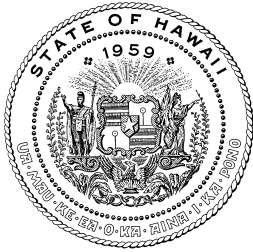


**Small Business Regulatory Review Board Meeting**

**September 15, 2022**

**10:00 a.m.**



## SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel: 808 798-0737

### AGENDA

**Thursday, September 15, 2022 ★ 10:00 a.m.**  
**No. 1 Capitol District Building**  
**250 S. Hotel Street, Conference Room 436**  
**Honolulu, HI 96813**

**David Y. Ige**  
*Governor*

**Mike McCartney**  
*DBEDT Director*

#### **Members**

**Robert Cundiff**  
*Chairperson*  
*O'ahu*

**Mary Albitz**  
*Vice Chairperson*  
*Maui*

**Jonathan Shick**  
*2nd Vice Chairperson*  
*O'ahu*

**Dr. Nancy Atmospera-Walch**  
*O'ahu*

**William Lydgate**  
*Kaua'i*

**James (Kimo) Lee**  
*Hawai'i*

**Garth Yamanaka**  
*Hawai'i*

**Taryn Rodighiero**  
*Kaua'i*

**Sanford Morioka**  
*O'ahu*

**Tessa Gomes**  
*O'ahu*

**Mark Ritchie** for  
Director, DBEDT  
*Voting Ex Officio*

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

**A. By attending the in-person meeting at:**  
**No. 1 Capitol District Building, 250 S. Hotel Street**  
**Conference Room 436, Honolulu, HI 96813; or**

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

<https://us06web.zoom.us/j/88945374966?pwd=cDhqWEEzZGZHYmJLM05tMHU5Mm5HQj09>

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

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

Members of the public may also submit written testimony via e-mail to: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov) or mailed to SBRRB, No. 1 Capitol District Building, 250 S. Hotel Street, Room 506A, Honolulu, HI 96813, or P.O. Box 2359, Honolulu, HI 96804. All written testimony should be received no later than 4:30 p.m., Wednesday, September 14, 2022.

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

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

- I. Call to Order**
- II. Approval of August 18, 2022 Meeting Minutes**

### **III. New Business – Before Public Hearing**

- A. Discussion and Action on proposed amendments to Hawaii Administrative Rules (HAR) Title 16, Chapter 115, **Professional Engineers Architects Surveyors and Landscape Architects**, promulgated by Department of Commerce and Consumer Affairs (DCCA) – **Discussion Leader – Tessa Gomes**
- B. Discussion and Action on proposed amendments to HAR Title 11 Chapter 60.1, **Air Pollution Control**, promulgated by Department of Health (DOH) – **Discussion Leader – Vice Chair Mary Albitz**

### **IV. Administrative Matters**

- A. Up-date on the Status of the Board's Proposed Phase II Website Project
- B. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Administrative Rules

### **V. Next Meeting:** Thursday, October 20, 2022 at 10:00 a.m., held via Zoom and at 250 S. Hotel Street, Conference Room 436, Honolulu, HI 96813

### **VI. Adjournment**

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process, please call (808) 798-0737 or email [dbedt.sbrrb.info@hawaii.gov](mailto:dbedt.sbrrb.info@hawaii.gov) at least three (3) business days prior to the meeting so arrangements can be made.

## **II. Approval of August 18, 2022 Meeting Minutes**

## Small Business Regulatory Review Board

### MEETING MINUTES - DRAFT

August 18, 2022

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:05 a.m., with a quorum present, which was open to the public.

**MEMBERS PRESENT:**

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Jonathan Shick, 2<sup>nd</sup> Vice Chair
- Garth Yamanaka
- Dr. Nancy Atmospera-Walch
- James (Kimo) Lee
- Mark Ritchie
- Taryn Rodighiero
- William Lydgate
- Tessa Gomes
- Sanford Morioka

**ABSENT MEMBERS:**

**STAFF: DBEDT**

Dori Palcovich  
Jet'aime Ariola

**Office of the Attorney General**

Alison Kato

II. **APPROVAL OF March 10, 2022 MINUTES**

Dr. Nancy Atmospera-Walch motioned to accept the June 16, 2022 meeting minutes as presented. Garth Yamanaka seconded the motion. Ten members voted in support and Tessa Gomes abstained.

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

- A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 12 Chapter 43, Rules of Practice and Procedure Before the Hawaii Labor Relations Board, promulgated by Department of Labor and Industrial Relations (DLIR)

Mr. Marcus Oshiro, Chairperson of Hawaii Labor Relations Board, states the main purpose of the proposed adoption of Hawaii Administrative Rules (HAR) Chapter 43 is to streamline the procedure for contested case hearings before the HRLB. Combining the rules of practice and procedure in HAR Chapters 41 and 42 into one coherent and internally consistent new HAR Chapter 43 has been an ongoing effort by the Hawaii Labor Relations Board (HLRB) and its staff members over a number of years. The proposed draft is designed to provide all parties

appearing before HLRB a clear understanding of how to navigate the process of contested case hearings.

HLRB is a quasi-judicial three-member body and functions as an appellate board; the HLRB adjudicates complaints between public employers, unions and employees involving prohibited practices. The current rules in chapter 41 and 42 have not been amended since 1981 and 1983, respectively.

In 2002, the Hawaii legislature transferred cases from Hawaii Occupational, Safety and Health (HIOSH) under Chapter 396 from the Labor and Industrial Appeals Board to HLRB; however, the legislature did not direct the promulgation of any rules. Since that time, HLRB has reviewed hundreds of HIOSH cases under the existing Chapters 41 and 42. Thus, the main purpose of proposed Chapter 43 is to streamline the procedure of contested case hearings in front of HLRB by incorporating Chapters 41 and 42 which has been an on-going process over the past several years.

Mr. Oshiro also explained that there is no apparent small business impact based on the proposed rules nor are there any imposed fees or indirect costs that would impact small businesses. In October of 2021, seven months prior to the public hearing, HLRB involved small business in the development of the proposed HAR Chapter 43 draft by posting the draft on its website and inviting comment from the public and private sectors. HLRB also wrote to the entities that may be covered under HRS Chapters 89, 377, or 396 and thus may be considered “stakeholders”:

After receiving formal approval to proceed to public hearing from the SBRRB on March 2, 2022, and the Office of the Governor on April 14, 2022, HLRB published the Public Hearing Notice in the statewide newspapers on May 4, 2022. The public hearing was held on June 13, 2022, at HLRB’s office and via Zoom.

At the public hearing held on June 13, 2022, there were no testifiers or written comments submitted. After the public hearing, HLRB reviewed its earlier responses to the comments received in November and December of 2021, and the sole comment received from UH. HLRB incorporated some, but not all, recommendations into the proposed rules from stakeholders who submitted comments.

Chair Cundiff comments and acknowledges the extensive summary and the effort Mr. Oshiro and the HLRB has gone to take the process so serious and be committed to the detail to the extent to which they conducted outreach to the community and stakeholders. He adds that Mr. Oshiro and the HLRB sought the input and took it under advisement and made corrections and adjustments as needed. He explained that the fact that there were no attendees or testimony at the Public Hearing is not because there were concerns or interest in the changes, but because Mr. Oshiro and the HLRB, on the front end did extensive outreach and engaged with stakeholders. The stakeholder list provided was the most thorough list provided thus far. Chair Cundiff thanks Mr. Oshiro and the effort made going through the process.

Vice Chair Albitz motioned to pass the rules onto the governor for adoption. Mr. Yamanaka seconded the motion. Ten members voted in support of the motion and Tessa Gomes abstained.

B. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 11 Chapter 94.2, Nursing Facilities, promulgated by Department of Health (DOH)

Vice Chair Albitz stated that DOH is repealing three chapters and replacing them to be align mostly with federal regulations.

Mr. Keith Ridley, Chief Officer at DOH's Office of Health Care Assurances, explained that DOH has the responsibility of conducting inspections on all health care facilities within the state from a state licensing standpoint. Inspections are also procured through Medicare for Medicare certification purposes. The facilities under DOH's jurisdiction include hospitals, nursing facilities, adult residential care homes, assisted living facilities, clinical laboratories, hospices, home health agencies, etc.

The subject rules and the two rules noted below are in the process of being repealed and amended and new rules are being created; two of the rules are aligned with Medicare; Chapter 11-103.1 in Section III. A. C. is the only rule not being aligned with Medicare.

Chapter 94.2 Nursing Facilities specifically will allow DOH to accept accreditation or certification of one's facilities by other nationally recognized accreditation and/or certification agencies for purposes of renewing state licensure. It was noted that Medicare requirements are much for stringent than state requirements; as such, DOH is aligning the state rules towards the federal rules. This is very beneficial to DOH on a workload and resource allocation standpoint because it allows DOH to conduct only one inspection rather than two or more.

The rule changes will also update requirements for emergencies including but not limited to natural disasters. Mr. Ridley clarified that only the larger institutions such as hospitals would be governed by both federal Medicare and state laws whereas the home health care facilities are only state operated and governed.

Vice Chair Albitz motioned to pass the rules onto the governor for adoption. Mr. Yamanaka seconded the motion, nine members voted in support of the proposal with Dr. Nancy Atmosphera-Walch recusing herself and Tessa Gomes abstaining.

C. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 11 Chapter 97.1, Home Health Agencies, promulgated by DOH

Mr. Keith Ridley, Chief Officer at DOH's Office of Health Care Assurances, explained that these rules are similar to the nursing home rules (above) in terms of being aligned with the federal Medicare. However, there is one difference. Congress recently passed a law that for the Veteran's Administration (VA) doctors who are in the VA system, regardless as to what state he or she is licensed in, can continue to do work in his or her host state and

provide services to VA beneficiaries even when it relates to services being referred to the private sector.

For example, under the current rules a physician or an APRN has to be licensed in the state of Hawaii in order to provide referrals to home health agencies. Licensed home health agencies can only accept referrals from physicians or APRNs who are licensed in Hawaii. This, of course, becomes a problem for the VA when they treat a patient in Hawaii and send them into the community as the VA does not have a robust home health agency system statewide. Thus, it becomes an issue for Hawaii licensed home health agencies to accept these VA beneficiaries.

Thus, the law that Congress recently passed is being incorporated into the rules that would allow a home health agency to accept a referral from a VA physician who is licensed in another state for the VA patient who is being referred for home health services.

Vice Chair Albitz motioned to pass the rules onto the governor for adoption. Mr. Yamanaka seconded the motion, nine members voted in support of the proposal with Dr. Nancy Atmosphera-Walch recusing herself and Tessa Gomes abstaining.

D. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 11 Chapter 103.1, Licensure and Certification Fees for Health Care Facilities and Agencies, promulgated by DOH

Mr. Keith Ridley, Chief Officer at DOH's Office of Health Care Assurances, indicated that these rules relate to state licensing fees only; there is no alignment with federal fees as the federal government does not charge a fee for certification. The proposed rule changes reflect updating and increasing the fees only; the fees are for providers that DOH license and certify. There are a number of facilities that would be considered small businesses such as adult residential care homes and community care foster family homes.

The fee increase will be for the initial or brand-new licenses as well as for renewals. The fee changes, which hadn't been increased since 2017, depends on the term of license. While most facilities are licensed and renewed every year, there are also a few facilities that are licensed every two years. The percentage increase for these facilities mostly ranges between 10 to 25 percent.

The Bureau of Labor Statistics and the Consumer Price Index over the past few years were reviewed and used as guides for establishing the proposed fees. DOH is expecting a lot of testimony at the public hearing from operators of adult residential care homes where the change in the fees will be 13 percent; this equates to \$225 per year from \$200 per year. Assisted living facilities will be imposed a 25 percent increase, hospitals will be imposed a 20 percent increase, and clinical laboratories a 33 percent increase.

The fee schedule has not yet been discussed with the impacted businesses despite being a major concern. Overall, there is no indication that fees will be raised next year or in the foreseeable future. Vice Chair Albitz requested a list of comments made by the small businesses that attend the public hearing, and noted that it will be helpful to see a chart



outlining both the current and proposed fee rates.

Vice Chair Albitz motioned to pass the rules onto the governor for adoption. Mr. Lee seconded the motion, nine members voted in support of the proposal with Dr. Nancy Atmospera-Walch recusing herself and Tessa Gomes abstaining.

E. Re-review and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 13 Chapter 256, Ocean Recreation Management Rules and Areas, promulgated by Department of Land and Natural Resources (DLNR)

Chairperson, Robert Cundiff, explained this is a re-review of the proposed rules and that there was a map that was excluded from the original submission back in June of 2021.

Mr. Todd Tashima, General Professional from DLNR's Division of Boating and Ocean Recreation (DOBOR), states a public hearing will be held on Hawai'i Island although final approval was given at the June 17, 2021 SBRRB meeting. There are no other changes being made. One technical change was made to remove a reference to Kamo Point because it was incorrectly stated in the map.

Discussion Leader and 2<sup>nd</sup> Vice Chair, Jonathan Shick, motioned to move the proposed amendments to public hearing once more. Mr. Yamanaka seconded the motion, ten members voted in support of the motion and Tessa Gomes abstained.

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

A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 11 Chapter 55, Appendices A, D, H, I, and M, Water Pollution Control, promulgated by DOH

Mr. Darryl Lum, Engineering Section Supervisor, Mr. Alec Wong, Program Manager, and Mr. Matthew Kurano, Enforcement Supervisor at DOH's Clean Water Branch, are introduced by Discussion Leader Nancy Atmospera-Walch.

Mr. Lum explains that the 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 A of HAR Chapter 11-55 is the list of standard general permit conditions that are applicable to all of the General Permits.

Appendix D of HAR Chapter 11-55 authorizes the discharge of treated effluent from leaking underground storage tank remedial activities to a State receiving water from the cleanup (or remedial action) of underground storage tanks that have leaked petroleum hydrocarbons. Currently there is only one permittee, The United States Navy.

Appendix H of HAR Chapter 11-55 authorizes discharges of treated process wastewater associated with petroleum bulk stations and terminals to a State receiving water. Treated process wastewater effluent includes tank water draws, product displacement process wastewater, wash down and fire hydrant system test waters, service station tank draws, recovered groundwater, and contaminated storm water runoff from the product storage and handling areas.

Appendix I of HAR Chapter 11-55 authorizes discharges of treated process wastewater associated with well drilling activities to a State receiving water. Treated process wastewater associated includes well drilling slurries, lubricating fluids wastewaters, and well purge wastewaters.

The last General Permit that DOH is proposing to amend is in Appendix M of HAR Chapter 11-55 which authorizes point source discharges from the application of pesticides (including insecticides, herbicides, fungicides, rodenticides, and various other substances to control pests) to a State receiving water.

Early Stakeholder Outreach on the proposed revisions to HAR 11-55 and the general permits were conducted from July 11, 2022 through August 1, 2022. The CWB sent 585 emails to notify current permittees and organizations and to solicit comments. The CWB does not expect the updated draft general permits to impose more stringent requirements than the drafts provided for stakeholder review.

The rule change is primarily to issue the Appendices D, H, I, and M before they expire. The rule change also updates the main body of HAR 11-55 and Appendix A to conform with current implementation practices and to address any needed clarifications and revisions that were deemed necessary since the last substantive revision.

Mr. Lum states Appendices D, H, and I do not impact small businesses, so there should be no adverse impact from revisions. Appendix M primarily impact government agencies and municipalities. Although there may be contractors or sub-contractors that are small business that are hired for these projects, there should be no adverse impact. These revisions to Appendix M only clarify existing submittal and compliance requirements and are required to comply with Federal regulations. Revisions to HAR 11-55 and Appendix A potentially affect other NPDES permittees, however, most changes are clarifications of current rules, and changes to the field citation penalties don't affect permittees who are in compliance with their permit.

Mr. Lydgate seeks clarification on Appendix M which authorizes point source discharges from the application of pesticides to a State receiving water. And he notes that it seems increasing the fees is the only change and there is no real impact. Mr. Lum responds that DOH is keeping the filing fees the same which is \$500 and that the only increase is the field citation fee. These revisions to Appendix M only clarify existing submittal and compliance requirements and are required to comply with Federal regulations.

Chair Cundiff adds comments regarding DOH's Clean Water Branch and their professionalism and amount of outreach. Chair Cundiff asks how many citations DOH has issued that created the motivation to increase these penalties.

Mr. Kurano, Enforcement Supervisor, claims that there are roughly around 1200 permittees, on average 35-45 field citations a year. There is a growing group particularly in the construction type industry where they rather pay a fine than go through the more costly compliance costs. There has been an increase in non-compliance with certain sub-groups. There is a reasonable amount of non-compliant businesses to have to double the field citation penalties moving forward.

Mr. Yamanaka follows up with asking if the penalty is sufficient to protect the other businesses or the individuals that maybe harmed by the pollution occurring .

Mr. Kurano explains that DOH has the authority to give penalties up to \$25,000 per day. If they are significant they don't use field citations as a vehicle. He claims that DOH can use judicial action and potentially criminal prosecution as well. So in one respect they would like to see violation and penalty amounts that are larger and field citations that are deterrent. But once increase the fees too much then you are forcing businesses to fight the citations. DOH will then initiate an escalated enforcement action. He adds that enforcement is limited by prioritization which is limited by budget.

Chair Cundiff commends and acknowledges the effort brought forth by DOH and asks if there was a lot of feedback regarding the new proposed rules. Mr. Lum states there were a few comments regarding an existing definition that DOH was not proposing to change but took into consideration and included. DOH is aware that this is pre-public hearing and there may be comments or concerns within the industry. One of the pre-comments that did come in may trigger similar comments at public hearing and DOH may need to re-phrase or make changes. The 500 stakeholders that the notice goes out to are people who operate in the industry very heavily. DOH believes that the lack of pre-input shows that the proposed rule changes are less controversial changes.

Mr. Yamanaka, motioned to move the proposed amendments to public hearing. Mr. Lee seconded the motion, ten members voted in support of the motion and Tessa Gomes abstained.

## **V. ADMINISTRATIVE MATTERS**

### **A. Update on the Board's Proposed Phase II Website Project**

Mr. Ritchie indicated that the website taskforce is doing a great job working with NIC on a weekly basis to improve upon the Board's website activity and allowing the public to be more engaged with the Board. Involving Small Business and Government Agencies in the rule making process and assist in tracking rules has been the focus. The new version will look very similar but the improvements will be very organized.

Ms. Palcovich adds that the website should be up live within the next month. Mr. Ritchie notes that NIC will be assisting in the final product presentation once completed.

Chair Cundiff comments on how the taskforce has been very engaged and provided great comments and input. It will be very user friendly, and the new version of the website will address the outreach that the board is trying to accomplish. A press release will be sent out once the website is launched.

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

Mr. Ritchie states that DBEDT has partnered with the SBA and will be hosting the Hawai'i Small Business Fair on Saturday, September 17, 2022, at Leeward Community College. Small Businesses will be able to hear from speakers and exhibitors on how to start or grow a business. The Fair will provide actionable information for small businesses recovering from economic hardships caused by the COVID-19 pandemic. Expert speakers will present step-by-step methods and concrete examples to help you grow and strengthen a business. Business resource providers will speak one-on-one with business owners and entrepreneurs about specific challenges and provide actionable advice for any specific business needs. Small Businesses will be able to connect with financial institutions to discuss SBA-guaranteed loans and other financing.

Also, the SBRRB will have a table set up at the fair to feature the board. Ms. Ariola will be available to answer questions and speak on behalf of the SBRRB.

Chair Cundiff acknowledges Mr. Ritchie as DBEDT Manager of the Year, and he also recognizes Ms. Palcovich and her 20 years of service with DBEDT.

## **VI. NEXT MEETING - Thursday, September 15, 2022 at 10:00 a.m.**

**VII. ADJOURNMENT** – Chair Cundiff made a motion to adjourn the meeting and Mr. Yamanaka seconded the motion; the meeting adjourned at 11:47 a.m.

DRAFT

### **III. New Business**

- A. Discussion and Action on the Small  
Business Statement Before Public Hearing  
and Proposed Amendments to HAR Title 16  
Chapter 115, **Professional Engineers  
Architects, Surveyors, and Landscape  
Architects**, promulgated by Department of  
Commerce and Consumer Affairs / DCCA

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.

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](mailto: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>

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-115  
Hawaii Administrative Rules

M DD, YYYY

1. Chapter 16-115, Hawaii Administrative Rules, entitled "Professional Engineers, Architects, Surveyors, and Landscape Architects", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 115

PROFESSIONAL ENGINEERS, ARCHITECTS, SURVEYORS, AND  
LANDSCAPE ARCHITECTS

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Historical note: Chapter 16-115, Professional Engineers, Architects, Surveyors, and Landscape

Architects, is based substantially upon chapter 16-82 of the rules of the Professional Engineers, Architects, Surveyors, and Landscape Architects. [Eff 4/18/80; am and ren 2/13/81; am and comp 10/16/82; am and comp 11/22/86; am 2/26/88; R 8/29/94]

## SUBCHAPTER 1

### GENERAL PROVISIONS

**§16-115-1 Objective.** This chapter is intended to clarify and implement chapter 464, Hawaii Revised Statutes, to the end that the provisions thereunder may be best effectuated, and the public interest most effectively served. [Eff 8/29/94; comp 10/26/01; comp 5/23/13; am and comp ] (Auth: HRS §464-7) (Imp: HRS §464-7)

**§16-115-2 Definitions.** As used in this chapter: "Agricultural engineering" means that branch of professional engineering involving the design, construction, and use of specialized equipment, machines, structures, and materials relating to the agricultural industry and economy. It requires knowledge of the engineering sciences relating to physical properties and biological variables of foods and fibers; atmospheric phenomena as they are related to agricultural operations; soil dynamics as related to traction, tillage and plant-soil-water relationships; and human factors relative to safe design and use of agricultural machines. The safe and proper application and use of agricultural chemicals and their effect on the environment are also concerns of the agricultural engineers.

"Architect committee" means members of the board who are professional architects.

"A.R.E." means the architect registration examination administered by the NCARB.

"AXP" means the Architectural Experience Program of NCARB.

"Branch examination" means a professional engineering examination which covers subjects within only one branch of professional engineering. The branches of engineering examined in are agricultural, chemical, civil, electrical, environmental, fire protection, industrial, mechanical, and structural.

"Chemical engineering" means that branch of professional engineering which embraces studies or activities relating to the development and application of processes in which chemical or physical changes of materials are involved. These processes are usually resolved into a coordinated series of unit physical operations and unit chemical processes. It is concerned with the research, design, production, operational, organizational, and economic aspects of the above.

"Civil engineering" means that branch of professional engineering which embraces studies or activities in connection with fixed works for matters such as irrigation, drainage, waterpower, water supply, flood control, inland waterways, harbors (not including piers), municipal improvements, railroads, highways, traffic, non-structurally supported tunnels, airfields and airways, purification of water, geotechnical activities, and sewerage and refuse disposal.

"CLARB" means Council of Landscape Architectural Registration Boards.

"Consultation" means meetings, discussions, written or verbal messages, reports, etc., involving scientific, aesthetic or technical information, facts, or advice for purposes of planning, designing, deciding, or locating construction or alteration of structures, buildings, works, machines, processes, land areas, or projects.

"Design" means any procedure which conveys the plan, location, arrangement, intent, purpose, appearance, and nature of construction or alteration of existing or proposed buildings, structures, works, machines, processes, land areas, or projects.

"Digital signature" means a digital code, generated and authenticated by public encryption, which is attached to an electronically transmitted document to verify its contents and the sender's identity. A digital signature contains encryption protections using a set of algorithms to determine authenticity of a document.

"Direct control" or "directly in charge of the professional work" means personal preparation, or direct supervision of the preparation and personal review, of all instruments of professional service.

"Electrical engineering" means that branch of professional engineering which embraces studies or activities relating to the generation, transmission, and utilization of electrical energy, including the design of electrical, electronic, and magnetic circuits and the technical control of their operation and of the design of electrical gear. It is concerned with research, organizational, and the economic aspects of the above.

"Engineer committee" means members of the board who are professional engineers.

"Environmental engineering" means that branch of engineering which embraces studies of activities relating to wastewater, storm water, potable water, and water resources; air quality systems and pollution control; municipal and industrial solid waste, hazardous waste, medical, radioactive and other waste; site assessment and remediation; and environmental health and safety assessment. Except as otherwise provided above, this definition shall not be construed to permit an environmental engineer to practice any other branch of professional engineering. This definition shall also not be construed to prevent civil engineers from performing the above work within their respective scope of practice, as provided in this chapter and chapter 464, HRS.



"Experience in responsible charge" means that an individual is licensed and in direct control or personal supervision of engineering, architecture, landscape architecture, or land surveying work.

"Evaluation" means careful search, examination, or inquiry to reveal, determine, or estimate the value, worth, merit, effect, efficiency, or practicability of planning, design, location, construction, or alteration of existing or proposed structures, buildings, works, processes, land areas, or projects.

"Fire protection engineering" means that branch of engineering which involves the safeguarding of life and property from fire and fire-related hazards; the identification, evaluation, correction, or prevention of present or potential fire and fire-related hazards in buildings, groups of buildings, or communities; and the arrangement and use of fire-resistant building materials and design of fire detection suppression and communication systems, devices, and apparatuses in order to protect life and property. Except as otherwise provided above, this definition shall not be construed to permit a fire protection engineer to practice any other branch of professional engineering. This definition shall also not be construed to prevent licensed civil, electrical, or mechanical engineers and architects from performing the above work within their respective scopes of practice, as provided in this chapter and chapter 464, HRS.

"Full-time" means forty hours or more per week.

"Geotechnical activities" means the investigation and engineering evaluation of earth materials including soil, rock, groundwater and man-made materials and their interaction with earth retention systems, structural foundations, and other civil engineering works. The activities involve application of the principles of soil mechanics and the earth sciences, and requires a knowledge of engineering laws, formulas, construction techniques, and performance evaluation of civil engineering works influenced by earth materials.

"IDP" means the intern development program of NCARB or other similar program satisfactory to the board.

"Industrial engineering" means that branch of professional engineering involving the investigation, design, and evaluation of systems of persons, materials, and facilities for the purpose of economical and efficient production, use, and distribution. It requires the application of specialized engineering knowledge of the mathematical and physical sciences, together with the principles and methods of engineering analysis and design to specify, predict, and evaluate the results to be obtained from such systems.

"Institution of higher education approved by the board" means an institution approved by the board that offers curricula leading to a master's degree in engineering, architecture, or landscape architecture.

"Investigation" means careful search, examination, inquiry, or study to reveal or determine scientific, aesthetic, technical information, or facts for the planning, design, location, construction, or alteration of existing or proposed structures, buildings, works, machines, processes, land areas, or projects.

"Land surveyor committee" means members of the board who are professional land surveyors.

"Landscape architect committee" means members of the board who are professional landscape architects.

"Lawful experience" means that type of experience listed in sections 16-115-39, 16-115-58, 16-115-79 and 16-115-98.

"Mechanical engineering" means that branch of professional engineering, which deals with engineering problems relating to generation, transmission, and utilization of energy in the thermal or mechanical form and also with engineering problems including but not limited to the production of tools, machinery, and their products and to heating, ventilation, refrigeration, and plumbing. It is concerned with the research, design, production, operational, organizational, and economic aspects of the above.

"NCARB" means National Council of Architectural Registration Boards.

"NCEES" means National Council of Examiners for Engineering and Surveying.

"Observation of construction" means making and documenting visits to the site by a licensed engineer, architect, landscape architect, or qualified representatives working under the supervision of a licensed engineer, architect, or landscape architect, as the case may require, to observe the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract documents. It is not required that they make exhaustive or continuous on-site observations to check the quality or quantity of work nor is it intended that the engineer, architect, or landscape architect be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work.

"Part-time" means less than forty hours per week.

"Planning" means careful search, examination, inquiry, study, and the formulation or execution of a statement, outline, draft, map, drawing, diagram, or picture showing arrangement, scheme, schedule, program, or procedure for locating, building, or altering existing or proposed buildings, structures, works, machines, processes, land areas, or projects.

"Prepared by" means that a licensed engineer, architect, surveyor, or landscape architect, as the case may be, personally drafts, draws, or designs the plans, specifications, and other related documents.

"Public officials" means and includes without limitation all federal, state, and county agencies that issue permits.

"School or college approved by the board" means an institution approved by the board and offering curricula leading to degrees in engineering, architecture, geo-science, or landscape architecture accredited by the Accreditation Board for Engineering and Technology, the National Architectural

Accreditation Board, Inc., the Landscape Architectural Accreditation Board, or as approved by the board.

"Specifications" means the specifying of material, equipment, projects, or methods to be used in the construction or alteration of buildings, structures, works, machines, processes, land areas, or projects.

"State-produced licensing examination" means and includes a licensing examination administered by states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States, as approved by the board.

"Structural engineering" means that branch of professional engineering which deals with the investigation of, the design of, the selection of, and construction observation of the force-resisting and load-supporting members of structures such as foundations, walls, columns, slabs, beams, girders, trusses, and similar members where such investigation, design, selection, and supervision requires a knowledge of engineering laws, formulae, practice, and knowledge of the methods used in their erection.

"Supervise", "supervision", "supervision of design", or "under the supervision of" means that a licensed engineer, architect, surveyor, or landscape architect, as the case may be, shall:

- (1) Exercise direct control and oversee the subject activity through physical presence or through the use of communication devices; provided the licensee has both direct control and detailed professional knowledge of the work being supervised; or
- (2) Substantially redraft, redraw, redesign, or recalculate the plans, specifications, and other related documents;

and be responsible for all work within the licensee's discipline performed on plans, specifications, and other related documents.

"Written examination" means paper-pencil or computer-assisted examination. [Eff 8/29/94; am and

comp 10/26/01; am and comp 5/23/13; am and comp  
] (Auth: HRS §464-7) (Imp: HRS  
§§464-7, 464-8, 464-11)

**§16-115-3 Notification and filing of names, addresses, and changes.** A licensee shall file the licensee's mailing address and name with the board and shall immediately notify the board in writing within thirty days of any and all changes of address or name. [Eff 8/29/94; am and comp 10/26/01; comp 5/23/13; comp  
] (Auth: HRS §464-7) (Imp: HRS  
§§464-7, 464-9)

**§16-115-4 Business entities.** Pursuant to chapters 428 and 464, HRS, a corporation, partnership, or limited liability company may engage in the practice of professional engineering, architecture, land surveying, or landscape architecture in the State provided the person or persons connected with the business entity directly in charge of the professional work is or are duly licensed under chapter 464, HRS. The person or persons in direct charge shall be full-time employee(s), principal(s), officer(s), partner(s), member(s), or manager(s) of the business entity, and shall have been delegated the legal authority to bind the business entity in all matters relating to the professional work. [Eff 8/29/94; am and comp 10/26/01; comp 5/23/13; comp  
] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-12)

**§16-115-5 Display of certificate.** Every licensee who, as an individual or as a member of a firm, partnership, corporation, or limited liability company, conducts an office or other place of business for the practice of the licensee's profession, shall display the licensee's certificate together with

evidence of current validation in a conspicuous manner, in the licensee's principal office or place of business. [Eff 8/29/94; am and comp 10/26/01; comp 5/23/13; comp ] (Auth: HRS §464-7)  
(Imp: HRS §§464-7, 464-9)

**§16-115-6 Lost, destroyed, or mutilated certificate of licensure.** Upon request accompanied by affidavit showing loss, destruction, or mutilation of a certificate, a licensee shall be furnished a new certificate. [Eff 8/29/94; comp 10/26/01; comp 5/23/13; comp ] (Auth: HRS §464-7)  
(Imp: HRS §§464-7, 464-9)

**§16-115-7 Biennial renewal.** Renewal fees paid by mail shall be considered as paid when due if the envelope bears a postmark of April 30 or earlier. [Eff 8/29/94; comp 10/26/01; comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-9)

**§16-115-8 Seal or stamp.** (a) The licensee shall use a seal or stamp that is legible and reproducible of the following design:

- (1) Two circles - a smaller one, 1-1/8" in diameter, within a larger one, 1-1/2" in diameter. The name of the licensee and the words "Hawaii, U.S.A." shall be in the outer or annular space. The words "Licensed Professional Engineer", "Licensed Professional Architect", "Licensed Professional Land Surveyor", or "Licensed Professional Landscape Architect", together with the licensee's license number, shall be inserted in the center space;

- (2) The engineer shall also insert in the center space and after the license number, the abbreviation of the engineering branch in which the engineer has especially qualified; and
- (3) The engineering branch abbreviations shall be:
  - (A) "Ag." - Agricultural;
  - (B) "Ch." - Chemical;
  - (C) "C." - Civil;
  - (D) "E." - Electrical;
  - (E) "En." - Environmental;
  - (F) "FP." - Fire Protection;
  - ~~{(E)}~~ (G) "I." - Industrial;
  - ~~{(F)}~~ (H) "M." - Mechanical; and
  - ~~{(G)}~~ (I) "S." - Structural.
- (4) An example of an acceptable seal or stamp is as follows:

(b) An engineer who is licensed in more than one branch shall have a seal or rubber stamp for each branch.

(c) All plans, specifications, maps, reports, surveys, and descriptions prepared by or under the supervision of a licensed professional engineer, architect, land surveyor, or landscape architect submitted to public officials for approval shall be stamped with the authorized seal or stamp and authenticated as provided in section 16-115-9. [Eff 8/29/94; am and comp 10/26/01; am and comp 5/23/13; am and comp ] (Auth: HRS §§464-7, 464-11) (Imp: HRS §§464-7, 464-11)

**§16-115-9 Authentication: preparation or supervision of design and observation of construction.**

(a) All plans, specifications, maps, reports, surveys, descriptions, and every sheet in a set of design drawings prepared by or under the supervision of a licensed professional engineer, architect, land

surveyor, or landscape architect shall be stamped with the authorized seal or stamp when filed with public officials. Below the seal or stamp, the authentication shall state "This work was prepared by me or under my supervision", be signed by the licensee, and state the expiration date of the license, as follows:

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION.

Signature	Expiration Date of the License
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Provided that where applicable, the form of authentication shall be as determined by the rules of the land court, the statute relating to file plans, or other legal authorities relating to maps, surveys, descriptions, etc.

(b) In addition to the requirements of subsection (a), when applications are made for building or construction permits involving public safety or health, all plans and specifications in connection therewith shall bear the authorized seal or stamp of the duly licensed professional engineer, architect, or landscape architect charged with observation of construction pursuant to sections 464-4 and 464-5, HRS. Below the seal or stamp, the authentication shall state "Construction of this project will be under my observation", be signed by the licensee, and state the expiration date of the license, as follows:

CONSTRUCTION OF THIS PROJECT WILL BE UNDER MY  
OBSERVATION



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Signature	Expiration Date of the License
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(c) Where the licensed professional engineer, architect, or landscape architect has responsibility for design and observation of construction, the authentication shall state "This work was prepared by me or under my supervision and construction of this project will be under my observation", be signed by the licensee, and state the expiration date of the license, as follows:

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION  
AND CONSTRUCTION OF THIS PROJECT WILL BE UNDER MY  
OBSERVATION

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Signature	Expiration Date of the License
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(d) In the event the licensed professional engineer, architect, or landscape architect whose seal or stamp and signature appear in connection with the statement in subsection (b) or (c) concerning observation of construction has been removed, replaced, or is otherwise unable to discharge the licensee's duties, the licensed professional engineer, architect, or landscape architect shall so notify the appropriate public official(s) in writing within fifteen days. The notification shall include the name, if known, of the licensed professional engineer, architect, or landscape architect charged with continuing the construction observation.

(e) All signatures required under this section shall be original and a digital signature is acceptable. The use of rubber signature stamps [, or computer-generated] or other facsimile signatures is prohibited. [Eff 8/29/94; am and comp 10/26/01; am

and comp 5/23/13; am and comp  
] (Auth: HRS §§464-7, 464-11) (Imp:  
HRS §§464-7, 464-11)

**§16-115-10 Misconduct in the practice.**

Misconduct in the practice of the profession of engineering, architecture, land surveying, or landscape architecture means without limitation the following:

- (1) Acting for licensee's client, or employer, in matters otherwise than as a faithful agent or trustee, or accepting any remuneration other than the licensee's stated recompense for services rendered;
- (2) To knowingly injure or attempt to injure falsely or maliciously, directly or indirectly, the professional reputation, prospects, or practice of another engineer, architect, land surveyor, or landscape architect;
- (3) Advertising in a false, misleading, or deceptive manner;
- (4) "Plan stamping"; i.e. sealing, stamping, or certifying any document which was not prepared by or supervised by the licensee; and
- (5) Misrepresentation, deceit, fraud, gross negligence, and other offenses relating to misconduct of the licensee's practice. [Eff 8/29/94; am and comp 10/26/01; comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-10, 464-11)

§16-115-10.5 Examination misconduct. (a) Any misconduct by an applicant in applying for, taking, or subsequent to the examination shall be prohibited and shall invalidate any grade earned by an applicant on

any section of the examination, and may warrant summary expulsion from the test site, disqualification from taking the examination permanently or for a specified period of time, and other action deemed appropriate by the board. [eff and comp ] (Auth; HRS §464-7) (Imp; HRS §§464-7, 464-10)

**§16-115-11 Oral testimony.** (a) The board shall accept oral testimony on any item which is on the board's agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony is requested to notify the board not later than forty-eight hours prior to the meeting, and at that time, to state the item on which testimony is to be presented;
- (2) The board may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the board;
- (3) The board may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;
- (4) Persons presenting oral testimony shall, at the beginning of the testimony, identify themselves and the organization, if any, that they represent;
- (5) The board may limit oral testimony to a specified time period; provided that the period is not less than five minutes, and the person testifying be informed prior to the commencement of the testimony of the time constraints to be imposed; and
- (6) The board may refuse to hear any testimony which is irrelevant, immaterial, or unduly repetitious to the agenda item on which it is presented.

(b) Nothing in this section shall require the board to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another pending proceeding subject to the hearing's relief, declaratory relief, or rule relief provisions of chapter 16-201.

(c) Nothing in this section shall prevent the board from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the board on any particular matter on the board's agenda. [Eff 8/29/94; comp 10/26/01; am and comp 5/23/13; comp ]  
(Auth: HRS §464-7) (Imp: HRS §92-3)

**§16-115-12 Denial.** In the event an application for the issuance of a license or for the reinstatement thereof is denied, the board shall notify the applicant by letter of the board's action which shall include a concise statement of the reasons therefor and a statement informing the applicant of the applicant's right to a hearing if the applicant so desires. Where the board has approved an application for licensure subject to the applicant passing an examination, but the applicant fails the examination, notice of failure of the examination shall be deemed sufficient notice under this rule. [Eff 8/29/94; comp 10/26/01; comp 5/23/13; am and comp ]  
(Auth: HRS §464-7) (Imp: HRS §§464-7, 91-2)

**§16-115-13 Demand for hearing.** Any person whose application for a license or whose application for the reinstatement of a license has been denied by the board shall be entitled to a hearing after notice, provided that the demand for a hearing is filed with the board within sixty days of the date of mailing of the letter informing the applicant of the denial of applicant's application. [Eff 8/29/94; comp 10/26/01;

comp 5/23/13; comp ] (Auth: HRS §464-  
7) (Imp: §§464-7, 91-2)

**§16-115-14 Proceedings upon demand for hearing.**

If a demand for hearing is filed within the time prescribed, the board shall order a hearing upon notice, which shall be conducted pursuant to chapter 91, HRS, and chapter 16 201, Administrative Practice and Procedure. [Eff 8/29/94; comp 10/26/01; comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 91-9)

**§16-115-15 Administrative practice and procedure.** The rules of practice and procedure for engineers, architects, surveyors, and landscape architects shall be as provided in chapter 16-201, the rules of practice and procedure of the department of commerce and consumer affairs, which are incorporated by reference and made a part of this chapter. [Eff 8/29/94; comp 10/26/01; comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 91-2)

## SUBCHAPTER 2

### PROFESSIONAL ENGINEERS

**§16-115-21 Branches of engineering.** A person may qualify for licensure in the following branches of engineering:

- (1) Agricultural;
- (2) Chemical;
- (3) Civil;

- (4) Electrical;
- (5) Environmental;
- (6) Fire Protection;
- ~~{(5)}~~ (7) Industrial;
- ~~{(6)}~~ (8) Mechanical; or
- ~~{(7)}~~ (9) Structural. [Eff 8/29/94; comp  
10/26/01; comp 5/23/13; am and comp  
] (Auth: HRS §464-7) (Imp:  
HRS §§464-1, 464-7)

**§16-115-22 Forms and instructions.** To apply for licensure, a person shall complete and file with the board the appropriate application forms. The following forms are currently in use by the board:

- (1) Application for Licensure Engineer;
- (2) Additional Experience Form;
- (3) Verification of Lawful Experience; and
- (4) Verification or Experience in Responsible Charge.

The aforementioned forms may be modified from time to time as required. [Eff 8/29/94; am and comp 10/26/01; am and comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-9)

**§16-115-24 Licensure by endorsement.** (a) The engineer committee shall review a person's qualifications for licensure by endorsement and make recommendations to the board.

(b) To be eligible for licensure by endorsement, a person shall hold a current license from another jurisdiction, currently possess the appropriate education and lawful experience requirements provided in section 464-8(a)(2) to (6), HRS, and sections 16-115-33(a) and 16-115-39, and shall:

- (1) Have successfully passed the NCEES fundamentals of engineering examination or a similar state-produced licensing examination; provided that this examination

requirement may be waived if the person has at least fifteen years of experience in responsible charge of the appropriate branch of engineering work as approved by the board; and

- (2) Have successfully passed the NCEES professional engineering branch or combined examination, or the board-produced structural engineering examination, or a similar state-produced licensing examination.

(c) Every person shall certify on the application that the person has read, understood, and agreed to comply with the laws and rules of the board.

(d) A person applying for licensure by endorsement shall file an Application for Licensure-Engineer. The application shall be accompanied by the application fee, which shall not be refunded, and the following applicable documents:

- (1) A certified copy of a diploma or certificate of graduation or official transcripts from an institution, school or college approved by the board; provided that if the applicant is educated in a foreign institution, school, or college, the applicant shall submit an official report by a professional service approved by the board which has evaluated the person's foreign educational credentials;
- (2) Verification(s) of Lawful Experience completed by supervisors who are licensed professional engineers and in the same branch in which the person seeks licensure. For structural engineering applicants from a jurisdiction in which structural engineering is considered a part of civil engineering, the applicant shall submit Verification(s) of Lawful Experience completed by supervisors who are licensed professional civil engineers in that jurisdiction; and
- (3) If applicable, Verification(s) of Experience in Responsible Charge completed by licensed

professional engineers who are in the same branch in which the person seeks licensure. For structural engineering applicants from a jurisdiction in which structural engineering is considered a part of civil engineering, the applicant shall submit Verification(s) of Experience in Responsible Charge completed by licensed professional civil engineers in that jurisdiction. If the applicant operated as a sole proprietorship, the applicant shall complete and submit Verification(s) of Experience in Responsible Charge; or

- (4) Appropriate NCEES records that document any of the above to the satisfaction of the board. [Eff 8/29/94; am and comp 10/26/01; am and comp 5/23/13; comp ]  
(Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-26 Licensure by examination.** (a) The engineer committee shall review a person's qualifications for licensure by examination and make recommendations to the board.

(b) To be eligible for licensure by examination, the person shall:

- (1) Meet the qualifications as contained in section 464-8(a)(2) to (6), HRS;
- (2) Have passed the appropriate examinations as contained in section 16 115-27; and
- (3) Certify on the application that the person has read, understood, and agrees to comply with the laws and rules of the board. [Eff 8/29/94; am and comp 10/26/01; comp 5/23/13; comp ] (Auth: HRS §464-7)  
(Imp: HRS §§464-7, 464-8)



**§16-115-27 Examination requirements for licensure.** (a) A person applying for licensure by examination shall be required to pass the following examinations:

- (1) NCEES fundamentals of engineering examination; and
- (2) NCEES professional engineering branch examination.

(b) The board reserves the right to modify or supplement the examinations. [Eff 8/29/94; am and comp 10/26/01; comp 5/23/13; comp ]  
(Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-29 Passing score.** The passing score shall be:

- (1) A grade of not less than seventy for the NCEES fundamentals of engineering and professional engineering branch examinations, or a grade of pass for similar state-produced licensing examinations; and
- (2) For structural engineers, a grade of not less than seventy for Part I and a grade of pass for both portions of Part II of the NCEES structural engineering examination, or a grade of not less than seventy or pass for a state-produced structural engineering licensing examination. [Eff 8/29/94; am and comp 10/26/01; comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-31 Examination-fundamentals of engineering: qualifications, application, fees, required documents.** (a) To be eligible for the NCEES fundamentals of engineering examination, the person shall:

- (1) Hold a ~~[masters]~~ master's degree in engineering from an institution of higher education approved by the board;
- (2) Be a graduate of a school or college of engineering approved by the board;
- (3) Be a graduate of a school or college approved by the board, have completed an engineering technology curriculum of four years or more or an arts and science curriculum of four years or more with a math, science, or science-related major and have not less than two years of full-time lawful experience or the part-time equivalent in engineering;
- (4) Be in the last year of an engineering curriculum at a school or college approved by the board with graduation expected not later than seven months from the date of application as confirmed by the dean of the applicant's school or college of engineering. If graduation does not occur within the seven-month period, the application shall be void; or
- (5) Have not less than nine years of full-time lawful experience or part-time equivalent in engineering.

(b) A person applying for the NCEES fundamentals of engineering examination shall file an Application for Licensure-Engineer no later than [January 10] 90 days prior to [for] the examination [which is regularly conducted once a year in April]. The application shall be accompanied by the application fee, which shall not be refunded, the examination fee, which may not be refunded, and the following applicable documents:

- (1) A certified copy of a diploma or certificate of graduation or official transcripts from an institution, school or college approved by the board; provided that if the applicant is educated in a foreign institution, school or college, the applicant shall submit an official report by a professional service

approved by the board which has evaluated the person's foreign educational credentials;

- (2) Verification(s) of Lawful Experience completed by supervisors who are licensed professional engineers and in the same branch in which the person seeks licensure. For structural engineering applicants from a jurisdiction in which structural engineering is considered a part of civil engineering, the applicant shall submit Verification(s) of Lawful Experience completed by supervisors who are licensed professional civil engineers in that jurisdiction; and
- (3) If applicable, Verification(s) of Experience in Responsible Charge completed by licensed professional engineers who are in the same branch in which the person seeks licensure. For structural engineering applicants from a jurisdiction in which structural engineering is considered a part of civil engineering, the applicant shall submit Verification(s) of Experience in Responsible Charge completed by licensed professional civil engineers in that jurisdiction; or
- (4) Appropriate NCEES records that document any of the above to the satisfaction of the board. [Eff 8/29/94; am and comp 10/26/01; comp 5/23/13; am and comp ]  
(Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-33 Examination-professional engineering: qualifications, application, fees, required documents.**

(a) To be eligible for the NCEES professional engineering branch examination, the person shall:

- (1) Hold a ~~[masters]~~ master's degree in engineering from an institution of higher education approved by the board, be a graduate of a school or college approved by

the board, have completed an engineering curriculum of four years or more, and have not less than three years of full-time lawful experience or the part-time equivalent in engineering;

- (2) Hold a ~~[masters]~~ master's degree in engineering from an institution of higher education approved by the board and have not less than four years of full-time lawful experience or the part-time equivalent in engineering;
- (3) Be a graduate of a school or college approved by the board, have completed an engineering curriculum of four years or more, and have not less than four years of full-time lawful experience or the part-time equivalent in engineering;
- (4) Be a graduate of a school or college approved by the board, have completed an engineering technology curriculum of four years or more or an arts and science curriculum of four years or more with a math, science, or science-related major, and have not less than eight years of full-time lawful experience or the part-time equivalent in engineering; or
- (5) Have not less than twelve years of full-time lawful experience or part-time equivalent in engineering.

(b) A person applying for the NCEES professional engineering branch examination in the civil, chemical, electrical or mechanical branch shall file an Application for Licensure-Engineer no later than ~~[January 10]~~ 90 days prior to ~~[for]~~ the examination ~~[which is regularly conducted once a year in April]~~.

(c) A person applying for the NCEES professional engineering branch examination in the agricultural, industrial or structural branch shall file an Application for Licensure-Engineer no later than ~~[July 10]~~ 90 days prior to ~~[for]~~ the examination ~~[which is regularly conducted once a year in October]~~.

(d) The application shall be accompanied by the application fee, which shall not be refunded, the examination fee, which may not be refunded, and the following applicable documents:

- (1) A certified copy of a diploma or certificate of graduation or official transcripts from an institution, school or college approved by the board; provided that if the applicant is educated in a foreign institution, school, or college, the applicant shall submit an official report by a professional service approved by the board which has evaluated the person's foreign educational credentials;
- (2) Verification(s) of Lawful Experience completed by supervisors who are licensed professional engineers and in the same branch in which the person seeks licensure. For structural engineering applicants from a jurisdiction in which structural engineering is considered a part of civil engineering, the applicant shall submit Verification(s) of Lawful Experience completed by supervisors who are licensed professional civil engineers in that jurisdiction; and
- (3) If applicable, Verification(s) of Experience in Responsible Charge completed by licensed professional engineers who are in the same branch in which the person seeks licensure. For structural engineering applicants from a jurisdiction in which structural engineering is considered a part of civil engineering, the applicant shall submit Verification(s) of Experience in Responsible Charge completed by licensed professional civil engineers in that jurisdiction; or
- (4) Appropriate NCEES records that document any of the above to the satisfaction of the board. [Eff 8/29/94; am and comp 10/26/01; comp 5/23/13; am and comp ]  
(Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-35 Examination-professional engineering (additional branch): qualifications, application, fees, required documents.** (a) To be eligible for the NCEES professional engineering branch examination for the additional branch, the person shall:

- (1) Hold a current professional engineer's license; and
- (2) Meet the educational and experience requirements as contained in section 16-115-33(a).

(b) A person applying for the NCEES professional engineering branch examination in the additional civil, chemical, electrical or mechanical branch shall file an Application for Licensure-Engineer no later than [January 10] 90 days prior to [for] the examination [which is regularly conducted once a year in April].

(c) A person applying for the NCEES professional engineering branch examination in the additional agricultural, industrial or structural branch shall file an Application for Licensure-Engineer no later than [July 10] 90 days prior to [for] the examination [which is regularly conducted once a year in October].

(d) The application shall be accompanied by the application fee, which shall not be refunded, the examination fee, which may not be refunded, and the following applicable documents:

- (1) A certified copy of a diploma or certificate of graduation or official transcripts from an institution, school or college approved by the board; provided that if the applicant is educated in a foreign institution, school, or college, the applicant shall submit an official report by a professional service approved by the board which has evaluated the person's foreign educational credentials;
- (2) Verification(s) of Lawful Experience completed by supervisors who are licensed

- professional engineers and in the same branch in which the person seeks licensure. For structural engineering applicants from a jurisdiction in which structural engineering is considered a part of civil engineering, the applicant shall submit Verification(s) of Lawful Experience completed by supervisors who are licensed professional civil engineers in that jurisdiction; and
- (3) If applicable, Verification(s) of Experience in Responsible Charge completed by licensed professional engineers who are in the same branch in which the person seeks licensure. For structural engineering applicants from a jurisdiction in which structural engineering is considered a part of civil engineering, the applicant shall submit Verification(s) of Experience in Responsible Charge completed by licensed professional civil engineers in that jurisdiction; or
- (4) Appropriate NCEES records that document any of the above to the satisfaction of the board. [Eff 8/29/94; am and comp 10/26/01; comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-37 Re-examination.** (a) A person may retake the examination(s) failed.

(b) A person applying to retake the NCEES fundamentals of engineering or the NCEES professional engineering branch examination in the civil, chemical, electrical, or mechanical branch shall file an Application for Reexamination no later than [January 10] 90 days prior to [for] the examination [which is regularly conducted once a year in April].

(c) A person applying to retake the NCEES professional engineering branch examination in the agricultural, industrial, or structural branch shall file an Application for Re-examination no later than

~~[July 10]~~ 90 days prior to ~~[for]~~ the examination  
~~[which is regularly conducted once a year in October]~~.

(d) The application shall be accompanied by the examination fee, which may not be refunded. [Eff 8/29/94; comp 10/26/01; am and comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-39 Lawful experience.** (a) The following may be acceptable lawful experience subject to the evaluation and approval of the board:

- (1) Field, including construction, and office training or experience in engineering under the supervision of licensed professional engineers who are in the same branch in which the person seeks licensure;
- (2) For structural engineering applicants from a jurisdiction in which structural engineering is considered a part of civil engineering, field and office training in structural engineering under the supervision of a licensed professional civil engineer in that jurisdiction; or
- (3) Teaching in an accredited institution, school, or college of engineering. Maximum experience credit for teaching shall be one year of teaching third, fourth, or fifth year courses. One year of teaching shall be considered to be a total teaching load of twenty semester credit hours or thirty quarter credit hours. The teaching credit can be applied only where minimum full-time lawful experience requirements are more than two years.

(b) Lawful experience may only be applied to one branch or profession. For lawful experience to be acceptable, each engagement shall be separate and distinct; dual credit for engagements that overlap shall not be allowed.



(c) The part-time equivalent of full-time lawful experience shall be calculated as follows: divide the total hours of part-time lawful experience by 173.33 hours to determine the number of months of full-time lawful experience; where:

- (1) 2,080 hours equals one year of full-time lawful experience; and
- (2) 2,080 hours divided by twelve months equals 173.33 hours or one month of full-time lawful experience.

(d) Any amount of time in excess of forty hours per week, whether for one or more supervisors, shall be considered full-time experience and shall not be considered part-time experience.

(e) Experience in responsible charge may be accepted in lieu of lawful experience in the discretion of the board; provided the applicant possesses experience in responsible charge in the ratio of 2:1 of the required lawful experience.

(f) Lawful experience may be compiled only up to the final filing date of the examination.

(g) A degree that is used to satisfy education requirements cannot be applied concurrently with experience credit towards licensure. [Eff 8/29/94;

am and comp 10/26/01; comp 5/23/13; comp

] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

#### **§16-115-40 Licensure of environmental engineers.**

(a) Notwithstanding any provision of this chapter to the contrary, a person may apply for licensure in the environmental branch of engineering by submitting a completed application to the board and shall be required to take and pass an environmental branch examination approved by the board, and comply with the other requirements of this chapter 464, HRS. [Eff and comp  
] (Auth: HRS §464-7) (Imp: §§464-1, 464-7)

**§16-115-40.5 Licensure of fire protection engineers.** (a) Notwithstanding any provision of this chapter to the contrary, a person may apply for licensure in the fire protection branch of engineering by submitting a completed application to the board and shall be required to take and pass a fire protection branch examination approved by the board, and comply with all the other requirements of this chapter and chapter 464, HRS. [Eff and comp ]  
(Auth; HRS §464-7) (Imp: HRS §§464-1, 464-7)

### SUBCHAPTER 3

#### ARCHITECTS

**§16-115-45 Forms and instructions.** To apply for licensure, a person shall complete and file with the board the appropriate application forms. The following forms are currently in use by the board:

- (1) Application for Licensure Architect;
- (2) Additional Experience Form;
- (3) Verification of Lawful Experience; and
- (4) Verification of Experience in Responsible Charge.

The aforementioned forms may be modified from time to time as required. [Eff 8/29/94; am and comp 10/26/01; am and comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-9)

**§16-115-47 Licensure by endorsement.** (a) The architect committee shall review a person's qualifications for licensure by endorsement and make recommendations to the board.

(b) To be eligible for licensure by endorsement, a person shall hold a current license from another jurisdiction, currently possess the appropriate education and lawful experience requirements provided in section 464-8(b)(2) to (5), HRS, and sections 16-115-54(a) and 16-115-58, and shall either:

- (1) Hold a current NCARB certificate; or
- (2) Have successfully passed the NCARB architect registration examination (A.R.E.) or a similar state-produced licensing examination.

(c) Every person shall certify on the application that the person has read, understood, and agreed to comply with the laws and rules of the board.

(d) A person applying for licensure by endorsement shall file an Application for Licensure-Architect. The application shall be accompanied by an application fee, which shall not be refunded, and the following applicable documents:

- (1) A certified copy of a diploma or certificate of graduation or official transcripts from an institution, school or college approved by the board, provided that if the applicant is educated in a foreign institution, school, or college, the applicant shall submit an official report by a professional service approved by the board which has evaluated the person's foreign educational credentials; and
- (2) Either of the following, as applicable:
  - (A) Verification(s) of Lawful Experience completed by supervisors who are licensed professional architects;
  - (B) Verification(s) of Experience in Responsible Charge completed by licensed professional architects. If the applicant operated as a sole proprietorship, the applicant shall complete and submit Verification(s) of Experience in Responsible Charge; or
  - (C) Appropriate NCARB records that document completion of the IDP or AXP of NCARB

or appropriate documentation from a similar program satisfactory to the board.

A person may submit appropriate NCARB records that document any of the above to the satisfaction of the board. [Eff 8/29/94; am and comp 10/26/01; am and comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-49 Licensure by examination.** (a) The architect committee shall review a person's qualification for licensure by examination and make recommendations to the board.

(b) To be eligible for licensure by examination, the person shall:

- (1) Meet the qualifications as contained in section 464-8(b)(2) to 5, HRS;
- (2) Have passed the appropriate examination(s) as contained in section 16-115-50; and
- (3) Certify on the application that the person has read, understood, and agrees to comply with the laws and rules of the board. [Eff 8/29/94; am and comp 10/26/01; am and comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-50 Examination requirements for licensure.** (a) A person applying for licensure by examination shall be required to pass the A.R.E.

(b) The board reserves the right to modify or supplement the examination(s). [Eff 8/29/94; am and comp 10/26/01; am and comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-52 Passing score.** The passing score shall be:

- (1) A grade of not less than seventy-five or pass for each of the portions of the A.R.E. [~~r~~ or
- (2) ~~A grade of pass for similar state-produced licensing examination~~]. [Eff 8/29/94; am and comp 10/26/01; am and comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-54 Examination: qualifications, application, fees, documents required.** (a) To be eligible for the A.R.E., the person shall **either**:

(1) Hold a bachelor's, master's, or higher degree in architecture from a school or college approved by the board as of satisfactory standing, and be enrolled in IDP **or AXP**;

(2) Be a graduate of a school or college with an architectural curriculum of four years or a pre-architecture or arts and science curriculum of four years or more, have not less than five years of full-time lawful experience or the part-time equivalent in architecture, and have completed IDP **or AXP**;

(3) Be a graduate of a community college or other technical training school with an architectural technology curriculum of two years or more, have not less than eight years of full-time lawful experience or the part-time equivalent in architecture, and have completed IDP **or AXP**; or

(4) Have not less than eleven years of full-time lawful experience or the part time equivalent in architecture[~~r~~] and have completed IDP **or AXP**.

(b) A person applying for the A.R.E. shall file an Application for Licensure-Architect. The application shall be accompanied by the application fee, which shall not be refunded, and the following applicable documents:

(1) A certified copy of a diploma or certificate of graduation or official transcripts from an

institution, school, or college approved by the board; provided that if the applicant is educated in a foreign institution, school or college, the applicant shall submit an official report by a professional service approved by the board which has evaluated the person's foreign educational credentials; and

(2) Appropriate NCARB records that document completion or enrollment in IDP **or AXP** of NCARB or appropriate documentation from a similar program satisfactory to the board; and if applicable:

(A) Verification(s) of Lawful Experience completed by supervisors who are licensed professional architects; and

(B) Verification(s) of Experience in Responsible Charge completed by licensed professional architects.

(3) **A person meeting the requirements in section 16-115-54(a)(1) may register for the A.R.E. directly with NCARB.** [Eff 8/29/94; am and comp 10/26/01; am and comp 5/23/13; am and comp ] (Auth: HRS §464-7) (Imp: HRS §§4647, 464-8)

**§16-115-56 Re-examination.** (a) A person may retake the failed portion(s) of the A.R.E. every six months or at times specified by NCARB.

(b) The testing agency approved by the board shall send a notice of authorization to retake the failed portion(s) of the A.R.E. to the person prior to the date the examination may be retaken.

(c) A person shall schedule the re-examination with the testing agency approved by the board. [Eff 8/29/94; am and comp 10/26/01; am and comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-58 Lawful experience.** (a) The following may be acceptable lawful experience subject to the evaluation and approval of the board:

- (1) Field and office training or experience in architecture under the supervision of licensed professional architects;
- (2) Teaching in an accredited institution, school, or college of architecture. Maximum experience credit for teaching shall be one year of teaching third, fourth, or fifth year courses. One year of teaching shall be considered to be a total teaching load of twenty semester credit hours or thirty quarter credit hours. The teaching credit can be applied only where minimum full-time lawful experience requirements are more than two years;
- (3) [Intern development program] IDP or AXP experience approved by the board; or
- (4) Successful completion of the practicum experience component in an architecture doctorate degree program.

(b) Lawful experience may only be applied to one profession. For lawful experience to be acceptable, each engagement shall be separate and distinct; dual credit for engagements that overlap shall not be allowed.

(c) The part-time equivalent of full-time lawful experience shall be calculated as follows: divide the total hours of part-time lawful experience by 173.33 hours to determine the number of months of full-time lawful experience; where:

- (1) 2,080 hours equals one year of full-time lawful experience; and
- (2) 2,080 hours divided by twelve months equals 173.33 hours or one month of full-time lawful experience.

(d) Any amount of time in excess of forty hours per week, whether for one or more supervisors, shall be considered full-time experience and shall not be considered part-time experience.

(e) Experience in responsible charge may be accepted in lieu of lawful experience in the discretion of the board; provided the applicant possesses experience in responsible charge in the

ratio of 2:1 of the required lawful experience. [Eff 8/29/94; am and comp 10/26/01; comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-59 ~~[Intern development program] Architectural experience program.~~** (a) ~~[Effective June 30, 2000, a]~~

~~An applicant for examination shall be required to fulfill the training requirements of the [IDP] current AXP of NCARB as approved by the board[, or any other similar program satisfactory to the board].~~

~~(b) [An applicant shall acquire seven hundred training units to satisfy the IDP training requirement. One training unit equals eight hours of acceptable experience in the training categories specified below.]~~

~~(c) The training units shall be acquired in the following training settings as approved by the board:~~

- ~~(1) Experience in architecture as an employee under the supervision of a licensed professional architect in a firm whose practice encompasses the comprehensive practice of architecture;~~
- ~~(2) Experience in architecture as an employee under the supervision of a licensed professional architect in a firm whose practice does not encompass the comprehensive practice of architecture;~~
- ~~(3) Experience directly related to architecture under the supervision of a licensed professional engineer or licensed professional landscape architect;~~
- ~~(4) Excluding the experience provided in paragraphs (1) to (3) above, experience in activities involving the design and construction of buildings or structures, (e.g., analysis of existing buildings, planning, programming, design of interior space, review or technical submissions, engaging in building construction activities~~



and the like) under the supervision of a person experienced and licensed in the activity; or

(5) Teaching or research in a professional degree program accredited by the National Architectural Accreditation Board, Inc.

(d) The applicant shall be responsible for documenting in detail the training obtained in the categories below. At a minimum, the applicant shall document the projects and dates involved. Applicants may select the NCARB Council Record as their documentation system. The board shall have the discretion to review and approve the documented training.

(e) The IDP training requirements shall be as follows:

[(1) Category A: Design and construction documents		Minimum training units required
(A)	Programming	10
(B)	Site and environmental analysis	10
(C)	Schematic design	15
(D)	Engineering systems coordination	15
(E)	Building cost analysis	10
(F)	Code research	15
(G)	Design development	40
(H)	Construction documents	135
(I)	Specifications and materials research	15
(J)	Document checking and coordination	10
(K)	Additional units in any of the above	75
(2) Category B: Construction administration		
(A)	Bidding and contract negotiation	10
(B)	Construction phase-office	15
(C)	Construction phase-observation	15
(D)	Additional units in any of the above	30
(3) Category C: Management		
(A)	Project management	15
(B)	Office management	10
(C)	Additional units in any of the above	10
(4) Category D: Related activities		
(A)	Professional and community service	10
(B)	Teaching, research, post-professional degree, and other related activities	0
(5) Other elective units from any of the above categories		235

Total training units	700
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(1)		Category A: Design and construction documents	Minimum training units required
	(A)	Programming	10
	(B)	Site and environmental analysis	10
	(C)	Schematic design	15
	(D)	Engineering systems coordination	15
	(E)	Building cost analysis	10
	(F)	Code research	15
	(G)	Design development	40
	(H)	Construction documents	135
	(I)	Specifications and materials research	15
	(J)	Document checking and coordination	10
	(K)	Additional units in any of the above	75
(2)		Category B: Construction administration	
	(A)	Bidding and contract negotiation	10
	(B)	Construction phase-office	15
	(C)	Construction phase-observation	15
	(D)	Additional units in any of the above	30
(3)		Category C: Management	
	(A)	Project management	15
	(B)	Office management	10
	(C)	Additional units in any of the above	10
(4)		Category D: Related activities	
	(A)	Professional and community service	10
	(B)	Teaching, research, post-professional degree, and other related activities	0
(5)		Other elective units from any of the above categories	235
		Total training units	700

]

~~(f)~~ (b) Completion of the ~~[IDP]~~ AXP shall fulfill the lawful experience requirement provided in sections 16-115-54(a) (1) ~~[and (2)]~~ as approved by the board. For sections 16-115-54(a) (2) to (4), time participating in the ~~[IDP]~~ AXP shall be credited toward the lawful experience requirement as approved by the board. [Eff and comp 10/26/01; am and comp 5/23/13; am and comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 4648)

**§16-115-60 Continuing education.** (a) Continuing education ("CE") shall be required to renew a license for all architects effective as of the biennial renewal date for a license expiring on April 30, 2008, and for every biennial renewal period thereafter. Each licensee shall have completed the CE program requirements for two years preceding the biennial renewal date. All CE courses shall be relevant to public protection subjects, as approved by the board.

(b) Each licensee shall be required to have sixteen CE credit hours for each biennium period as a condition to renew a license, provided that:

- (1) A licensee initially licensed in the first year of the biennium shall complete eight CE credit hours;
- (2) A licensee initially licensed in the second year of the biennium shall not be required to complete any CE credit hours;
- (3) "Credit hours" means one 60-minute clock hour of an educational activity with no less than 50 minutes of instructional content within the hour; and
- (4) CE credits earned in excess of the sixteen required for renewal may not be carried forward to apply towards the next renewal period.

(c) Except as provided in section 16-115-62, failure of a licensee to present evidence of compliance with the CE program requirements shall constitute a forfeiture of license, which may be restored pursuant to

section 464-9(c), HRS. [Eff and comp ]  
(Auth: HRS §464-7) (Imp: HRS §§464-7, 464-9)

**§16-115-60.5 Requirements for approval by the board.** (a) Public protection subjects shall be related to the health, safety, and welfare ("HSW") of the public.

- (1) Such subjects include building design, landscape design, environmental or land use analysis, life safety, architectural programming, site planning, site and soils analyses, plant material, accessibility, structural systems considerations, lateral forces, building codes, evaluation and selection of building systems, products or materials, construction methods, contract documentation, construction administration, energy conservation, zoning and governance policies and procedures, hurricane/high wind safety and design, sustainability, building in coastal requirements, mold mitigation, and the impact of design on human physiology and neurology;
- (2) CE courses shall be structured educational activities in which the teaching methodology consists primarily of the systematic presentation of public protection subjects by qualified individuals or organizations, including monographs; courses of study taught in person or by correspondence (including courses of study taught by distance education via computer, video, or telephone); organized lectures, presentations, or workshops; and other means through which identifiable technical and professional subjects are presented in a planned manner;
- (3) Teaching or instructing an architectural course, seminar, lecture, presentation, or workshop on a qualifying HSW subject may be

used to satisfy the CE requirements of this section, provided that:

- (A) One credit hour shall be accepted for each hour spent in the actual seminar, lecture, presentation, or workshop;
  - (B) These credits shall only be valid when the course, seminar, lecture, presentation, or workshop is initially taught or instructed and may be acceptable up to a maximum of fifty percent of the required credits; and
  - (C) Teaching credit shall not apply to full-time faculty at a college, university, or other educational institution.
- (4) Contact hours spent in professional service to the public which draws upon the licensee's professional expertise on boards, commissions, and committees of the State or its political subdivisions (e.g., serving on planning commissions, building code advisory boards, urban renewal boards, code study committees or regulatory boards) may be acceptable up to a maximum of fifty percent of the required credits.
- (5) The Board shall not pre-approve individual courses or programs.

(b) Licensees shall comply with CE requirements by completing the required number of HSW hours in courses approved or offered by organizations such as the American Institute of Architects (AIA), Construction Specifications Institute (CSI), National Council of Architectural Registration Boards (NCARB), University of Hawaii School of Architecture (UHSoA) or similar organizations devoted to architectural education, design, or construction technology education, as approved by the board. [Eff and comp ]

(Auth: HRS §464-7) (Imp: HRS §§464-7, 464-9)

**§16-115-61 Certification of compliance and audit.**

- (a) At the time of renewal, each licensee shall certify

on the renewal application that the licensee has satisfied all of the CE requirements in this section and chapter.

(b) The Board may audit and shall require any licensee to submit copies of the original documents or evidence of attendance (e.g., certificate of attendance, transcripts, proof of registration, etc.) demonstrating compliance with the CE requirements. The Board may require additional evidence demonstrating the licensee's compliance with the CE requirements.

(c) It shall be the responsibility of each licensee to retain or otherwise produce evidence of such compliance. The evidence shall be retained for at least four years following the renewal period for which the CE courses were taken.

(d) A false certification to the board by a licensee shall be deemed a violation of this chapter and chapter 464, HRS, as applicable, and subject the licensee to disciplinary proceedings. [Eff and comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-9)

#### **§16-115-62 Waiver or modification of requirements.**

(a) A licensee seeking renewal of license without full compliance of the CE requirements shall submit:

(1) A written request for waiver or modification of the CE requirements, with an explanation why the waiver or modification is being sought; and

(2) Other supporting documents.

(b) The board may grant a waiver or modification of the CE requirements for:

(1) A licensee who is a member of the armed forces, national guard or a reserve component on full-time active duty and deployed for a period of time exceeding one hundred twenty consecutive days during the renewal period, where such activity restricts participation in a CE program;

- (2) A licensee who demonstrates to the satisfaction of the board that meeting these requirements would constitute an undue hardship by reason of a medical disability, illness, or other clearly extenuating circumstances. Such supporting documentation shall be in the form of a sworn statement by the licensee, and a statement from a physician or medical records which show that the disability or illness prevented the licensee's participation in active practice and in the CE program during a substantial part of the renewal period;
- (3) A licensee who has retired from practice but wishes to maintain a license may be exempt from the CE requirement; provided that the licensee has not performed any architectural services and have not sealed or signed any documents in the preceding two-year period. A licensee who is granted a retired status shall not perform any architectural services during the renewal biennial period; or
- (4) A licensee who has been granted an exemption and desires to reenter active practice shall complete CE requirements for each year of inactive practice, not to exceed thirty-two CE credit hours. [Eff and comp
- ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-9)

## SUBCHAPTER 4

## LAND SURVEYORS

**§16-115-64 Forms and instructions.** To apply for licensure, a person shall complete and file with the

board the appropriate application forms. The following forms are currently in use by the board:

- (1) Application for Licensure-Land Surveyor;
- (2) Additional Experience Form;
- (3) Verification of Lawful Experience; and
- (4) Verification of Experience in Responsible Charge.

The aforementioned forms may be modified from time to time as required. [Eff 8/29/94; am and comp 10/26/01; am and comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-9)

**§16-115-66 Licensure by endorsement.** (a) The land surveyor committee shall review a person's qualifications for licensure by endorsement and make recommendations to the board.

(b) To be eligible for licensure by endorsement, a person shall hold a current license from another jurisdiction, currently possess the appropriate education and lawful experience requirements provided in section 464-8(c)(1)(B) to (D), HRS, and sections 16-115-75(a) and 16-115-79, and shall [~~either~~]:

- (1) Have successfully passed the NCEES fundamentals of land surveying examination [~~and the NCEES professional land surveying examination, or similar state-produced licensing examination~~]; provided that this examination requirement may be waived if the person has at least 15 years of experience in responsible charge of land surveying work as approved by the board; and [~~or~~]
- (2) [~~Possess at least fifteen years of experience in responsible charge of land surveying work as approved by the board.~~] Have successfully passed the NCEES professional land surveying examination.

(c) Every person shall be required to pass the board-produced professional land surveying examination [~~on Hawaii land matters and Hawaii land description,~~] and certify on the application that the



person has read, understood, and agrees to comply with the laws and rules of the board.

(d) A person applying for licensure by endorsement shall file an Application for Licensure-Land Surveyor. The application shall be accompanied by the application fee, which shall not be refunded, and the following applicable documents:

- (1) A certified copy of a diploma or certificate of graduation or official transcripts from an institution, school or college approved by the board; provided that if the applicant is educated in a foreign institution, school, or college, the applicant shall submit an official report by a professional service approved by the board which has evaluated the person's foreign educational credentials;
- (2) Verification(s) of Lawful Experience completed by supervisors who are licensed professional land surveyors; and
- (3) If applicable, Verification(s) of Experience in Responsible Charge completed by licensed professional land surveyors. If the applicant operated as a sole proprietorship, the applicant shall complete and submit Verification(s) of Experience in Responsible Charge; or
- (4) Appropriate NCEES records that document any of the above to the satisfaction of the board. [Eff 8/29/94; am and comp 10/26/01; am and comp 5/23/13; comp ]  
(Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-68 Licensure by examination.** (a) The land surveyor committee shall review a person's qualifications for licensure by examination and make recommendations to the board.

(b) To be eligible for licensure by examination, the person shall:

- (1) Meet the qualifications as contained in section 464-8(c)(1)(B) to (D), HRS;
- (2) Have passed the appropriate examinations as contained in section 16-115-69; and
- (3) Certify on the application that the person has read, understood, and agrees to comply with the laws and rules of the board. [Eff 8/29/94; am and comp 10/26/01; am and comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-69 Examination requirements for licensure.** (a) A person applying for licensure by examination shall be required to pass the following examinations:

- (1) NCEES fundamentals of land surveying examination;
- (2) NCEES professional land surveying examination; and
- (3) Board-produced professional land surveying examination [on Hawaii land matters and Hawaii land description].

(b) The board reserves the right to modify or supplement the examinations. [Eff 8/29/94; comp 10/26/01; comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-71 Passing score.** The passing score shall be:

- (1) A grade of not less than seventy for the NCEES fundamentals of land surveying and professional land surveying examinations, or a grade of pass [for similar state produced licensing examinations]; and
- (2) A grade of not less than seventy for the board-produced professional land surveying examination. [Eff 8/29/94; am and comp 10/26/01; comp 5/23/13; comp ]

] (Auth: HRS §464-7) (Imp:  
HRS §§464-7, 464-8)

**§16-115-73 Examination-fundamentals of land surveying: qualifications, application, fees, required documents.** (a) To be eligible for the NCEES fundamentals of land surveying examination, the person shall:

- (1) Be a graduate of a school or college approved by the board and have completed a land surveying, geo-science, ~~[or]~~ civil engineering, or general engineering curriculum of four years or more;
- (2) Be a graduate of a school or college approved by the board, have completed a civil engineering technology (survey option) curriculum of two years or more or arts and science curriculum of four years or more with a math, science, or science-related major and have not less than five years of full-time lawful experience or the part-time equivalent in land surveying;
- (3) Be in the last year of a land surveying, geo-science, ~~[or]~~ civil engineering, or general engineering curriculum at a school or college approved by the board with graduation expected not later than seven months from the date of application as confirmed by the dean of the applicant's school or college. If graduation does not occur within the seven-month period, the application shall be void; or
- (4) Have not less than nine years of full-time lawful experience or the part-time equivalent in land surveying.

(b) A person applying for the NCEES fundamentals of land surveying examination shall file an Application for Licensure-Land Surveyor no later than [January 10] 90 days prior to [for] the examination [which is regularly conducted once a year in April].

The application shall be accompanied by the application fee, which shall not be refunded, the examination fee, which may not be refunded, and the following applicable documents:

- (1) A certified copy of a diploma or certificate of graduation or official transcripts from an institution, school, or college approved by the board; provided that if the applicant is educated in a foreign institution, school, or college, the applicant shall submit an official report by a professional service approved by the board which has evaluated the person's foreign educational credentials;
- (2) Verification(s) of Lawful Experience completed by supervisors who are licensed professional land surveyors; and
- (3) If applicable, Verification(s) of Experience in Responsible Charge completed by licensed professional land surveyors; or
- (4) Appropriate NCEES records that document any of the above to the satisfaction of the board. [Eff 8/29/94; am and comp 10/26/01; comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-75 Examination-professional land surveying: qualifications, application, fees, required documents.** (a) To be eligible for the NCEES or board-produced professional land surveying examination, the person shall:

- (1) Be a graduate of a school or college approved by the board, have completed a **land surveying,** geo-science, ~~or~~ civil engineering, or general engineering curriculum of four years or more and also have not less than three years of full-time lawful experience or part-time equivalent in land surveying;

- (2) Be a graduate of a school or college approved by the board, have completed a civil engineering technology (survey option) curriculum of two years or more or arts and sciences curriculum of four years or more with a math, science, or science-related major, and also have not less than seven years of full-time lawful experience or the part-time equivalent in land surveying; or
  - (3) Have not less than eleven years of full-time lawful experience or the part time equivalent in land surveying.
- (b) A person applying for the NCEES or board-produced professional land surveying examination shall file an Application for Licensure-Land Surveyor no later than [January 10] 90 days prior to ~~[for]~~ the examination ~~[which is regularly conducted once a year in April]~~. The application shall be accompanied by the application fee, which shall not be refunded, the examination fee, which may not be refunded, and the following applicable documents:
- (1) A certified copy of a diploma or certificate of graduation or official transcripts from an institution, school, or college approved by the board; provided that if the applicant is educated in a foreign institution, school, or college, the applicant shall submit an official report by a professional service approved by the board which has evaluated the person's foreign educational credentials;
  - (2) Verification(s) of Lawful Experience completed by supervisors who are licensed professional land surveyors; and
  - (3) If applicable, Verification(s) of Experience in Responsible Charge completed by licensed professional land surveyors; or
  - (4) Appropriate NCEES records that document any of the above to the satisfaction of the board. [Eff 8/29/94; am and comp 10/26/01; comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-77 Re-examination.** (a) A person may retake the examination(s) failed.

(b) A person applying to retake the NCEES fundamentals of land surveying examination, NCEES professional land surveying examination, and board produced professional land surveying examination shall file an Application for Re-examination no later than [January 10] 90 days prior to [for] the examination [which is regularly conducted once a year in April].

(c) The application shall be accompanied by the examination fee, which may not be refunded. [Eff 8/29/94; am and comp 10/26/01; comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-79 Lawful experience.** (a) The following may be acceptable lawful experience subject to the evaluation and approval of the board:

- (1) Field and office training or experience in land surveying under the supervision of licensed professional land surveyors; or
- (2) Teaching in an accredited institution, school, or college. Maximum experience credit for teaching shall be one year of teaching third, fourth, or fifth year courses. One year of teaching shall be considered to be a total teaching load of twenty semester credit hours or thirty quarter credit hours. The teaching credit can be applied only where minimum full-time lawful experience requirements are more than two years.

(b) Lawful experience may only be applied to one profession. For lawful experience to be acceptable, each engagement shall be separate and distinct; dual credit for engagements that overlap shall not be allowed.

(c) The part-time equivalent of full-time lawful experience shall be calculated as follows: divide the total hours of part-time lawful experience by 173.33 hours to determine the number of months of full-time lawful experience; where:

- (1) 2,080 hours equals one year of full-time lawful experience; and
- (2) 2,080 hours divided by twelve months equals 173.33 hours or one month of full-time lawful experience.

(d) Any amount of time in excess of forty hours per week, whether for one or more supervisors, shall be considered full-time experience and shall not be considered part-time experience.

(e) Experience in responsible charge may be accepted in lieu of lawful experience in the discretion of the board; provided the applicant possesses experience in responsible charge in the ratio of 2:1 of the required lawful experience.

(f) Lawful experience may be compiled only up to the final filing date of the examination.

(g) A degree that is used to satisfy education requirements cannot be applied concurrently with experience credit towards licensure. [Eff 8/29/94; am and comp 10/26/01; comp 5/23/13; comp ]  
(Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

## SUBCHAPTER 5

### LANDSCAPE ARCHITECTS

**§16-115-85 Forms and instructions.** To apply for licensure, a person shall complete and file with the board the appropriate application forms. The following forms are currently in use by the board:

- (1) Application for Licensure-Landscape Architect;

- (2) Additional Experience Form;
- (3) Verification of Lawful Experience; and
- (4) Verification of Experience in Responsible Charge.

The aforementioned forms may be modified from time to time as required. [Eff 8/29/94; am and comp 10/26/01; am and comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-9)

**§16-115-87 Licensure by endorsement.** (a) The landscape architect committee shall review a person's qualifications for licensure by endorsement and make recommendations to the board.

(b) To be eligible for licensure by endorsement, a person shall hold a current license from another jurisdiction, currently possess the appropriate education and lawful experience requirements provided in section 464-8(d) (2) to (5), HRS, and sections 16-115-94(a) and 16-115-98, and shall ~~[either]~~:

- (1) Have successfully passed a CLARB landscape architectural licensing examination ~~[or a similar state-produced licensing examination; or].~~
- (2) ~~[Possess at least fifteen years of experience in responsible charge of landscape architectural work as approved by the board.]~~

(c) Every person shall be required to pass the board-produced landscape architectural licensing examination on the State's climatic conditions, native plants and ecosystems, land use ordinances and special management area requirements, and cultural and historical conditions affecting landscape architecture, and certify on the application that the person has read, understood, and agreed to comply with the laws and rules of the board.

(d) A person applying for licensure by endorsement shall file an Application for Licensure Landscape Architect. The application shall be



accompanied by an application fee, which shall not be refunded, and the following applicable documents:

- (1) A certified copy of a diploma or certificate of graduation or official transcripts from an institution, school or college approved by the board; provided that if the applicant is educated in a foreign institution, school, or college, the applicant shall submit an official report by a professional service approved by the board which has evaluated the person's foreign educational credentials;
- (2) Verification(s) of Lawful Experience completed by supervisors who are licensed professional landscape architects; and
- (3) If applicable, Verification(s) of Experience in Responsible Charge completed by licensed professional landscape architects. If the applicant operated as a sole proprietorship, the applicant shall complete and submit Verification(s) of Experience in Responsible Charge; or
- (4) Appropriate CLARB records that document any of the above to the satisfaction of the board. [Eff 8/29/94; am and comp 10/26/01; am and comp 5/23/13; comp ]  
(Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-89 Licensure by examination.** (a) The landscape architect committee shall review a person's qualifications for licensure by examination and make recommendations to the board.

(b) To be eligible for licensure by examination, the person shall:

- (1) Meet the qualifications as contained in section 464-8(d) (2) to (5);
- (2) Have passed the appropriate examinations as contained in section 16-115-90; and

- (3) Certify on the application that the person has read, understood, and agreed to comply with the laws and rules of the board. [Eff 8/29/94; am and comp 10/26/01; am and comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-90 Examination requirements for licensure.** (a) A person applying for licensure by examination shall be required to pass the following examinations:

- (1) CLARB landscape architectural licensing examination; and
- (2) Board-produced landscape architectural licensing examination on the State's climatic conditions, native plants and native ecosystems, land use ordinances and special management area requirements, and cultural and historical conditions affecting landscape architecture.

(b) The board reserves the right to modify or supplement the examinations. [Eff 8/29/94; am and comp 10/26/01; comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-92 Passing score.** The passing score shall be:

- (1) A grade of not less than seventy-five for each section of the CLARB landscape architectural licensing examination, or a grade of pass for similar state-produced licensing examination; and
- (2) A grade of not less than seventy-five for the board produced landscape architectural licensing examination. [Eff 8/29/94; am and comp 10/26/01; comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-94 Examination: qualifications, application, fees, ~~[documents]~~ required documents.**

(a) To be eligible for the CLARB or board-produced landscape architectural licensing examinations, the person shall:

- (1) Hold a master's degree in landscape architecture from an institution of higher education approved by the board, be a graduate of a school or college approved by the board, have completed a landscape architecture curriculum of four years or more and have not less than two years of full-time lawful experience or the part-time equivalent in landscape architecture;
- (2) Be a graduate of a school or college approved by the board, have completed a landscape architectural curriculum of four years or more and also have not less than three years of full-time lawful experience or the part-time equivalent in landscape architecture;
- (3) Be a graduate of a school or college approved by the board, have completed a pre-landscape architectural or arts and science curriculum of four years or more and also have not less than five years of full-time lawful experience or the part-time equivalent in landscape architecture; or
- (4) Have not less than twelve years of full-time lawful experience or part-time equivalent in landscape architecture.

(b) A person applying for the CLARB or board-produced landscape architectural licensing examination shall file an Application for Licensure-Landscape Architect no later than ~~[March 10]~~ 90 days prior to ~~[for]~~ the examination ~~[which is regularly conducted once a year in June]~~. The application shall be accompanied by the application fee, which shall not be

refunded, the examination fee, which may not be refunded, and the following applicable documents:

- (1) A certified copy of a diploma or certificate of graduation, or official transcripts from an institution, school, or college approved by the board; provided that if the applicant is educated in a foreign institution, school or college, the applicant shall submit an official report by a professional service approved by the board which has evaluated the person's foreign educational credentials;
- (2) Verification(s) of Lawful Experience completed by supervisors who are licensed professional landscape architects; and
- (3) If applicable, Verification(s) of Experience in Responsible Charge completed by licensed professional landscape architects; or
- (4) Appropriate CLARB records that document any of the above to the satisfaction of the board. [Eff 8/29/94; am and comp 10/26/01; comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-96 Re-examination.** (a) A person may retake the failed portions of the CLARB landscape architectural examination or the board-produced landscape architectural examination.

(b) A person applying to retake the failed portions of the CLARB landscape architectural licensing examination or board-produced landscape architectural licensing examination shall file an Application for Re-examination no later than March 10 90 days prior to [for] the examination [which is regularly conducted once a year in June].

(c) The application shall be accompanied by the examination fee which may not be refunded. [Eff 8/29/94; am and comp 10/26/01; comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

**§16-115-98 Lawful experience.** (a) The following may be acceptable lawful experience subject to the evaluation and approval of the board:

- (1) Field and office training or experience in landscape architecture under the supervision of licensed professional landscape architects; or
- (2) Teaching in an accredited institution, school, or college of landscape architecture. Maximum experience credit for teaching shall be one year of teaching third, fourth, or fifth year courses. One year of teaching shall be considered to be a total teaching load of twenty semester credit hours or thirty quarter credit hours. The teaching credit can be applied only where minimum full-time lawful experience requirements are more than two years.

(b) Lawful experience may only be applied to one profession. For lawful experience to be acceptable, each engagement shall be separate and distinct; dual credit for engagements that overlap shall not be allowed.

(c) The part-time equivalent of full-time lawful experience shall be calculated as follows: divide the total hours of part-time lawful experience by 173.33 hours to determine the number of months of full-time lawful experience; where:

- (1) 2,080 hours equals one year of full-time lawful experience; and
- (2) 2,080 hours divided by the twelve months equals 173.33 hours or one month of full-time lawful experience.

(d) Any amount of time in excess of forty hours per week, whether for one or more supervisors, shall be considered full-time experience and shall not be considered part-time experience.

(e) Experience in responsible charge may be accepted in lieu of lawful experience in the

discretion of the board; provided the applicant possesses experience in responsible charge in the ratio of 2:1 of the required lawful experience.

(f) Lawful experience may be compiled only up to the final filing date of the examination. [Eff 8/29/94; am and comp 10/26/01; comp 5/23/13; comp ] (Auth: HRS §464-7) (Imp: HRS §§464-7, 464-8)

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

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

4. These amendments to and compilation of chapter 16-115, 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 M DD, YYYY, and filed with the Office of the Lieutenant Governor.

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Catherine P. Awakuni Colón  
Director of Commerce and  
Consumer Affairs

APPROVED AS TO FORM:

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Deputy Attorney General

### **III. New Business**

B. Discussion and Action on the Small  
Business Statement Before Public Hearing  
and Proposed New HAR 11 Title Chapter  
60.1, **Air Pollution Control**, promulgated  
by Department of Health / DOH



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

Date: 8/11/2022

Department or Agency: Department of Health, Clean Air Branch

Administrative Rule Title and Chapter: HAR Title 11, Department of Health, Chapter 60.1

Chapter Name: Air Pollution Control

Contact Person/Title: Barry Ching

E-mail: barry.ching@doh.hawaii.gov Phone: (808) 586-4200

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

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

☐ Yes ☒ No

If "Yes," provide details: \_\_\_\_\_

I. Rule Description:

☐ New ☐ Repeal ☒ Amendment ☐ Compilation

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

☒ Yes ☐ No

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

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

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

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

☐ Yes ☒ No

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

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

☐ Yes ☒ No

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

\* \* \*

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

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

Please see our Small Business Impact Statement.

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.

See attached.

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

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

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

See attached.

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.

Please see our Small Business Impact Statement.

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

Please see our Small Business Impact Statement.

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.

Please see our Small Business Impact Statement.

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

Please see our Small Business Impact Statement.

- 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.

Please see our Small Business Impact Statement.

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](mailto: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 Impact Statement  
Department of Health, Clean Air Branch  
2022 Proposed Amendments to HAR 11-60.1 Air Pollution Control

The Hawaii Department of Health, Clean Air Branch (CAB), continues its effort to amend Hawaii Administrative Rules (HAR) 11-60.1, Air Pollution Control. At the January 21, 2021, meeting of the Small Business Regulatory Review Board, CAB presented its Small Business Impact Statement and responded to questions. In a memo to the Director of Health, dated the next day, the board unanimously agreed to pass our proposed amendments to public hearing.

After CAB's May 5, 2021, public hearing, the U.S. Environmental Protection Agency (EPA) provided additional, recommended revisions to our proposed rule amendments. CAB and EPA staff have come up with additional proposed revisions (see attached), only one of which affects the operations of small businesses. This statement presents that one amendment.

Before we begin, it is useful to understand that Air Pollution Control permits are generally divided into Covered Source Permits (CSP), by definition larger emitters of air pollution, and Noncovered Source Permits (NSP). While the difference between a company holding a CSP and NSP does not necessarily correlate with being a large or small business, respectively, we are conservatively applying that distinction here and considering a NSP company a small business. In actuality, a small business is defined in Hawaii Revised Statutes 201M as a for-profit enterprise consisting of fewer than one hundred full-time or part-time employees.

Currently, approximately 150 Covered Source Permits (CSP) and 250 Noncovered Source Permits (NSP) are active statewide. As a result of other, unrelated amendments to these rules, approximately 100 facilities will change from a CSP (permits with federal oversight) to NSP (state only permits). All CSP facilities are subject to a 30-day public comment period for every new permit or permit renewal, and for some modifications. Therefore, CSP facilities that convert to a NSP facility would be subject, in general, to less frequent public noticing.

Currently, NSP facilities are not subject to a required public comment period. The additional proposed amendments to HAR §11-60.1-73, Public Participation would require CAB to hold a 30-day public comment period before an NSP can be issued to a new facility or modification to an existing facility if the proposed increase in emissions is equal to or above significant emission rates defined in Hawaii's air pollution control rules.

While the CAB has determined that the proposed changes will not cause a direct and significant economic burden upon a small business or impose provisions more stringent than comparable federal, state or county standards, the amendments may be directly related to the formation, operation, or expansion of a small business.

If you have any questions, please contact Mr. Barry Ching, Clean Air Branch, Department of Health at 586-4200 or [CAB@doh.hawaii.gov](mailto:CAB@doh.hawaii.gov).

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

As described above, affected businesses include those proposing a new facility or a modification to a facility that results in an increase in emissions defined in the regulations.

- NSP facilities subject to this public noticing requirement would be subject to increased public scrutiny.

- The public comment period does not include a public hearing, although a public hearing could be requested.
- The added public comment period would delay permit issuance by about 40 days: 5 days for preparations to publish a public notice, 30 days for the public comment period, and 5 days to complete the process.

As mentioned, other amendments to these rules will convert approximately 100 facilities will change from CSP to NSP. Facilities that convert to NSP would be subject to less frequent public noticing.

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

The proposed amendment will not cause a direct and significant economic burden upon a small business. The amendment will extend the amount of time before an air permit is issued to those subject facilities by approximately 40 days. The CAB pays for the costs to publish the public notice. There are no indirect costs associated with reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

**3. The probable monetary costs and benefits to the implementing 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 money will be used.**

There will be no additional fees charged to businesses and no monetary benefit to CAB. The CAB pays for the cost to publish the public notice.

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

The proposed revision is required by EPA for Hawaii to comply with *40 Code of Federal Regulations §51.160(e) (Requirements for Preparation, Adoption, and Submittal of Implementation Plans – Review of New Sources and Modifications – Legally enforceable procedures*. The federal regulation requires that a percentage of Hawaii's smaller emission sources be subject to public comment. The impact to these emission sources will be minimized by requiring only those sources that increase air emissions at or above trigger levels defined in Hawaii's rules to be subject to public noticing requirements. The trigger level was recommended by EPA and is also used by other air agencies in the United States.

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

As stated in 4 above, the proposed amendment is to comply with federal regulation with 40 CFR §51.160(e) (Requirements for Preparation, Adoption, and Submittal of

Implementation Plans – Review of New Sources and Modifications – Legally enforceable procedures, which requires Hawaii to public notice draft permits for a percentage of Hawaii's smaller emission sources. The trigger level was recommended by EPA and is also used by other air agencies in the United States.

**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.**

Affected businesses include those proposing a new facility or a modification to a facility that results in an increase in emissions defined in the regulations. This amendment may affect up to approximately thirty (30) emission sources each year.

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

These additional proposed amendments, which are being added after our 2021 public hearing, were reviewed by the same Clean Air Rules Review Team members who reviewed the original set of amendments. A number of members directly or indirectly represent small business interests, including the following:

- Mr. Michael Moefu, Aloun Farms.
- Mr. Gary Maunakea-Forth, MA`O Organic Farms.
- Ms. Paula Hegele, Maui Wine.
- Ms. Lorina Modelski, Pineridge Farms.
- Ms. Janet Ashman, Hawaii Farm Bureau, which represents a large number of small business farmers.
- Mr. Gregg Ichimura (Koga Engineering), and Mr. Victor Szabo (Healy Tibbitts Builders), General Contractors Association, which represents approximately 600 companies, including many that are small businesses.
- Dr. Jim Morrow, Consultant, who represents a number of small business clients in his air permitting work.
- Mr. Earl Yamamoto, Planner, and Mr. Heath Williams, Special Assistant to the Chairperson, Hawaii Department of Agriculture.

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

The proposed rules do not impose any stricter requirements than those mandated by any comparable or related federal, state, county standards.

In April 2021, the Clean Air Branch (CAB) began a 30-day public comment period for its proposed amendments to Hawaii Administrative Rules (HAR) 11-60.1, Air Pollution Control. Proceedings included a public hearing on May 5, 2021. At the conclusion of the public comment period, no changes were made to the proposed amendments. Subsequent to the public comment period, the U.S. Environmental Protection Agency (EPA) requested additional revisions to several sections regarding air permitting. Since that time, CAB staff have identified minor amendments to other areas. The following are the proposed additional revisions to HAR 11-60.1 after the 2021 public comment period, shown in yellow highlight.

According to Ramseyer format, text to be repealed is bracketed and struck through and text to be added is underscored.

# **1. Subchapter 1 General Requirements, 11-60.1-1 Definitions**

Revisions recommended by EPA:

- Amend definition of "Major source" to exclude greenhouse gases (GHG) from the list of pollutants that trigger a major source at 100 tons per year of emissions.
- Change the threshold from two-hundred fifty to fifty ton per day charging rate for municipal incinerators.

Other revisions:

- Amend the definition of "Covered source" to clarify that the CAB must receive program approval from EPA before implementing the revisions previously proposed in 2021. The 2021 proposed revisions will allow a nonmajor source that is subject to a Section 111 or 112 standard to obtain a noncovered source permit as long as the Section 111 or 112 standard does not require the source to obtain a Title V permit.
- Add the definition of "Program approval," delete the definition of "Upon program approval" to accommodate the revised definition of "Covered source," and delete the use of "Upon program approval" throughout the rules.

**§11-60.1-1 Definitions.** As used in this chapter, unless otherwise defined for purposes of a particular subchapter or section of this chapter:

"Covered source" means:

~~[(1) Any major source;~~

~~(2) Any source subject to a standard or other requirement under Section 111 of the Act;~~

~~(3) Any source subject to an emissions standard or other requirement for hazardous air pollutants pursuant to Section 112 of the Act, with the exception of those sources solely subject to regulations or requirements pursuant to Section 112(r) of the Act; and~~

~~(4) Any source subject to the rules for prevention of significant deterioration of air quality as established in subchapter 7.]~~

(1) Prior to program approval:

(A) Any major source;

(B) Any source subject to a standard or other requirement under Section 111 of the Act;



- (C) Any source subject to an emissions standard or other requirement for hazardous air pollutants pursuant to Section 112 of the Act, with the exception of those sources solely subject to regulations or requirements pursuant to Section 112(r) of the Act; and
- (D) Any source subject to the rules for prevention of significant deterioration of air quality as established in subchapter 7.
- (2) Upon program approval and thereafter:
  - (A) Any major source;
  - (B) Any source subject to a standard or other requirement under Section 111 or 112 of the Act designated by the Administrator as requiring a Title V permit, such as subject solid waste incineration units; and
  - (C) Any source subject to the rules for prevention of significant deterioration of air quality as established in subchapter 7.

\* \* \*

“Major source” means:

- (1) For hazardous air pollutants, a source or a group of stationary sources that is located on one or more contiguous or adjacent properties, and is under common control of the same person (or persons under common control) and that emits or has the potential to emit considering controls and fugitive emissions, any hazardous air pollutant, except radionuclides, in the aggregate of ten tons per year or more of a single pollutant or twenty-five tons per year or more of any combination of pollutants; or
- (2) For any other pollutant, a source, or a group of stationary sources that is located on one or more contiguous or adjacent properties, and is under common control of the same person (or persons under common control) belonging to a single major industrial grouping (i.e., all having the same two-digit Standard Industrial Classification Code) and that emits or has the potential to emit, considering controls, one hundred tons per year or more of any air pollutant[,] subject to regulation other than the pollutant greenhouse gases. Fugitive emissions from the stationary source shall be considered in determining whether the stationary source is major, if it belongs to one of the following categories of stationary sources:
  - (A) Coal cleaning plants (with thermal dryers);
  - (B) Kraft pulp mills;
  - (C) Portland cement plants;
  - (D) Primary zinc smelters;
  - (E) Iron and steel mills;
  - (F) Primary aluminum ore reduction plants;
  - (G) Primary copper smelters;
  - (H) Municipal incinerators capable of charging more than [two hundred] fifty tons of refuse per day;
  - (I) Hydrofluoric, sulfuric, or nitric acid plants;

- (J) Petroleum refineries;
- (K) Lime plants;
- (L) Phosphate rock processing plants;
- (M) Coke oven batteries;
- (N) Sulfur recovery plants;
- (O) Carbon black plants (furnace process);
- (P) Primary lead smelters;
- (Q) Fuel conversion plants;
- (R) Sintering plants;
- (S) Secondary metal production plants;
- (T) Chemical process plants – the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- (U) Fossil fuel boilers (or combination thereof) totaling more than two hundred fifty million BTU per hour heat input;
- (V) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;
- (W) Taconite ore processing plants;
- (X) Glass fiber processing plants;
- (Y) Charcoal production plants;
- (Z) Fossil fuel fired steam electric plants of more than two hundred fifty million BTU per hour heat input; and
- (AA) Any other stationary source which as of August 7, 1980 is being regulated by a standard promulgated pursuant to Section 111 or 112 of the Act.

\*\*\*

“Program approval” means approval granted by the Administrator pursuant to 40 CFR Part 70 for revisions to the State of Hawaii covered source permit program.

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["Upon program approval" means the date the State of Hawaii covered source permit program is granted full or interim approval by the Administrator pursuant to 40 CFR Part 70 and thereafter.]

## 2. Subchapter 3 Open Burning

CAB staff propose three revisions as follows:

- Add a definition of “recreational fire” in §11-60.1-51 to clarify application of §11-60.1-52(d)(1).
- Include a conditional use for special effects in §11-60.1-52(d)(4). Requests for this approval have been received in the past.
- Revise §11-60.1-52(e)(2) to add a conditional use for the prevention or control of invasive species (only the highlighted portion is newly proposed). Requests for this approval have been received in the past

**§11-60.1-51 Definitions.** As used in this subchapter:

\* \* \*

“Recreational fire” means a fire used for social, cultural, or other activities including, but not limited to, campfires, bonfires, hand-warming fires, raku or pit pottery curing fires, or fires conducted as part of an unusual event such as fire dancing, provided the activity is not part of a business for gainful occupation.

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**§11-60.1-52 General provisions.** (a) Except as provided in subsections (b), (c), (d), (e) and section 11-60.1-53, no person shall cause, permit, or maintain any open burning. Any open burning is the responsibility of the person owning, operating, or managing the property, premises, business establishment, or industry where the open burning is occurring. Subsections (b), (c), (d), (e) and section 11-60.1-53 shall not apply to the open burning of human remains or animal carcasses unless the activities fall under the exemptions found in paragraph (d)(2).

(b) Subsection (a) shall not apply to attended fires for the cooking of food[.] provided that:

- (1) Only untreated dry wood, charcoal, natural or synthetic natural gas, butane, propane, or cooking fuel is used, and
- (2) If visible smoke enters any residence, business or public area, best practical measures to eliminate the smoke, including extinguishing the fire, are taken.

(c) Subsection (a) shall not apply to the following, provided that notification is given to the director prior to the commencement of any burn:

- (1) Fires set to a building, structure or simulated aircraft for training personnel in firefighting methods.

(d) Subsection (a) shall not apply to the following, provided that the burning is approved by the director:

- (1) [Fires for recreational, decorative, or ceremonial purposes] Outdoor fires for recreational, religious, ceremonial, decorative, or related purposes including, but not limited to, campfires, bonfires, pottery curing fires, that are burning dry untreated wood, charcoal, or auxiliary fuels;

- (2) Fires for the disposal of human remains and animal carcasses and debris generated from a natural disaster or catastrophic event, where there is no reasonable alternative method of disposal; ~~[and]~~
  - (3) ~~[Other fires as approved by the director.]~~ Outdoor fires set for cultural, traditional, or related purposes and fires within cultural or traditional structures including sweat houses or lodges; and
  - (4) Pyrotechnics for the creation of special effects during filming or motion pictures, television programs, or other commercial video, photography, or creative arts production activities.
- (e) Subsection (a) shall not apply to the following, provided that the burning is both approved by the director, and that the burning is allowed under either section 11-60.1-55 or 11-60.1-52(f):
- (1) Fires to abate a fire hazard, provided that the hazard is so declared by the fire department, forestry division, or federal agency having jurisdiction, and that a prescribed burning plan, if applicable, has been submitted to and approved by the jurisdictional agency;
  - (2) Fires for prevention or control of disease ~~[or]~~, pests, invasive species or other natural threats to the environment or economy; and
  - (3) Fires for the disposal of dangerous materials, where there is no alternate method of disposal;
- (f) The director may provide a waiver to the section 11-60.1-55 “no-burn” period for any exemption to open burning found under subsection 11-60.1-52(e).
- (g) Subsections (b), (c), (d), or (e) shall not exempt any activity from the application of any rules or requirements in any other section or chapter.

3. **Subchapter 4 Noncovered Sources, 11-60.1.-63 Initial noncovered source permit application.**

Revision recommended by EPA to ensure compliance with the provisions of 40 Code of Federal Regulations (CFR) §51.160(b) (Requirements for Preparation, Adoption, and Submittal of Implementation Plans - Review of New Sources and Modifications - Legally enforceable procedures)

**§11-60.1-63 Initial noncovered source permit application.** (a) Every application for an initial noncovered source permit shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application. Information submitted shall include:

\* \* \*

(7) Citation and description of all applicable requirements, and a description of or reference to any method and/or applicable test method for determining compliance with each applicable requirement;

~~[(7)]~~(8) A schedule for construction or modification of the noncovered source, if applicable;

~~[(8)]~~(9) All calculations and assumptions on which the information in paragraphs (2), (4), (5), and (6) is based;

~~[(9)]~~(10) If requested by the director, an assessment of the ambient air quality impact of the noncovered source or modification. The assessment shall include all supporting data, calculations and assumptions, and a comparison with the NAAQS and state ambient air quality standards;

~~[(10)]~~(11) If requested by the director, a risk assessment of the air quality related impacts caused by the noncovered source or modification to the surrounding environment;

~~[(11)]~~(12) If requested by the director, results of source emission testing, ambient air quality monitoring, or both;

~~[(12)]~~(13) If requested by the director, information on other available control technologies;

~~[(13)]~~(14) An explanation of all proposed exemptions from any applicable requirement;

~~[(14)]~~(15) A compliance plan in accordance with section 11-60.1-65; and

~~[(15)]~~(16) Other information:

(A) As required by any applicable requirement or as requested and deemed necessary by the director to make a decision on the application; and

(B) As may be necessary to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of such requirements.

\* \* \*

(e) The director, in writing, shall approve, conditionally approve, or deny an application for a noncovered source permit within six months after receipt of a complete application. A noncovered source permit application for a new noncovered source or a modification shall be approved only if the director determines that the construction or operation of the new noncovered source or modification will be in compliance with all applicable requirements and will not interfere with attainment or maintenance of the NAAQS.

4. **Subchapter 4 Noncovered Sources, 11-60.1-73 Public participation.**

Revision recommended by EPA:

- To ensure compliance with the provisions of 40 CFR §51.160(e) (Requirements for Preparation, Adoption, and Submittal of Implementation Plans – Review of New Sources and Modifications – Legally enforceable procedures)
- Current HAR language allows for public noticing of noncovered source permits “at the director’s sole discretion.” Note that Hawaii satisfies the requirements of 40 CFR §51.160(e), with the HAR in its current form, by requiring many minor sources (<100 Tons per Year (TPY) Potential to Emit (PTE)) to obtain covered source permits (also known as, Title V), which are subject to public participation. The CAB’s proposed revisions to the HAR will allow a significant number of minor covered source permits to obtain noncovered source permits (i.e., non-Title V). The proposed revision to 11-60.1-73 will remove “at the director’s sole discretion,” and instead set a public noticing trigger level for new noncovered sources and modifications to existing noncovered sources that have a net increase in emissions at or above significant emission rates. EPA indicated the proposed trigger level is in use by other air agencies.

**§11-60.1-73 Public participation.** (a) ~~[Except for administrative permit amendments, in]~~ In considering [any] an application for a noncovered source permit, the director, [at the director's sole discretion, may] shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment [if the director is of the opinion that public comment would aid in the director's decision] for permits that result in a net increase in emissions of any air pollutant at or above the “significant” emission rates of 11-60.1-131, paragraph (1) of the definition. The fugitive emissions of a stationary source shall not be included in determining the increase in emissions of the source for the purposes of this section, unless the source belongs to one of the categories of stationary sources listed in section (2) of the definition of “major source” in section 11-60.1-1. [If a public comment period is provided, any] Any person requesting a public hearing shall do so during the public comment period. Any request from a person for [a public comment period,] a public hearing[, or both] shall indicate the interest of the person filing the request and the reasons why a public [comment period or] hearing is warranted.

**5. Subchapter 5 Covered Sources, §11-60.1-81 Definitions.**

EPA recommended the additional language to ensure Hawaii's rules are clear that major stationary sources must first evaluate whether a proposed modification is a major modification by comparing past actual emissions to either future potential (i.e., PTE) or projected actual emissions. If the proposed modification at the major stationary source is not a major modification, based on this evaluation, the source would proceed to evaluate whether the modification is significant or minor by using a PTE to PTE evaluation.

**§11-60.1-81 Definitions.** As used in this subchapter, unless otherwise defined for purposes of a particular section or subsection of this subchapter:

\* \* \*

"Minor modification" means a modification which:

- (1) Does not increase the emissions of any air pollutant above the permitted emission limits[;] and for existing major stationary sources does not result in a major modification as defined in section 11-60.1-131;
- (2) Does not result in or increase the emissions of any air pollutant not limited by permit to levels equal to or above[; the following, and for existing major stationary sources does not result in a major modification as defined in section 11-60.1-131:
  - (A) 500 pounds per year of a hazardous air pollutant, except lead;
  - (B) 300 pounds per year of lead;
  - (C) twenty-five percent of significant amounts of emission as defined in section 11-60.1-1, paragraph (1) in the definition of "significant"; or
  - (D) two tons per year of each regulated air pollutant not already identified above;
- (3) Does not violate any applicable requirement;
- (4) Does not involve significant changes to existing monitoring requirements or any relaxation or significant change to existing reporting or recordkeeping requirements in the permit. Any change to the existing monitoring, reporting, or recordkeeping requirements that reduces the enforceability of the permit is considered a significant change;
- (5) Does not require or change a case-by-case determination of an emission limitation or other standard, a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
- (6) Does not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement, and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:
  - (A) A federally enforceable emissions cap assumed to avoid classification as a modification pursuant to any provision of Title I of the Act or subchapter 7; and



- (B) An alternative emissions limit approved pursuant to regulations promulgated pursuant to Section 112(i)(5) of the Act or subchapter 9; and
- (7) Is not a modification pursuant to any provision of Title I of the Act.

**6. Subchapter 5 Covered Sources, §11-60.1-99 Public participation.**

This change is being made to comply with 40 CFR §51.161(a), which states that the opportunity for public comment must be provided to show the effect of construction or modification on ambient air quality. EPA expressed its concerns that some minor modifications at major stationary sources were not being subjected to public noticing. The EPA advised the CAB that an actual to potential or actual to projected actual emissions test should be used as the criteria to determine whether a proposed minor modification at an existing major stationary source should be subject to public noticing. The public noticing trigger level is included in the revision below and is understood by the CAB, in its communications with EPA, to be an acceptable method to determine which minor modifications at major stationary sources trigger public noticing.

**§11-60.1-99 Public participation.** (a) Except for administrative permit amendments and permit amendments reflecting certain minor modifications, the director shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment on all draft covered source permits for [initial issuance, for permit renewal, or for the significant modification of a covered source-]:

(1) initial issuance;

(2) renewal;

(3) significant modification; or

(4) minor modifications to major stationary sources that result in a net emissions increase, as defined in 40 CFR Part 52.21, equal to or exceeding fifty percent of the significant amounts of emissions in the definition of significant in section 11-60.1-131, paragraph (1) of the definition.

(b) Any person requesting a public hearing shall do so during the public comment period. Any request from a person for a public hearing shall indicate the interest of the person filing the request and the reasons why a public hearing is warranted.

[(b)](c) Procedures for public notice, public comment periods, and public hearings shall be as follows:

- (1) The director shall make available for public inspection in at least one location in the county affected by the proposed action, or in which the source is or would be located:
  - (A) Information on the subject matter;
  - (B) Information submitted by the applicant, except for that determined to be confidential pursuant to section 11-60.1-14;
  - (C) The department's analysis and proposed action; and
  - (D) Other information and documents determined to be appropriate by the department;
- (2) Notification of a public hearing shall be given at least thirty days in advance of the hearing date;
- (3) A public comment period shall be no less than thirty days following the date of the public notice, during which time interested persons may submit to the department written comments on:

- (A) The subject matter;
  - (B) The application;
  - (C) The department's analysis;
  - (D) The proposed actions; and
  - (E) Other considerations as determined to be appropriate by the department;
- (4) Notification of a public comment period or a public hearing shall be made:
- (A) By publication in a newspaper which is printed and issued at least twice weekly in the county affected by the proposed action, or in which the source is or would be located;
  - (B) To persons on a mailing list developed by the director, including those who request in writing to be on the list; and
  - (C) If necessary by other means to assure adequate notice to the affected public;
- (5) Notice of public comment and public hearing shall identify:
- (A) The affected facility;
  - (B) The name and address of the permittee;
  - (C) The name and address of the agency of the department processing the permit;
  - (D) The activity or activities involved in the permit action;
  - (E) The emissions change involved in any permit amendment reflecting a modification to the covered source;
  - (F) The name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft permit, the application, all relevant supporting materials including any compliance plan, and monitoring and compliance certification reports, and all other materials available to the department that are relevant to the permit decision, except for information that is determined to be confidential, including information determined to be confidential pursuant to section 11-60.1-14;
  - (G) A brief description of the comment procedures;
  - (H) The time and place of any hearing that may be held, including a statement of procedures to request a hearing if one has not already been scheduled; and
  - (I) The availability of the information listed in paragraph (1), and the location and times the information will be available for inspection; and
- (6) The director shall maintain a record of the commenters and the issues raised during the public participation process and shall provide this information to the Administrator upon request.

7. **Subchapter 5 Covered Sources, §11-60.1-104 Applications for significant modifications**

Revisions recommended by EPA to improve clarity.

**§11-60.1-104 Applications for significant modifications.** (a) Every application for a significant modification to a covered source is subject to the same requirements as for an initial covered source permit application pursuant to §11-60.1-83 as it pertains to the proposed significant modification. Applications shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application and to determine the fee requirements specified in subchapter 6. Information submitted shall include:

\* \* \*

- (8) Citation and description of all applicable requirements, and a description of or reference to any method and/or applicable test method for determining compliance with each applicable requirement;

\* \* \*

(f) The director, in writing, shall approve, conditionally approve, or deny an application containing an early reduction demonstration pursuant to Section 112(i)(5) of the Act [, and upon program approval,] within nine months after receipt of a complete application.

(g) The director, in writing, shall approve, conditionally approve, or deny an application for a new covered source or significant modification subject to the requirements of subchapter 7 within twelve months after receipt of a complete application.

(h) The director shall provide reasonable procedures and resources to complete the review of the majority of the applications for a significant modification within nine months after receipt of a complete application. An application for significant modification shall be approved only if the director determines that the significant modification will be in compliance with all applicable requirements [,] and will not interfere with attainment or maintenance of the NAAQS.

**8. Subchapter 7 Prevention of Significant Deterioration Review. §11-60.1-131 Definitions**

To address EPA's comment, the revised date is intended to capture recent amendments to 40 CFR §52.21 that address outdated language and other corrections. Please note that changes in date are also being made to HAR §11-60.1-132(a) and §11-60.1-206(f), for this same reason

The addition of "other than the pollutant greenhouse gases" to paragraphs (1) and (2) of the definition of "Major stationary source" is proposed to clarify that greenhouse gas emissions alone do not trigger a "Major stationary source."

The addition of "R" to the definition of "Significant" is to clarify that the greenhouse gas significant emission level is defined in paragraphs (3) and (4) of the definition of "Subject to Regulation."

**§11-60.1-131 Definitions.** All of the definitions in 40 CFR 52.21(b) as they existed on [November 19, 2013] **July 1, 2022** are hereby incorporated by reference. This section incorporates these definitions to support the implementation of 40 CFR Section 52.21, Prevention of Significant Deterioration of Air Quality. Selected definitions are included here for convenience. If a conflict is found, the definition in 40 CFR Section 52.21 shall apply.

\* \* \*

"Major stationary source" means:

- (1) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any regulated NSR pollutant **[;] other than the pollutant greenhouse gases:**
  - (A) Fossil fuel fired steam electric plants of more than two hundred fifty million BTU per hour heat input;
  - (B) Coal cleaning plants (with thermal dryers);
  - (C) Kraft pulp mills;
  - (D) Portland cement plants;
  - (E) Primary zinc smelters;
  - (F) Iron and steel mills;
  - (G) Primary aluminum ore reduction plants (with thermal dryers);
  - (H) Primary copper smelters;
  - (I) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;
  - (J) Hydrofluoric, sulfuric, and nitric acid plants;
  - (K) Petroleum refineries;
  - (L) Lime plants;
  - (M) Phosphate rock processing plants;
  - (N) Coke oven batteries;

- (O) Sulfur recovery plants;
- (P) Carbon black plants (furnace process);
- (Q) Primary lead smelters;
- (R) Fuel conversion plants;
- (S) Sintering plants;
- (T) Secondary metal production plants;
- (U) Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140);
- (V) Fossil fuel boilers (or combinations thereof) totaling more than two hundred fifty million BTU per hour heat input;
- (W) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;
- (X) Taconite ore processing plants;
- (Y) Glass fiber processing plants; and
- (Z) Charcoal production plants;
- (2) Notwithstanding the stationary source size specified in this definition, any stationary source which emits, or has the potential to emit two hundred fifty tons per year or more of a regulated NSR pollutant~~;~~ other than the pollutant greenhouse gases; or
- (3) Any physical change that would occur at a stationary source not otherwise qualifying under this definition as a major stationary source, if the changes would constitute a major stationary source by itself.

\* \* \*

"Significant" means in reference to a net emissions increase or the potential of a source to emit any of the following pollutants:

- (1) A rate of emissions that would equal or exceed any of the following pollutant emission rates:
  - (A) Carbon monoxide: one hundred tpy;
  - (B) Nitrogen oxides: forty tpy;
  - (C) Sulfur dioxide: forty tpy;
  - (D) Particulate matter: twenty-five tpy of particulate matter emissions;
  - (E) PM10: fifteen tpy;
  - (F) PM2.5: ten tpy of direct PM2.5 emissions; forty tpy of sulfur dioxide emissions; forty tpy of nitrogen oxide emissions unless demonstrated not to be a PM2.5 precursor under 40 CFR 52.21(b)(50);
  - (G) Ozone: forty tpy of volatile organic compounds or nitrogen oxides;
  - (H) Lead: 0.6 tpy;
  - (I) Fluorides: three tpy;
  - (J) Sulfuric acid mist: seven tpy;
  - (K) Hydrogen sulfide (H<sub>2</sub>S): ten tpy;

- (L) Total reduced sulfur (including H<sub>2</sub>S): ten tpy;
- (M) Reduced sulfur compounds (including H<sub>2</sub>S): ten tpy;
- (N) Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans):  $3.2 \times 10^{-6}$  megagrams per year ( $3.5 \times 10^{-6}$  tpy);
- (O) Municipal waste combustor metals (measured as particulate matter): fourteen megagrams per year (fifteen tpy);
- (P) Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): thirty-six megagrams per year (forty tpy);
- (Q) Municipal solid waste landfills emissions (measured as nonmethane organic compounds): forty-five megagrams per year (50 tpy); or

(R) Greenhouse gases: as specified in paragraphs (3) and (4) under the definition of "Subject to Regulation" of this subchapter.

- (2) Any net emissions increase or the potential of a major stationary source to emit a regulated NSR pollutant that is not listed in paragraph (1), any emissions rate.
- (3) Notwithstanding paragraph (1), any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten kilometers of a Class I area, and have an impact on such area equal to or greater than  $1 \mu\text{g}/\text{m}^3$ , (twenty-four-hour average).

**9. Subchapter 8 Standards of Performance for New Stationary Sources §11-60.1-161  
New source performance standards**

The proposed revision to HAR §11-60.1-161(b) and the addition of 11-60.1-161(c) is to clarify that air permit applications shall be submitted for an affected facility subject to covered or noncovered source permitting requirements, and that the requirements of the federal standard are an applicable requirement of Subchapter 4, Noncovered Sources or Subchapter 5, Covered Sources, as applicable.

**§11-60.1-161 New source performance standards.** (a) This section applies to an owner or operator subject to a promulgated federal standard of performance for new stationary sources. An owner or operator of an affected facility shall comply with all applicable provisions of 40 CFR Part 60, entitled "Standards of Performance for New Stationary Sources," including the following subparts:

- (1) Subpart A, General Provisions;
- (2) Subpart D, Standards of Performance for Fossil Fuel Fired Steam Generators for Which Construction is Commenced After August 17, 1971;
- (3) Subpart Da, Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978;
- (4) Subpart Db, Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units;
- (5) Subpart Dc, Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units;
- (6) Subpart E, Standards of Performance for Incinerators;
- (7) Subpart Ea, Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989 and on or Before September 20, 1994;
- (8) Subpart Eb, Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996;
- (9) Subpart Ec, Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996;
- (10) Subpart F, Standards of Performance for Portland Cement Plants;
- (11) Subpart I, Standards of Performance for Hot Mix Asphalt Facilities;
- (12) Subpart J, Standards of Performance for Petroleum Refineries;
- (13) Subpart Ja, Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007;
- ~~[(13)]~~(14) Subpart K, Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978;



- ~~[(14)]~~(15) Subpart Ka, Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984;
- ~~[(15)]~~(16) Subpart Kb, Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984;
- ~~[(16)]~~(17) Subpart O, Standards of Performance for Sewage Treatment Plants;
- ~~[(17)]~~(18) Subpart Y, Standards of Performance for Coal Preparation Plants;
- ~~[(18)]~~(19) Subpart AA, Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983;
- ~~[(19)]~~(20) Subpart AAa, Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983;
- ~~[(20)]~~(21) Subpart GG, Standards of Performance for Stationary Gas Turbines;
- (22) Subpart UU, Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture;
- ~~[(21)]~~(23) Subpart VV, Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry[;] for which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006;
- (24) Subpart VVa, Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006;
- ~~[(22)]~~(25) Subpart WW, Standards of Performance for the Beverage Can Surface Coating Industry;
- ~~[(23)]~~(26) Subpart XX, Standards of Performance for Bulk Gasoline Terminals;
- ~~[(24)]~~(27) Subpart GGG, Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries[;] for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or Before November 7, 2006;
- (28) Subpart GGGa, Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006;
- ~~[(25)]~~(29) Subpart JJJ, Standards of Performance for Petroleum Dry Cleaners;
- ~~[(26)]~~(30) Subpart NNN, Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations;
- ~~[(27)]~~(31) Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants;

- ~~[(28)]~~(32) Subpart QQQ, Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems;
- ~~[(29)]~~(33) Subpart VVV, Standards of Performance for Polymeric Coating of Supporting Substrates Facilities;
- ~~[(30)]~~(34) Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills;
- (35) Subpart XXX, Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014;
- ~~[(31)]~~(36) Subpart AAAA, Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction Commenced After June 6, 2001;~~[-and]~~
- ~~[(32)]~~(37) Subpart CCCC, Standards of Performance for Commercial and Industrial Solid Waste Incineration Units [~~for Which Construction is Commenced After November 30, 1999 or for Which Modification or Reconstruction is Commenced on or After June 1, 2001.~~];
- (38) Subpart EEEE, Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006;
- (39) Subpart IIII, Standards of Performance for Stationary Compression Ignition Internal Combustion Engines;
- (40) Subpart JJJJ, Standards of Performance for Stationary Spark Ignition Internal Combustion Engines;
- (41) Subpart KKKK, Standards of Performance for Stationary Combustion Turbines;
- (42) Subpart LLLL, Standards of Performance for New Sewage Sludge Incineration Units; and
- (43) Subpart TTTT, Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units.

(b) ~~[Each federal standard of performance for new stationary sources (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources. Unless specifically exempted from Title V permitting requirements by an applicable federal standard, any]~~ Any owner or operator who constructs, reconstructs, modifies, or operates an affected facility subject to covered source permitting is subject to the application and permitting requirements of subchapter 5. If there is a conflict between the application deadlines in subchapter 5 and the applicable federal standard, the earlier deadline shall apply. Each federal standard of performance for new stationary sources (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources. If there is a conflict between an applicable requirement of subchapter 5, or any other subchapter of these rules, and the applicable federal standard, the most stringent requirement shall

apply. "Affected facility" as used in this section shall have the same meaning as in 40 CFR §60.2.

(c) Any owner or operator who constructs, reconstructs, modifies, or operates an affected facility subject to noncovered source permitting requirements is subject to the application and permitting requirements of subchapter 4. Each federal standard of performance for new stationary sources (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 4, Noncovered Sources. "Affected facility" as used in this section shall have the same meaning as in 40 CFR §60.2.

**10. Subchapter 8 Standards of Performance for New Stationary Sources §11-60.1-163 Federal plans**

The proposed revision to HAR §11-60.1-163(b) and the addition of 11-60.1-163(c) is to clarify that air permit applications shall be submitted for an affected facility subject to covered or noncovered source permitting requirements, and that the requirements of the federal standard are an applicable requirement of Subchapter 4, Noncovered Sources or Subchapter 5, Covered Sources, as applicable.

**§11-60.1-163 Federal plans.** (a) This section applies to an owner or operator subject to a promulgated federal plan for designated or affected facilities, where the facility is not covered by an EPA approved state plan. "State plan" as used in this subsection means a plan submitted pursuant to section 111(d) and section 129(b)(2) of the Clean Air Act and 40 CFR Part 60, subpart B that implements and enforces 40 CFR Part 60, subpart C.

(b) An owner or operator of a designated or affected facility, as defined in the applicable federal plan, shall comply with all applicable requirements of the federal plan, including the following:

- (1) 40 CFR Part 62, Subpart FFF, Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994;
- (2) 40 CFR Part 62, Subpart GGG, Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991;
- (3) 40 CFR Part 62, Subpart HHH, Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or Before June 20, 1996; and
- (4) 40 CFR Part 62, Subpart III, Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999;
- ~~[(4)]~~(5) 40 CFR Part 62, Subpart JJJ, Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999~~[-];~~
- (6) 40 CFR Part 62, Subpart LLL, Federal Plan Requirements for Sewage Sludge Incineration Units Constructed on or Before October 14, 2010; and
- (7) 40 CFR Part 62, Subpart OOO, Federal Plan Requirements for Municipal Solid Waste Landfills that Commenced Construction On or Before July 17, 2014 and Have Not Been Modified or Reconstructed Since July 17, 2014.

(c) ~~[Each federal plan for designated or affected facilities (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources. Unless specifically exempted from Title V permitting by applicable federal plan, any owner or operator of a designated or affected facility]~~ Any owner or operator who constructs, reconstructs, modifies, or operates a designated or affected facility subject to covered source

permitting is subject to the application and permitting requirements of subchapter 5. Each federal plan for designated or affected facilities (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources.

(d) Any owner or operator who constructs, reconstructs, modifies, or operates an affected facility subject to noncovered source permitting requirements is subject to the application and permitting requirements of subchapter 4. Each federal plan for designated or affected facilities (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 4, Noncovered Sources.

**11. Subchapter 9 Hazardous Air Pollutant Sources. §11-60.1-172 List of hazardous air pollutants**

In December 2021, 1-Bromopropane (1-BP) was added as a hazardous air pollutant regulated under Section 112 of the Clean Air Act.

**§11-60.1-172 List of hazardous air pollutants.** The following are hazardous air pollutants:

	<u>CAS number</u>	<u>Chemical name</u>
(1)	75070	Acetaldehyde
(2)	60355	Acetamide
(3)	75058	Acetonitrile

\* \* \*

<u>(189)</u>	<u>106945</u>	<u>1-Bromopropane (1-BP)</u>
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**12. Subchapter 9 Hazardous Air Pollutant Sources. §11-60.1-174 Maximum achievable control technology (MACT) emission standards.**

The proposed revision to HAR §11-60.1-174(b) and the addition of 11-60.1-174(c) is to clarify that air permit applications shall be submitted for an affected facility subject to covered or noncovered source permitting requirements, and that the requirements of the federal standard are an applicable requirement of Subchapter 4, Noncovered Sources or Subchapter 5, Covered Sources, as applicable.

**§11-60.1-174 Maximum achievable control technology (MACT) emission standards.** (a) This section applies to an owner or operator of a major or area source of hazardous air pollutants that has or will have affected source(s) in a category or subcategory subject to a promulgated MACT emission standard. An owner or operator of an affected source shall comply with all applicable provisions of 40 CFR Part 63, entitled "National Emission Standards for Hazardous Air Pollutants for Source Categories," including the following subparts:

- (1) Subpart A, General Provisions;
- (2) Subpart D, Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants;
- (3) Subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks;
- (4) Subpart M, National ~~[Perchloroethylene]~~ Perchloroethylene Air Emission Standards for Dry Cleaning Facilities;
- (5) Subpart N, National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Anodizing Tanks;
- (6) Subpart O, Ethylene Oxide Emissions Standards for Sterilization Facilities;
- (7) Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers;
- (8) Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations);
- (9) Subpart T, National Emission Standards for Halogenated Solvent Cleaning;
- (10) Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins;
- (11) Subpart W, National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production;
- (12) Subpart Y, National Emission Standards for Marine Tank Vessel Loading Operations;
- (13) Subpart CC, National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries;
- (14) Subpart DD, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations;
- (15) Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities;

- (16) Subpart II, National Emission Standards for Shipbuilding and Ship Repair (Surface Coating);
- (17) Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations;
- (18) Subpart KK, National Emission Standards for the Printing and Publishing Industry;
- (19) Subpart OO, National Emission Standards for Tanks-Level 1;
- (20) Subpart PP, National Emission Standards for Containers;
- (21) Subpart QQ, National Emission Standards for Surface Impoundments;
- (22) Subpart RR, National Emission Standards for Individual Drain Systems;
- (23) Subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process;
- ~~[(23)]~~(24) Subpart VV, National Emission Standards for Oil-Water Separators and Organic Water Separators;
- (25) Subpart WW, National Emission Standards for Storage Vessels (Tanks)—Control Level 2;
- ~~[(24)]~~(26) Subpart JJJ, National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins;
- ~~[(25)]~~(27) Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units;
- ~~[(26)]~~(28) Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works;
- (29) Subpart AAAA, National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills;
- ~~[(27)]~~(30) Subpart HHHH, National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production;~~and~~
- ~~[(28)]~~(31) Subpart VVVV, National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing~~[-]~~;
- (32) Subpart YYYYY, National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines;
- (33) Subpart ZZZZ, National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines;
- (34) Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters;
- (35) Subpart PPPPP, National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stand;
- (36) Subpart UUUUU, National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units;
- (37) Subpart BBBBBB, National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities;
- (38) Subpart CCCCCC, National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities;



(39) Subpart HHHHHH, National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources; and

(40) Subpart JJJJJJ, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources.

(b) ~~[Each MACT emission standard (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources.]~~ Any owner or operator who constructs, reconstructs, modifies, or operates an affected source subject to covered source permitting is subject to the application and permitting requirements of subchapter 5. Each MACT emission standard (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources.

(c) Any owner or operator who constructs, reconstructs, modifies, or operates an affected source subject to noncovered source permitting requirements is subject to the application and permitting requirements of subchapter 4. Each MACT emission standard (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 4, Noncovered Sources.

~~[(e)]~~(d) The deadlines for submitting the required initial notification, and applying for or obtaining a noncovered or covered source permit to address the MACT emission standard are as follows:

- (1) The owner or operator of a new affected source subject to noncovered or covered source permitting shall submit a complete noncovered or covered source permit application for and obtain a noncovered or covered source permit prior to commencing construction or reconstruction of an affected source, except as provided below.
- (2) The owner or operator of a new major affected source for which construction or reconstruction had commenced, and initial startup had not occurred before the standard's effective date, shall submit a complete and timely covered source permit application within sixty calendar days after the standard's effective date. The covered source permit application may be used to fulfill the initial notification requirements of 40 CFR §63.9(b).
- (3) The owner or operator of:
  - (A) an existing affected source;
  - (B) a new nonmajor affected source for which construction or reconstruction had commenced and initial startup had not occurred before the standard's effective date; or
  - (C) a new affected source for which construction or reconstruction had commenced and initial startup had occurred before the standard's effective date;

shall submit written notification to the director of being subject to the MACT emission standard within 120 calendar days after the effective date

of the applicable standard or within 120 calendar days after the source becomes subject to the applicable standard. The owner or operator may submit an initial notification later than the deadline required above, if the applicable MACT standard sets a later deadline. Notification shall be provided pursuant to 40 CFR §63.9(b)(2). The owner or operator shall also submit a complete and timely noncovered or covered source permit application, as applicable, within twelve months after the effective date of the standard, or within twelve months after the source becomes subject to the standard.

~~[(d)]~~(e) In addressing the MACT emission standard, the owner or operator of an affected source shall provide as part of the noncovered or covered source permit application, any other additional information listed in 40 CFR 63.5(d)(1)(ii), (2), and (3).

**13. Subchapter 9 Hazardous Air Pollutant Sources. §11-60.1-180 National emission standards for hazardous air pollutants**

The proposed revision to HAR §11-60.1-180(b) and the addition of 11-60.1-180(c) is to clarify that air permit applications shall be submitted for an affected facility subject to covered or noncovered source permitting requirements, and that the requirements of the federal standard are an applicable requirement of Subchapter 4, Noncovered Sources or Subchapter 5, Covered Sources, as applicable.

**§11-60.1-180 National emission standards for hazardous air pollutants. (a)**

This section applies to an owner or operator of a major or area source of hazardous air pollutants that has or will have source(s) that emit designated hazardous air pollutants listed in 40 CFR Part 61. An owner or operator of a stationary source shall comply with all applicable provisions of 40 CFR Part 61, entitled National Emission Standards for Hazardous Air Pollutants, including the following subparts:

- (1) Subpart A, General Provisions;
- (2) Subpart C, National Emission Standard for Beryllium;
- (3) Subpart D, National Emission Standard for Beryllium Rocket Motor Firing;
- (4) Subpart E, National Emission Standard for Mercury;
- (5) Subpart J, National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene;
- (6) Subpart V, National Emission Standard for Equipment Leaks (Fugitive Emission Sources);
- (7) Subpart Y, National Emission Standard for Benzene Emissions from Benzene Storage Vessels;
- (8) Subpart BB, National Emission Standard for Benzene Emissions from Benzene Transfer Operations; and
- (9) Subpart FF, National Emission Standard for Benzene Waste Operations.

(b) ~~[Each emission standard in 40 CFR Part 61 (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources.]~~ Any owner or operator who constructs, reconstructs, modifies, or operates an applicable source **subject to covered source permitting** is subject to the application and permitting requirements of subchapter 5. **Each emission standard in 40 CFR Part 61 (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources.**

c) Any owner or operator who constructs, reconstructs, modifies, or operates an applicable source subject to noncovered source permitting requirements is subject to the application and permitting requirements of subchapter 4. **Each emission standard in 40 CFR Part 61 (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 4, Noncovered Sources.**

DEPARTMENT OF HEALTH  
Amendment and Compilation of Chapter 11-60.1  
Hawaii Administrative Rules

1. Chapter 60.1, Hawaii Administrative Rules, entitled "Air Pollution Control" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 60.1

AIR POLLUTION CONTROL

Subchapter 1 General Requirements

\$11-60.1-1	Definitions
\$11-60.1-2	Prohibition of air pollution
<u>\$11-60.1-2.5</u>	<u>Credible evidence</u>
\$11-60.1-3	General conditions for considering applications
\$11-60.1-4	Certification
\$11-60.1-5	Permit conditions
\$11-60.1-6	Holding of permit
\$11-60.1-7	Transfer of permit
\$11-60.1-8	Reporting discontinuance
\$11-60.1-9	Cancellation of a noncovered or covered source permit
\$11-60.1-10	Permit termination, suspension, reopening, and amendment
\$11-60.1-11	Sampling, testing, and reporting methods

§11-60.1-12	Air quality models
§11-60.1-13	Operations of monitoring stations
§11-60.1-14	Public access to information
§11-60.1-15	Reporting of equipment shutdown
§11-60.1-16	Prompt reporting of deviations
§11-60.1-16.5	Emergency provision
§11-60.1-17	Prevention of air pollution emergency episodes
§11-60.1-18	Variances
§11-60.1-19	Penalties and remedies
§11-60.1-20	Severability

## Subchapter 2 General Prohibitions

§11-60.1-31	Applicability
§11-60.1-32	Visible emissions
§11-60.1-33	Fugitive dust
§11-60.1-34	Motor vehicles
§11-60.1-35	Incineration
§11-60.1-36	Biomass fuel burning boilers
§11-60.1-37	Process industries
§11-60.1-38	Sulfur oxides from fuel combustion
§11-60.1-39	Storage of volatile organic compounds
§11-60.1-40	Volatile organic compound water separation
§11-60.1-41	Pump and compressor requirements
§11-60.1-42	Waste gas disposal
§11-60.1-43	<u>All operation and maintenance of permitted source</u>

## Subchapter 3 Open Burning

§11-60.1-51	Definitions
§11-60.1-52	General provisions
§11-60.1-53	Agricultural burning: permit applicability
§11-60.1-54	Agricultural burning permit application
§11-60.1-55	Agricultural burning or conditionally allowed open burning from subsection 11-60.1-52(e): "no-burn" periods

§11-60.1-56	Agricultural burning: recordkeeping and monitoring
§11-60.1-57	Agricultural burning: action on application
§11-60.1-58	Agricultural burning: permit content

#### Subchapter 4 Noncovered Sources

§11-60.1-61	Definitions
§11-60.1-62	Applicability
§11-60.1-63	Initial noncovered source permit application
§11-60.1-64	Duty to supplement or correct permit applications
§11-60.1-65	Compliance Plan
§11-60.1-66	Transition into the noncovered source permit program
§11-60.1-67	Permit term
§11-60.1-68	Permit content
§11-60.1-69	Temporary noncovered source permits
§11-60.1-70	Noncovered source general permits
§11-60.1-71	Transmission of information to the administrator
§11-60.1-72	Permit reopening
§11-60.1-73	Public participation
§11-60.1-74	Noncovered source permit renewal applications
§11-60.1-75	Administrative permit amendment
§11-60.1-76	Applications for modifications

#### Subchapter 5 Covered Sources

§11-60.1-81	Definitions
§11-60.1-82	Applicability
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\$11-60.1-134	Repealed
\$11-60.1-135	Repealed
\$11-60.1-136	Repealed
\$11-60.1-137	Repealed
\$11-60.1-138	Repealed
\$11-60.1-139	Repealed
\$11-60.1-140	Repealed
\$11-60.1-141	Repealed
\$11-60.1-142	Repealed
\$11-60.1-143	Repealed
\$11-60.1-144	Repealed
\$11-60.1-145	Repealed
\$11-60.1-146	Repealed
\$11-60.1-147	Repealed
\$11-60.1-148	Repealed
\$11-60.1-149	Repealed
\$11-60.1-150	Repealed

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Historical note: This chapter is based substantially upon chapter 11-60. [Eff 11/29/82; am and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

## SUBCHAPTER 1

### GENERAL REQUIREMENTS

**§11-60.1-1 Definitions.** As used in this chapter, unless otherwise defined for purposes of a particular subchapter or section of this chapter:

" $\mu\text{g}/\text{m}^3$ " means micrograms per cubic meter.

"Act" means the Clean Air Act, as amended, 42 United States Code Section 7401, et seq.

"Administrative permit amendment" means a permit amendment which:

- (1) Corrects typographical errors;
- (2) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
- (3) Requires more frequent monitoring or reporting by the permittee;
- (4) Consolidates the terms and conditions of two or more noncovered source permits into one noncovered source permit for a facility;
- (5) Consolidates the terms and conditions of two or more covered source permits into one covered source permit for a facility;
- (6) Incorporates applicable requirements for any insignificant activity listed in section 11-60.1-82(f) or (g), provided the activity is not by itself subject to subchapters 8 or 9, does not cause a noncovered stationary source to become a major source, and does not cause the stationary source to become subject to provisions of subchapters 7, 8, or 9; or
- (7) Allows for a change in ownership or operational control of a source provided the department has determined that no other change in the permit is necessary, and provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability

between the current and new permittees has been submitted to the director.

"Administrator" means the Administrator of the EPA or the Administrator's designee.

"Agricultural burning permit" means written authorization from the director to engage in agricultural burning.

"Air pollutant" has the same meaning as in chapter 342B, HRS.

"Air pollution" means the presence in the outdoor air of substances in quantities and for durations which may endanger human health or welfare, plant or animal life, or property or which may unreasonably interfere with the comfortable enjoyment of life and property throughout the State and in such areas of the State as are affected thereby, but excludes all aspects of employer-employee relationships as to health and safety hazards.

"Air pollution control equipment" means equipment or a facility of a type intended to eliminate, prevent, reduce, or control the emissions of any regulated or hazardous air pollutant to the atmosphere.

"Allowable emissions" means the emissions of a stationary source calculated using the maximum rated capacity of the source, unless the source is subject to federally enforceable limits which restrict the operating rate, capacity, or hours of operations, or any combination of these, and the most stringent of the following:

- (1) The applicable standards set forth in the Standards of Performance for New Stationary Sources or the National Emissions Standards for Hazardous Air Pollutants;
- (2) Any Hawaii state implementation plan emission limitation, including those with a future compliance date; and
- (3) The emission rates specified as a federally enforceable permit condition, including those with a future compliance date.

"Applicant" means any person who submits an application for a permit.

"Authority to construct" means the permit issued by the director pursuant to repealed chapter 11-60 giving approval or conditional approval to an owner or operator to construct an air pollution source.

"Best available control technology" means an emissions limitation including a visible emission standard based on the maximum degree of reduction for each regulated air pollutant which would be emitted from any proposed stationary source or modification which the director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard promulgated pursuant to 40 CFR Parts 60, 61, and 63. If the director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means which achieve equivalent results.

"Biogenic CO<sub>2</sub> emissions" mean CO<sub>2</sub> emissions from a stationary source directly resulting from the combustion or decomposition of biologically-based materials other than fossil fuels and mineral sources of carbon. Examples of biogenic CO<sub>2</sub> emissions include, but are not limited to: CO<sub>2</sub> generated from the biological decomposition of waste in landfills, wastewater treatment or manure management processes;

CO<sub>2</sub> from the combustion of biogas collected from biological decomposition of waste in landfills, wastewater treatment or manure management processes; CO<sub>2</sub> from fermentation during ethanol production or other industrial fermentation processes; CO<sub>2</sub> from combustion of the biological fraction of municipal solid waste or biosolids; CO<sub>2</sub> from combustion of the biological fraction of tire-derived fuel; and CO<sub>2</sub> derived from combustion of biological material, including all types of wood and wood waste, forest residue, and agricultural material.

"Biomass fuel burning boilers" means fuel burning equipment in which the actual heat input of biomass fuel exceeds the actual heat input of fossil fuels, calculated on an annual basis.

"BTU" means British thermal unit.

"Carbon dioxide" means a gas emitted naturally or from human activities such as the burning of fossil fuels and biomass, land-use changes, and industrial processes. It is the principal anthropogenic greenhouse gas that affects the Earth's radiative balance. It is the reference gas against which other greenhouse gases are measured and therefore has a global warming potential of one.

"CFR" means the Code of Federal Regulations.

"CO<sub>2</sub>" means carbon dioxide.

"CO<sub>2</sub> equivalent emissions" means the amount of greenhouse gases emitted as computed by multiplying the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs, by the gases' associated global warming potential values published at 40 CFR Part 98, Subpart A, Table A-1, and summing the resultant values of each gas to compute a TPY CO<sub>2</sub> equivalent.

"CO<sub>2</sub>e" means carbon dioxide equivalent emissions.

"Commenced" as applied to construction of or modification to a stationary source means that the owner or operator has all necessary preconstruction approvals or permits and either has:

- (1) Begun, or caused to begin a continuous program of actual operation or on-site construction of the source; or

- (2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual operation or construction of the source.

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary to begin and reasonably complete processing the application.

"Compliance plan" means a plan which includes a description of how a source will comply with all applicable requirements, and includes a schedule of compliance under which the owner or operator will submit progress reports to the director no less frequently than every six months.

"Construction" means a physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of an emissions unit which would result in a change in actual emissions.

"Covered source" means:

- ~~[(1) Any major source;~~
- ~~(2) Any source subject to a standard or other requirement under Section 111 of the Act;~~
- ~~(3) Any source subject to an emissions standard or other requirement for hazardous air pollutants pursuant to Section 112 of the Act, with the exception of those sources solely subject to regulations or requirements pursuant to Section 112(r) of the Act; and~~
- ~~(4) Any source subject to the rules for prevention of significant deterioration of air quality as established in subchapter 7.]~~
- (1) Prior to program approval:
  - (A) Any major source;
  - (B) Any source subject to a standard or other requirement under Section 111 of the Act;
  - (C) Any source subject to an emissions standard or other requirement for

hazardous air pollutants pursuant to Section 112 of the Act, with the exception of those sources solely subject to regulations or requirements pursuant to Section 112(r) of the Act; and

(D) Any source subject to the rules for prevention of significant deterioration of air quality as established in subchapter 7.

(2) Upon program approval and thereafter:

(A) Any major source;

(B) Any source subject to a standard or other requirement under Section 111 or 112 of the Act designated by the Administrator as requiring a Title V permit, such as subject solid waste incineration units; and

(C) Any source subject to the rules for prevention of significant deterioration of air quality as established in subchapter 7.

"Covered source permit" means a permit or group of permits covering a covered source that is issued, renewed, or amended pursuant to this chapter. A covered source permit generally is synonymous with a "Title V," "operating," or "part 70" permit as referred to in federal regulations or standards.

"Credible evidence" means various kinds of information other than reference test data, much of which is already available and utilized for other purposes, that may be used to determine compliance or noncompliance with emission standards.

"Department" means the department of health of the State of Hawaii.

"Director" means the director of health of the State of Hawaii or an authorized agent, officer, or inspector.

"Draft permit" means the version of a permit for which the director offers public notice, including the method by which a public hearing can be requested, and

an opportunity for public comment pursuant to section 11-60.1-99.

"Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error, and shall not include an exceedance of a health-based emission limitation.

"Emission" means the act of releasing or discharging air pollutants into the ambient air from any source or an air pollutant which is released or discharged into the ambient air from any source.

"Emission limitation" means a requirement established by the director or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated or hazardous air pollutant.

"EPA" means the United States Environmental Protection Agency.

"Existing covered source" means a stationary covered source that has received an authority to construct permit, commenced construction or modification, or was in operation prior to the effective date of this chapter.

"Existing noncovered source" means a stationary noncovered source that has received an authority to construct permit, commenced construction or



modification, or was in operation prior to the effective date of this chapter.

"Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60, 61, and 63; requirements within the Hawaii State implementation plan; or any permit requirements established pursuant to 40 CFR Part 52.21 or all permit terms and conditions in a covered source permit except those specifically designated as not federally enforceable or regulations approved pursuant to 40 CFR Part 51 Subpart I, including operating permits issued under an EPA-approved program that is incorporated into this subchapter and expressly requires adherence to any permit issued under such program.

"Fossil fuel" means a hydrocarbon deposit, such as petroleum, coal, or natural gas, derived from the accumulated remains of plants and animals of a previous geologic time and used for fuel.

"Fuel burning equipment" means a furnace, boiler, internal combustion engine, apparatus, stack, and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power.

"Fugitive dust" means the emission of solid airborne particulate matter from any source other than combustion.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Gas-tight" means no detectable gaseous emissions.

"Global warming potential" means the relative scale of how much a given mass of greenhouse gas is estimated to heat up the atmosphere in comparison to carbon dioxide having a global warming potential of one.

"Greenhouse gases" means the air pollutant defined as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, [~~hydrofluorocarbons, perfluorocarbons~~]

hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"GHG or GHGs" means greenhouse gas or greenhouse gases.

"Hazardous air pollutants" means those hazardous air pollutants listed pursuant to Section 112(b) of the Act and any other hazardous air pollutants listed in section 11-60.1-172.

"HRS" means the Hawaii Revised Statutes.

"Major source" means:

- (1) For hazardous air pollutants, a source or a group of stationary sources that is located on one or more contiguous or adjacent properties, and is under common control of the same person (or persons under common control) and that emits or has the potential to emit considering controls and fugitive emissions, any hazardous air pollutant, except radionuclides, in the aggregate of ten tons per year or more of a single pollutant or twenty-five tons per year or more of any combination of pollutants; or
- (2) For any other pollutant, a source, or a group of stationary sources that is located on one or more contiguous or adjacent properties, and is under common control of the same person (or persons under common control) belonging to a single major industrial grouping (i.e., all having the same two-digit Standard Industrial Classification Code) and that emits or has the potential to emit, considering controls, one hundred tons per year or more of any air pollutant subject to regulation other than the pollutant greenhouse gases. Fugitive emissions from the stationary source shall be considered in determining whether the stationary source is major, if it belongs to one of the following categories of stationary sources:
  - (A) Coal cleaning plants (with thermal dryers);

- (B) Kraft pulp mills;
- (C) Portland cement plants;
- (D) Primary zinc smelters;
- (E) Iron and steel mills;
- (F) Primary aluminum ore reduction plants;
- (G) Primary copper smelters;
- (H) Municipal incinerators capable of charging more than [~~two hundred~~] fifty tons of refuse per day;
- (I) Hydrofluoric, sulfuric, or nitric acid plants;
- (J) Petroleum refineries;
- (K) Lime plants;
- (L) Phosphate rock processing plants;
- (M) Coke oven batteries;
- (N) Sulfur recovery plants;
- (O) Carbon black plants (furnace process);
- (P) Primary lead smelters;
- (Q) Fuel conversion plants;
- (R) Sintering plants;
- (S) Secondary metal production plants;
- (T) Chemical process plants - the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- (U) Fossil fuel boilers (or combination thereof) totaling more than two hundred fifty million BTU per hour heat input;
- (V) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;
- (W) Taconite ore processing plants;
- (X) Glass fiber processing plants;
- (Y) Charcoal production plants;
- (Z) Fossil fuel fired steam electric plants of more than two hundred fifty million BTU per hour heat input; and
- (AA) Any other stationary source which as of August 7, 1980 is being regulated by a

standard promulgated pursuant to  
Section 111 or 112 of the Act.

"Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation shall not be considered malfunctions.

"Maximum achievable control technology" means the maximum degree of reduction in emissions of the hazardous air pollutants, on a case-by-case basis, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, that is deemed achievable.

"Monitoring device" means the total equipment, required under the monitoring of operations sections in all applicable subparts, used to measure and record (if applicable) process parameters. Nothing in these rules shall preclude the use, including the exclusive use, of any credible evidence information, relevant to whether a source would have been in compliance with any applicable requirements if the appropriate performance or compliance test or procedure had been performed.

"Month" means a calendar month.

"NAICS" means the North American Industry Classification System used by business and government to classify business establishments according to type of economic activity (process of production) in the United States, Canada, and Mexico. The NAICS numbering system employs a six-digit code at the most detailed industry level. The first two digits designate the largest business sector, the third digit designates the subsector, the fourth digit designates the industry group, and the fifth digit designates particular industries. The last digit designates national industry types.

"NAAQS" means the National Ambient Air Quality Standards contained in 40 CFR Part 50.

"National Emission Standards for Hazardous Air Pollutants" means the federal emission standards contained in 40 CFR Parts 61 and 63.

"Necessary preconstruction approvals or permits" means those permits or approvals required pursuant to federal air quality control laws and regulations, chapter 342B, HRS, and air quality control rules adopted pursuant to chapter 342B.

"New covered source" means a covered source that commenced construction or modification on or after the effective date of this chapter.

"New noncovered source" means a noncovered source that commenced construction or modification on or after the effective date of this chapter.

"No detectable emissions" means less than 500 ppm above background levels, as measured by a detection instrument in accordance with Method 21 in Appendix A of 40 CFR Part 60.

"Noncovered source" means a stationary source constructed, modified, or relocated after March 20, 1972, that is not a covered source.

"Nonroad engine" means:

- (1) Except as discussed in paragraph (2) of this definition, an internal combustion engine that meets any of the following criteria:
  - (A) It is (or will be) used in or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers).
  - (B) It is (or will be) used in or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers).
  - (C) By itself or in or on a piece of equipment, it is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not

- limited to, wheels, skids, carrying handles, dolly, trailer, or platform.
- (2) An internal combustion engine is not a nonroad engine if it meets any of the following criteria:
- (A) The engine is used to propel a motor vehicle, an aircraft, or equipment used solely for competition.
  - (B) The engine is regulated under 40 CFR Part 60, or otherwise regulated by a federal New Source Performance Standard promulgated under section 111 of the Clean Air Act (42 U.S.C. 7411).
  - (C) The engine otherwise included in subparagraph (1) (C) of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. See 40 CFR Section 1068.31 for provisions that apply if the engine is removed from the location.

"Opacity" means a condition which renders material partially or wholly impervious to rays of light and causes obstruction of an observer's view.

"Owner or operator" means a person who owns, leases, operates, controls, or supervises a stationary source.

"Particulate matter" means any material, except water in uncombined form, that is or has been airborne and exists as a liquid or a solid at standard conditions.

"Permit" means written authorization from the director to construct, modify, relocate, or operate any regulated or hazardous air pollutant source. A permit authorizes the owner or operator to proceed with the construction, modification, relocation, or operation of a regulated or hazardous air pollutant source, and to cause or allow the emission of such air pollutants in a specified manner or amount, or to do any act not forbidden by chapter 342B, HRS, the Act, rules adopted pursuant to chapter 342B, or regulations promulgated pursuant to the Act, but requiring review by the department.

"Permit renewal" means the process by which a permit is reissued at the end of its term.

"Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, federal government agency, state, county, commission, political subdivision of the State, or, to the extent they are subject to this chapter, the United States or any interstate body.

"PM<sub>2.5</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers. Gaseous emissions which condense to form particulate matter at ambient temperatures shall be included.

"PM<sub>10</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers. Gaseous emissions which condense to form particulate matter at ambient temperatures shall be included.

"Potential annual heat input" means the product of the maximum rated heat input capacity (megawatts or million BTU per hour) times 8760 hours per year.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under

its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator and the director.

"Program approval" means approval granted by the Administrator pursuant to 40 CFR Part 70 for revisions to the State of Hawaii covered source permit program.

"PSD" means prevention of significant deterioration.

"Reconstruction" means the replacement of components at an existing stationary source to such an extent that the fixed capital cost of the new components exceeds fifty per cent of the fixed capital cost that would be required to construct a comparable entirely new stationary source.

"Regulated air pollutant" means:

- (1) Nitrogen oxides or any volatile organic compound;
- (2) Greenhouse gases;
- (3) Any air pollutant for which a national or state ambient air quality standard has been promulgated;
- (4) Any air pollutant that is subject to any standard adopted pursuant to chapter 342B, HRS, or promulgated pursuant to Section 111 of the Act;
- (5) Any Class I or II substance subject to a standard promulgated pursuant to or established by Title VI of the Act; or
- (6) Any air pollutant subject to a standard promulgated pursuant to Section 112 or other requirements established pursuant to Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including:
  - (A) Any air pollutant subject to requirements of Section 112(j) of the Act. If the Administrator does not promulgate a standard by the date



established pursuant to Section 112(e) of the Act, any air pollutant for which a subject source would be major shall be considered a regulated air pollutant on the date eighteen months after the applicable date established pursuant to Section 112(e) of the Act; and

- (B) Any air pollutant for which the requirements of Section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to Section 112(g)(2) requirements.

"Responsible official" means:

- (1) For a corporation: 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 an authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
  - (A) The facilities employ more than two hundred fifty persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
  - (B) The delegation of authority to such representative is approved in advance by the director;
- (2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or
- (3) For a municipality, state, federal, or other public agency: a principal executive officer, ranking elected official, or an authorized representative as approved by the director. For the purposes of this chapter,

a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

"Risk assessment" means the process of determining the potential adverse health effects of human exposure to environmental hazards. The process includes hazard identification, dose-response assessment, exposure assessment, and risk characterization by quantifying the magnitude of the public health problem that results from the hazard.

"SICC" means Standard Industrial Classification Code.

"Significant" means in reference to a net emissions increase or the potential of a source to emit:

- (1) A rate of emissions that would equal or exceed any of the following pollutant emission rates:
  - (A) Carbon monoxide: one hundred tpy;
  - (B) Nitrogen oxides: forty tpy;
  - (C) Sulfur dioxide: forty tpy;
  - (D) Particulate matter: a total of twenty-five tpy of particulate matter of all sizes;
  - (E) PM<sub>10</sub>: fifteen tpy;
  - (F) PM<sub>2.5</sub>: ten tpy of direct PM<sub>2.5</sub>, forty tpy of sulfur dioxide, forty tpy of nitrogen oxide;
  - (G) Ozone: forty tpy of volatile organic compounds or nitrogen oxides;
  - (H) Greenhouse Gases: forty thousand tpy CO<sub>2</sub>e [~~-(mass biogenic CO<sub>2</sub> emissions accounted for as provided in the "subject to regulation" definition)~~];  
or
  - (I) Lead: 0.6 tpy.

"Smoke" means the gaseous products of burning carbonaceous materials made visible by the presence of small particles of carbon.

"Source" means property, real or personal, which emits or may emit any air pollutant.

"Stack" means a point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Standard Industrial Classification Code" means Major Group Number, Industry Group Number, or Industry Number as described in the Standard Industrial Classification Manual, 1987.

"Standards of Performance for New Stationary Sources" means the federal emission standards contained in 40 CFR Part 60.

"Stationary source" means any piece of equipment or any activity at a building, structure, facility, or installation that emits or may emit any air pollutant.

"Subject to regulation" means for any pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified in 40 CFR Subchapter C of Chapter I, Air Programs, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. ~~[Except that GHG emissions shall be subject to regulation from a stationary source emitting or having the potential to emit 100,000 tpy or more of CO<sub>2</sub>-equivalent emissions and GHGs that equal or exceed 100 tpy on a mass basis for Title V or thresholds specified in Subchapter 7 for PSD.]~~

"Submerged fill pipe" means a fill pipe the discharged opening of which is entirely submerged when the liquid level is six inches above the bottom of the tank; or when applied to a tank which is loaded from the side, shall mean a fill pipe the discharge opening of which is eighteen inches above the bottom of the tank.

"Tpy" means tons per year.

~~["Upon program approval" means the date the State of Hawaii covered source permit program is granted full or interim approval by the Administrator pursuant to 40 CFR Part 70 and thereafter.]~~

"Valid covered source permit" or "valid noncovered source permit" means a covered or noncovered source permit that has not been canceled pursuant to section 11-60.1-9, has not been terminated or suspended pursuant to section 11-60.1-10, and has not expired or which remains in effect pursuant to subsection 11-60.1-82(b), or 11-60.1-62(b).

"Volatile organic compound" means a compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any such organic compound other than those determined to have negligible photochemical reactivity as listed in the definition of "volatile organic compound" in 40 CFR §51.100.

"Volatile organic compound water separator" means a tank, box, sump, or other container which is primarily designed to separate and recover volatile organic compounds from water. Petroleum storage tanks from which water incidental to the process is periodically removed are not considered volatile organic compound water separators. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp ] (Auth: HRS §§342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52)

**§11-60.1-2 Prohibition of air pollution.** No person, including any public body, shall engage in any activity which causes air pollution or causes or allows the emission of any regulated or hazardous air pollutant without first securing approval in writing from the director. The written approval from the director shall not release any person from compliance with any other applicable statutes, local laws, regulations, or ordinances. [Eff 11/26/93; comp

10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp \_\_\_\_\_] (Auth: HRS §§342B-3, 342B-11; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52) (Imp: HRS §§342B-3, 342B-11; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52)

Historical note: §11-60.1-2 is based substantially upon §11-60-2. [Eff 11/29/82; am, ren §11-60-2 and comp 4/14/86; comp 6/29/92; R 11/26/93]

**§11-60.1-2.5 Credible evidence.** Nothing in these rules shall preclude the use, including the exclusive use, of any credible evidence information, relevant to whether a source would have been in compliance with any applicable requirements if the appropriate performance or compliance test or procedure had been performed. [Eff and comp \_\_\_\_\_] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52)

**§11-60.1-3 General conditions for considering applications.** The director shall approve an application for a noncovered or covered source permit if the applicant can show to the satisfaction of the director that all applicable provisions of this chapter will be complied with, including, as applicable:

- (1) The maintenance and attainment of any NAAQS and any state ambient air quality standard;
- (2) General prohibitions pursuant to subchapter 2;
- (3) Requirements for noncovered and covered sources pursuant to subchapters 4 and 5;
- (4) Applicable Standards of Performance for New Stationary Sources (40 CFR Part 60),

National Emission Standards for Hazardous Air Pollutants (40 CFR Part 61), National Emission Standards for Hazardous Air Pollutants for Source Categories (40 CFR Part 63), or any other federal standard or other requirement established pursuant to the Act.

- (5) Prevention of significant deterioration review requirements pursuant to subchapter 7;
- (6) Applicable standards of performance for stationary sources pursuant to subchapter 8; and
- (7) Requirements for stationary sources of hazardous air pollutants and greenhouse gases pursuant to subchapters 9 and 11, respectively. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14; comp  
] (Auth: HRS §§342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

**§11-60.1-4 Certification.** Every application form, report, compliance plan, or compliance certification submitted pursuant to this chapter shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required pursuant to this chapter shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp  
] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

**§11-60.1-5 Permit conditions.** In addition to the conditions authorized in sections 11-60.1-68 and 11-60.1-90, the director may impose more restrictive conditions in a noncovered or covered source permit to further limit the air pollutants and operation of the source. In determining whether to impose more restrictive conditions, the director shall consider the relevant circumstances of each individual case, including the availability of a reasonable control technology, cleaner fuels, or a less polluting operating process; the consideration of the existing air quality and the resulting degradation; the protection of the public health, welfare and safety; and any information, assumptions, limitations, or statements made in conjunction with a permit application. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-5 is based substantially upon §11-60-47. [Eff 11/29/82; am, ren §11-60-47 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

**§11-60.1-6 Holding of permit.** (a) Each noncovered or covered source permit, or a copy thereof, shall be maintained at or near the stationary source for which the noncovered or covered source permit was issued and shall be made available for inspection upon the director's request.

(b) No person shall willfully deface, alter, forge, counterfeit, or falsify a noncovered or covered source permit. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-6 is based substantially upon §11-60-49. [Eff 11/29/82; am, ren §11-60-49 and comp 4/14/86; comp 6/29/92; R 11/26/93]

**§11-60.1-7 Transfer of permit.** (a) Except as provided in sections 11-60.1-69 and 11-60.1-91, all noncovered and covered source permits issued pursuant to this chapter shall not be transferable, whether by operation of law or otherwise, either from one location to another or from one piece of equipment to another.

(b) All noncovered and covered source permits issued pursuant to this chapter shall not be transferable, whether by operation of law or otherwise, from one person to another without the approval of the director. A request for transfer from one person to another shall be made on a permit transfer application form furnished by the director. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-7 is based substantially upon §11-60-50. [Eff 11/29/82; am, ren §11-60-50 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

**§11-60.1-8 Reporting discontinuance.** Within thirty days of permanent discontinuance of the construction, modification, relocation, or operation of any noncovered or covered source, the discontinuance shall be reported in writing to the director by a responsible official of the source. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp



] (Auth: HRS §§342B-3, 342B-12; 42  
U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42  
U.S.C. §§7407, 7416)

Historical note: §11-60.1-8 is based substantially  
upon §11-60-54. [Eff 11/29/82; am, ren §11-60-47 and  
comp 4/14/86; comp 6/29/92; R 11/26/93]

**§11-60.1-9 Cancellation of a noncovered or covered source permit.** (a) If construction authorized by a noncovered source permit is not commenced within twelve months after the noncovered source permit takes effect, is discontinued for a period of twelve months or more, or is not completed within a reasonable time, the noncovered source permit shall become invalid with respect to the authorized construction.

(b) If construction authorized by a covered source permit is not commenced within eighteen months after the covered source permit takes effect, is discontinued for a period of eighteen months or more, or is not completed within a reasonable time, the covered source permit shall become invalid with respect to the authorized construction.

(c) Subsections (a) and (b) shall not apply to phased construction projects. Instead, each phase shall commence construction within eighteen months for a covered source, or twelve months for a noncovered source, of the projected and approved commencement dates in the permit.

(d) The director may extend the specified periods upon a satisfactory showing that an extension is justified. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp  
] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-9 is based substantially upon §11-60-52. [Eff 11/29/82; am, ren §11-60-52 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

**§11-60.1-10 Permit termination, suspension, reopening, and amendment.** (a) The director, at the director's sole discretion or on the petition of any person, may terminate, suspend, reopen, or amend any permit if, after affording the permittee an opportunity for a hearing in accordance with chapter 91, HRS, the director determines that:

- (1) The permit contains a material mistake made in establishing the emissions limitations or other requirements of the permit;
- (2) Permit action is required to assure compliance with the requirements of the Act; chapter 342B, HRS; and this chapter;
- (3) Permit action is required to address additional requirements of the Act; chapter 342B, HRS; and this chapter;
- (4) There is a violation of any condition of the permit;
- (5) The permit was obtained by misrepresentation or failure to disclose fully all relevant facts;
- (6) The source is constructed or operated not in accordance with the application for the noncovered or covered source permit and any information submitted as part of the application;
- (7) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;
- (8) More frequent monitoring or reporting by the permittee is required; or
- (9) Such is in the public interest, as determined pursuant to section 342B-27, HRS.

(b) The provisions of this section are supplemental to the provisions of sections 11-60.1-72

and 11-60.1-98. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-10 is based substantially upon §11-60-53. [Eff 11/29/82; am, ren §11-60-53 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

**§11-60.1-11 Sampling, testing, and reporting methods.** (a) All sampling and testing shall be made and the results calculated in accordance with the reference methods specified by EPA, or in the absence of an EPA reference method, test procedures approved by the director. All tests shall be made under the direction of persons knowledgeable in the field of air ~~[pollution control]~~ emissions measurement testing.

(b) The department may conduct tests of emissions of air pollutants from any source. Upon request of the director, an owner or operator of a stationary source may be required to conduct tests of emissions of air pollutants at the owner or operator's expense. The owner or operator of the stationary source to be tested shall provide necessary ports in stacks or ducts and such other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the emissions of air pollutants.

(c) The director may require the owner or operator of any stationary source to maintain files on information concerning pertinent process and material flow, fuels used, nature and amount and time periods or durations of emissions, or any other information as may be deemed necessary by the director to determine whether the stationary source complies with applicable emission limitations, NAAQS, any state ambient air quality standard, or other provisions of this chapter

in a permanent form suitable for inspection or in a manner authorized by the director.

(d) The information recorded shall be summarized and reported to the director as specified in the permit and in accordance with any requirement of this chapter. Recording periods shall be January 1 to June 30 and July 1 to December 31, or any other period specified by the director, except the initial recording period shall commence on the date the director issues the notification of the recordkeeping requirements. The director may require the owner or operator to submit any reported summary to the Administrator.

(e) Information recorded by the owner or operator of a stationary source and copies of the summarizing reports submitted to the director shall be retained by the owner or operator for a specified time period from the date on which the information is recorded or the pertinent report is submitted. The specified time period shall be as required in sections 11-60.1-68(5)(F) or 11-60.1-90(7)(H) or as identified within an applicable requirement [~~of~~] for the stationary source.

(f) Owners or operators of stationary sources shall correlate applicable emission limitations and other requirements within the report. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp ]  
(Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)  
(Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-11 is based substantially upon §11-60-15. [Eff 11/29/82; am and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

**§11-60.1-12 Air quality models.** (a) All required estimates of ambient concentrations shall be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W.

(b) Where an air quality model specified in ~~[Appendix A of]~~ 40 CFR Part 51, Appendix W is inappropriate, the model may be modified or another model substituted on written request to and written approval from the director. The director shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment, on all proposed modifications or substitutions of an air quality model. Written approval from the director, and EPA through the director shall be obtained for any modification or substitution. Guidelines identified in 40 CFR Part 51, Appendix W for substituting or using alternate models shall be used in determining the acceptability of a substitute or alternate model. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-12 is based substantially upon §11-60-17. [Eff and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

### **§11-60.1-13 Operations of monitoring stations.**

The EPA monitoring requirements of ~~[Appendix B]~~ Appendices A, C, D and E to 40 CFR Part 58, "Ambient Air Quality Surveillance," shall be met as a minimum during the operation of any monitoring stations required by the director or this chapter. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-13 is based substantially upon §11-60-18. [Eff and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

**§11-60.1-14 Public access to information. (a)**

Except as provided in subsection (b), the following information shall be considered government records and as such shall be available for public inspection pursuant to chapter 92F, HRS, unless access is restricted or closed by law:

- (1) All permit applications;
- (2) All supporting information for permit applications;
- (3) Compliance plans and schedules;
- (4) Reports and results associated with performance tests and continuous emission monitors;
- (5) Ambient air monitoring data and emissions inventory data;
- (6) Certifications;
- (7) Any other information submitted to the department pursuant to the noncovered and covered source permit program;
- (8) Proposed GHG emission reduction plans;
- (9) Permits; and
- (10) Public comments or testimonies received during any public comment period or public hearing.

(b) Any owner or operator of an existing or proposed noncovered or covered source may request confidential treatment of specific information, including information concerning secret processes or methods of manufacture, by submitting a written request to the director at the time of submission, and clearly identifying the specific information that is to be accorded confidential treatment. With respect to each item of confidential information, the owner or operator requesting that it be designated as confidential shall provide the following documentation:

- (1) How each item of information concerns secret processes, secret methods of manufacture, or

is determined to be confidential pursuant to chapter 92F, HRS;

- (2) Who has access to each item of information;
- (3) What steps have been taken to protect the secrecy of each item of information; and
- (4) Why it is believed each item of information must be accorded confidential treatment and the anticipated prejudice should disclosure be made.

(c) Any information submitted to the department without a request for confidentiality in accordance with this section shall be considered a public record.

(d) Upon a satisfactory showing to the director by any owner or operator that records, reports, or information, or particular part thereof, to which the director has access pursuant to this chapter, contain information of a confidential nature, including information concerning secret processes or methods of manufacture, these records, reports, or information shall be kept confidential except that such records, reports, or information may be disclosed to other state and federal officers or employees concerned with carrying out this chapter or when relevant in any proceeding pursuant to this chapter. If required by EPA, all records, reports, and information determined by the owner or operator to be confidential shall be submitted directly to EPA. Neither the contents of the permit nor emissions data shall be entitled to confidentiality protection.

(e) Records, reports, or information for which confidentiality has been claimed may be disclosed only after the requirements of section 342B-31(d), HRS, have been met and the person requesting confidentiality has had an opportunity to obtain judicial review pursuant to subsection (f).

(f) Any person who has claimed confidentiality for records, reports, or other information and whose claim was denied by the director may obtain administrative review and subsequent judicial review of the denial pursuant to chapter 91, HRS. Records which are the subject of a judicial review shall not

be released until the judicial review is complete and only if the court authorizes such release.

(g) All requests for public records shall be in writing, shall be addressed to the director, and shall identify or describe the character of the requested record. Upon approval by the director, the requested public record shall be available to the requestor for inspection and copying during established office hours. The director shall charge the requester a reasonable cost for reproduction of any public record, but not less than twenty-five cents per page, sheet, or fraction thereof. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

#### **§11-60.1-15 Reporting of equipment shutdown.**

(a) In the case of shutdown of air pollution control equipment for necessary scheduled maintenance, the intent to shut down such equipment shall be reported to the director at least twenty-four hours prior to the planned shutdown. The prior notice shall include:

- (1) Identification of the specific equipment to be taken out of service as well as its location and permit number;
- (2) The expected length of time that the air pollution control equipment will be out of service;
- (3) The nature and quantity of emissions of air pollutants likely to be emitted during the shutdown period;
- (4) Measures such as the use of off-shift labor and equipment that will be taken to minimize the length of the shutdown period; and
- (5) The reasons why it would be impossible or impractical to shut down the source operation during the maintenance period.

(b) The submittal of the notice shall not be a defense to an enforcement action. [Eff 11/26/93; comp



10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12;  
comp 6/30/14; comp ] (Auth: HRS  
§§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS  
§§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-15 is based substantially  
upon §11-60-14. [Eff 11/29/82; am, ren §11-60-14 and  
comp 4/14/86; am and comp 6/29/92; R 11/26/93]

**§11-60.1-16 Prompt reporting of deviations.** (a)

Except for emergencies which result in noncompliance with any technology-based emission limitation pursuant to section 11-60.1-16.5, in the event any emission unit, air pollution control equipment, or related equipment malfunctions or breaks down in such a manner as to cause the emission of air pollutants in violation of this chapter or a permit, the owner or operator shall immediately notify the department of the malfunction or breakdown, unless the protection of personnel or public health or safety demands immediate attention to the malfunction or breakdown and makes such notification infeasible. In the latter case, the notice shall be provided as soon as practicable.

(b) The owner or operator shall provide the following information in writing within five working days of the notification:

- (1) Identification of each affected emission point and each emission limit exceeded;
- (2) Magnitude of each excess emission;
- (3) Time and duration of each excess emission;
- (4) Identity of the process or control equipment causing each excess emission;
- (5) Cause and nature of each excess emission;
- (6) Description of the steps taken to remedy the situation, prevent a recurrence, limit the excessive emissions, and assure that the malfunction or breakdown does not interfere with the attainment and maintenance of the NAAQS and state ambient air quality standards;

- (7) Documentation that the equipment or process was at all times maintained and operated in a manner consistent with good practice for minimizing emissions; and
  - (8) A statement that the excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance.
- (c) The submittal of the notice shall not be a defense to an enforcement action. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

**§11-60.1-16.5 Emergency provision.** (a) An emergency constitutes an affirmative defense to any action brought for noncompliance with any technology-based emission limitation, if it can be demonstrated to the director through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (1) An emergency occurred and the owner or operator of the source can identify the cause or causes of the emergency;
- (2) The permitted facility was at the time being properly operated;
- (3) During the period of the emergency, the owner or operator of the source took all reasonable steps to minimize emission levels that exceeded the emission limitations or other requirements in the covered or noncovered source permit; and
- (4) The owner or operator of the source submitted written notice of the emergency to the director within two working days of the time when emission limitations were exceeded due to the emergency, provided that the notice contained a description of the

emergency, any steps taken to mitigate emissions, and corrective actions taken.

(b) In any proceedings for enforcement action, the owner or operator of the source seeking to establish the occurrence of an emergency has the burden of proof.

(c) This emergency provision is in addition to any emergency or upset provision in any applicable requirement. [Eff and comp 9/15/01; comp 11/14/03, comp 1/13/12; comp 6/30/14; comp ]  
(Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)

Historical note: §11-60.1-16.5 is based substantially upon §11-60.1-97. [Eff 11/26/93; comp 10/26/98; R 9/15/01]

#### **§11-60.1-17 Prevention of air pollution**

**emergency episodes.** (a) This section is designed to prevent the excessive buildup of air contaminants during air pollution episodes, thereby preventing the occurrence of any emergency due to the effects of these contaminants on the public health.

(b) Conditions justifying the proclamation of an air pollution alert, air pollution warning, or air pollution emergency shall be deemed to exist whenever the director determines that the accumulation of air contaminants in any place is attaining or has attained levels which could, if such levels are sustained or exceeded, lead to a threat to the health of the public. In making this determination, the director shall be guided by the criteria set forth in subsections (c) to (g).

(c) If the national weather service issues an atmospheric stagnation advisory or if an equivalent local forecast of stagnant atmospheric conditions is issued, the department shall survey its monitoring stations to determine whether alert, warning, or emergency levels have occurred or are likely to occur.

(d) The alert level is that concentration of pollutants at which first stage control action is to begin. An alert shall be declared, health advisories issued, and source activities curtailed as ordered by the director when any one of the following levels is reached:

- (1) SO<sub>2</sub> - eight hundred µg/m<sup>3</sup> (0.3 ppm), twenty-four-hour average;
- (2) PM<sub>10</sub> - three hundred fifty µg/m<sup>3</sup>, twenty-four-hour average;
- (3) SO<sub>2</sub> and particulate matter combined - product of SO<sub>2</sub>, µg/m<sup>3</sup>, twenty-four-hour average and particulate matter, µg/m<sup>3</sup>, twenty-four-hour average equal to 65 X 10<sup>3</sup>;
- (4) CO - seventeen mg/m<sup>3</sup> (fifteen ppm), eight-hour average;
- (5) Ozone - four hundred µg/m<sup>3</sup> (0.2 ppm), one-hour average; or
- (6) NO<sub>2</sub> - one thousand one hundred thirty µg/m<sup>3</sup> (0.6 ppm), one-hour average; two hundred eighty-two µg/m<sup>3</sup> (0.15 ppm), twenty-four-hour average;

and meteorological conditions are such that this condition can be expected to continue for twelve or more hours.

(e) The warning level indicates that air quality is continuing to degrade and that additional abatement actions are necessary. A warning shall be declared, health advisories issued, and source activities curtailed or terminated as ordered by the director when any one of the following levels is reached:

- (1) SO<sub>2</sub> - one thousand six hundred µg/m<sup>3</sup> (0.6 ppm), twenty-four-hour average;
- (2) PM<sub>10</sub> - four hundred twenty µg/m<sup>3</sup>, twenty-four-hour average;
- (3) SO<sub>2</sub> and particulate matter combined - product of SO<sub>2</sub>, µg/m<sup>3</sup>, twenty-four-hour average and particulate matter, µg/m<sup>3</sup>, twenty-four-hour average equal to 261 X 10<sup>3</sup>;
- (4) CO - thirty-four mg/m<sup>3</sup> (thirty ppm), eight-hour average;

- (5) Ozone - eight hundred  $\mu\text{g}/\text{m}^3$  (0.4 ppm), one-hour average; or
- (6)  $\text{NO}_2$  - two thousand two hundred sixty  $\mu\text{g}/\text{m}^3$  (1.2 ppm), one-hour average; five hundred sixty-five  $\mu\text{g}/\text{m}^3$  (0.3 ppm), twenty-four-hour average;

and meteorological conditions are such that this condition can be expected to continue for twelve or more hours.

(f) The emergency level indicates that air quality may have an impact on public health. An emergency shall be declared, health advisories issued, source activities terminated as ordered by the director, and the public evacuated from the affected area if so recommended by the director, civil defense, or the police department when the warning level for a pollutant has been exceeded and:

- (1) The concentrations of the pollutant are continuing to increase;
- (2) The director determines that, because of meteorological or other facts, the concentrations will continue to increase; or
- (3) When one of the following levels is reached:
  - (A)  $\text{SO}_2$  - two thousand one hundred  $\mu\text{g}/\text{m}^3$  (0.8 ppm), twenty-four-hour average;
  - (B)  $\text{PM}_{10}$  - five hundred  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average; or
  - (C)  $\text{SO}_2$  and particulate matter combined - product of  $\text{SO}_2$ ,  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average and particulate matter,  $\mu\text{g}/\text{m}^3$ , twenty-four-hour average equal to  $393 \times 10^3$ ;
  - (D) CO - forty-six  $\text{mg}/\text{m}^3$  (forty ppm), eight-hour average;
  - (E) Ozone - one thousand  $\mu\text{g}/\text{m}^3$  (0.5 ppm), one-hour average; or
  - (F)  $\text{NO}_2$  - three thousand  $\mu\text{g}/\text{m}^3$  (1.6 ppm), one-hour average; seven hundred fifty  $\mu\text{g}/\text{m}^3$  (0.4 ppm), twenty-four-hour average.

(g) Once declared, any episode level reached by application of these criteria shall remain in effect

until the criteria for that level are no longer met. At that time, the next lower episode level shall be assumed. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-17 is based substantially upon §11-60-19. [Eff 11/29/82; am, ren §11-60-19 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

**§11-60.1-18 Variances.** (a) Variances and variance applications shall comply with section 342B-14, HRS, except that no variance shall prevent or interfere with the maintenance or attainment of NAAQS. Any application for a variance shall include a calculation and description of any change in emissions and the expected ambient air quality concentrations.

(b) Under no circumstances shall a variance from any federal regulations or covered source federally enforceable permit terms and conditions be granted. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-18 is based substantially upon §11-60-20. [Eff 11/29/82; am, ren §11-60-20 and comp 4/14/86; comp 6/29/92; R 11/26/93]

**§11-60.1-19 Penalties and remedies.** Any person who violates any provision of this chapter, any term or condition of a permit, or any term or condition of an agricultural burning permit shall be subject to the penalties and remedies provided for in sections 342B-42, 342B-44, 342B-47, and 342B-48, HRS. [Eff

§11-60.1-20

11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03;  
comp 1/13/12; comp 6/30/14; comp ]  
(Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)  
(Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-19 is based substantially  
upon §11-60-21. [Eff 11/29/82; am, ren §11-60-21 and  
comp 4/14/86; comp 6/29/92; R 11/26/93]

**§11-60.1-20 Severability.** If any provision of  
this chapter or its application to any person or  
circumstance is held invalid, the application of such  
provision to other persons or circumstances and the  
remainder of this chapter shall not be affected  
thereby. [Eff 11/26/93; comp 10/26/98; comp 9/15/01;  
comp 11/14/03; comp 1/13/12; comp 6/30/14; comp  
] (Auth: HRS §§342B-3, 342B-12; 42  
U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42  
U.S.C. §§7407, 7416)

Historical note: §11-60.1-20 is based substantially  
upon §11-60-22. [Eff 11/29/82; am, ren §11-60-22 and  
comp 4/14/86; comp 6/29/92; R 11/26/93]

## SUBCHAPTER 2

### GENERAL PROHIBITIONS

**§11-60.1-31 Applicability.** (a) All owners or  
operators of an air pollution source are subject to  
the requirements of this subchapter, whether or not  
the source is required to obtain a noncovered or  
covered source permit.

(b) In the event any federal or state laws,  
rules, or regulations are in conflict with the

provisions of this subchapter, the most stringent requirement shall apply.

(c) This section shall apply to all federal and state laws, rules, or regulations implemented through this chapter. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

**§11-60.1-32 Visible emissions.** (a) Visible emission restrictions for stationary sources which commenced construction or were in operation before March 21, 1972, shall be as follows:

- (1) No person shall cause or permit the emission of visible air pollutants of a density equal to or darker than forty per cent opacity, except as provided in paragraph (2);
- (2) During start-up, shutdown, or when ~~[breakdown]~~ a malfunction of equipment occurs, a person may discharge into the atmosphere from any single source of emission, for a period aggregating not more than six minutes in any sixty minutes, air pollutants of a density not darker than sixty per cent opacity.

(b) Visible emission restrictions for stationary sources which commenced construction, modification, or relocation after March 20, 1972, shall be as follows:

- (1) No person shall cause or permit the emission of visible air pollutants of a density equal to or darker than twenty per cent opacity, except as provided in paragraph (2);
- (2) During start-up, shutdown, or when ~~[breakdown]~~ a malfunction of equipment occurs, a person may discharge into the atmosphere from any single source of emission, for a period aggregating not more than six minutes in any sixty minutes, air



pollutants of a density not darker than sixty per cent opacity.

(c) Compliance with visible emission requirements shall be determined by evaluating opacity of emissions pursuant to 40 CFR Part 60, Appendix A, Method 9 ~~[and]~~, other EPA approved methods~~[-]~~, or any other credible evidence.

(d) Emissions of uncombined water, such as water vapor, are exempt from the provisions of subsections (a) and (b), and do not constitute a violation of this section. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-32 is based substantially upon §11-60-3. [Eff 11/29/82; am, ren §11-60-3 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

**§11-60.1-33 Fugitive dust.** (a) No person shall cause or permit visible fugitive dust to become airborne without taking reasonable precautions. Examples of reasonable precautions are:

- (1) Use of water or suitable chemicals for control of fugitive dust in the demolition of existing buildings or structures, construction operations, the grading of roads, or the clearing of land;
- (2) Application of asphalt, water, or suitable chemicals on roads, material stockpiles, and other surfaces which may result in fugitive dust;
- (3) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials. Reasonable containment methods shall be employed during sandblasting or other similar operations;

- (4) Covering all moving, open-bodied trucks transporting materials which may result in fugitive dust;
- (5) Conducting agricultural operations, such as tilling of land and the application of fertilizers, in such manner as to reasonably minimize fugitive dust;
- (6) Maintenance of roadways in a clean manner; and
- (7) Prompt removal of earth or other materials from paved streets which have been transported there by trucking, earth-moving equipment, erosion, or other means.

(b) Except for persons engaged in agricultural operations or persons who ~~[can demonstrate to the director that]~~ are implementing the best practical operation or treatment [is being implemented], no person shall cause or permit the discharge of visible fugitive dust beyond the property lot line on which the fugitive dust originates.

(c) Except for persons engaged in agricultural operations, no person shall cause or permit visible fugitive dust emissions equal to or in excess of twenty percent opacity for more than twenty-four individual readings recorded during any one-hour period. Opacity observations shall be conducted in accordance with 40 CFR Part 51, Appendix M, Method 203B, "Visual Determination of Opacity of Emissions from Stationary Sources for Time-Exception Regulations." This rule shall be in addition to complying with paragraphs (a) and (b), including when reasonable precautions are applied and shall be applicable in all circumstances. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp ]  
 (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)  
 (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-33 is based substantially upon §11-60-5. [Eff 11/29/82; am, ren §11-60-5 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

**§11-60.1-34 Motor vehicles.** (a) No person shall operate a gasoline-powered motor vehicle which emits visible smoke while upon streets, roads, or highways.

(b) No person shall operate a diesel-powered motor vehicle which emits visible smoke for a period of more than five consecutive seconds while upon streets, roads, or highways.

(c) No person shall cause, suffer, or allow any engine to be in operation while the motor vehicle is stationary at a loading zone, parking or servicing area, route terminal, or other off street areas, except:

- (1) During adjustment or repair of the engine at a garage or similar place of repair;
- (2) During operation of ready-mix trucks, cranes, hoists, and certain bulk carriers, or other auxiliary equipment built onto the vehicle or equipment that require power take-off from the engine, provided that there is no visible discharge of smoke and the equipment is being used and operated for the purposes as originally designed and intended. This exception shall not apply to operations of air conditioning equipment or systems;
- (3) During the loading or unloading of passengers, not to exceed three minutes; and
- (4) During the buildup of pressure at the start-up and cooling down at the closing down of the engine for a period of not more than three minutes.

(d) No person shall remove, dismantle, fail to maintain, or otherwise cause to be inoperative any equipment or feature constituting an operational element of the air pollution control system or mechanism of a motor vehicle as required by the provisions of the Act except as permitted or authorized by law. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14;

comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-34 is based substantially upon §11-60-4. [Eff 11/29/82; am, ren §11-60-4 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

**§11-60.1-35 Incineration.** (a) No person shall cause or permit the emissions of particulate matter to exceed 0.20 pounds per one hundred pounds (two grams per kilogram) of refuse charged from any incinerator.

(b) Compliance with particulate matter emissions requirements shall be determined by evaluating particulate matter emissions pursuant to 40 CFR Part 60, Appendix A-3, Method 5 or other EPA approved methods.

(c) All required emission tests shall be conducted at the maximum burning capacity of the incinerator [~~or at other capacities, as approved by the director~~].

~~[(c)]~~ (d) The burning capacity of an incinerator shall be the manufacturer's or designer's guaranteed maximum rate [~~or such other rate as may be determined by the director~~].

~~[(d)]~~ (e) For the purposes of this section, the total of the capacities of all furnaces within one system shall be considered as the incineration capacity. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-35 is based substantially upon §11-60-6. [Eff 11/29/82; am, ren §11-60-6 and comp 4/14/86; comp 6/29/92; R 11/26/93]

**§11-60.1-36 Biomass fuel burning boilers.** (a)

No person shall cause or permit the emissions of particulate matter from each biomass burning boiler and its drier or driers in excess of 0.40 pounds per one hundred pounds (four grams per kilogram) of biomass as burned.

(b) Compliance with particulate matter emissions requirements shall be determined by evaluating particulate matter emissions pursuant to 40 CFR Part 60, Appendix A-3, Method 5 or other EPA approved methods. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-36 is based substantially upon §11-60-7. [Eff 11/29/82; am, ren §11-60-7 and comp 4/14/86; comp 6/29/92; R 11/26/93]

**§11-60.1-37 Process industries.** (a)

No person shall cause or permit the emission of particulate matter in any one hour from any stack or stacks, except for incinerators and biomass fuel burning boilers, in excess of the amount determined by the equation  $E = 4.10 p^{0.67}$ , where E = rate of emission in pounds per hour and p = process weight rate in tons per hour, except that no rate of emissions shall exceed forty pounds per hour regardless of the process weight rate.

(b) Rate of emissions shall be determined by evaluating particulate matter emissions pursuant to 40 CFR Part 60, Appendix A-3, Method 5 or other EPA approved methods.

(c) Process weight per hour is the total weight of all materials introduced into any specific process that may cause any emission of particulate matter through any stack or stacks. Solid fuels charged shall be considered as part of the process weight, but liquid and gaseous fuels and combustion air shall not.

For a cyclical or batch operation, the process weight per hour shall be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, including any time during which the equipment is idle. For a continuous operation, the process weight per hour shall be derived for a typical period of time by the number of hours of the period.

~~[(e)]~~ (d) Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation, the interpretation that results in the minimum value for the allowable emission shall apply.

~~[(d)]~~ (e) For purposes of this section, a process is any method, reaction, or operation whereby materials introduced into the process undergo physical or chemical change. A specific process is one which includes all of the equipment and facilities necessary for the completion of the transformation of the materials to produce a physical or chemical change. There may be several specific processes in series necessary to the manufacture of a product. However, where there are parallel series of specific processes, the similar parallel specific processes shall be considered as a single specific process. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp  
] (Auth: HRS §§342B-3, 342B-12;  
42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12;  
42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-37 is based substantially upon §11-60-8. [Eff 11/29/82; am, ren §11-60-8 and comp 4/14/86; comp 6/29/92; R 11/26/93]

**§11-60.1-38 Sulfur oxides from fuel combustion.**

(a) No person shall burn any fuel containing in

excess of two [~~per cent~~] percent sulfur by weight[~~except for fuel used in ocean-going vessels~~].

(b) No person shall burn any fuel containing in excess of 0.50 [~~per cent~~] percent sulfur by weight in any fossil fuel fired power and steam generating unit having a power generating output in excess of twenty-five megawatts or a heat input greater than two hundred fifty million BTU per hour.

(c) Compliance with sulfur by weight requirements shall be determined by evaluating sulfur by weight pursuant to American Society for Testing and Materials (ASTM) methods.

(1) For liquid fuels: ASTM D129-00(2005) Standard Test Method for Sulfur in Petroleum Products (General Bomb Method); D2622-05 Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry; D4294-03 Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry; D5453-05 Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence; or other EPA approved methods.

(2) For gaseous fuels: ASTM D1072-90(1999) Standard Test Method for Total Sulfur in Fuel Gases; D3246-05 Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry; D4810-88(1999) Standard Test Method for Hydrogen Sulfide in Natural Gas Using Length-of-Stain Detector Tubes; D6228-98(2003), D6667-01 or Gas Processors Association Standard 2377-86 Test for Hydrogen Sulfide and Carbon Dioxide in Natural Gas Using Length-of-Stain Tubes; or other EPA approved methods.

[~~(e)~~] (d) The use of fuels prohibited in subsections (a) and (b) may be allowed at the director's sole discretion if it can be demonstrated that the use of these fuels will result in equivalent or lower emission rates of oxides of sulfur.

Compliance with oxides of sulfur emissions requirements shall be determined by evaluating oxides of sulfur emissions pursuant to 40 CFR Part 60, Appendix A-4, Method 8 or other EPA approved methods.  
[Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-38 is based substantially upon §11-60-9. [Eff 11/29/82; am, ren §11-60-9 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

**§11-60.1-39 Storage of volatile organic compounds.** (a) Except as provided in subsection (c), no person shall place, store, or hold in any stationary tank, reservoir, or other container of more than a forty thousand-gallon (one hundred fifty thousand-liter) capacity any volatile organic compound which, as stored, has a true vapor pressure equal to or greater than 1.5 pounds per square inch absolute unless the tank, reservoir, or other container is pressurized and capable of maintaining working pressures sufficient at all times to prevent vapor or gas loss to the atmosphere or is designed and equipped with one of the following vapor loss control devices:

- (1) A floating roof, consisting of a pontoon type roof, double deck type roof or internal floating cover roof, which will rest on the surface of the liquid contents and be equipped with a closure seal or seals to close the space between the roof edge and tank wall. This control equipment shall not be permitted if the volatile organic compounds have a vapor pressure of eleven pounds per square inch absolute (five hundred sixty-eight millimeters of mercury) or greater under actual storage conditions. All tank gauging or sampling devices shall



be gas-tight except when tank gauging or sampling is taking place;

- (2) A vapor recovery system, consisting of a vapor gathering system capable of collecting the volatile organic compound vapors and gases discharged, and a vapor disposal system capable of processing such volatile organic compound vapors and gases to prevent their emission to the atmosphere. All tank gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place; or

- (3) Other equipment or means of equal efficiency for purposes of air pollution control ~~[as]~~ may be approved by the director~~[-]~~ after demonstrating equivalence to the director by one of the following methods:

- (A) an actual emissions test in a full size or scale sealed tank facility which accurately collects and measures all hydrocarbon emissions associated with a given closure device, and which accurately simulates other emission variables, such as temperature, barometric pressure and wind. The test facility shall be subject to prior approval by the director, or  
(B) a pressure leak test, engineering evaluation or other means where the director determines that the same is an accurate method of determining equivalence.

(b) Compliance with true vapor pressure requirements shall be determined by evaluating vapor pressure pursuant to ASTM Method D323-82 or other EPA approved methods.

(c) No person shall place, store, or hold in any new stationary storage tank, reservoir, or other container of more than a two hundred fifty-gallon (nine hundred fifty-liter) capacity any volatile organic compound unless such tank, reservoir, or other container is equipped with a permanent submerged fill

pipe, is a pressure tank as described in subsection (a), or is fitted with a vapor recovery system as described in subsection (a)(2).

~~[(e)]~~ (d) Underground tanks shall be exempted from the requirements of subsection (a) if the total volume of volatile organic compounds added to and taken from a tank annually does not exceed twice the volume of the tank. Any person claiming this exemption shall be responsible for maintaining records which substantiate this claim and make them available to the director upon request. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp ]  
(Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)  
(Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-39 is based substantially upon §11-60-10. [Eff 11/29/82; am, ren §11-60-10 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

**§11-60.1-40 Volatile organic compound water separation.** (a) No person shall use any single or multiple compartment volatile organic compound water separator which receives effluent water containing two hundred gallons (seven hundred sixty liters) or more of any volatile organic compound a day from any equipment that is processing, refining, treating, storing, or handling volatile organic compounds having a Reid vapor pressure of 0.5 pounds per square inch or greater unless such compartment is equipped with a properly installed vapor loss control device described as follows and which is in good working order, and in operation:

- (1) A container having all openings sealed which totally encloses the liquid content. All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place;
- (2) A container equipped with a floating roof, consisting of a pontoon type roof, double

deck-type roof, or internal floating cover roof, which will rest on the surface of the liquid contents and be equipped with a closure seal or seals to close the space between the roof edge and container wall. All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place;

- (3) A container equipped with a vapor recovery system consisting of a vapor gathering system capable of collecting the volatile organic compound vapors and gases discharged, and a vapor disposal system capable of processing such volatile organic compound vapors and gases to prevent their emission to the atmosphere. All container gauging and sampling devices shall be gas-tight except when gauging and sampling is taking place; or

- (4) A container having other equipment of equal efficiency for purposes of air pollution control ~~[as]~~ may be approved by the director~~[-]~~ after demonstrating equivalence to the director by one of the following methods:

(A) an actual emissions test in a full size or scale sealed tank facility which accurately collects and measures all hydrocarbon emissions associated with a given closure device, and which accurately simulates other emission variables, such as temperature, barometric pressure and wind. The test facility shall be subject to prior approval by the director, or

(B) a pressure leak test, engineering evaluation or other means where the director determines that the same is an accurate method of determining equivalence.

(b) Compliance with Reid vapor pressure requirements shall be determined by evaluating Reid

vapor pressure pursuant to ASTM Method D323-99 or other EPA approved methods. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp ]  
(Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)  
(Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-40 is based substantially upon §11-60-11. [Eff 11/29/82; am, ren §11-60-11 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

**§11-60.1-41 Pump and compressor requirements.**

(a) All pumps and compressors handling volatile organic compounds having a Reid vapor pressure of 1.5 pounds per square inch or greater which can be fitted with mechanical seals shall have mechanical seals or other equipment of equal efficiency for purposes of air pollution control as may be approved by the director. Pumps and compressors not capable of being fitted with mechanical seals, such as reciprocating pumps, shall be fitted with the best sealing system available for air pollution control given the particular design of pump or compressor as may be approved by the director. In either case, all pumps and compressors shall be vapor tight where the reading on a portable hydrocarbon meter is less than 500 parts per million (ppm), expressed as methane, above background.

(b) Compliance with Reid vapor pressure requirements shall be determined by evaluating Reid vapor pressure pursuant to ASTM Method D323-99 or other EPA approved methods.

(c) Compliance with vapor tight requirements shall be determined by evaluating vapor tightness pursuant to EPA Method 21 or other EPA approved methods. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-41 is based substantially upon §11-60-12. [Eff 11/29/82; am, ren §11-60-12 and comp 4/14/86; comp 6/29/92; R 11/26/93]

**§11-60.1-42 Waste gas disposal.** (a) No person shall cause or permit the emissions of gas streams containing volatile organic compounds from a vapor blowdown system unless these gases are burned by smokeless flares, or abated by an equally effective control device as approved by the director.

(b) Compliance with smokeless flare or equally effective control device requirements shall be in accordance with section 11-60.1-32. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp ]  
(Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)  
(Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-42 is based substantially upon §11-60-13. [Eff 11/29/82; am, ren §11-60-13 and comp 4/14/86; comp 6/29/92; R 11/26/93]

**§11-60.1-43 All operation and maintenance of permitted source.** Permittees shall, at all times, operate and maintain their permitted source, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions, at a minimum, to the levels required by their permits.

Determination of whether such operation and maintenance procedures are being used will be based on information available to the director, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source. [Eff and comp ]

(Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)  
(Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

### SUBCHAPTER 3

#### OPEN BURNING

**§11-60.1-51 Definitions.** As used in this subchapter:

"Agricultural burning" means the use of open burning in agricultural operations, forest management, or range improvements.

"Agricultural operation" means a bona fide agricultural, silvicultural, or aquacultural activity for the purpose of making a profit by raising, harvesting and selling crops, or by raising and selling livestock or poultry, or produce thereof. Agricultural operation also means activities conducted by non-profit agricultural research organizations and by educational institutions for the purpose of providing agricultural instruction. The burning of animal carcasses is not an agricultural operation.

"Attended" means to be physically present at the immediate location of the fire, to actively and physically look after, or to actively and physically take charge of.

"Auxiliary fuels" means butane, propane, pipeline quality natural gas, liquefied petroleum gas, or a petroleum liquid having an American Petroleum Institute gravity of at least 30.

"Aquacultural" means dealing with the cultivation of the natural produce of water.

"Clearing of land" means the removal of non-agricultural waste or vegetation from land not currently being utilized for agricultural operations, or not associated with forest management or range improvement.

"Cooking fuel" means any fuel that is processed, marketed, and sold by commercial establishments specifically for the cooking of food.

"District" means a geographic area, as designated by the director, to distinguish appropriate air basins for the purpose of smoke management.

"Forest management" means wildland vegetation management using prescribed burning procedures which have been approved by the forestry division or responsible federal agency prior to the commencement of any burn and which are being conducted by a public agency or through a cooperative agreement involving a public agency. The fire department may be consulted for advice and guidance as part of the prescribed burning procedure.

"Forestry division" means the division of forestry and wildlife of the department of land and natural resources of the State of Hawaii.

"No-burn period" means any period in which agricultural burning or conditionally allowed open burning in subsection 11-60.1-52(e) is prohibited by the director as provided in section 11-60.1-55.

"Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through an adequate stack or flare.

"Range" means an extensive area of open land on which domestic livestock or wild animals wander and graze.

"Range improvement" means physical modification or treatment of rangeland which is designed to: improve production of forages; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; and otherwise restore, protect, and improve the conditions of the rangeland ecosystems to benefit livestock, horses, and fish and wildlife.

"Recreational fire" means a fire used for social, cultural, or other activities including, but not limited to, campfires, bonfires, hand-warming fires, raku or pit pottery curing fires, or fires conducted

as part of an unusual event such as fire dancing, provided the activity is not part of a business for gainful occupation.

"Silvicultural" means dealing with the cultivation of forest trees; forestry. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; am and comp 1/13/12; am and comp 6/30/14; am and comp ] (Auth: HRS §§342B-3, 342B-12, 342B-34; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, and 52) (Imp: HRS §§342B-3, 342B-12, 342B-34; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, and 52)

**§11-60.1-52 General provisions.** (a) Except as provided in subsections (b), (c), (d), (e) and section 11-60.1-53, no person shall cause, permit, or maintain any open burning. Any open burning is the responsibility of the person owning, operating, or managing the property, premises, business establishment, or industry where the open burning is occurring. Subsections (b), (c), (d), (e) and section 11-60.1-53 shall not apply to the open burning of human remains or animal carcasses unless the activities fall under the exemptions found in paragraph (d)(2).

(b) Subsection (a) shall not apply to attended fires for the cooking of food[~~-~~] provided that:

- (1) Only untreated dry wood, charcoal, natural or synthetic natural gas, butane, propane, or cooking fuel is used, and
- (2) If visible smoke enters any residence, business or public area, best practical measures to eliminate the smoke, including extinguishing the fire, are taken.

(c) Subsection (a) shall not apply to the following, provided that notification is given to the director prior to the commencement of any burn:



- (1) Fires set to a building, structure or simulated aircraft for training personnel in firefighting methods.
- (d) Subsection (a) shall not apply to the following, provided that the burning is approved by the director:
  - (1) ~~[Fires for recreational, decorative, or ceremonial purposes]~~ Outdoor fires for recreational, religious, ceremonial or decorative, or related purposes including, but not limited to, campfires, bonfires, pottery curing fires, that are burning dry untreated wood, charcoal, or auxiliary fuels;
  - (2) Fires for the disposal of human remains and animal carcasses and debris generated from a natural disaster or catastrophic event, where there is no reasonable alternative method of disposal; ~~[-and]~~
  - (3) ~~[Other fires as approved by the director.]~~ Outdoor fires set for cultural, traditional, or related purposes and fires within cultural or traditional structures including sweat houses or lodges; and
  - (4) Pyrotechnics for the creation of special effects during filming or motion pictures, television programs, or other commercial video, photography or creative arts production activities.
- (e) Subsection (a) shall not apply to the following, provided that the burning is both approved by the director, and that the burning is allowed under either section 11-60.1-55 or 11-60.1-52(f):
  - (1) Fires to abate a fire hazard, provided that the hazard is so declared by the fire department, forestry division, or federal agency having jurisdiction, and that a prescribed burning plan, if applicable, has been submitted to and approved by the jurisdictional agency;
  - (2) Fires for prevention or control of disease, ~~[or]~~ pests, invasive species or other

natural threats to the environment or economy; and

- (3) Fires for the disposal of dangerous materials, where there is no alternate method of disposal;

(f) The director may provide a waiver to the section 11-60.1-55 "no-burn" period for any exemption to open burning found under subsection 11-60.1-52(e).

(g) Subsections (b), (c), (d), or (e) shall not exempt any activity from the application of any rules or requirements in any other section or chapter. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; am and comp 1/13/12; comp 6/30/14; am and comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, and 52) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52)

Historical note: §11-60.1-52 is based substantially upon §11-60-31. [Eff 11/29/82; am, ren §11-60-31 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

**§11-60.1-53 Agricultural burning: permit applicability.** No person engaged in any agricultural operation, forest management, or range improvement shall cause or allow agricultural burning without first obtaining an agricultural burning permit from the director. Any person who fails to comply with the terms and conditions of the permit or this chapter shall be subject to the penalties and remedies provided for in sections 342B-42, 342B-44, 342B-47, and 342B-48, HRS, including the invalidation of the permit. No agricultural permit shall be granted for, or be construed to permit:

- (1) The open burning of trash, waste, or by-products generated outside the permitted property;
- (2) The open burning of trash or other waste that has been handled or processed by

- factory operations, not including material from the field; or
- (3) The open burning of any waste for the clearing of land. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; am and comp 1/13/12; comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12, 342B-21; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, and 52) (Imp: HRS §§342B-3, 342B-12, 342B-21; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52)

Historical note: §11-60.1-53 is based substantially upon §11-60-32. [Eff 11/29/82; am, ren §11-60-32 and comp 4/14/86; comp 6/29/92; R 11/26/93]

**§11-60.1-54 Agricultural burning permit**

**application.** (a) Application for an agricultural burning permit shall be made on forms furnished by the director. The application shall include the following:

- (1) Business license information or commercial agricultural activity general excise tax license, if applicable;
- (2) Maps of areas to be burned showing fields by appropriate numbers and acreage, direction of prevailing winds, location of residential, school, and commercial establishments, public buildings, airports, and public utilities;
- (3) The designation of fields to be burned under specified wind conditions; and
- (4) Any other information as required and deemed necessary by the director to make a decision on the application.

(b) To be eligible for an agricultural burning permit, the applicant must currently be involved in agricultural operations, forest management, or range improvements at the property where burning will occur,

and must have legal right, title, or possession to the property, and if not the owner, must have the written authorization of the owner or owner's representative to burn on the property.

(c) Each application shall be signed by the applicant as being true and accurate and shall constitute an agreement that the applicant shall comply with all the terms and conditions of the permit and this chapter.

(d) The director shall not continue to act upon or consider any incomplete application. An application shall be determined to be complete only when all of the following have been complied with:

- (1) All information required or requested pursuant to subsection (a) has been submitted;
- (2) All documents in subsection (a) have been signed by the applicant; and
- (3) All applicable fees have been submitted.

(e) The application will be deemed complete sixty days after received unless the director requests the applicant to provide additional information. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; am and comp 1/13/12; comp 6/30/14; comp

] (Auth: HRS §§342B-3, 342B-12, 342B-21; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, and 52) (Imp: HRS §§342B-3, 342B-12, 342B-21; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52)

Historical note: §11-60.1-54 is based substantially upon §11-60-33. [Eff 11/29/82; am, ren §11-60-33 and comp 4/14/86; comp 6/29/92; R 11/26/93]

**§11-60.1-55 Agricultural burning or conditionally allowed open burning from subsection 11-60.1-52(e): "no-burn" periods.** (a) Except as provided in subsection (d), no person, with or without an agricultural burning permit, shall cause or allow agricultural burning or conditionally allowed open

burning from subsection 11-60.1-52(e) ~~[under the following conditions:~~

- ~~(1) When the director determines that meteorological conditions have resulted in widespread haze on any island or in any district on the island and that these meteorological conditions will continue or deteriorate. For the purposes of this section, widespread haze shall be considered to exist when all visible ridges:
  - ~~(A) Within five to ten miles have a "smoky" or bluish appearance and colors are subdued; and~~
  - ~~(B) Beyond ten miles have a blurred appearance; or~~~~
- ~~(2) When a "no-burn" period has been declared in a district and smoke from any adjacent district, as determined by the director, may impact on the affected district, the "no-burn" period shall apply to both districts.]~~

when a "no-burn" period has been declared by the director.

~~[(b) Notices of "no-burn" periods for the specified islands or districts may be provided by radio broadcast and shall apply for a specified "no burn" period.]~~

(b) "No-burn" periods shall be determined by current and forecasted weather conditions which inhibit the dispersion of air pollutants. A no-burn period may be declared if unfavorable meteorological conditions such as high winds, temperature inversions and air stagnation are existing and forecasted to continue or deteriorate. If forecasting is unavailable, "no-burn" periods shall be determined based on visibility.

~~[(c) Verification that widespread haze exists in any district may be accomplished by consultation with personnel in the appropriate district fire or police stations.]~~

(c) Visibility shall be used as the basis for determining "no-burn" periods when forecasting is not possible or not available. A "no-burn" call based on

visibility shall be made under the following conditions:

- (1) When the director determines that meteorological conditions have resulted in widespread haze on any island or in any district on the island and that these meteorological conditions will continue or deteriorate. For the purposes of this section, widespread haze shall be considered to exist when all visible ridges:
  - (A) Within five to ten miles have a "smoky" or bluish appearance and colors are subdued; and
  - (B) Beyond ten miles have a blurred appearance;
- (2) When a "no-burn" period has been declared in a district and smoke from any adjacent district, as determined by the director, may impact on the affected district, the "no-burn" period shall apply to both districts;  
or
- (3) On the island of Oahu either when the condition specified in paragraph (1) or (2) occurs or when meteorological conditions have resulted in a rise of the carbon monoxide level exceeding five mg/m<sup>3</sup> for an eight-hour average or the PM<sub>10</sub> level exceeding one hundred thirty five µg/m<sup>3</sup> for twenty-four hours and when the director determines that these meteorological conditions will continue or deteriorate.
  - (d) Verification that widespread haze exists in any district may be accomplished by consultation with department personnel in the appropriate district.
  - (e) Notices of "no-burn" periods for the specified islands or districts may be posted on a department web page and shall apply to a specified "no burn" period.
  - ~~(d)~~ (f) In a district where a long-term "no burn" declaration is in effect, the director may provide a waiver during an agricultural "no burn" period for the control of plant diseases or

infestations when burning is determined to be the  
[~~sole~~] best available method of control. [Eff  
11/26/93; comp 10/26/98; am and comp 9/15/01; comp  
11/14/03; am and comp 1/13/12; comp 6/30/14; am and  
comp ] (Auth: HRS §§342B-3,  
342B-12, 342B-43; 42 U.S.C. §§7407, 7410, 7416; 40  
C.F.R. Parts 50, 51, and 52) (Imp: HRS §§342B-3,  
342B-12, 342B-43; 42 U.S.C. §§7407, 7416; 40 C.F.R.  
Parts 50, 51, and 52)

Historical note: §11-60.1-55 is based substantially  
upon §11-60-34. [Eff 11/29/82; am, ren §11-60-34 and  
comp 4/14/86; am and comp 6/29/92; R 11/26/93]

**§11-60.1-56 Agricultural burning: recordkeeping  
and monitoring.** Each permittee shall monitor and  
maintain records in accordance with the agricultural  
burning permit issued by the director. [Eff 11/26/93;  
comp 10/26/98; am and comp 9/15/01; comp 11/14/03;  
comp 1/13/12; comp 6/30/14; comp ]  
(Auth: HRS §§342B-3, 342B-12, 342B-28; 42 U.S.C.  
§§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, and 52)  
(Imp: HRS §§342B-3, 342B-12, 342B-28; 42 U.S.C.  
§§7407, 7416; 40 C.F.R. Parts 50, 51, and 52)

Historical note: §11-60.1-56 is based substantially  
upon §11-60-35. [Eff 11/29/82; am, ren §11-60-35 and  
comp 4/14/86; am and comp 6/29/92; R 11/26/93]

**§11-60.1-57 Agricultural burning: action on  
application.** (a) The director shall act on a  
complete application within a reasonable time, but not  
to exceed ninety calendar days from the date the  
complete application is received, and shall notify the  
applicant in writing of the approval or denial of the  
application. If the director has not acted on an  
application within the ninety calendar-day period, the  
application shall be deemed to have been approved.

(b) If an application is denied, the applicant may request in writing, a re-evaluation of the application to the director.

(c) If the application is denied after the re-evaluation, the applicant may request a hearing in accordance with chapter 91, HRS.

(d) The permit may be granted for a period of up to one year from the date of issuance.

(e) At the director's sole discretion or the application of any person, the director may terminate, suspend, reopen, or amend a permit if, after affording the applicant a hearing in accordance with chapter 91, HRS, it is determined that:

- (1) Any condition of the permit has been violated;
- (2) Any provision of this chapter has been violated;
- (3) Any provision of chapter 342B, HRS, has been violated;
- (4) The maintenance or attainment of NAAQS and state ambient air quality standards will be interfered with; or
- (5) The action is in the public interest.

(f) The permit shall not be transferable whether by operation of law or otherwise or from one person to another. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; am and comp 1/13/12; comp 6/30/14; comp ] (Auth: HRS

§§342B-3, 342B-12, 342B-21, 342B-24, 342B-27; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, and 52) (Imp: HRS §§342B-3, 342B-12, 342B-21, 342B-24, 342B-27; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52)

Historical note: §11-60.1-57 is based substantially upon §11-60-36. [Eff 11/29/82; am, ren §11-60-36 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

**§11-60.1-58 Agricultural burning: permit content.** The director shall consider and incorporate



the following elements into an agricultural burning permit, as applicable:

- (1) Notification of appropriate authorities prior to each burn;
- (2) The type and amount of material allowed to be burned and the time period(s) when burning is allowed;
- (3) Proper fire and safety control measures;
- (4) Operator or permittee must allow the director or an authorized representative, upon presentation of credentials, to enter the burn location and inspect, all facilities, practices, and operations, or records covered under the terms and conditions of the permit; and
- (5) Any other provision to assure compliance with all applicable requirements of HAR Chapter 11-60.1. [Eff and comp 1/13/12; comp 6/30/14; comp ]  
(Auth: HRS §§342B-3, 342B-12, 342B-21, 342B-22, 342B-24, 342B-27, 342B-28; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, and 52) (Imp: HRS §§342B-3, 342B-12, 342B-21, 342B-21, 342B-24, 342B-27, 342B-28; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52)

#### SUBCHAPTER 4

#### NONCOVERED SOURCES

**§11-60.1-61 Definitions.** As used in this subchapter, unless otherwise defined for purposes of a particular section or subsection of this subchapter:

"Applicable requirement" means all of the following as they apply to emissions units in a noncovered source:

- (1) Any NAAQS or state ambient air quality standard;

- (2) Any standard or other requirement approved pursuant to Section 111 of the Act, including Section 111(d);
- (3) Any standard or other requirement approved pursuant to Section 112 of the Act, including any requirement concerning accident prevention approved pursuant to Section 112(r) (7) of the Act;
- ~~[(2)]~~ (4) The application of best available control technology to control a regulated air pollutant, but only as best available control technology would apply to new noncovered sources and modifications to noncovered sources that have the potential to emit or increase emissions above significant amounts considering any limitations, enforceable by the director, on the noncovered source to emit a pollutant; and
- ~~[(3)]~~ (5) Any standard or other requirement provided for in chapter 342B, HRS; this chapter; or chapter 11-59.

"General permit" means a noncovered source permit covering numerous similar sources that meets the requirements of section 11-60.1-70.

"Modification" means a physical change in or a change in the method of operation of a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted; or every significant change in existing monitoring requirements, and every relaxation of, or significant change in reporting or recordkeeping requirements. Routine maintenance, repair, and replacement of parts shall not be considered a modification.

"Temporary noncovered source" means a noncovered source that is intended to be operated at multiple locations for a designated period of time at each location. The operation of the source shall be temporary and involve at least one change of location during the term of a noncovered source permit.

"Timely application" means:

- (1) An initial application for a noncovered source permit which is submitted to the director in accordance with the schedule for application submittal specified in section 11-60.1-66; or
- (2) An application for a noncovered source permit renewal which is submitted to the director at least sixty days prior to the date of permit expiration. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp ]  
(Auth: HRS §§342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416)  
(Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

**§11-60.1-62 Applicability.** (a) Except as provided in subsections (d) and (g) and section 11-60.1-66, no person shall burn used or waste oil or begin construction, reconstruction, modification, relocation, or operation of an emission unit or air pollution control equipment of any noncovered source without first obtaining a noncovered source permit from the director. The construction, reconstruction, modification, relocation, or operation shall continue only if the owner or operator of a noncovered source holds a valid noncovered source permit. An owner or operator of a grandfathered noncovered source, one constructed, modified, or relocated on or prior to March 20, 1972, may be required by the director to obtain a noncovered source permit if the source is found to operate in violation of an applicable requirement, or is found to have improper or inadequate air pollution controls.

(b) The noncovered source permit shall remain valid past the expiration date and the noncovered source shall not be in violation for failing to have a noncovered source permit, until the director has

issued or denied a renewal of the noncovered source permit provided:

- (1) Prior to permit expiration, a timely and complete renewal application has been submitted and the owner or operator acts consistently with the permit previously granted, the application on which it was based, and all plans, specifications, and other information submitted as part of the application; and
- (2) The owner or operator has submitted to the director within the specified deadlines all requested additional information deemed necessary to evaluate or take final action on the renewal application, as described in section 11-60.1-74(e).

(c) A noncovered source permit shall not constitute, nor be construed to be an approval of the design of a noncovered source. Noncovered source permits shall be issued in accordance with this chapter and it is the responsibility of the applicants to ~~[insure]~~ ensure compliance with all applicable requirements in the construction and operation of any noncovered source.

(d) The following are exempt from the requirements of subsection (a), provided that no exemption interferes with the imposition of any requirement of subchapter 5 or the determination of whether a stationary source is subject to any requirement of this chapter. Sources or activities exempt from the requirements of subsection (a) shall not relieve the owner or operator from complying with any other applicable requirement, including provisions of subchapter 2. Any fuel burning equipment identified shall not include equipment burning off-spec used oil or fuel classified as hazardous waste. The director shall reserve the right to disallow any exemption and impose the requirements of subsection (a), if the source or activity requires additional controls or monitoring to ensure compliance with the applicable requirements.

- (1) Stationary sources with potential emissions of less than:
  - (A) 500 pounds per year for each hazardous air pollutant, except lead;
  - (B) 300 pounds per year for lead;
  - (C) five tons per year of carbon monoxide;
  - (D) 3,500 tons per year CO<sub>2</sub>e for greenhouse gases; and
  - (E) two tons per year of each regulated air pollutant not already identified above;
- (2) All sources and source categories that would be required to obtain a permit solely because they are subject to the "Standards of Performance for New Residential Wood Heaters," 40 CFR Section 60.530 et seq.;
- (3) Any storage tank, reservoir, or other container of capacity equal to or less than forty thousand gallons storing volatile organic compounds, except those storage tanks, reservoirs, or other containers subject to any standard or other requirement pursuant to Sections 111 and 112 of the Act;
- (4) Gasoline service stations;
- (5) Other than smoke house generators and gasoline fired industrial equipment, fuel burning equipment with a heat input capacity less than one million BTU per hour, or a combination of fuel burning equipment operated simultaneously as a single unit having a total combined heat input capacity of less than one million BTU per hour;
- (6) Steam generators, steam superheaters, water boilers, or water heaters, all of which have a heat input capacity of less than five million BTU per hour, and are fired exclusively with one of the following:
  - (A) Natural or synthetic gas;
  - (B) Liquified petroleum gas; or
  - (C) A combination of natural, synthetic, or liquified petroleum gas;
- (7) Kilns used for firing ceramic ware heated exclusively by natural gas, electricity,

- liquid petroleum gas, or any combination of these and have a heat input capacity of ten million BTU per hour or less;
- (8) Standby generators used exclusively to provide electricity, standby sewage pump drives, and other emergency equipment used to protect the health and welfare of personnel and the public, all of which are used only during power outages, emergency equipment maintenance and testing, and which:
    - (A) Are fired exclusively by natural or synthetic gas; or liquified petroleum gas; or fuel oil No. 1 or No. 2; or diesel fuel oil No. 1D or No. 2D; and
    - (B) Do not trigger a PSD or covered source review, based on their potential to emit regulated or hazardous air pollutants;
  - (9) Landfills, except for operating municipal waste landfills with a design capacity equal to or greater than 1,500,000 metric tons;
  - (10) Paint spray booths, except for paint spray booths subject to any standard or other requirement pursuant to Section 112(d) of the Act;
  - (11) Welding booths;
  - (12) Diesel fired portable industrial equipment less than 200 horsepower in size which is used during power outages or periodically for the equipment's maintenance and repair;
  - (13) Gasoline fired portable industrial equipment less than:
    - (A) 25 horsepower; or
    - (B) 200 horsepower in size which is used during power outages or periodically for the equipment's maintenance and repair;
  - (14) Hand held equipment used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, surface grinding, or turning of ceramic art work,

- precision parts, leather, metals, plastics, fiber board, masonry, carbon, glass, or wood, provided reasonable precautions are taken to prevent particulate matter from becoming airborne. Reasonable precautions include the use of dust collection systems, dust barriers, or containment systems;
- (15) Laboratory equipment used exclusively for chemical and physical analyses;
  - (16) Containers, reservoirs, or tanks used exclusively for dipping operations for coating objects with oils, waxes, or greases where no organic solvents, diluents, or thinners are used; or dipping operations for applying coatings of natural or synthetic resins which contain no organic solvents;
  - (17) Closed tumblers used for cleaning or deburring metal products without abrasive blasting, and pen tumblers with batch capacity of one thousand pounds or less;
  - (18) Ocean-going vessels, except for ocean-going vessels subject to any standard or other requirement for the control of air pollution from outer continental shelf sources, pursuant to 40 CFR Part 55;
  - (19) Fire water system pump engines dedicated for fire-fighting and maintaining fire water system pressure, which are operated only during fire fighting and periodically for engine maintenance, and fired exclusively by natural or synthetic gas; or liquified petroleum gas; or fuel oil No. 1 or No. 2; or diesel fuel No. 1D or No. 2D;
  - (20) Smoke generating systems used exclusively for training in government or certified fire fighting training facilities;
  - (21) Internal combustion engines propelling mobile sources such as automobiles, trucks, cranes, forklifts, front-end loaders, graders, trains, helicopters, and airplanes;
  - (22) Nonroad engines. Owners of nonroad engines, except for those exempt engines listed in

subsection (d) of this section, must maintain a Nonroad Engine Location Log to demonstrate the engine meets subparagraph (1)(C) of the nonroad engine definition of Subchapter 1. The Nonroad Engine Location Log shall include:

- (A) Owner's Name;
- (B) Engine Manufacturer and Model;
- (C) Engine Serial Number;
- (D) Engine Date of Manufacture; and
- (E) For each location to which the engine is moved, the location of the engine, initial date at the location, and the date moved off the location;

- ~~[(+22)]~~ (23) Diesel fired portable ground support equipment used exclusively to start aircraft or provide temporary power or support service to aircraft prior to start-up;
- ~~[(+23)]~~ (24) Plant maintenance and upkeep activities (e.g., grounds-keeping, general repairs, cleaning, painting, welding, plumbing, re-tarring roofs, installing insulation, and paving parking lots), including equipment used to conduct these activities, provided these activities are not conducted as part of a manufacturing process, are not related to the source's primary business activity, and are not otherwise subject to an applicable requirement triggering a permit modification;
- ~~[(+24)]~~ (25) Fuel burning equipment which is used in a private dwelling or for space heating, other than internal combustion engines, boilers, or hot furnaces;
- ~~[(+25)]~~ (26) Ovens, stoves, or grills used solely for the purpose of preparing food for human consumption operated in private dwellings, restaurants, or stores;
- ~~[(+26)]~~ (27) Stacks or vents to prevent escape of sewer gases through plumbing traps;



~~[(27)]~~ (28) Air conditioning or ventilating systems not designed to remove air pollutants generated by or released from equipment, and that do not involve the open release or venting of CFC's into the atmosphere;

~~[(28)]~~ (29) Woodworking shops with a sawdust collection system; and

~~[(29)]~~ (30) Other sources as may be approved by the director.

(e) An owner or operator of a stationary source that is not subject to the requirements of subchapter 4, and that becomes subject to the requirements of subchapter 4 because of a new or amended regulation in HRS chapter 342B or this chapter shall submit a complete and timely noncovered source permit application. For purposes of this subsection, "timely" means within six months after the effective date of the new or amended regulation or such other time as approved by the director. The owner or operator of the source may continue to construct or operate and shall not be in violation for failing to have a noncovered source permit only if the owner or operator has submitted to the director a complete and timely noncovered source permit application, and any additional information necessary for the processing of the application, including additional information required pursuant to sections 11-60.1-63(d) and 11-60.1-64.

(f) An owner or operator of a stationary source that becomes subject to the requirements of subchapter 5 pursuant to a new or amended regulation under ~~[section]~~ Section 111 or 112 of the Act, HRS chapter 342B, or this chapter shall submit a complete and timely covered source permit application to address the new requirements. For purposes of this subsection, "timely" means:

- (1) by the date required under subchapter 8 or 9 of this chapter, or the applicable federal regulation, whichever deadline is earlier; or

- (2) within twelve months after the effective date of the new or amended regulation, if not specified in the applicable regulation.

The owner or operator of the source may continue to construct or operate and shall not be in violation for failing to have a covered source permit addressing the new requirements only if the owner or operator has submitted to the director a complete and timely covered source permit application, and any additional information that the director deems necessary to evaluate or take final action on the application, including additional information required pursuant to sections 11-60.1-83(d) and 11-60.1-84.

(g) The director, upon written request and submittal of adequate support information from the owner or operator of a noncovered source, may provide written approval of the following activities to proceed without prior issuance or amendment of a noncovered source permit. Under no circumstances will these activities be approved if the activity interferes with the imposition of any applicable requirement or the determination of whether a stationary source is subject to any applicable requirement.

- (1) Installation and operation of air pollution control devices. The director may allow the installation and operation of an air pollution control device prior to issuing a noncovered source permit or amendment to a noncovered source permit if the owner or operator of the source can demonstrate that the control device reduces the amount of emissions previously emitted, does not emit any new air pollutants, and does not adversely affect the ambient air quality impact assessment. The owner or operator of the noncovered source shall submit with the written request, a complete noncovered source permit application to install and operate the air pollution control device.
- (2) Test burns. The director may allow an owner or operator of a noncovered source to test

alternate fuels not allowed by permit if the following conditions are met:

- (A) The test burn period does not exceed one week, unless the director, upon reasonable justification, approves a longer period, not to exceed three months;
- (B) The purpose of the test burn is to establish emission rates, to determine if alternate fuels are feasible with the existing noncovered source facility, or as an investigative measure to research the operational characteristics of a fuel;
- (C) A stack performance test, a pre-approved monitoring program, or both, if requested by the director, are conducted during the test burn to record and verify emissions;
- (D) The owner or operator of the noncovered source provides emission estimates of the test burn and if requested by the director, an ambient air quality impact assessment to demonstrate that no violation of the NAAQS and state ambient air quality standards will occur;
- (E) The owner or operator of the noncovered source demonstrates that the use of the alternate fuel is allowed or not restricted by any applicable requirement, other than the permit condition(s) restricting the alternate fuel use; and
- (F) If a performance test or monitoring is required, the owner or operator of the noncovered source provides written test or monitoring results within sixty days of the completion of the test burn or such other time as approved by the director. The results shall include the operational parameters of the

noncovered source at the time of the test burn, and any other significant factors that affected the test or monitoring results.

If the director approves the test burn, the director may set operational limitations or other conditions for the test burn. Deviations from those limits or conditions shall be considered a violation of this chapter. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp ] (Auth: HRS §§342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

**§11-60.1-63 Initial noncovered source permit application.** (a) Every application for an initial noncovered source permit shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application. Information submitted shall include:

- (1) Name, address, and phone number of:
  - (A) The company;
  - (B) The facility, if different from the company;
  - (C) The owner and owner's agent; and
  - (D) The plant site manager or other contact;
- (2) A description of the nature, location, design capacity, production capacity, production rates, fuels, fuel use, raw materials, and typical operating schedules to the extent needed to determine or regulate emissions; specifications and drawings showing the design of the source and plant layout; a description of all processes and products; and, if reasonably

- anticipated, a detailed description of alternative operating scenarios;
- (3) If available, maximum emission rates, including fugitive emissions, of all regulated and hazardous air pollutants from each emissions unit. If applicable, biogenic CO<sub>2</sub> emissions shall be identified and quantified separately from other biogenic and non-biogenic greenhouse gas emissions. Emission rates shall be reported in pounds per hour and tons per year and in such terms necessary to establish compliance consistent with the applicable requirements and standard reference test methods. For greenhouse gases, emission rates shall also be reported in CO<sub>2</sub>e tons per year. All supporting emission calculations and assumptions shall also be provided;
  - (4) Identification and description of all points of emissions, including stack parameters;
  - (5) Identification and detailed description of air pollution control equipment and compliance monitoring devices or activities as planned by the owner or operator of the noncovered source, and to the extent of available information, an estimate of emissions before and after controls;
  - (6) Current operational limitations or work practices, or for noncovered sources that have not yet begun operation, such limitations or practices which the owner or operator of the noncovered source plans to implement that affect emissions of any regulated or hazardous air pollutants at the source;
  - (7) Citation and description of all applicable requirements, and a description of or reference to any method and/or applicable test method for determining compliance with each applicable requirement;

- ~~[(7)]~~ (8) A schedule for construction or modification of the noncovered source, if applicable;
- ~~[(8)]~~ (9) All calculations and assumptions on which the information in paragraphs (2), (4), (5), and (6) is based;
- ~~[(9)]~~ (10) If requested by the director, an assessment of the ambient air quality impact of the noncovered source or modification. The assessment shall include all supporting data, calculations and assumptions, and a comparison with the NAAQS and state ambient air quality standards;
- ~~[(10)]~~ (11) If requested by the director, a risk assessment of the air quality related impacts caused by the noncovered source or modification to the surrounding environment;
- ~~[(11)]~~ (12) If requested by the director, results of source emission testing, ambient air quality monitoring, or both;
- ~~[(12)]~~ (13) If requested by the director, information on other available control technologies;
- ~~[(13)]~~ (14) An explanation of all proposed exemptions from any applicable requirement;
- ~~[(14)]~~ (15) A compliance plan in accordance with section 11-60.1-65; and
- ~~[(15)]~~ (16) Other information:
  - (A) As required by any applicable requirement or as requested and deemed necessary by the director to make a decision on the application; and
  - (B) As may be necessary to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of such requirements.

(b) The director shall not continue to act upon or consider an incomplete application. An application shall be determined to be complete only when all of the following have been complied with:

- (1) All information required or requested pursuant to subsection (a) has been submitted;
- (2) All documents requiring certification have been certified pursuant to section 11-60.1-4;
- (3) All applicable fees have been submitted; and
- (4) The director has certified that the application is complete.

(c) The director shall notify the applicant in writing whether the application is complete. Unless the director requests additional information or notifies the applicant of incompleteness within sixty days of receipt of an application, the application shall be deemed complete.

(d) During the processing of an application that has been determined or deemed complete if the director determines that additional information is necessary to evaluate or take final action on the application, the director may request such information in writing and set a reasonable deadline for a response.

(e) The director, in writing, shall approve, conditionally approve, or deny an application for a noncovered source permit within six months after receipt of a complete application. A noncovered source permit application for a new noncovered source or a modification shall be approved only if the director determines that the construction or operation of the new noncovered source or modification will be in compliance with all applicable requirements~~[-]~~ and will not interfere with attainment or maintenance of the NAAQS. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp ] (Auth: HRS §§342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

**§11-60.1-64 Duty to supplement or correct permit applications.** Any applicant for a noncovered source

permit who fails to submit any relevant facts or who has submitted incorrect information in any permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application, but prior to the issuance of the noncovered source permit. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ]  
(Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)  
(Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

**§11-60.1-65 Compliance plan.** (a) A compliance plan shall be submitted with every initial application for a noncovered source, temporary noncovered source, and general noncovered source permit, application for a noncovered source permit renewal, and application for a modification to a noncovered source, and at such other times as requested by the director.

(b) The owner or operator of a noncovered source shall submit to the director for approval a compliance plan which includes at a minimum the following information:

- (1) A description of the compliance status of the existing noncovered source or proposed source with respect to all the applicable requirements; and
- (2) The following statement or description and compliance schedule, as applicable:
  - (A) For applicable requirements with which the source is in compliance, a statement that the source is in compliance and will continue to comply with such requirements;
  - (B) For applicable requirements which become applicable during the permit term, a statement that the source on a



timely basis will meet all such applicable requirements and a detailed schedule if required by the applicable requirement. The statement shall include documentation on the proposed method the owner or operator plans to initiate to obtain compliance; and a compliance schedule demonstrating that the source will meet such applicable requirement by the date specified in the applicable requirement; or

- (C) For applicable requirements with which the source is not in compliance, a narrative description of how the source will achieve compliance with all such applicable requirements; and a detailed compliance schedule containing specific milestones of remedial measures to obtain compliance, allowing for an enforceable sequence of actions. Any compliance schedule shall resemble and shall be at least as stringent as any judicial consent decree or administrative order that applies to the source. The schedule shall not sanction noncompliance with the applicable requirements on which the schedule is based.

(c) If a compliance plan is to remedy a violation, a progress report certified pursuant to section 11-60.1-4 shall be submitted to the director no less frequently than every six months and shall include:

- (1) Dates for achieving the activities, milestones, or compliance, and dates when such activities, milestones, or compliance were achieved; and
- (2) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted. [Eff 11/26/93; comp

10/26/98; comp 9/15/01; comp 11/14/03; comp  
1/13/12; comp 6/30/14; comp  
] (Auth: HRS §§342B-3,  
342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS  
§§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

**§11-60.1-66 Transition into the noncovered source permit program.** (a) The owner or operator of an existing noncovered source with a permit to operate, issued pursuant to repealed chapter 11-60, shall submit a complete initial noncovered source permit application at least sixty days prior to the expiration of the permit to operate. The owner or operator shall continue to operate according to the provisions of the permit to operate and in accordance with any applicable laws, regulations, and rules in effect at the time the permit to operate was issued, until the noncovered source permit is issued.

(b) The owner or operator of a noncovered source who has applied for but has not received an initial permit to operate or a renewal for a permit to operate pursuant to repealed chapter 11-60 shall submit to the director in a timely manner, not to exceed sixty days from the effective date of this chapter, a complete initial noncovered source permit application (less any permit to operate application fee previously submitted). The owner or operator shall continue to operate according to the provisions of the authority to construct or permit to operate, whichever is applicable, and in accordance with any applicable laws, regulations, and rules in effect at the time the authority to construct or permit to operate was issued, until the noncovered source permit is issued.

(c) The owner or operator of a noncovered source with an authority to construct permit, issued pursuant to repealed chapter 11-60, shall submit to the director a complete initial noncovered source permit application at least sixty days prior to the expiration of the authority to construct permit or the planned date of construction completion, whichever is

earlier. The owner or operator may continue construction or operation provided construction or operation is performed in accordance with the provisions of the authority to construct permit and in accordance with any applicable laws, regulations, and rules in effect at the time the authority to construct permit was issued, until the noncovered source permit is issued.

(d) The owner or operator of a noncovered source who has applied for but has not received an authority to construct permit pursuant to repealed chapter 11-60 shall submit to the director in a timely manner a complete initial noncovered source permit application (less any authority to construct application fee previously submitted). A noncovered source permit for the emission unit subject to the authority to construct permit application must be obtained prior to commencement of construction, modification, relocation, or operation.

(e) In the event an authority to construct or permit to operate expires prior to the issuance of the noncovered source permit, the owner or operator may continue to construct or operate only if the owner or operator has submitted to the director a complete noncovered source permit application, and any additional information necessary for the processing of the application. The authority to construct or permit to operate shall continue to be in effect until the noncovered source permit is issued or denied, provided the owner or operator constructs or operates in accordance with the authority to construct or permit to operate and any applicable laws, regulations, and rules in effect at the time of the authority to construct or permit to operate issuance. Noncompliance with any condition of the authority to construct or permit to operate is considered a violation of this chapter.

(f) All noncovered source permit applications, compliance plans and filing fees shall be submitted in accordance with sections 11-60.1-63 and 11-60.1-65, and subchapter 6. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14;

comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

**§11-60.1-67 Permit term.** (a) A noncovered source permit shall not be issued for any term exceeding five years.

(b) A noncovered source permit may be renewed for any term not to exceed five years. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-67 is based substantially upon §11-60-48. [Eff 11/29/82; am, ren §11-60-47 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

**§11-60.1-68 Permit content.** The director shall consider and incorporate the following elements into a noncovered source permit as applicable:

- (1) Emission limitations and standards, including operational requirements and limitations to assure compliance with all applicable requirements at the time of permit issuance;
- (2) Permit term pursuant to section 11-60.1-67;
- (3) Requirements for the installation of devices, at the expense of the owner or operator, for the measurement or analysis of source emissions or ambient concentrations of air pollutants;
- (4) The requirement for source emissions tests or alternative methodology to determine compliance with the terms and conditions of the noncovered source permit and applicable requirements. Source emission tests conducted or alternative methodology used

- shall be at the expense of the owner or operator;
- (5) Monitoring and related recordkeeping and reporting requirements to assure compliance with all the terms and conditions of the permit, including:
- (A) Monitoring results expressed in units, averaging periods, and other statistical conventions consistent with the applicable requirements;
  - (B) Requirements concerning the use, maintenance, and installation of monitoring equipment. The installation, operation, and maintenance of the monitoring equipment shall be at the expense of the owner or operator;
  - (C) Appropriate monitoring methods;
  - (D) Monitoring records including:
    - (i) Place as defined in the permit, date, and time of sampling or measurements;
    - (ii) Dates the analyses were performed;
    - (iii) The name and address of the company or entity that performed the analyses;
    - (iv) Analytical techniques or methods used;
    - (v) Analyses results; and
    - (vi) Operating conditions during the time of sampling or measurement;
  - (E) Other records including support information, such as calibration and maintenance records, original stripchart recordings or computer printouts for continuous monitoring instrumentation, and all other reports required by the director;
  - (F) A requirement for the retention of records of all required monitoring data and support information for a period of at least three years from the date of

- the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original stripchart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit; and
- (G) Provisions for the owner or operator to annually report in writing emissions of hazardous air pollutants;
- (6) Terms and conditions for reasonably anticipated operating scenarios identified by the source in the noncovered source permit application as approved by the director. Such terms and conditions shall include:
- (A) A requirement that the owner or operator, contemporaneously with making a change from one operating scenario to another, record in a log at the permitted facility the scenario under which it is operating and, if required by the director, submit written notification to the director; and
  - (B) Provisions to ensure that the terms and conditions under each alternative scenario meet all applicable requirements;
- (7) General provisions including:
- (A) A statement that the owner or operator shall comply with all terms and conditions of the noncovered source permit and that any permit noncompliance constitutes a violation of this chapter, and is grounds for enforcement action; for permit termination, suspension, reopening, or amendment; or for denial of a permit renewal application;
  - (B) A severability clause to ensure the continued validity of the various

- permit requirements in the event of a challenge to any portion of the permit;
- (C) A statement that it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the terms and conditions of the permit;
  - (D) A statement that the permit may be terminated, suspended, reopened, or amended for cause pursuant to sections 11-60.1-10 and 11-60.1-72, and section 342B-27, HRS. The filing of a request by the permittee for a permit termination, suspension, reopening, or amendment or of a notification of planned changes or anticipated noncompliance does not stay any permit condition;
  - (E) A statement that the permit does not convey any property rights of any sort, or any exclusive privilege;
  - (F) A provision that, if construction is not commenced, continued, or completed in accordance with section 11-60.1-9, the noncovered source permit for the subject emission unit shall become invalid;
  - (G) A provision that the owner or operator shall notify the director in writing of the anticipated date of initial start-up for each emission unit of a new noncovered source or modification to the source not more than sixty days or less than thirty days prior to such date. The director shall also be notified in writing of the actual date of construction commencement and start-up within fifteen days after such dates;

- (H) A requirement pursuant to sections 11-60.1-15 and 11-60.1-16 for reporting of equipment shutdown and malfunction;
- (I) A statement that the owner or operator shall furnish in a timely manner any information or records requested in writing by the department to determine whether cause exists for terminating, suspending, reopening, or amending the permit, or to determine compliance with the permit. Upon request, the permittee shall also furnish to the department copies of records required to be kept by the permit. For information claimed to be confidential, the permittee shall furnish such records to the department with a claim of confidentiality;
- (J) A provision for the designation of confidentiality of any records pursuant to section 11-60.1-14;
- (K) A requirement that the owner or operator shall submit fees in accordance with subchapter 6;
- (L) Certification requirements pursuant to section 11-60.1-4; ~~and~~
- (M) A requirement that the owner or operator allow the director or an authorized representative, upon presentation of credentials or other documents required by law:
  - (i) To enter the owner or operator's premises where a source is located or emission-related activity is conducted, or where records must be kept under the conditions of the permit and inspect at reasonable times all facilities, equipment, including monitoring and air pollution control equipment, practices, operations, or records covered under the terms



- and conditions of the permit and request copies of records or copy records required by the permit; and
- (ii) To sample or monitor at reasonable times substances or parameters to assure compliance with the permit or applicable requirements; and
- (N) A requirement that at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the director which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.
- (8) Compliance plan submittal requirements pursuant to section 11-60.1-65; and
- (9) Any other provision to assure compliance with all applicable requirements. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp ]  
 (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

**§11-60.1-69 Temporary noncovered source permits.**

- (a) An owner or operator of a temporary noncovered source may apply for a temporary noncovered source

permit. The owner or operator of the temporary noncovered source shall certify its intention to operate at various locations with the same equipment and similar operational methods.

(b) The application and issuance of a temporary noncovered source permit is subject to the same procedures and requirements for an initial application and issuance of a noncovered source permit, including requirements of section 11-60.1-63. The initial location of the source shall be specified.

(c) Upon issuance of the temporary noncovered source permit, the owner or operator shall submit all succeeding location changes to the director for approval at least thirty days or such lesser time as designated and approved by the director, prior to the change in location. The owner or operator shall submit sufficient information to enable the director to assess the air quality impact the temporary noncovered source may have at the new location. Information submitted shall include:

- (1) Name, address, and phone number of:
  - (A) The company;
  - (B) The facility, if different from the company;
  - (C) The owner and owner's agent; and
  - (D) The plant site manager or other contact;
- (2) Temporary noncovered source permit identification number and expiration date;
- (3) Location map of the new temporary location, identifying the surrounding commercial, industrial, and residential developments;
- (4) Projected dates of operation at the new location;
- (5) Identification of any other air pollution source at the new location; and
- (6) Certification that no modification will be made to the equipment, and operational methods will remain similar as permitted under the temporary noncovered source permit at the new location.

(d) The director shall not continue to act upon or consider a location change request, unless the following have been submitted:

- (1) All required information as identified in subsection (c);
- (2) Any additional information as requested by the director; and
- (3) Any applicable fee.

(e) Prior to any relocation, the director shall approve, conditionally approve, or deny in writing each location change. If the director denies a location change, the applicant may appeal the decision pursuant to chapter 91, HRS.

(f) With the exception of the initial location, if a source remains in any one location for longer than twelve consecutive months, the director may request an ambient air quality impact assessment of the source.

(g) At each of the authorized locations, the owner or operator shall operate in accordance with the temporary noncovered source permit and all applicable requirements. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

**§11-60.1-70 Noncovered source general permits.**

(a) The director, at the director's sole discretion may, after providing for public notice, including the method by which a hearing can be requested, and an opportunity for public comment in accordance with section 11-60.1-73, issue a noncovered source general permit for similar noncovered sources. The general noncovered source permit expiration date shall apply to all sources covered under this permit.

(b) The director shall establish criteria and conditional requirements in the noncovered source general permit by which noncovered sources may qualify for the general permit. Noncovered sources qualifying

for a noncovered source general permit shall, at a minimum, have the same Standard Industrial Classification Code, similar equipment design and air pollution controls, and the same applicable requirements. Under no circumstances shall a general permit be considered for noncovered sources requiring a case-by-case determination for air pollution control requirements (e.g. Best Available Control Technology Determination). The owner or operator of a noncovered source shall be subject to enforcement action for operating without a permit if the source is later determined not to qualify for the conditions and terms of the general permit.

(c) The owner or operator of a noncovered source requesting coverage for some or all of its emission units under the terms and conditions of the noncovered source general permit must submit an application to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application. Information submitted shall include:

- (1) Name, address, and phone number of:
  - (A) The company;
  - (B) The facility, if different from the company;
  - (C) The owner and owner's agent; and
  - (D) The plant site manager or other contact;
- (2) A description of the nature, location, design capacity, production capacity, production rates, fuels, fuel use, raw materials, and typical operating schedules to the extent needed to determine or regulate emissions; specifications and drawings showing the design of the source and plant layout; and a description of all processes and products;
- (3) If available, maximum emission rates, including fugitive emissions, of all regulated and hazardous air pollutants from each emissions unit. If applicable, biogenic CO<sub>2</sub> emissions shall be identified

and quantified separately from other biogenic and non-biogenic greenhouse gas emissions. Emission rates shall be reported in pounds per hour and tons per year and in such terms necessary to establish compliance consistent with the applicable requirements and standard reference test methods. For greenhouse gases, emission rates shall also be reported in CO<sub>2</sub>e tons per year. All supporting emission calculations and assumptions shall also be provided;

- (4) Identification and description of all points of emissions including stack parameters;
- (5) Identification and detailed description of air pollution control equipment and compliance monitoring devices or activities as planned by the owner or operator of the source, and to the extent of available information, an estimate of emissions before and after controls;
- (6) Current operational limitations or work practices, or for noncovered sources that have not yet begun operation, such limitations or practices which the owner or operator of the source plans to implement that affect emissions of any regulated or hazardous air pollutants at the source;
- (7) A schedule for construction of the noncovered source, if applicable;
- (8) All calculations and assumptions on which the information in paragraphs (2), (4), (5), and (6) is based;
- (9) If requested by the director, an assessment of the ambient air quality impact of the noncovered source. The assessment shall include all supporting data, calculations, and assumptions, and a comparison with the NAAQS and state ambient air quality standards;
- (10) If requested by the director, a risk assessment of the air quality related

impacts caused by the noncovered source to the surrounding environment;

- (11) If requested by the director, results of source emission testing, ambient air quality monitoring, or both;
- (12) If requested by the director, information on other available control technologies;
- (13) An explanation of all proposed exemptions from any applicable requirement;
- (14) A compliance plan in accordance with section 11-60.1-65; and
- (15) Other information:
  - (A) As required by any applicable requirement or as requested and deemed necessary by the director to make a decision on the application; and
  - (B) As may be necessary to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of such requirements.

(d) The director shall not continue to act upon or consider any incomplete application. An application shall be determined to be complete only when all of the following have been complied with:

- (1) All information required and requested pursuant to subsection (c) has been submitted;
- (2) All documents requiring certification have been certified pursuant to section 11-60.1-4;
- (3) All applicable fees have been submitted; and
- (4) The director has certified that the application is complete.

(e) The director shall notify the applicant in writing whether the application is complete. Unless the director requests additional information or notifies the applicant of incompleteness within sixty days of receipt of an application, the application shall be deemed complete.

(f) During the processing of an application that has been determined or deemed complete if the director

determines that additional information is necessary to evaluate or take final action on the application, the director may request such information in writing and set a reasonable deadline for a response.

(g) The director, in writing, shall approve, conditionally approve, or deny an application for coverage under a noncovered source general permit within six months after receipt of a complete application.

(h) The director may approve an application for coverage under a noncovered source general permit without repeating the public participation procedures. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

**§11-60.1-71 Transmission of information to the administrator.** (a) The director may at any time require the owner or operator of a noncovered source to submit to the Administrator a copy of any noncovered source permit application, including applications for permit renewal and permit amendment reflecting a proposed modification, compliance plan, or records required to be kept under the noncovered source permit.

(b) The department shall maintain records on all noncovered source permit applications, compliance plans, final permits, and other relevant information for a minimum of five years. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

**§11-60.1-72 Permit reopening.** (a) The director shall reopen and amend a noncovered source permit if

the director determines that any one of the following circumstances exist:

- (1) The director determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or
- (2) The permit must be terminated, suspended, or amended to assure compliance with the applicable requirements.

(b) Procedures to reopen and amend a noncovered source permit shall be the same as procedures which apply to initial permit issuance in accordance with section 11-60.1-63 and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(c) The director shall provide written notification to the permittee on the reopening of the permit indicating the basis for reopening at least thirty days prior to the reopening date, except that the director may provide a shorter time period if it is determined that immediate action on the reopening of the permit is required to prevent an imminent peril to public health and safety or the environment.

(d) If requested by the director, the owner or operator of a noncovered source shall submit a permit application or information related to the basis of the permit reopening or those provisions affected by the reopening within thirty days of receipt of the permit reopening notice. An extension for the application submittal may be granted by the director if the owner or operator can provide adequate written justification for such an extension. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)



**§11-60.1-73 Public participation.** (a) ~~[Except for administrative permit amendments, in]~~ In considering ~~[any]~~ an application for a noncovered source permit, the director~~[, at the director's sole discretion, may]~~ shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment ~~[if the director is of the opinion that public comment would aid in the director's decision.]~~ for permits that result in a net increase in emissions of any air pollutant at or above the "significant" emission rates of 11-60.1-131, paragraph (1) of the definition. The fugitive emissions of a stationary source shall not be included in determining the increase in emissions of the source for the purposes of this section, unless the source belongs to one of the categories of stationary sources listed in paragraph (2) of the definition of "major source" in section 11-60.1-1. ~~[If a public comment period is provided, any]~~ Any person requesting a public hearing shall do so during the public comment period. Any request from a person for ~~[a public comment period,]~~ a public hearing ~~[, or both]~~ shall indicate the interest of the person filing the request and the reasons why a public ~~[comment period or]~~ hearing is warranted.

(b) Procedures for public notice, public comment periods, and public hearings shall be as follows:

- (1) The director shall make available for public inspection in at least one location in the county affected by the proposed action, or in which the source is or would be located:
  - (A) Information on the subject matter;
  - (B) Information submitted by the applicant, except for that determined to be confidential pursuant to section 11-60.1-14;
  - (C) The department's analysis and proposed action; and
  - (D) Other information and documents determined to be appropriate by the department;

- (2) Notification of a public hearing shall be given at least thirty days in advance of the hearing date;
- (3) A public comment period shall be no less than thirty days following the date of the public notice, during which time interested persons may submit to the department written comments on:
  - (A) The subject matter;
  - (B) The application;
  - (C) The department's analysis;
  - (D) The proposed actions; and
  - (E) Other considerations as determined to be appropriate by the department;
- (4) Notification of a public comment period or a public hearing shall be made:
  - (A) By publication in a newspaper which is printed and issued at least twice weekly in the county affected by the proposed action, or in which the source is or would be located;
  - (B) To persons on a mailing list developed by the director, including those who request in writing to be on the list; and
  - (C) If necessary by other means to assure adequate notice to the affected public;
- (5) Notice of public comment and public hearing shall identify:
  - (A) The affected facility;
  - (B) The name and address of the permittee;
  - (C) The name and address of the agency of the department processing the permit;
  - (D) The activity or activities involved in the permit action;
  - (E) The emissions change involved in any permit amendment reflecting a modification to the noncovered source;
  - (F) The name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the

draft permit, the application, all relevant supporting materials including any compliance plan and monitoring reports, and all other materials available to the department that are relevant to the permit decision, except for information that is determined to be confidential pursuant to section 11-60.1-14;

- (G) A brief description of the comment procedures;
  - (H) The time and place of any hearing that may be held, including a statement of procedures to request a hearing if one has not already been scheduled; and
  - (I) The availability of the information listed in paragraph (1), and the location and times the information will be available for inspection; and
- (6) The director shall maintain a record of the commenters and the issues raised during the public participation process and shall provide this information to the Administrator upon request.
- [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

**§11-60.1-74 Noncovered source permit renewal applications.** (a) Every application for a noncovered source permit renewal is subject to the same requirements for an initial application of a noncovered source permit including the requirements of section 11-60.1-63. Applications shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to

enable the director to make a decision on the application. Information submitted shall include:

- (1) Name, address, and phone number of:
  - (A) The company;
  - (B) The facility, if different from the company;
  - (C) The owner and owner's agent; and
  - (D) The plant site manager or other contact;
- (2) Statement certifying that no changes have been made in the design or operation of the source as proposed in the initial and any subsequent noncovered source permit applications. If changes have occurred or are being proposed, the applicant shall provide a description of those changes such as work practices, operations, equipment design, and monitoring procedures;
- (3) A compliance plan in accordance with section 11-60.1-65; and
- (4) Other information as may be necessary:
  - (A) ~~[necessary by]~~ for the director to make a decision on the application; and
  - (B) ~~[As may be necessary]~~ to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of such requirements.

(b) Each application for permit renewal shall be submitted to the director a minimum of sixty days prior to the date of permit expiration.

(c) The director shall not continue to act upon or consider any incomplete application. An application shall be determined to be complete only when all of the following have been complied with:

- (1) All information required and requested pursuant to subsection (a) has been submitted;
- (2) All documents requiring certification have been certified pursuant to section 11-60.1-4;
- (3) All applicable fees have been submitted; and

(4) The director has certified that the application is complete.

(d) The director shall notify the applicant in writing whether the application is complete. Unless the director requests additional information or notifies the applicant of incompleteness within sixty days of receipt of an application, the application shall be deemed complete.

(e) During the processing of an application that has been determined or deemed complete if the director determines that additional information is necessary to evaluate or take final action on the application, the director may request such information in writing and set a reasonable deadline for a response. As set forth in section 11-60.1-62, the noncovered source's ability to operate and the validity of the noncovered source permit shall continue beyond the permit expiration date, until the final permit is issued or denied, provided the applicant submits all additional information within the reasonable deadline specified by the director.

(f) The director, in writing, shall approve, conditionally approve, or deny an application for renewal of a noncovered source permit, including an application for renewal requesting coverage under a noncovered source general permit, within six months after receipt of a complete application. If the application for renewal has not been approved or denied within six months after a complete application is received, the noncovered source permit and all its terms and conditions shall remain in effect and not expire until the application for renewal has been approved or denied. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; am and comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

**§11-60.1-75 Administrative permit amendment.**

(a) The director, at the director's sole discretion

or upon written request from the owner or operator of a noncovered source, may issue an administrative permit amendment.

(b) Except for a request to consolidate two or more noncovered source permits into one or to change ownership or operational control, an owner or operator requesting an administrative permit amendment may make the requested change immediately upon submittal of the request.

(c) Within sixty days of receipt of a written request for an administrative permit amendment, the director shall take final action on the request and may amend the permit without providing notice to the public. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

**§11-60.1-76 Applications for modifications.** (a)

Every application for a modification to a noncovered source shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application. Information submitted shall include:

- (1) The name, address, and phone number of:
  - (A) The company;
  - (B) The facility, if different from the company;
  - (C) The owner and owner's agent; and
  - (D) The plant site manager or other contact;
- (2) A description of the modification, identifying all proposed changes, including any changes to the source operations, work practices, equipment design, source emissions, or any monitoring, recordkeeping, and reporting procedures;

- (3) A description of the nature, location, design capacity, production capacity, production rates, fuels, fuel use, raw materials, and typical operating schedules to the extent needed to determine or regulate emissions of any proposed addition or modification of any source of emissions; specifications and drawings showing the design of the source and plant layout; a description of all processes and products; and, if reasonably anticipated, a detailed description of alternative operating scenarios;
- (4) If available, maximum emissions rates, including fugitive emissions, of all regulated and hazardous air pollutants from each emissions unit. If applicable, biogenic CO<sub>2</sub> emissions shall be identified and quantified separately from other biogenic and non-biogenic greenhouse gas emissions. Emission rates shall be reported in pounds per hour and tons per year and in such terms necessary to establish compliance consistent with the applicable requirements and standard reference test methods. For greenhouse gases, emission rates shall also be reported in CO<sub>2</sub>e tons per year. All supporting emission calculations and assumptions shall also be provided;
- (5) Identification and description of all points of emissions including stack parameters;
- (6) Identification and detailed description of air pollution control equipment and compliance monitoring devices or activities as planned by the owner or operator of the noncovered source or modification, and to the extent of available information, an estimate of emissions before and after controls;
- (7) Citation and description of all applicable requirements, and a description of or reference to any method and/or applicable

test method for determining compliance with each applicable requirement;

- ~~[(7)]~~ (8) Operational limitations or work practices which the owner or operator of the noncovered source plans to implement that affect emissions of any regulated or hazardous air pollutants at the source;
- ~~[(8)]~~ (9) A schedule for construction or modification of the noncovered source;
- ~~[(9)]~~ (10) All calculations and assumptions on which the information in paragraphs (3), (5), (6), and (7) is based;
- ~~[(10)]~~ (11) If requested by the director, an assessment of the ambient air quality impact of the noncovered source or modification. The assessment shall include all supporting data, calculations and assumptions, and a comparison with the national and state ambient air quality standards;
- ~~[(11)]~~ (12) If requested by the director, a risk assessment of the air quality related impacts caused by the noncovered source or modification to the surrounding environment;
- ~~[(12)]~~ (13) If requested by the director, results of source emission testing, ambient air quality monitoring, or both;
- ~~[(13)]~~ (14) If requested by the director, information on other available control technologies;
- ~~[(14)]~~ (15) An explanation of all proposed exemptions from any applicable requirement;
- ~~[(15)]~~ (16) A compliance plan in accordance with section 11-60.1-65; and
- ~~[(16)]~~ (17) Other information:
  - (A) As requested and deemed necessary by the director to make a decision on the application; and
  - (B) As may be necessary to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of such requirements.



(b) The director shall not continue to act upon or consider any incomplete application. An application shall be determined to be complete only when all of the following have been complied with:

- (1) All information required and requested pursuant to subsection (a) has been submitted;
- (2) All documents requiring certification have been certified pursuant to section 11-60.1-4;
- (3) All applicable fees have been submitted; and
- (4) The director has certified that the application is complete.

(c) The director shall notify the applicant in writing whether the application is complete. Unless the director requests additional information or notifies the applicant of incompleteness within sixty days of receipt of an application, the application shall be deemed complete.

(d) During the processing of an application that has been determined or deemed complete if the director determines that additional information is necessary to evaluate or take final action on the application, the director may request such information in writing and set a reasonable deadline for a response.

(e) The director, in writing, shall approve, conditionally approve, or deny an application for modification to a noncovered source within six months after receipt of a complete application. An application for modification shall be approved only if the director determines that the modification will be in compliance with all applicable requirements~~[-]~~ and will not interfere with attainment or maintenance of the NAAQS. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp ] (Auth: HRS §§342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

## SUBCHAPTER 5

### COVERED SOURCES

**§11-60.1-81 Definitions.** As used in this subchapter, unless otherwise defined for purposes of a particular section or subsection of this subchapter:

"Applicable requirement" means all of the following as they apply to emissions units in a covered source (including requirements that have been promulgated or approved by EPA through rulemaking at the time of permit issuance but have future-effective compliance dates):

- (1) Any standard or other requirement provided for in the state implementation plan approved or promulgated by EPA;
- (2) Any term or condition of any preconstruction permit issued pursuant to regulations approved or promulgated through rulemaking pursuant to Title I, including Part C of the Act;
- (3) Any standard or other requirement approved pursuant to Section 111 of the Act, including Section 111(d);
- (4) Any standard or other requirement approved pursuant to Section 112 of the Act, including any requirement concerning accident prevention approved pursuant to Section 112(r)(7) of the Act;
- (5) Any requirement approved pursuant to Section 504(b) or 114(a)(3) of the Act;
- (6) Any standard or other requirement governing solid waste incineration approved pursuant to Section 129 of the Act;
- (7) Any standard or other requirement for consumer and commercial products, approved pursuant to Section 183(e) of the Act;
- (8) Any standard or other requirement for tank vessels approved pursuant to Section 183(f) of the Act;
- (9) Any standard or other requirement of the program to control air pollution from outer

- continental shelf sources approved pursuant to Section 328 of the Act;
- (10) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone approved pursuant to Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a Title V permit;
  - (11) Any NAAQS or increment or visibility requirement approved pursuant to Part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act;
  - (12) Any NAAQS or state ambient air quality standard;
  - (13) Any standard or other requirement approved pursuant to Title I, including Part C of the Act;
  - (14) The application of best available control technology to control regulated air pollutants, but only as best available control technology would apply to new covered sources and significant modifications to covered sources that have the potential to emit or increase emissions above significant amounts considering any limitations, enforceable by the director, on the covered source to emit a pollutant; and
  - (15) Any standard or other requirement provided for in chapter 342B, HRS; this chapter; or chapter 11-59.

"Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Final covered source permit" means the version of a covered source permit issued by the director that

has completed all review procedures required by 40 CFR Parts 70.7 and 70.8.

"General permit" means a covered source permit covering numerous similar sources that meets the requirements of section 11-60.1-92.

"Minor modification" means a modification which:

- (1) Does not increase the emissions of any air pollutant above the permitted emission limits~~[+]~~ and for existing major stationary sources, does not result in a major modification as defined in section 11-60.1-131;
- (2) Does not result in or increase the emissions of any air pollutant not limited by permit to levels equal to or above~~[+]~~ the following, and for existing major stationary sources, does not result in a major modification as defined in section 11-60.1-131:
  - (A) 500 pounds per year of a hazardous air pollutant, except lead;
  - (B) 300 pounds per year of lead;
  - (C) twenty-five percent of significant amounts of emission as defined in section 11-60.1-1, paragraph (1) in the definition of "significant"; or
  - (D) two tons per year of each regulated air pollutant not already identified above;
- (3) Does not violate any applicable requirement;
- (4) Does not involve significant changes to existing monitoring requirements or any relaxation or significant change to existing reporting or recordkeeping requirements in the permit. Any change to the existing monitoring, reporting, or recordkeeping requirements that reduces the enforceability of the permit is considered a significant change;
- (5) Does not require or change a case-by-case determination of an emission limitation or other standard, a source-specific determination for temporary sources of

ambient impacts, or a visibility or increment analysis;

- (6) Does not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement, and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:
  - (A) A federally enforceable emissions cap assumed to avoid classification as a modification pursuant to any provision of Title I of the Act or subchapter 7; and
  - (B) An alternative emissions limit approved pursuant to regulations promulgated pursuant to Section 112(i)(5) of the Act or subchapter 9; and
- (7) Is not a modification pursuant to any provision of Title I of the Act.

"Modification" means a physical change in or a change in the method of operation of a stationary source which requires a change to a permit. Modification includes minor and significant modifications. Routine maintenance, repair, and replacement of parts shall not be considered a modification.

"Nonmajor covered source" means any covered source that is not a major covered source.

"Proposed covered source permit" means the version of a permit that the director proposes to issue, and forwards to EPA for review pursuant to section 11-60.1-95.

"Section 502(b)(10) changes" means changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

"Significant modification" means a modification which does not qualify as a minor modification or

administrative amendment. A significant modification shall include every significant change in existing monitoring requirements, and every relaxation of, or significant change to the existing reporting or recordkeeping requirements. Nothing herein shall be construed to preclude the permittee from making changes consistent with this part that would render existing permit compliance terms and conditions irrelevant.

"Temporary covered source" means a nonmajor covered source that is intended to be operated at multiple locations for a designated period of time at each location. The operation of the source shall be temporary and involve at least one change of location during the term of a covered source permit.

"Timely application" means:

- (1) An initial application for a covered source permit filed during the transition period, in accordance with the submittal schedule in section 11-60.1-87; or
- (2) An application for a covered source permit renewal which is submitted to the director no fewer than twelve months and no more than eighteen months prior to the permit expiration date, or the deadline as approved by the director pursuant to subsection 11-60.1-101(b).

"Transition period" means the three years following the effective date of this chapter. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp ] (Auth: HRS §§342B-1, 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70) (Imp: HRS §§342B-1, 342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)

**§11-60.1-82 Applicability.** (a) Except as provided in subsections (d), (e), and (k) and section 11-60.1-87, no person shall burn used or waste oil or

begin construction, reconstruction, modification, relocation, or operation of an emission unit or air pollution control equipment of any covered source without first obtaining a covered source permit from the director. The construction, reconstruction, modification, relocation, or operation shall continue only if the owner or operator of a covered source holds a valid covered source permit.

(b) The covered source permit shall remain valid past the expiration date and the covered source shall not be in violation for failing to have a covered source permit, until the director has issued or denied the renewal of the covered source permit, provided:

- (1) Prior to permit expiration, a timely and complete renewal application has been submitted and the owner or operator acts consistently with the permit previously granted, the application on which it was based, and all plans, specifications, and other information submitted as part of the application; and
- (2) The owner or operator has submitted to the director within the specified deadlines, all requested additional information deemed necessary to evaluate or take final action on the renewal application, as described in section 11-60.1-101(e).

(c) The covered source permit shall not constitute, nor be construed to be an approval of the design of the covered source. The covered source permit shall be issued in accordance with this chapter and it is the responsibility of the applicant to ~~[insure]~~ ensure compliance with all applicable requirements in the construction and operation of any covered source.

(d) The following are exempt from the requirements of subsection (a):

- (1) All sources and source categories that would be required to obtain a permit solely because they are subject to the "Standards of Performance for New Residential Wood Heaters," 40 CFR Section 60.530 et seq.;

- (2) All sources and source categories that would be required to obtain a permit solely because they are subject to the "Standards for Demolition and Renovation" pursuant to the "National Emission Standard for Asbestos," 40 CFR Section 61.145;
- (3) Ocean-going vessels, except for ocean-going vessels subject to any standard or other requirement for the control of air pollution from outer continental shelf sources, pursuant to 40 CFR Part 55;
- (4) Internal combustion engines propelling mobile sources such as automobiles, trucks, cranes, forklifts, front-end loaders, graders, trains, helicopters, and airplanes;
- (5) Nonroad Engines. Owners of nonroad engines, except for those exempt engines listed in subsections (f) and (g) of this section, must maintain a Nonroad Engine Location Log to demonstrate the engine meets subparagraph (1) (C) of the nonroad engine definition of Subchapter 1. The Nonroad Engine Location Log shall include:
  - (A) Owner's Name;
  - (B) Engine Manufacturer and Model;
  - (C) Engine Serial Number;
  - (D) Engine Date of Manufacture; and
  - (E) For each location to which the engine is moved, the location of the engine, initial date at the location, and the date moved off the location;
- ~~[(5)]~~ (6) Diesel fired portable ground support equipment used exclusively to start aircraft or provide temporary power or support service to aircraft prior to start-up; and
- ~~[(6)]~~ (7) Air-conditioning or ventilating systems that do not contain more than 50 pounds of any Class I or Class II ozone depleting substance regulated under Title VI of the Act and are not designed to remove air pollutants generated by or released from equipment.



(e) The owner or operator of any insignificant activity identified in subsections (f) and (g) may begin construction, reconstruction, modification, or operation of the activity without first obtaining a covered source permit, provided:

~~[(1) The insignificant activity is not by itself subject to subchapters 8 or 9;~~

~~(2)]~~ (1) The insignificant activity does not cause a noncovered stationary source to become a major source;

~~[(3)]~~ (2) The insignificant activity does not cause the stationary source to become subject to provisions of ~~[subchapters 7, 8 or 9;]~~ subchapter 7; and

~~[(4)]~~ (3) The owner or operator can demonstrate to the director's satisfaction that each activity meets the size, emission level, or production rate criteria~~[-]~~ contained in subsections (f) and (g).

The insignificant activities listed in subsection (f) shall be identified in the covered source permit application. The insignificant activities listed in subsection (g) need not be identified in the covered source permit application, unless subject to an applicable requirement. Any fuel burning equipment identified shall not include equipment burning off-spec used oil or fuel classified as hazardous waste. The director may request additional information on any insignificant activity to determine the applicability of, or to impose, any applicable requirement. Action to incorporate applicable requirements for insignificant activities into a covered source permit shall be in accordance with section 11-60.1-88.5.

(f) Insignificant activities based on size, emission level, or production rate, are as follows:

(1) Any storage tank, reservoir, or other container of capacity equal to or less than forty thousand gallons storing volatile organic compounds, except those storage tanks, reservoirs, or other containers subject to any standard or other requirement pursuant to Sections 111 and 112 of the Act;

- (2) Other than smoke house generators and gasoline fired industrial equipment, fuel burning equipment with a heat input capacity less than one million BTU per hour, or a combination of fuel burning equipment operated simultaneously as a single unit having a total combined heat input capacity of less than one million BTU per hour;
- (3) Steam generators, steam superheaters, water boilers, or water heaters, all of which have a heat input capacity of less than five million BTU per hour, and are fired exclusively with one of the following:
  - (A) Natural or synthetic gas;
  - (B) Liquified petroleum gas; or
  - (C) A combination of natural, synthetic, or liquified petroleum gas;
- (4) Kilns used for firing ceramic ware heated exclusively by natural gas, electricity, liquid petroleum gas, or any combination of these and have a heat input capacity of five million BTU per hour or less;
- (5) Standby generators used exclusively to provide electricity, standby sewage pump drives, and other emergency equipment used to protect the health and welfare of personnel and the public, all of which are used only during power outages, emergency equipment maintenance and testing, and which:
  - (A) Are fired exclusively by natural or synthetic gas; or liquified petroleum gas; or fuel oil No. 1 or No. 2; or diesel fuel oil No. 1D or No. 2D; and
  - (B) Do not trigger a Prevention of Significant Deterioration (PSD) or covered source review, based on their potential to emit regulated or hazardous air pollutants;
- (6) Paint spray booths that emit less than emission levels specified in paragraph 7 below, except for paint spray booths subject

- to any standard or other requirement pursuant to Section 112(d) of the Act; and
- (7) Other activities which emit less than:
    - (A) 500 pounds per year of a hazardous air pollutant, except lead;
    - (B) 300 pounds per year of lead;
    - (C) five tons per year of carbon monoxide;
    - (D) 3,500 tons per year CO<sub>2</sub>e of greenhouses gases; and
    - (E) two tons per year of each regulated air pollutant not already identified above; and which the director determines to be insignificant on a case-by-case basis.
  - (g) Insignificant activities in addition to those listed in subsection (f) are:
    - (1) Welding booths;
    - (2) Hand held equipment used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, surface grinding, or turning of ceramic art work, precision parts, leather, metals, plastics, fiber board, masonry, carbon, glass, or wood, provided reasonable precautions are taken to prevent particulate matter from becoming airborne. Reasonable precautions include the use of dust collection systems, dust barriers, or containment systems;
    - (3) Laboratory equipment used exclusively for chemical and physical analyses;
    - (4) Containers, reservoirs, or tanks used exclusively for dipping operations for coating objects with oils, waxes, or greases where no organic solvents, diluents, or thinners are used; or dipping operations for applying coatings of natural or synthetic resins which contain no organic solvents;
    - (5) Closed tumblers used for cleaning or deburring metal products without abrasive blasting, and pen tumblers with batch capacity of one thousand pounds or less;
    - (6) Fire water system pump engines dedicated for fire-fighting and maintaining fire water

system pressure, which are operated only during fire fighting and periodically for engine maintenance, and fired exclusively by natural or synthetic gas; or liquified petroleum gas; or fuel oil No. 1 or No. 2; or diesel fuel No. 1D or No. 2D;

- (7) Smoke generating systems used exclusively for training in government or certified fire fighting training facilities;
- (8) Gasoline fired portable industrial equipment less than 25 horsepower in size;
- (9) Plant maintenance and upkeep activities (e.g., grounds-keeping, general repairs, cleaning, painting, welding, plumbing, re-tarring roofs, installing insulation, and paving parking lots), including equipment used to conduct these activities, provided these activities are not conducted as part of a manufacturing process, are not related to the source's primary business activity, and are not otherwise subject to an applicable requirement triggering a permit modification;
- (10) Fuel burning equipment which is used in a private dwelling or for space heating, other than internal combustion engines, boilers, or hot furnaces;
- (11) Ovens, stoves, and grills used solely for the purpose of preparing food for human consumption operated in private dwellings, restaurants, or stores;
- (12) Stacks or vents to prevent escape of sewer gases through plumbing traps;
- (13) Consumer use of office equipment and products; and
- (14) Woodworking shops with a sawdust collection system.

(h) The prevention of significant deterioration review requirements of subchapter 7 for new major stationary sources and major modifications are additional requirements for considering an application for a covered source permit. In the event any

requirement of subchapter 7 is in conflict with the requirements of this subchapter, the most stringent requirement shall apply.

(i) Any covered source permit, including temporary and general covered source permits, permit renewals, or permit amendments for a modification may be issued only if all of the following conditions are met:

- (1) The owner or operator has submitted a complete covered source permit application;
- (2) Except for minor modifications and administrative amendments, the director has provided for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment on the draft covered source permit in accordance with section 11-60.1-99;
- (3) The permit provides for compliance with all applicable requirements and contains the applicable terms and conditions pursuant to 11-60.1-90; and
- (4) The requirements for transmission of information to EPA and EPA oversight have been satisfied pursuant to sections 11-60.1-94 and 11-60.1-95.

(j) An owner or operator of a stationary source that is not subject to the requirements of subchapter 5 and that becomes subject to the requirements of subchapter 5, or becomes subject to additional requirements of subchapter 5, pursuant to a new or amended regulation under Section 111 or 112 of the Act, HRS chapter 342B, or this chapter shall submit a complete and timely covered source permit application to address the new requirements. For purposes of this subsection, "timely" means:

- (1) by the date required under subchapter 8 or 9 of this chapter, or the applicable federal regulation, whichever deadline is earlier; or
- (2) within twelve months after the effective date of the new or amended regulation, if not specified in the applicable regulation.

The owner or operator of the source may continue to construct or operate and shall not be in violation for failing to have a covered source permit addressing the new requirements only if the owner or operator has submitted to the director a complete and timely covered source permit application, and any additional information that the director deems necessary to evaluate or take final action on the application, including additional information required pursuant to sections 11-60.1-83(d) and 11-60.1-84.

(k) The director, upon written request and submittal of adequate support information from the owner or operator of a covered source, may provide written approval of the following activities to proceed without prior issuance or amendment of a covered source permit. Under no circumstances will these activities be approved if the activity interferes with the imposition of any applicable requirement or the determination of whether a stationary source is subject to any applicable requirement.

- (1) Installation and operation of air pollution control devices. The director may allow the installation and operation of an air pollution control device prior to issuing a covered source permit or amendment to a covered source permit if the owner or operator of the source can demonstrate that the control device reduces the amount of emissions previously emitted, does not emit any new air pollutants, and does not adversely affect the ambient air quality impact assessment. The owner or operator of the covered source shall submit with the written request, a complete covered source permit application to install and operate the air pollution control device. The application shall include the proposed operating parameters, including any parametric monitoring to ensure that the control device is operating properly.

- (2) Test burns. The director may allow an owner or operator of a covered source to test alternate fuels not allowed by permit if the following conditions are met:
- (A) The test burn period does not exceed one week, unless the director, upon reasonable justification, approves a longer period, not to exceed three months;
  - (B) The purpose of the test burn is to establish emission rates, to determine if alternate fuels are feasible with the existing covered source facility, or as an investigative measure to research the operational characteristics of a fuel;
  - (C) A stack performance test, a pre-approved monitoring program, or both, if requested by the director, are conducted during the test burn to record and verify emissions;
  - (D) The owner or operator of the covered source provides emission estimates of the test burn and demonstrates that no violation of the NAAQS and state ambient air quality standards will occur;
  - (E) The owner or operator of the covered source demonstrates that the use of the alternate fuel is allowed or not restricted by any applicable requirement, other than the permit condition(s) restricting the alternate fuel use; and
  - (F) If a performance test or monitoring is required, the owner or operator of the covered source provides written test or monitoring results within sixty days of the completion of the test burn or such other time as approved by the director. The results shall include the operational parameters of the covered

source at the time of the test burn,  
and any other significant factors that  
affected the test or monitoring  
results.

If the director approves the test burn, the  
director may set operational limitations or  
other conditions for the test burn.  
Deviations from those limits or conditions  
shall be considered a violation of this  
chapter. [Eff 11/26/93; comp 10/26/98; am  
and comp 9/15/01; am and comp 11/14/03; comp  
1/13/12; am and comp 6/30/14; am and comp  
] (Auth: HRS §§342B-  
3, 342B-12, 342B-22, 342B-71, 342B-72, 342B-  
73; 42 U.S.C. §§7407, 7416, 7661a, 7661b; 40  
C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-  
12, 342B-22; 42 U.S.C. §§7407, 7416, 7661A,  
7661B; 40 C.F.R. Part 70)

**§11-60.1-83 Initial covered source permit  
application.** (a) Every application for an initial  
covered source permit shall be submitted to the  
director on forms furnished by the director. The  
applicant shall submit sufficient information to  
enable the director to make a decision on the  
application and to determine the fee requirements  
specified in subchapter 6. Information submitted  
shall include:

- (1) Name, address, and phone number of:
  - (A) The company;
  - (B) The facility, if different from the  
company;
  - (C) The owner and owner's agent; and
  - (D) The plant site manager or other  
contact;
- (2) A description of the nature, location,  
design capacity, production capacity,  
production rates, fuels, fuel use, raw  
materials, and typical operating schedules  
and capacities to the extent needed to



determine or regulate emissions;  
specifications and drawings showing the design of the source and plant layout; a detailed description of all processes and products by Standard Industrial Classification Code and source category or categories (as defined in section 11-60.1-171); reasonably anticipated alternative operating scenarios, and processes and products by Standard Industrial Classification Code and source category or categories (as defined in section 11-60.1-171) associated with each alternative operating scenario;

- (3) Information to define permit terms and conditions for any proposed emissions trading within the facility pursuant to section 11-60.1-96;
- (4) Maximum emission rates, including fugitive emissions, of all regulated and hazardous air pollutants and all air pollutants for which the source is major from each emissions unit. If applicable, biogenic CO<sub>2</sub> emissions shall be identified and quantified separately from other biogenic and non-biogenic greenhouse gas emissions. Emission rates shall be reported in pounds per hour and tons per year and in such terms necessary to establish compliance consistent with the applicable requirements and standard reference test methods. For GHGs, emission rates shall also be reported in CO<sub>2</sub>e tons per year. All supporting emission calculations and assumptions shall also be provided;
- (5) Identification and description of all points of emissions in sufficient detail to establish the basis for fees and applicability of requirements of this chapter and the Act. Information on stack parameters and any stack height limitations

- developed pursuant to Section 123 of the Act shall also be provided;
- (6) Identification and detailed description of air pollution control equipment and compliance monitoring devices or activities as planned by the owner or operator of the source, and to the extent of available information, an estimate of maximum and expected emissions before and after controls, technical information on the design, operation, size, estimated control efficiency, manufacturer's name, address, telephone number, and relevant specifications and drawings;
  - (7) Citation and description of all applicable requirements, and a description of or reference to any method and/or applicable test method for determining compliance with each applicable requirement;
  - (8) Current operational limitations or work practices, or for covered sources that have not yet begun operation, such limitations or practices which the owner or operator of the source plans to implement that affect emissions of any regulated or hazardous air pollutants at the source. For sources subject to an Equivalent Maximum Achievable Control Technology limitation pursuant to section 11-60.1-175, a proposed emission limitation consistent with the requirements set forth in section 11-60.1-175;
  - (9) All calculations and assumptions on which the information in paragraphs (2), (4), (5), (6), and (8) is based;
  - (10) A detailed schedule for construction or reconstruction of the source or modification, if applicable;
  - (11) For existing covered sources, an assessment of the ambient air quality impact of the covered source. The assessment shall include all supporting data, calculations and assumptions, and a comparison with the

NAAQS and state ambient air quality standards;

- (12) For new covered sources, and significant modifications which increase the emissions of any air pollutant or result in the emission of any air pollutant not previously emitted, an assessment of the ambient air quality impact of the covered source or significant modification, with the inclusion of any available background air quality data. The assessment shall include all supporting data, calculations and assumptions, and a comparison with the NAAQS and state ambient air quality standards;
- (13) For new covered sources or significant modifications subject to the requirements of subchapter 7, all analyses, assessments, monitoring, and other application requirements of subchapter 7;
- (14) If requested by the director, a risk assessment of the air quality related impacts caused by the covered source or significant modification to the surrounding environment;
- (15) If requested by the director, results of source emission testing, ambient air quality monitoring, or both;
- (16) If requested by the director, information on other available control technologies and associated analysis;
- (17) An explanation of all proposed exemptions from any applicable requirement;
- (18) A list of insignificant activities pursuant to section 11-60.1-82(e) to (g);
- (19) A compliance plan in accordance with section 11-60.1-85;
- (20) A source compliance certification in accordance with section 11-60.1-86; and
- (21) Other information:
  - (A) As required by any applicable requirement or as requested and deemed

necessary by the director to make a decision on the application; and

- (B) As may be necessary to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of such requirements.

(b) The director shall not continue to act upon or consider any incomplete application. An application shall be determined to be complete only when all of the following have been complied with:

- (1) All information required or requested pursuant to subsection (a) has been submitted;
- (2) All documents requiring certification have been certified pursuant to section 11-60.1-4;
- (3) All applicable fees have been submitted; and
- (4) The director has certified that the application is complete.

(c) The director shall notify the applicant in writing whether the application is complete:

- (1) For the requirements of subchapter 7, thirty days after receipt of the application; and
- (2) For the requirements of subchapter 5, sixty days after receipt of the application. For purposes of this paragraph, the date of receipt of an application for a new covered source or significant modification subject to the requirements of subchapter 7 shall be the date the application is determined to be complete for the requirements of subchapter 7.

Unless the director requests additional information or notifies the applicant of incompleteness within sixty days after receipt of an application pursuant to paragraph (c)(2), the application shall be deemed complete for the requirements of subchapter 5.

(d) During the processing of an application that has been determined or deemed complete if the director determines that additional information is necessary to evaluate or take final action on the application, the

director may request such information in writing and set a reasonable deadline for a response.

(e) Except as provided in section 11-60.1-88 and subsections (f) and (g), the director, in writing, shall approve, conditionally approve, or deny an application for a covered source permit within eighteen months after receipt of a complete application.

(f) The director, in writing, shall approve, conditionally approve, or deny an application containing an early reduction demonstration pursuant to section 112(i)(5) of the Act~~[, and upon program approval,]~~ within nine months after receipt of a complete application.

(g) The director, in writing, shall approve, conditionally approve, or deny an application for a new covered source or significant modification subject to the requirements of subchapter 7 within twelve months after receipt of a complete application.

(h) A covered source permit application for a new covered source or a significant modification shall be approved only if the director determines that the construction or operation of the new covered source or significant modification will be in compliance with all applicable requirements~~[.]~~ and will not interfere with attainment or maintenance of a NAAQS.

(i) The director shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment on the draft covered source permit in accordance with section 11-60.1-99.

(j) The director shall provide a statement that sets forth the legal and factual bases for the draft permit conditions (including references to the applicable statutory or regulatory provisions) to EPA and any other person requesting it.

(k) Each application and proposed covered source permit shall be subject to EPA oversight in accordance with section 11-60.1-95. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp

] (Auth: HRS §§342B-3, 342B-12, 342B-23, 342B-24, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-23, 342B-24; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661d; 40 C.F.R. Part 70)

**§11-60.1-84 Duty to supplement or correct permit applications.** Any applicant for a covered source permit who fails to submit any relevant facts or who has submitted incorrect information in any permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to the release of a draft permit. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)

**§11-60.1-85 Compliance plan.** (a) A compliance plan shall be submitted with every initial application for a covered source, temporary covered source, and general covered source permit, application for a covered source permit renewal, and application for a significant modification to a covered source, and at such other times as requested by the director.

(b) The owner or operator of a covered source shall submit to the director for approval a compliance plan which includes at a minimum the following information:

- (1) A description of the compliance status of the existing covered source or proposed

- source with respect to all the applicable requirements; and
- (2) The following statement or description and compliance schedule, as applicable:
- (A) For applicable requirements with which the source is in compliance, a statement that the source is in compliance and will continue to comply with such requirements;
  - (B) For applicable requirements which become applicable during the permit term, a statement that the source on a timely basis will meet all such applicable requirements. The statement shall include documentation on the proposed method the owner or operator plans to initiate to obtain compliance; and a compliance schedule demonstrating that the source will meet such applicable requirement by the date specified in the applicable requirement. A detailed schedule shall be provided if required by the applicable requirement; or
  - (C) For applicable requirements with which the source is not in compliance, a narrative description of how the source will achieve compliance with all such applicable requirements; and a detailed compliance schedule containing specific milestones of remedial measures to obtain compliance, allowing for an enforceable sequence of actions. Any compliance schedule shall resemble and shall be at least as stringent as any judicial consent decree or administrative order that applies to the source. The schedule shall supplement and shall not sanction noncompliance with the applicable requirements on which the schedule is based.

(c) If a compliance plan is to remedy a violation, a progress report certified pursuant to section 11-60.1-4 shall be submitted to the director no less frequently than every six months and shall include:

- (1) Dates for achieving the activities, milestones, or compliance, and dates when such activities, milestones, or compliance were achieved; and
- (2) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ]  
(Auth: HRS §§342B-3, 342B-12, 342B-23; 42 U.S.C. §§7407, 7416, 7661a, 7661b; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-23; 42 U.S.C. §§7407, 7416, 7661a, 7661b; 40 C.F.R. Part 70)

**§11-60.1-86 Compliance certification of covered sources.** (a) A compliance certification shall be submitted with every initial application for a covered source, temporary covered source, and general covered source permit, application for any covered source permit renewal, and application for a significant modification to a covered source, and at such other times as requested by the director. The responsible official of a covered source shall submit to the director and the Administrator a compliance certification which includes at a minimum the following information:

- (1) A detailed description of the methods to be used in determining compliance with all applicable requirements, including any monitoring, recordkeeping, and reporting requirements and test methods;
- (2) A schedule for submission of compliance certifications during the permit term; and



- (3) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements, including the requirements of Section 114(a)(3) of the Act or any applicable monitoring and analysis provisions of Section 504(b) of the Act.

(b) During the permit term, the responsible official of a covered source shall also submit to the director and the Administrator at least annually, or more frequently as set by any applicable requirement, a compliance certification which includes at a minimum the following information:

- (1) The identification of each term or condition of the permit that is the basis of the certification;
- (2) The compliance status;
- (3) Whether compliance was continuous or intermittent;
- (4) The methods used for determining the compliance status of the source currently and over the reporting period;
- (5) Any additional information indicating the source's compliance status with any applicable enhanced monitoring and compliance certification including the requirements of Section 114(a)(3) of the Act or any applicable monitoring and analysis provisions of Section 504(b) of the Act; and
- (6) Any additional information as required by the director including information to determine compliance.

(c) The responsible official, in submitting a compliance certification for insignificant activities, may certify compliance if:

- (1) There were no observed, documented, or known instances of noncompliance during the reporting period where a permit does not require testing, monitoring, recordkeeping, or reporting; or
- (2) The testing, monitoring, or recordkeeping required by permit revealed no violations,

and there were no observed, documented, or known instances of noncompliance during the reporting period.

(d) The compliance certification may reference information contained in a previous compliance certification submittal to the director, provided such referenced information has been certified as being current and still applicable.

(e) Notwithstanding the provisions of subsection (b), a compliance certification may be submitted once per year, or more frequently as set by any applicable requirement, if allowed by state statute. Other than the change in the submission period, this subsection does not affect any other requirement of subsection (b). [Eff 11/26/93; comp 10/26/98; comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12, 342B-33; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-33; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661d; 40 C.F.R. Part 70)

**§11-60.1-87 Transition period.** (a) During the transition period, all owners or operators of an existing covered source shall submit to the director a complete initial covered source permit application according to the submission schedule in subsection (f).

(b) During the transition period, the owner or operator of a covered source who has applied for but has not received an authority to construct permit pursuant to repealed chapter 11-60 shall submit to the director a complete and timely covered source permit application (less any authority to construct application fee previously submitted). A covered source permit for the emission unit subject to the authority to construct permit application must be obtained prior to commencement of construction, modification, relocation, or operation.

(c) During the transition period, the owner or operator of a covered source in existence prior to March 21, 1972, or a covered source that has been exempt pursuant to repealed chapter 11-60, may continue to operate and shall not be in violation for failing to have a covered source permit, only if the owner or operator has submitted to the director a complete and timely covered source permit application, and any additional information necessary for the processing of the application, including the additional information specified in section 11-60.1-83(d). The owner or operator shall continue to operate in accordance with any applicable laws, regulations, or rules until the covered source permit is issued or denied.

(d) Except as provided in subsection (e), if an authority to construct or permit to operate expires prior to the issuance of the covered source permit, the owner or operator may continue to construct or operate only if the owner or operator has submitted to the director a complete and timely covered source permit application, and any additional information necessary for the processing of the application, including the additional information specified in section 11-60.1-83(d). The authority to construct or permit to operate shall continue to be in effect until the covered source permit is issued or denied, provided the owner or operator constructs or operates in accordance with the authority to construct or permit to operate, section 11-60.1-9, and any applicable laws, regulations, or rules in effect at the time of issuance of the authority to construct or permit to operate. Noncompliance with any condition of the authority to construct or permit to operate is considered a violation of this chapter.

(e) In the event an authority to construct or permit to operate expires prior to the required submission date for the initial application:

- (1) The owner or operator may continue construction or operation for the submittal period, provided the owner or operator constructs or operates in accordance with

the expired authority to construct or permit to operate, section 11-60.1-9, and any applicable laws, regulations, or rules in effect at the time of issuance of the authority to construct or permit to operate; and

- (2) The owner or operator of the covered source may continue to construct or operate after the required submission date, provided the owner or operator meets the requirements of section 11-60.1-9 and has submitted to the director a complete and timely covered source permit application, and any additional information necessary for the processing of the application, including the additional information specified in section 11-60.1-83(d).

The authority to construct or permit to operate shall continue to be in effect until the covered source permit is issued or denied, provided the owner or operator constructs or operates in accordance with the authority to construct or permit to operate, section 11-60.1-9, and any applicable laws, regulations, or rules in effect at the time of issuance of the authority to construct or permit to operate. Noncompliance with any condition of the authority to construct or permit to operate is considered a violation of this chapter.

(f) All existing covered sources shall submit an initial covered source permit application according to the following submission schedule:

<u>SICC</u>	<u>Type of Covered Source</u>	<u>Number of months from effective date of this chapter when submission is due</u>
14	Mining and quarrying of nonmetallic minerals, except fuels	Four months
32	Manufacturing stone, clay, glass, and concrete products	Four months
2951	Asphalt paving mixtures and blocks	Four months
2952	Asphalt felts and coatings	Four months
01	Agricultural production	Six months
07	Agricultural services	Six months
49	Electric, gas, and sanitary services	Eight months
	All others	Ten months

The director, upon written request from the owner or operator of a covered source, may extend the application submittal deadline if the director determines that reasonable justification exists for the extension. The written request for an extension shall be submitted at least thirty days prior to the required submission date and shall include the following information:

- (1) Justification for the extension, including a showing that reasonable effort and resources have been and are being utilized in the preparation of the application;
- (2) Description of the problems being encountered and the reasons for any delays

- in meeting the application submittal deadline;
- (3) The current status of the covered source permit application; and
- (4) The projected completion date of the covered source application.

If the director disapproves an extension for initial application submittal, the owner or operator shall meet the scheduled submission date. Under no circumstances shall the deadline for submitting an initial covered source application be extended beyond twelve months from the effective date of this chapter.

(g) All covered source permit applications, compliance plans, compliance certifications, and filing fees shall be submitted in accordance with sections 11-60.1-83, 11-60.1-85, and 11-60.1-86 and subchapter 6. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12, 342B-29, 342B-33; 42 U.S.C. §§7407, 7416, 7661a, 7661b; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-29, 342B-33; 42 U.S.C. §§7407, 7416, 7661a, 7661b; 40 C.F.R. Part 70)

**§11-60.1-88 Action on applications submitted within one year of the effective date of this chapter.** Except for applications for a new covered source or significant modification subject to the requirements of subchapter 7, during the transition period, the director shall approve, conditionally approve, or deny, annually, at least one-third of all complete covered source permit applications submitted within one year from the effective date of this chapter. The director, in writing, shall approve, conditionally approve, or deny an application for a new covered source or significant modification subject to the requirements of subchapter 7 within twelve months after receipt of a complete application. The director may prioritize the action on the applications

submitted. At a minimum, the director shall provide for reasonable procedures and resources to assign priority to applications for any new construction or significant modification of a covered source. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ]  
(Auth: HRS §§342B-3, 342B-12, 342B-24; 42 U.S.C. §§7407, 7416, 7661a, 7661b; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-24; 42 U.S.C. §§7407, 7416, 7661a, 7661b; 40 C.F.R. Part 70)

**§11-60.1-88.5 Permit action on insignificant activities.** The director shall incorporate applicable requirements (if not already incorporated) for insignificant activities into the covered source permit as follows:

- (1) For insignificant activities already identified in a covered source permit application as of the effective date of this section, the director shall incorporate all applicable requirements for insignificant activities at the time of permit renewal;
- (2) For insignificant activities identified in a covered source permit application (e.g. for an initial permit, a minor or significant modification, or permit renewal) on or after the effective date of this section, the director shall incorporate the applicable requirements for insignificant activities at the time of permit issuance; or
- (3) For insignificant activities identified separately as an addendum to a covered source permit application on or after the effective date of this section, the director may incorporate the applicable requirements for insignificant activities by administrative permit amendment, or at the earliest date a permit action for either a minor or significant modification, or permit

renewal is required. [Eff and comp  
11/14/03; comp 1/13/12; comp 6/30/14; comp  
] (Auth: HRS §§342B-3,  
342B-12; 40 C.F.R. Part 70) (Imp: §§342B-3,  
342B-12; 40 C.F.R. Part 70)

**§11-60.1-89 Permit term.** (a) A covered source permit shall be issued for a fixed term of five years unless the owner or operator of the covered source requests a shorter term.

(b) A covered source permit shall be renewed for a fixed term of five years unless the owner or operator of the covered source requests a shorter term. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp  
] (Auth: HRS §§342B-3, 342B-12, 342B-21, 342B-25; 42 U.S.C. §§7407, 7416, 7661a; 42 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-21, 342B-25; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)

Historical note: §11-60.1-89 is based substantially upon §11-60-48. [Eff 11/29/82; am, ren §11-60-36 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

**§11-60.1-90 Permit content.** The director shall consider and incorporate the following elements into all covered source permits, as applicable:

- (1) Emission limitations and standards, including operational requirements and limitations to assure compliance with all applicable requirements at the time of permit issuance;
- (2) Requirements regarding fugitive emissions regardless of whether the source category in question is included in the list of sources contained in the definition of "major source";



- (3) The origin of and authority for each term or condition and any differences in form as compared to the applicable requirement upon which the term or condition is based;
- (4) Permit term pursuant to section 11-60.1-89;
- (5) Requirements for the installation of devices, at the expense of the owner or operator, for the measurement or analysis of source emissions or ambient concentrations of air pollutants;
- (6) The requirement for source emissions tests or alternative methodology to determine compliance with the terms and conditions of the covered source permit, and applicable requirements. Source emission tests conducted or alternative methodology used shall be at the expense of the owner or operator;
- (7) All monitoring and related recordkeeping and reporting requirements to assure compliance with all terms and conditions of the permit. Each covered source permit shall address the following with respect to monitoring, recordkeeping, and reporting:
  - (A) All reporting, emissions monitoring and analysis procedures, or test methods, required pursuant to the applicable requirements, including any procedures or methods promulgated pursuant to Section 114(a)(3) or 504(b) of the Act;
  - (B) If the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, periodic monitoring or recordkeeping sufficient to yield reliable data from the relevant time period that is representative of the source's compliance with the permit. Use of terms, test methods, units, averaging periods, and other statistical conventions used for these

- requirements shall be consistent with applicable requirements;
- (C) Monitoring results expressed in units, averaging periods, and other statistical conventions consistent with the applicable requirements;
  - (D) Requirements concerning the use, maintenance, and installation of monitoring equipment. The installation, operation, and maintenance of the monitoring equipment shall be at the expense of the owner or operator;
  - (E) Appropriate monitoring methods;
  - (F) Monitoring records including:
    - (i) Place as defined in the permit, date, and time of sampling or measurements;
    - (ii) Dates the analyses were performed;
    - (iii) The name and address of the company or entity that performed the analyses;
    - (iv) Analytical techniques or methods used;
    - (v) Analyses results; and
    - (vi) Operating conditions during the time of sampling or measurement;
  - (G) Other records including support information, such as calibration and maintenance records, original stripchart recordings or computer printouts for continuous monitoring instrumentation, and all other reports required by the director;
  - (H) A requirement for the retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all

- original stripchart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit;
- (I) A requirement for submission of reports of any required monitoring at least every six months. Deviations from the permit requirements shall be clearly identified and addressed in these reports;
  - (J) A requirement for prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The term "prompt" shall be delineated on a permit-by-permit basis in relation to the degree and type of deviation likely to occur and the applicable requirements; and
  - (K) Provisions for the owner or operator to annually report in writing, emissions of hazardous air pollutants;
- (8) If requested by the owner or operator of a covered source, terms and conditions to allow emissions trading within the facility pursuant to section 11-60.1-96, including provisions to insure compliance with all applicable requirements, and requiring the owner or operator to provide a minimum seven-day advance written notification to the Administrator and director prior to any proposed emissions trading;
- (9) Terms and conditions for reasonably anticipated operating scenarios identified by the source in the covered source permit application as approved by the director. Such terms and conditions shall include:
- (A) A requirement that the owner or operator, contemporaneously with making

- a change from one operating scenario to another, record in a log at the permitted facility the scenario under which it is operating and, if required by any applicable requirement or the director, submit written notification to the director; and
- (B) Provisions to ensure that the terms and conditions under each alternative scenario meet all applicable requirements;
- (10) General provisions including:
- (A) A statement that the owner or operator shall comply with all the terms and conditions of the covered source permit and that any permit noncompliance constitutes a violation of this chapter and the Act and is grounds for enforcement action; for permit termination, suspension, reopening, or amendment; or for denial of a permit renewal application;
  - (B) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit;
  - (C) A statement that it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the terms and conditions of the permit;
  - (D) A statement that the permit may be terminated, suspended, reopened, or amended for cause pursuant to sections 11-60.1-10 and 11-60.1-98, and section 342B-27, HRS. The filing of a request by the permittee for a permit termination, suspension, reopening, or amendment, or of a notification of planned changes or anticipated

noncompliance does not stay any permit condition;

- (E) A statement that the permit does not convey any property rights of any sort, or any exclusive privilege;
- (F) A provision that, if construction is not commenced, continued or completed in accordance with section 11-60.1-9, the covered source permit for the subject emission unit shall become invalid;
- (G) A provision that the owner or operator shall notify the director in writing of the anticipated date of initial start-up for each emission unit of a new covered source or significant modification not more than sixty days or less than thirty days prior to such date. The director shall also be notified in writing of the actual date of construction commencement and start-up within fifteen days after these dates;
- (H) A statement that the owner or operator shall furnish in a timely manner any information or records requested in writing by the department to determine whether cause exists for terminating, suspending, reopening, or amending the permit, or to determine compliance with the permit. Upon request, the permittee shall also furnish to the department copies of records required to be kept by the permit. For information claimed to be confidential, the director may require the permittee to furnish such records not only to the department but also directly to the Administrator along with a claim of confidentiality;
- (I) A requirement that a copy of applicable correspondence or records submitted to

the department be provided to the Administrator;

- (J) A provision for the designation of confidentiality of any records pursuant to section 11-60.1-14;
- (K) A requirement that the owner or operator shall submit fees in accordance with subchapter 6;
- (L) Certification requirements pursuant to section 11-60.1-4; ~~and~~
- (M) A requirement that the owner or operator allow the director or an authorized representative, upon presentation of credentials or other documents required by law:
  - (i) To enter the owner or operator's premises where a source is located or emission-related activity is conducted, or where records must be kept under the conditions of the permit and inspect at reasonable times all facilities, equipment, including monitoring and air pollution control equipment, practices, operations, or records covered under the terms and conditions of the permit and request copies of records or copy records required by the permit; and
  - (ii) To sample or monitor at reasonable times substances or parameters to assure compliance with the permit or applicable requirements; and
- (N) A requirement that at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air

pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the director which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

- (11) Compliance plan and compliance certification submittal requirements pursuant to sections 11-60.1-85 and 11-60.1-86; and
- (12) Any other provision to assure compliance with all applicable requirements. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp ]  
(Auth: HRS §§342B-3, 342B-12, 342B-28, 342B-29, 342B-31, 342B-33, 342B-41; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661c; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-28, 342B-29, 342B-31, 342B-33, 342B-41; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661c; 40 C.F.R. Part 70)

**§11-60.1-91 Temporary covered source permits.**

(a) An owner or operator of a temporary covered source may apply for a temporary covered source permit. The owner or operator of the temporary covered source shall certify its intention to operate at various locations with the same equipment and similar operational methods.

(b) The application and issuance of a temporary covered source permit is subject to the same procedures and requirements for an initial application and issuance of a covered source permit, including the requirements of section 11-60.1-83. The initial location of the source shall be specified.

(c) On the draft temporary covered source permit, the director shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment in accordance with section 11-60.1-99. Each notification shall identify the intent to operate at various locations.

(d) The director shall provide a statement that sets forth the legal and factual bases for the draft temporary covered source permit conditions (including references to the applicable statutory or regulatory provisions) to EPA and any other person requesting it.

(e) Each application and proposed temporary covered source permit shall be subject to EPA oversight in accordance with section 11-60.1-95.

(f) Upon issuance of the temporary covered source permit, the owner or operator shall submit all succeeding location changes to the director for approval at least thirty days or such lesser time as designated and approved by the director, prior to the change in location. The owner or operator shall submit sufficient information to enable the director to assess the air quality impact the temporary covered source may have at the new location. Information submitted shall include:

- (1) Name, address, and phone number of:
  - (A) The company;
  - (B) The facility, if different from the company;
  - (C) The owner and owner's agent; and
  - (D) The plant site manager or other contact;
- (2) Temporary covered source permit identification number and expiration date;
- (3) Location map of the new temporary location, identifying the surrounding commercial, industrial, and residential developments;
- (4) Projected dates of operation at the new location;
- (5) Identification of any other air pollution source at the new location; and



- (6) Certification that no modification will be made to the equipment, and operational methods will remain similar as permitted under the temporary covered source permit at the new location.
- (g) The director shall not continue to act upon or consider a location change request, unless the following have been submitted:
  - (1) All required information as identified in subsection (f);
  - (2) Any additional information as requested by the director; and
  - (3) Any applicable fee.
- (h) Prior to any relocation, the director shall approve, conditionally approve, or deny in writing each location change. If the director denies a location change, the applicant may appeal the decision pursuant to chapter 91, HRS.
- (i) With the exception of the initial location, if a source remains in any one location for longer than twelve consecutive months, the director may request an ambient air quality impact assessment of the source.
- (j) At each of the authorized locations, the owner or operator shall operate in accordance with the temporary covered source permit and all applicable requirements. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12, 342B-23, 342B-24, 342B-25, 342B-26, 342B-29; 42 U.S.C. §§7407, 7416, 7661a, 7661c, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-23, 342B-24, 342B-25, 342B-26, 342B-29; 42 U.S.C. §§7407, 7416, 7661a, 7661c, 7661d; 40 C.F.R. Part 70

**§11-60.1-92 Covered source general permits.** (a) The director, at the director's sole discretion may, after providing for public notice, including the method by which a hearing can be requested, and an opportunity for public comment in accordance with

section 11-60.1-99, issue a covered source general permit for similar nonmajor covered sources. The general covered source permit expiration date shall apply to all sources covered under this permit.

(b) The director shall establish criteria and conditional requirements in the covered source general permit by which nonmajor covered sources may qualify for the general permit. Nonmajor covered sources qualifying for a covered source general permit shall, at a minimum, have the same Standard Industrial Classification Code, similar equipment design and air pollution controls, and the same applicable requirements. Under no circumstances shall a general permit be considered for nonmajor covered sources requiring a case-by-case determination for air pollution control requirements (e.g. Best Available Control Technology Determination). The owner or operator of a covered source shall be subject to enforcement action for operating without a permit if the source is later determined not to qualify for the conditions and terms of the general permit.

(c) The owner or operator of a nonmajor covered source requesting coverage for some or all of its emission units under the terms and conditions of the covered source general permit must submit an application to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application and to evaluate the fee requirements specified in subchapter 6. Information submitted shall include:

- (1) Name, address, and phone number of:
  - (A) The company;
  - (B) The facility, if different from the company;
  - (C) The owner and owner's agent; and
  - (D) The plant site manager or other contact;
- (2) A description of the nature, location, design capacity, production capacity, production rates, fuels, fuel use, raw materials, and typical operating schedules

and capacities to the extent needed to determine or regulate emissions; specifications and drawings showing the design of the source and plant layout; and a detailed description of all processes and products by Standard Industrial Classification Code and source category or categories (as defined in section 11-60.1-171);

- (3) Maximum emission rates, including fugitive emissions, of all regulated and hazardous air pollutants from each emissions unit. If applicable, biogenic CO<sub>2</sub> emissions shall be identified and quantified separately from other biogenic and non-biogenic greenhouse gas emissions. Emission rates shall be reported in pounds per hour and tons per year and in such terms necessary to establish compliance consistent with the applicable requirements and standard reference test methods. For GHGs, emission rates shall also be reported in CO<sub>2</sub>e tons per year. All supporting emission calculations and assumptions shall also be provided;
- (4) Identification and description of all points of emissions in sufficient detail to establish the basis for fees and applicability of requirements of this chapter and the Act. Information on stack parameters and any stack height limitations developed pursuant to Section 123 of the Act shall also be provided;
- (5) Identification and detailed description of air pollution control equipment and compliance monitoring devices or activities as planned by the owner or operator of the source and to the extent of available information, an estimate of maximum and expected emissions before and after controls, technical information on the design, operation, size, estimated control efficiency, manufacturer's name, address,

- telephone number, and relevant specifications and drawings;
- (6) Citation and description of all applicable requirements and a description of or reference to any method and/or applicable test method for determining compliance with each applicable requirement;
  - (7) Current operational limitations or work practices, or for covered sources that have not yet begun operation, such limitations or practices which the owner or operator of the source plans to implement that affect emissions of any regulated or hazardous air pollutants at the source;
  - (8) All calculations and assumptions on which the information in paragraphs (2), (3), (4), (5), and (7) is based;
  - (9) A detailed schedule for construction or reconstruction of the covered source, if applicable;
  - (10) If requested by the director, an assessment of the ambient air quality impact of the covered source. The assessment shall include all supporting data, calculations and assumptions, and a comparison with the NAAQS and state ambient air quality standards;
  - (11) If requested by the director, a risk assessment of the air quality related impacts caused by the covered source to the surrounding environment;
  - (12) If requested by the director, results of source emission testing, ambient air quality monitoring, or both;
  - (13) If requested by the director, information on other available control technologies and associated analysis;
  - (14) An explanation of all proposed exemptions from any applicable requirement;
  - (15) A list of insignificant activities pursuant to section 11-60.1-82(e) to (g);

- (16) A compliance plan in accordance with section 11-60.1-85;
- (17) A source compliance certification in accordance with section 11-60.1-86; and
- (18) Other information:
  - (A) As required by any applicable requirement or as requested and deemed necessary by the director to make a decision on the application; and
  - (B) As may be necessary to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of such requirements.

(d) The director shall not continue to act upon or consider an incomplete application. An application shall be determined to be complete only when all of the following have been complied with:

- (1) All information required and requested pursuant to subsection (c) has been submitted;
- (2) All documents requiring certification have been certified pursuant to section 11-60.1-4;
- (3) All applicable fees have been submitted; and
- (4) The director has certified that the application is complete.

(e) The director shall notify the applicant in writing whether the application is complete. Unless the director requests additional information or notifies the applicant of incompleteness within sixty days of receipt of an application, the application shall be deemed complete.

(f) During the processing of an application that has been determined or deemed complete if the director determines that additional information is necessary to evaluate or take final action on the application, the director may request such information in writing and set a reasonable deadline for a response.

(g) The director, in writing, shall approve or deny an application for coverage under a covered source general permit within six months after receipt

of a complete application. An application for coverage under a general permit shall be approved only if the director determines that the source seeking coverage meets the criteria and conditional requirements established in the covered source general permit and will be in compliance with all the applicable requirements.

(h) The director may approve an application for coverage under a covered source general permit without repeating the public participation procedures, but such approval shall not be considered the final permit action for purposes of administrative and judicial review pursuant to section 11-60.1-100.

(i) The director shall provide a statement that sets forth the legal and factual bases for the draft permit conditions (including references to the applicable statutory or regulatory provisions) to EPA and any other person requesting it.

(j) Each application and proposed covered source general permit shall be subject to EPA oversight in accordance with section 11-60.1-95. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp

] (Auth: HRS §§342B-3, 342B-12, 342B-23, 342B-24, 342B-25, 342B-26, 342B-29, 342B-33, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661c, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-23, 342B-24, 342B-25, 342B-26, 342B-29, 342B-33; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661c, 7661d; 40 C.F.R. Part 70)

**§11-60.1-93 Federally-enforceable permit terms and conditions.** Terms and conditions included in a covered source permit, including any provision designed to limit a source's potential to emit, are federally enforceable unless such terms, conditions, or requirements are specifically designated as not federally enforceable. Those terms and conditions left undesignated shall become federally enforceable upon permit issuance provided the Administrator does

not object during the forty-five-day review pursuant to section 11-60.1-95. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)

**§11-60.1-94 Transmission of information to the Administrator.** (a) Except as provided in subsection (c), the director shall submit to the Administrator a copy of each proposed covered source permit and each final covered source permit.

(b) Except as provided in subsection (c), the owner or operator shall simultaneously submit to the Administrator a copy of all covered source permit applications, including any applications for a covered source permit renewal and permit amendment reflecting a proposed minor or significant modification submitted to the director.

(c) By agreement with the Administrator or pursuant to federal regulation, the director may waive the requirements of subsections (a) and (b), or submit summaries for specific categories of nonmajor covered sources.

(d) The department shall maintain records on all covered source permit applications, compliance plans, proposed and final permits, and other relevant information for a minimum of five years. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12, 342B-24; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-24; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70)

**§11-60.1-95 EPA oversight.** (a) ~~[Upon program approval, t]~~The director shall not issue a covered source permit, permit renewal, or permit amendment for minor and significant modifications, if the Administrator objects to its issuance in writing within forty-five days of receipt of the proposed covered source permit and all necessary supporting information.

(b) ~~[Upon program approval, t]~~The director shall submit to the Administrator an amended proposed covered source permit within ninety days after receipt of any written objection from the Administrator. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ]  
(Auth: HRS §§342B-3, 342B-12, 342B-24; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-24; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70)

**§11-60.1-96 Operational flexibility.** (a) The director shall allow emissions trading and Section 502(b)(10) changes within a permitted facility without requiring a permit amendment, provided:

- (1) The emissions trading or Section 502(b)(10) changes are not modifications pursuant to any provision of Title I of the Act;
- (2) The emissions trading or Section 502(b)(10) changes do not exceed the emissions allowable under the permit;
- (3) The owner or operator of the covered source provides the Administrator and director a seven-day minimum advance written notification of the proposed emissions trading or Section 502(b)(10) changes; and
- (4) The following criteria are exclusively met for emissions trading within the permitted facility:
  - (A) An applicable requirement provides for the trading of emissions, or the trading of emissions is solely for the



purpose of complying with a federally-enforceable emission cap that is established in the covered source permit independent of otherwise applicable requirements;

- (B) The applicant requests such emissions trading provisions and includes in the covered source permit application the proposed replicable procedures and permit terms and conditions that ensure the emission trades are quantifiable and enforceable;
- (C) The director has determined that the provisions for emissions trading ensure that emissions from each emission unit are quantifiable and enforceable; and
- (D) Any emissions trading is in compliance with all applicable requirements.

(b) The seven-day advance written notification of any proposed emissions trading shall include, at a minimum, the date on which the change will occur, a description of the changes in emissions that will result, the permit requirements with which the source will comply, and how the source will comply with the terms and conditions of the permit and the applicable requirements authorizing the trade.

(c) The seven-day advance written notification of any Section 502(b)(10) changes shall include, at a minimum, a brief description of the proposed change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that will no longer be applicable as a result of the change.

(d) The owner or operator of a covered source and the director shall attach all written notifications of proposed emissions trading and Section 502(b)(10) changes to their copy of the relevant permit. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp  
] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part

70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)

**§11-60.1-97** REPEALED. [R 9/15/01]

**§11-60.1-98 Permit reopening.** (a) The director shall reopen and amend a covered source permit if the director determines that any one of the following circumstances exists:

- (1) Additional applicable requirements pursuant to the Act or this chapter become applicable to a major covered source with a remaining permit term of three or more years. Such permit reopening shall be completed not later than eighteen months after promulgation or adoption of the applicable requirement. No such permit reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the expiration date of the original permit or any of its terms and conditions has been extended pursuant to section 11-60.1-101;
- (2) The permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or
- (3) The permit must be terminated, suspended, or amended to assure compliance with the applicable requirements.

(b) Procedures to reopen and amend a covered source permit shall be the same as procedures which apply to initial permit issuance in accordance with section 11-60.1-83 and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(c) The director shall provide written notification to the permittee on the reopening of the permit indicating the basis for reopening at least thirty days prior to the reopening date, except that the director may provide a shorter time period if it is determined that immediate action on the reopening of the permit is required to prevent an imminent peril to public health and safety or the environment.

(d) If requested by the director, the owner or operator of a covered source shall submit a permit application or information related to the basis of the permit reopening or those provisions affected by the reopening within thirty days of receipt of the permit reopening notice. An extension for the application submittal may be granted by the director if the owner or operator can provide adequate written justification for such an extension.

(e) ~~[Upon program approval, i]~~ If the Administrator notifies the director of any cause to terminate, suspend, reopen, or amend a permit, the director shall submit to the Administrator within ninety days of receipt of such written notification, or within such other times as required by the Administrator, a proposed determination of termination, suspension, reopening, or amendment as appropriate.

(f) ~~[Upon program approval, i]~~ If the Administrator objects to the director's proposed determination, the director shall terminate, suspend, reopen, or amend the permit in accordance with the Administrator's objection within ninety days from receipt of a written objection. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70)

**§11-60.1-99 Public participation.** (a) Except for administrative permit amendments and permit amendments reflecting certain minor modifications, the director shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment on all draft covered source permits for ~~[initial issuance, for permit renewal, or for the significant modification of a covered source]~~:

- (1) initial issuance;
- (2) renewal;
- (3) significant modification; or
- (4) minor modifications to major stationary sources that result in a net emissions increase, as defined in 40 CFR Part 52.21, equal to or exceeding fifty percent of the significant amounts of emissions in the definition of significant in section 11-60.1-131, paragraph (1) of the definition.

(b) Any person requesting a public hearing shall do so during the public comment period. Any request from a person for a public hearing shall indicate the interest of the person filing the request and the reasons why a public hearing is warranted.

~~[(b)]~~ (c) Procedures for public notice, public comment periods, and public hearings shall be as follows:

- (1) The director shall make available for public inspection in at least one location in the county affected by the proposed action, or in which the source is or would be located:
  - (A) Information on the subject matter;
  - (B) Information submitted by the applicant, except for that determined to be confidential pursuant to section 11-60.1-14;
  - (C) The department's analysis and proposed action; and
  - (D) Other information and documents determined to be appropriate by the department;

- (2) Notification of a public hearing shall be given at least thirty days in advance of the hearing date;
- (3) A public comment period shall be no less than thirty days following the date of the public notice, during which time interested persons may submit to the department written comments on:
  - (A) The subject matter;
  - (B) The application;
  - (C) The department's analysis;
  - (D) The proposed actions; and
  - (E) Other considerations as determined to be appropriate by the department;
- (4) Notification of a public comment period or a public hearing shall be made:
  - (A) By publication in a newspaper which is printed and issued at least twice weekly in the county affected by the proposed action, or in which the source is or would be located;
  - (B) To persons on a mailing list developed by the director, including those who request in writing to be on the list; and
  - (C) If necessary by other means to assure adequate notice to the affected public;
- (5) Notice of public comment and public hearing shall identify:
  - (A) The affected facility;
  - (B) The name and address of the permittee;
  - (C) The name and address of the agency of the department processing the permit;
  - (D) The activity or activities involved in the permit action;
  - (E) The emissions change involved in any permit amendment reflecting a modification to the covered source;
  - (F) The name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the

draft permit, the application, all relevant supporting materials including any compliance plan, and monitoring and compliance certification reports, and all other materials available to the department that are relevant to the permit decision, except for information that is determined to be confidential, including information determined to be confidential pursuant to section 11-60.1-14;

- (G) A brief description of the comment procedures;
  - (H) The time and place of any hearing that may be held, including a statement of procedures to request a hearing if one has not already been scheduled; and
  - (I) The availability of the information listed in paragraph (1), and the location and times the information will be available for inspection; and
- (6) The director shall maintain a record of the commenters and the issues raised during the public participation process and shall provide this information to the Administrator upon request. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp ] (Auth: HRS §§92F-11, 92F-12, 342B-3, 342B-12, 342B-13, 342B-31; 42 U.S.C. §§7407, 7416, 7661a, 7661b; 40 C.F.R. Part 70) (Imp: HRS §§92F-11, 92F-12, 342B-3, 342B-12, 342B-13, 342B-31; 42 U.S.C. §§7407, 7416, 7661a, 7661b; 40 C.F.R. Part 70)

**§11-60.1-100 Public petitions.** (a) [~~Upon program approval, persons~~] A person may object to the issuance of any proposed covered source permit by

petitioning the Administrator pursuant to 40 CFR Section 70.8(d).

(b) ~~[Upon program approval, if]~~ If the Administrator objects to the proposed covered source permit as a result of a public petition, the director shall not issue the permit until the Administrator's objection has been resolved. However, a permit that was issued after the end of the forty-five-day review period and prior to the Administrator's objection, and except as provided in subsection (h), shall remain in effect at least until the objection is resolved. ~~[Upon program approval, if]~~ If the Administrator amends or terminates the permit based on the public petition, the director may issue only an amended permit that satisfies the Administrator's objection. If an amended permit is issued by the director, the owner or operator of the source shall not be in violation of the requirement to have submitted a timely and complete application.

(c) The applicant and any person who participated in the public comment or hearing process and objects to the grant or denial of a covered source permit or permit amendment may petition the department for a contested case hearing by submitting a written request to the director.

(d) The petition shall be based solely upon objections to the covered source permit that were raised with reasonable specificity during the public participation process, unless the petitioner demonstrates that it was impracticable to raise such objections; for example, the grounds for such objections arose after the public participation process.

(e) Any petitioner shall file a petition for a contested case hearing within ninety days of the date of the department's approval or disapproval of the proposed draft permit.

(f) Notwithstanding the provisions of subsection (e), if based solely on objections which were impracticable to raise during the public participation process, a petition for a contested case hearing may be filed up to ninety days after the objections could

be reasonably raised.

(g) Except as provided in subsection (h), any covered source permit that has been issued shall not be invalidated by a petition for a contested case hearing. If an amended covered source permit is issued by the director, the owner or operator of the source shall not be in violation of the requirement to have submitted a timely and complete application.

(h) The effective date of a covered source permit for a new covered source or significant modification subject to the requirements of subchapter 7 shall be as specified in 40 CFR Part 124.15.

(i) Any person may petition for a contested case hearing for the director's failure to take final action on an application for a covered source permit, covered source permit renewal, or covered source permit amendment within the time required by this chapter. Such petition shall be submitted in writing and may be filed any time before the director issues a proposed draft permit or denies the application for a covered source permit, covered source permit renewal, or covered source permit amendment.

(j) Any person aggrieved by a final administrative decision and order, including the denial of any contested case hearing, may petition for judicial review pursuant to section 91-14, HRS. A petition for judicial review shall be filed no later than thirty days after service of the certified copy of the final administrative decision and order. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp

] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70)

**§11-60.1-101 Covered source permit renewal applications.** (a) Every application and issuance of a covered source permit renewal is subject to the same requirements for an initial application of a covered



source permit including requirements of section 11-60.1-83. Applications shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application and to determine the fee requirements specified in subchapter 6. Information submitted shall include:

- (1) Name, address, and phone number of:
  - (A) The company;
  - (B) The facility, if different from the company;
  - (C) The owner and owner's agent; and
  - (D) The plant site manager or other contact;
- (2) Statement certifying that no changes have been made in the design or operation of the source as proposed in the initial and any subsequent covered source permit applications. If changes have occurred or are being proposed, the applicant shall provide a description of those changes such as work practices, operations, equipment design, and monitoring procedures, including the affected applicable requirements associated with the changes and the corresponding information to determine the applicability of all applicable requirements;
- (3) A compliance plan in accordance with section 11-60.1-85;
- (4) A source compliance certification in accordance with section 11-60.1-86; and
- (5) Other information:
  - (A) As required by any applicable requirement or as requested and deemed necessary by the director to make a decision on the application; and
  - (B) As may be necessary to implement and enforce other applicable requirements of the Act or of this chapter or to

determine the applicability of such requirements.

(b) Each permit renewal application shall be submitted to the director no fewer than twelve months and no more than eighteen months prior to the permit expiration date. The director may allow a permit renewal application to be submitted no fewer than six months prior to the permit expiration date, if the director determines that there is reasonable justification.

(c) The director shall not continue to act upon or consider an incomplete application. An application shall be determined to be complete only when all of the following have been complied with:

- (1) All information required and requested pursuant to subsection (a) has been submitted;
- (2) All documents requiring certification have been certified pursuant to section 11-60.1-4;
- (3) All applicable fees have been submitted; and
- (4) The director has certified that the application is complete.

(d) The director shall notify the applicant in writing whether the application is complete. Unless the director requests additional information or notifies the applicant of incompleteness within sixty days of receipt of an application, the application shall be deemed complete.

(e) During the processing of an application that has been determined or deemed complete, if the director determines that additional information is necessary to evaluate or take final action on the application, the director may request such information in writing and set a reasonable deadline for a response. As set forth in section 11-60.1-82, the covered source ability to operate and the validity of the covered source permit shall continue beyond the permit expiration date until the final permit is issued or denied, provided the applicant submits all additional information within the reasonable deadline specified by the director.

(f) Except for applications for renewal for coverage under a covered source general permit, the director, in writing, shall approve, conditionally approve, or deny an application for renewal of a covered source permit within twelve months after receipt of a complete application. If the application for renewal has not been approved or denied within twelve months after a complete application is received, the covered source permit and all its terms and conditions shall remain in effect and not expire until the application for renewal has been approved or denied and provided the applicant has submitted any additional information within the reasonable deadline specified by the director.

(g) For applications for renewal requesting coverage under a covered source general permit, the director shall approve or deny an application for renewal within six months after receipt of a complete application. If the application for renewal has not been approved or denied within six months after a complete application is received, the coverage under the covered source general permit and all its terms and conditions shall remain in effect and not expire until the application for renewal has been approved or denied and provided the applicant has submitted any additional information within the reasonable deadline specified by the director.

(h) A covered source permit renewal application shall be approved only if the director determines that the operation of the covered source will be in compliance with all applicable requirements.

(i) The director shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment on the draft covered source permit renewal in accordance with section 11-60.1-99.

(j) The director shall provide a statement that sets forth the legal and factual bases for the draft permit conditions (including references to the applicable statutory or regulatory provisions) to EPA and any other person requesting it.

(k) Each application for renewal and proposed covered source permit shall be subject to EPA oversight in accordance with section 11-60.1-95. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp

] (Auth: HRS §§342B-3, 342B-12, 342B-13, 342B-22, 342B-23, 342B-24, 342B-25, 342B-26, 342B-33; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-13, 342B-22, 342B-23, 342B-24, 342B-25, 342B-26, 342B-33; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661d; 40 C.F.R. Part 70)

**§11-60.1-102 Administrative permit amendment.**

(a) The director, at the director's sole discretion or upon written request from the owner or operator of a covered source, may issue an administrative permit amendment.

(b) Except for a request to consolidate two or more covered source permits into one or to change ownership or operational control, an owner or operator requesting an administrative permit amendment may make the requested change immediately upon submittal of the request.

(c) Within sixty days of receipt of a written request for an administrative permit amendment, the director shall take final action on the request and may amend the permit without providing notice to the public provided the director designates any such permit amendments as having been made pursuant to this section.

(d) The department shall submit a copy of the amended covered source permit to the Administrator. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp

] (Auth: HRS §§342B-3, 342B-12, 342B-27; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-27; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70)

**§11-60.1-103 Applications for minor**

**modifications.** (a) Every application for a minor modification to a covered source shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application and to determine the fee requirements specified in subchapter 6. Information submitted shall include:

- (1) A clear description of all changes;
- (2) A statement of why the modification is determined to be minor, and a request that minor modification procedures be used;
- (3) Maximum emission rates, including fugitive emissions, of all regulated and hazardous air pollutants resulting from the change. If applicable, biogenic CO<sub>2</sub> emissions shall be identified and quantified separately from other biogenic and non-biogenic greenhouse gas emissions. Emission rates shall be reported in pounds per hour and tons per year and in such terms necessary to establish compliance consistent with applicable requirements and standard reference test methods. For GHGs, emission rates shall also be reported in CO<sub>2</sub>e tons per year. All supporting emission calculations and assumptions shall also be provided;
- (4) The identification of any new applicable requirements that will apply if the minor modification occurs;
- (5) The suggested changes to permit terms or conditions;
- (6) Certification by a responsible official that the proposed modification meets the criteria for minor modification;
- (7) All information submitted with the application for the initial covered source permit or any subsequent application for a

covered source permit. The owner or operator may reference information contained in a previous application submittal, provided such referenced information has been certified as being current and still applicable; and

- (8) Other information, as required by any applicable requirement or as requested and deemed necessary by the director to make a decision on the application.

(b) The director shall not continue to act upon or consider an incomplete application. An application shall be determined to be complete only when all of the following have been complied with:

- (1) All information required and requested pursuant to subsection (a) has been submitted;
- (2) All documents requiring certification have been certified pursuant to section 11-60.1-4; and
- (3) All applicable fees have been submitted.

(c) The director shall notify the applicant in writing whether the application is complete. Unless the director requests additional information or notifies the applicant of incompleteness within thirty days of receipt of an application, the application shall be deemed complete.

(d) During the processing of an application, if the director determines that additional information is necessary to evaluate or take final action on the application, the director may request such information in writing and set a reasonable deadline for a response.

(e) Within ninety days of receipt of a complete application for a minor modification, or ~~[upon program approval]~~ within fifteen days after the end of the Administrator's forty-five-day review period, whichever is later, the director in writing shall:

- (1) Amend the permit to reflect the minor modification as proposed;
- (2) Deny the minor modification;

- (3) Determine that the requested modification does not meet the minor modification criteria, and should be reviewed under the significant modification procedures; or
- (4) ~~[Upon program approval, a]~~ Amend the proposed permit and resubmit the amendment to EPA for reevaluation.

(f) An application for a minor modification to a covered source shall be approved only if the director determines that the minor modification will be in compliance with all applicable requirements.

(g) The director shall provide a statement that sets forth the legal and factual bases for the proposed permit conditions (including references to the applicable statutory or regulatory provisions) to EPA and any other person requesting it.

(h) Each application and proposed permit reflecting the minor modification to a covered source shall be subject to EPA oversight in accordance with section 11-60.1-95. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12, 342B-23, 342B-24, 342B-25, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-23, 342B-24, 342B-25; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70)

**§11-60.1-104 Applications for significant modifications.** (a) Every application for a significant modification to a covered source is subject to the same requirements as for an initial covered source permit application pursuant to §11-60.1-83 as it pertains to the proposed significant modification. Applications shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application and to determine the fee requirements

specified in subchapter 6. Information submitted shall include:

- (1) The name, address, and phone number of:
  - (A) The company;
  - (B) The facility, if different from the company;
  - (C) The owner and owner's agent; and
  - (D) The plant site manager or other contact;
- (2) A description of the significant modification, identifying all proposed changes, including any changes to the source operations, work practices, equipment design, source emissions, or any monitoring, recordkeeping, and reporting procedures;
- (3) A description of the nature, location, design capacity, production capacity, production rates, fuels, fuel use, raw materials, and typical operating schedules and capacities to the extent needed to determine or regulate emissions of any proposed addition or modification of any source of emissions; specifications and drawings showing the design of the source and plant layout; a detailed description of all processes and products by Standard Industrial Classification Code and source category or categories (as defined in section 11-60.1-171) affected by the proposed modification; reasonably anticipated alternative operating scenarios, and processes and products by Standard Industrial Classification Code and source category or categories (as defined in section 11-60.1-171) associated with each alternative operating scenario affected by the proposed modification;
- (4) Information to define permit terms and conditions for any proposed emissions trading within the facility pursuant to section 11-60.1-96;



- (5) Maximum emissions rates, including fugitive emissions, of all regulated and hazardous air pollutants and all air pollutants for which the source is major from each emissions unit related to the modification. If applicable, biogenic CO<sub>2</sub> emissions shall be identified and quantified separately from other biogenic and non-biogenic greenhouse gas emissions. Emission rates shall be reported in pounds per hour and tons per year and in such terms necessary to establish compliance consistent with the applicable requirements and standard reference test methods. For GHGs, emission rates shall also be reported in CO<sub>2</sub>e tons per year. All supporting emission calculations and assumptions shall also be provided;
- (6) Identification and description of all points of emissions in sufficient detail to establish the basis for fees and applicability of requirements of this chapter and the Act. Information on stack parameters and any stack height limitations developed pursuant to Section 123 of the Act shall also be provided;
- (7) Identification and detailed description of air pollution control equipment and compliance monitoring devices or activities as planned by the owner or operator of the source or modification, and to the extent of available information, an estimate of maximum and expected emissions before and after controls, technical information on the design, operation, size, estimated control efficiency, manufacturer's name, address, telephone number, and relevant specifications and drawings;
- (8) Citation and description of all applicable requirements, and a description of or reference to any method and/or applicable test method for determining compliance with each applicable requirement;

- (9) Operational limitations or work practices which the owner or operator of the source plans to implement that affect emissions of any regulated or hazardous air pollutants at the source. For sources subject to an Equivalent Maximum Achievable Control Technology limitation pursuant to section 11-60.1-175, a proposed emission limitation consistent with the requirements set forth in section 11-60.1-175;
- (10) All calculations and assumptions on which the information in paragraphs (3), (5), (6), (7), and (9) is based;
- (11) A detailed schedule for construction or reconstruction of the source or modification;
- (12) For significant modifications which increase the emissions of any air pollutant or result in the emission of any air pollutant not previously emitted, an assessment of the ambient air quality impact of the covered source with the inclusion of any available background air quality data. The assessment shall include all supporting data, calculations and assumptions, and a comparison with the NAAQS and state ambient air quality standards;
- (13) For new covered sources or significant modifications subject to the requirements of subchapter 7, all analyses, assessments, monitoring, and other application requirements of subchapter 7;
- (14) If requested by the director, a risk assessment of the air quality related impacts caused by the covered source or significant modification to the surrounding environment;
- (15) If requested by the director, results of source emission testing, ambient air quality monitoring, or both;

- (16) If requested by the director, information on other available control technologies and associated analysis;
- (17) An explanation of all proposed exemptions from any applicable requirement;
- (18) A list of any new insignificant activities pursuant to section 11-60.1-82(e) to (g);
- (19) A compliance plan in accordance with section 11-60.1-85;
- (20) A source compliance certification in accordance with section 11-60.1-86; and
- (21) Other information:
  - (A) As required by any applicable requirement or as requested and deemed necessary by the director to make a decision on the application; and
  - (B) As may be necessary to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of such requirements.

(b) The director shall not continue to act upon or consider an incomplete application. An application shall be determined to be complete only when all of the following have been complied with:

- (1) All information required and requested pursuant to subsection (a) has been submitted;
- (2) All documents requiring certification have been certified pursuant to section 11-60.1-4;
- (3) All applicable fees have been submitted; and
- (4) The director has certified that the application is complete.

(c) The director shall notify the applicant in writing whether the application is complete:

- (1) For the requirements of subchapter 7, thirty days after receipt of the application; and
- (2) For the requirements of subchapter 5, sixty days after receipt of the application. For purposes of this paragraph, the date of receipt of an application for a new covered

source or significant modification subject to the requirements of subchapter 7 shall be the date the application is determined to be complete for the requirements of subchapter 7.

Unless the director requests additional information or notifies the applicant of incompleteness within sixty days after receipt of an application pursuant to paragraph (c)(2), the application shall be deemed complete for the requirements of subchapter 5.

(d) During the processing of an application that has been determined or deemed complete if the director determines that additional information is necessary to evaluate or take final action on the application, the director may request such information in writing and set a reasonable deadline for a response.

(e) Except as provided in section 11-60.1-88 and subsections (f) and (g), the director, in writing, shall approve, conditionally approve, or deny an application for a significant modification within eighteen months after receipt of a complete application.

(f) The director, in writing, shall approve, conditionally approve, or deny an application containing an early reduction demonstration pursuant to Section 112(i)(5) of the Act~~[, and upon program approval,]~~ within nine months after receipt of a complete application.

(g) The director, in writing, shall approve, conditionally approve, or deny an application for a new covered source or significant modification subject to the requirements of subchapter 7 within twelve months after receipt of a complete application.

(h) The director shall provide reasonable procedures and resources to complete the review of the majority of the applications for a significant modification within nine months after receipt of a complete application. An application for significant modification shall be approved only if the director determines that the significant modification will be in compliance with all applicable requirements~~[.]~~ and

will not interfere with attainment or maintenance of the NAAQS.

(i) The director shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment on the draft significant modification to the covered source in accordance with section 11-60.1-99.

(j) The director shall provide a statement that sets forth the legal and factual bases for the draft permit conditions (including references to the applicable statutory or regulatory provisions) to EPA and any other person requesting it.

(k) Each application for a significant modification, and the proposed covered source permit reflecting the significant modification shall be subject to EPA oversight in accordance with section 11-60.1-95. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp ] (Auth: HRS §§342B-3, 342B-12, 342B-13, 342B-23, 342B-24, 342B-25, 342B-29, 342B-33, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661c, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-13, 342B-23, 342B-24, 342B-25, 342B-29, 342B-33; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661c, 7661d; 40 C.F.R. Part 70)

## SUBCHAPTER 6

FEES FOR COVERED SOURCES, NONCOVERED SOURCES,

AND AGRICULTURAL BURNING

**§11-60.1-111 Definitions.** As used in this subchapter:

"Actual emissions" means the actual rate of emissions of a regulated or hazardous air pollutant from a stationary source. Actual emissions for a time period as specified by the director shall equal the average rate in pounds per hour at which the

stationary source actually emitted the pollutant during the specified time period, and which is representative of the source's actual operation. The director shall allow the use of a different time period upon a determination that it is more representative of the actual operation of a source. Actual emissions shall be calculated using the source's actual operating hours, production rates, and amounts of materials processed, stored, or combusted during the selected time period. Other parameters may be used in the calculation of actual emissions if approved by the director.

"Air permit application" means a noncovered or covered source permit application.

"Air permit program" means the program established pursuant to part III of chapter 342B, HRS, and this chapter.

"Allowable emission rate" means the quantity of regulated or hazardous air pollutant that may be emitted (per unit of time, tons of production, or other parameter) as established by an air permit limitation or an applicable requirement that establishes an emission limit.

"Annual fee" means the fee imposed on each owner or operator of a stationary source on an annual basis.

"AP-42" means EPA's compilation of air pollutant emission factors, Volume 1: Stationary Point and Area Sources, Fifth Edition, and its associated supplements and appendices.

"Application fee" means the fee imposed on an owner or operator of:

- (1) A stationary source upon the filing of any air permit application; or
- (2) An agricultural operation upon the filing of any agricultural burning permit application.

"Closure fee" means the annual fee that an owner or operator of a stationary source is assessed for the last year a source is in operation before permanent discontinuance.

"Covered source permit application" means an application for an initial covered source permit, a renewal of a covered source permit, a permit amendment

for any modification to a covered source, or the written request filed for a change in location of a temporary covered source, or an administrative permit amendment to a covered source permit.

"Dollar per ton charge" means the dollar fee charge per ton of regulated air pollutant emitted, and the dollar fee charge per CO<sub>2</sub>e ton of greenhouse gas emitted.

"Fee worksheets" means the forms provided by the director to aid the owner or operator of a stationary source in the calculation of annual fees.

"Major modification" has the same meaning as in section 11-60.1-131.

"Minor modification" has the same meaning as in section 11-60.1-81.

"Non-toxic pollutant" means any pollutant that is not a toxic pollutant.

"Non-toxic source" means a stationary source that is not a toxic source.

"Noncovered source permit application" means an application for an initial noncovered source permit, a renewal of a noncovered source permit, a permit amendment for any modification to a noncovered source, or the written request for a change in location of a temporary noncovered source, or an administrative permit amendment to a noncovered source permit.

~~["Nonmajor modification" means any physical change in or change in method of operation of a major stationary source that is not classified as a major modification.]~~

"PSD source" means a source subject to the requirements of subchapter 7.

"Significant modification" has the same meaning as in section 11-60.1-81.

"Toxic pollutant" means any hazardous air pollutant listed pursuant to Section 112(b) of the Act, and any other hazardous air pollutant designated by this chapter.

"Toxic source" means:

- (1) A major covered source that emits or has the potential to emit any hazardous air pollutant, except radionuclides, in the

aggregate of ten tons per year or more, or twenty-five tons per year or more of any combination;

- (2) A covered source that is subject to an emission standard or other requirement for hazardous air pollutants approved pursuant to Section 112 of the Act, with the exception of those sources solely subject to regulations or requirements approved pursuant to Section 112(r) of the Act; or
- (3) A noncovered source that emits or has the potential to emit two tons per year or more of any hazardous air pollutant or five tons per year or more of any combination.

"Verifiable documentation" means a record, certified pursuant to section 11-60.1-4, that best substantiates the operating characteristic or parameters of a stationary source. Records identified as verifiable documentation may include fuel usage records, production records, or other records that can be substantiated through the use of non-resetting fuel or hour meters, appropriate testing, and other methods or devices, as required or deemed acceptable by the director. Records may be deemed unacceptable by the director if found to be erroneous, incomplete, inaccurate, or inconsistent. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp

] (Auth: HRS §§342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

**§11-60.1-112 General fee provisions for covered sources.** (a) Every applicant for a covered source permit shall pay an application fee as set forth in section 11-60.1-113.

(b) Except as provided in subsection (h) below, every owner or operator of a covered source shall pay an annual fee as set forth in section 11-60.1-114.



(c) All application and annual fees collected pursuant to this chapter shall be used to cover the direct and indirect costs to develop, support, and administer the air permit program.

(d) All application fees for covered sources shall be submitted by check or money order made payable to the Clean Air Special Fund-COV, and are not refundable, except as otherwise provided in this subchapter.

(e) All annual fees for covered sources required by this chapter shall be submitted by check or money order, made payable to:

- (1) The Clean Air Special Fund-COV, for fees determined by the dollar per ton charge pursuant to sections 11-60.1-114(i) (1), (3) and (4), and (j); and
- (2) The Clean Air Special Fund-NON, for fees determined by the dollar per ton charge pursuant to sections 11-60.1-114(i) (2), (3) and (5), and (j);

and are not refundable, except for any amount that constitutes an overpayment, as determined by the director.

(f) Checks returned for any reason (e.g., insufficient funds, closed account, etc.) shall be considered a failure to pay. Returned checks are subject to an additional \$25 handling charge. If a returned check results in a late payment, the owner or operator shall also be assessed a late payment penalty in accordance with section 11-60.1-114(m).

(g) The department shall reevaluate the provisions of this subchapter at least every three years to ensure that adequate fees are being generated to cover the direct and indirect costs to develop, support, and administer the air permit program.

~~[Notwithstanding the]~~ If fee adjustments are required based on the director's reevaluation, the director shall afford the opportunity for public comment in accordance with chapters 91 and 342B, HRS. Any fee adjustments pursuant to [section] subsection 11-60.1-114(j), and fee waivers allowed in subsection (h) below, [if fee adjustments are required based on the

~~director's reevaluation, the director shall afford the opportunity for public comment in accordance with chapters 91 and 342B, HRS]~~ shall not require that the director afford the opportunity for public comment in accordance with chapters 91 and 342B, HRS.

(h) With EPA's approval, the director may waive annual fees due from owners or operators of covered sources for the following calendar year, provided that funds in excess of \$6 million will exist in the Clean Air Special Fund-COV account as of the end of the current calendar year. Nothing in this subsection shall be construed to allow a waiver of any application fee, or a waiver of any other requirements under this chapter, including reporting requirements, such as annual emissions reporting. The owner or operator of a covered source shall continue to report the source's actual emissions of regulated air pollutants, including toxic pollutants, in tons per year. For greenhouse gases, biogenic CO<sub>2</sub> emissions shall be identified separately; and actual emissions shall be reported in both mass tons and CO<sub>2</sub>e tons of each greenhouse gas emitted (e.g., carbon dioxide, nitrous oxide, methane, ~~[hydrofluorocarbons, perfluorocarbons]~~ hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride), and the resulting total mass tons and CO<sub>2</sub>e tons emitted. The emissions report shall show the method, assumptions, emissions factors, and calculations used to obtain the tons per year emissions of each regulated air pollutant, including the CO<sub>2</sub>e tons of GHGs. The reporting of annual emissions shall be submitted within the time frame specified in the applicable permit. [Eff 11/26/93; am and comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp ] (Auth: HRS §§342B-3, 342B-12, 342B-29, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-29; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)

**§11-60.1-113 Application fees for covered**

**sources.** (a) An application fee shall be submitted with the covered source permit application and shall not be refunded or applied to any subsequent application, except for any amount that constitutes an overpayment, as determined by the director. No covered source permit application shall be deemed complete unless the application fee is paid in full.

(b) The fee schedule for filing a covered source permit application shall be as follows:

(1) PSD sources:

- |                        |          |
|------------------------|----------|
| (A) Initial permit     | \$10,000 |
| (B) Major modification | \$10,000 |

(2) Major non-toxic sources:

- |                                     |          |
|-------------------------------------|----------|
| (A) Initial permit                  | \$ 4,000 |
| (B) Renewal                         | \$ 3,000 |
| (C) Administrative permit amendment | \$ 100   |
| (D) Minor modification              | \$ 200   |
| (E) Significant modification        |          |

resulting in an increase of emissions less than:

- |  |          |
|--|----------|
| (i) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs, |          |
| (ii) one tpy of any hazardous air pollutant, or  |          |
| (iii) 40,000 tpy CO <sub>2</sub> e of GHGs   | \$ 1,000 |

(F) Significant modification resulting in an increase of emissions greater than or equal to:

- |  |          |
|--|----------|
| (i) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs, |          |
| (ii) one tpy of any hazardous air pollutant, or  |          |
| (iii) 40,000 tpy CO <sub>2</sub> e of GHGs   | \$ 2,000 |

(3) Nonmajor non-toxic sources:

- (A) Initial permit \$ 1,000
- (B) Renewal \$ 500
- (C) Administrative permit amendment \$ 100
- (D) Minor modification \$ 100
- (E) Significant modification resulting in an increase of emissions less than:
  - (i) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs,
  - (ii) one tpy of any hazardous air pollutant, or
  - (iii) 40,000 tpy CO<sub>2</sub>e of GHGs \$ 500
- (F) Significant modification resulting in an increase of emissions greater than or equal to:
  - (i) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs,
  - (ii) one tpy of any hazardous air pollutant, or
  - (iii) 40,000 tpy CO<sub>2</sub>e of GHGs \$ 1,000
- (4) Temporary covered sources:
  - (A) Initial permit for a non-toxic source \$ 1,000
  - (B) Initial permit for a toxic source \$ 2,000
  - (C) Renewal of a non-toxic source \$ 500
  - (D) Renewal of a toxic source \$ 1,000
  - (E) Change in location for a non-toxic source \$ 100
  - (F) Change in location for a toxic source \$ 300
  - (G) Administrative permit amendment \$ 100
  - (H) Minor modification for a

- non-toxic source \$ 100
- (I) Minor modification for a
  - toxic source \$ 200
- (J) Significant modification for a
  - non-toxic source resulting in
  - an increase of emissions less
  - than:
  - (i) forty tpy of any
    - regulated air pollutant
    - other than hazardous air
    - pollutants and GHGs,
  - (ii) one tpy of any hazardous
    - air pollutant, or
  - (iii) 40,000 tpy CO<sub>2</sub>e of GHGs \$ 500
- (K) Significant modification for a
  - non-toxic source resulting
  - in an increase of emissions
  - greater than or equal to:
  - (i) forty tpy of any
    - regulated air pollutant
    - other than hazardous air
    - pollutants and GHGs,
  - (ii) one tpy of
    - any hazardous air
    - pollutant, or
  - (iii) 40,000 tpy CO<sub>2</sub>e of GHGs \$ 1,000
- (L) Significant modification for
  - a toxic source resulting in
  - an increase of emissions less
  - than:
  - (i) one tpy of any hazardous
    - air pollutant,
  - (ii) 40,000 tpy CO<sub>2</sub>e of GHGs, or
  - (iii) forty tpy of any
    - regulated air pollutant
    - other than hazardous air
    - pollutants and GHGs \$ 1,000
- (M) Significant modification for
  - a toxic source resulting in
  - an increase of emissions
  - greater than or equal to:
  - (i) one tpy of any hazardous

- air pollutant,
  - (ii) 40,000 tpy CO<sub>2</sub>e of GHGs, or
  - (iii) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs \$ 2,000
- (5) Sources seeking coverage under a general covered source permit:
  - (A) Initial permit \$40 for each remaining year before expiration of a general permit at the time of application submittal. Any fraction of a remaining year shall be rounded up to the next full year.
  - (B) Renewal \$ 100
  - (C) Administrative permit amendment \$ 50
- (6) Major toxic sources:
  - (A) Initial permit \$ 5,000
  - (B) Renewal \$ 3,000
  - (C) Administrative permit amendment \$ 100
  - (D) Minor modification \$ 200
  - (E) Significant modification resulting in an increase of emissions less than:
    - (i) one tpy of any hazardous air pollutant,
    - (ii) 40,000 tpy CO<sub>2</sub>e of GHGs, or
    - (iii) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs \$ 1,000
  - (F) Significant modification resulting in an increase of emissions greater than or equal to:
    - (i) one tpy of any hazardous air pollutant,
    - (ii) 40,000 tpy CO<sub>2</sub>e of GHGs, or

- (iii) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs \$ 3,000
  - (7) Nonmajor toxic sources:
    - (A) Initial permit \$ 2,000
    - (B) Renewal \$ 1,000
    - (C) Administrative permit amendment \$ 100
    - (D) Minor modification \$ 200
    - (E) Significant modification resulting in an increase of emissions less than:
      - (i) one tpy of any hazardous air pollutant,
      - (ii) 40,000 tpy CO<sub>2</sub>e of GHGs, or
      - (iii) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs \$ 1,000
    - (F) Significant modification resulting in an increase of emissions greater than or equal to:
      - (i) one tpy of any hazardous air pollutant,
      - (ii) 40,000 tpy CO<sub>2</sub>e of GHGs, or
      - (iii) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs \$ 2,000
- (c) Except for individual sources having or seeking coverage under a general covered source permit, if a covered source can be categorized under two or more types of sources listed in the fee schedule, the owner or operator of that source shall pay the highest application fee that is applicable to the source.
- (d) If a modification changes the classification of a source, the modification fee shall no longer apply. The fee associated with the initial permit for the new source category shall apply. For example, a

modification to a nonmajor covered source which triggers a major covered source review shall be subject to the fee associated with the initial permit for a major covered source and not to the fee associated with a nonmajor covered source modification.

(e) An application fee for an administrative permit amendment shall be assessed only if the administrative change is requested by the owner or operator of the covered source. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14; comp

] (Auth: HRS §§342B-3, 342B-12, 342B-29, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-29; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)

#### **§11-60.1-114 Annual fees for covered sources.**

(a) Except as specified in subsection 11-60.1-112(h), subsection (b), and below, an annual fee shall be paid in full within the first one-hundred twenty days of each calendar year and a closure fee shall be paid within thirty days after the permanent discontinuance of the covered source.

(b) The director, at the director's sole discretion, or upon written request from the owner or operator of a covered source, may extend the annual fee submittal deadline if the director determines that reasonable justification exists for the extension. The owner or operator's written request for an extension shall be submitted at least fifteen days prior to the required submission due date, unless the director with reasonable justification approves a lesser period, and shall include the following information:

- (1) Justification for the extension, including a showing that reasonable effort and resources have been and are being utilized in the calculation of annual emissions and the



- corresponding annual fee as calculated pursuant to this section;
- (2) Description of the problems being encountered and reasons for any delays in meeting the annual fee deadline;
- (3) The current status of emission calculations; and
- (4) The projected date of submitting the annual fee.

If the director disapproves an extension for submitting the annual fee, the owner or operator shall pay the required annual fee within thirty days of receipt of the disapproval notice or by the original submittal deadline, whichever is later. If the director approves an extension for submitting the annual fee, the owner or operator shall pay the required annual fee by the extended approved date. Any part of the annual fee that is not paid within the required time shall at once be assessed the late penalty fee pursuant to subsection (m).

(c) An annual fee due within the first one-hundred twenty days of each calendar year shall be based upon the tons of regulated air pollutants emitted during the prior calendar year, except that GHGs shall be based on the total CO<sub>2</sub>e tons emitted.

(d) A closure fee due within thirty days after the permanent discontinuance of the covered source shall be based upon the tons of regulated air pollutants emitted during the year of permanent discontinuance, except that GHGs shall be based on the total CO<sub>2</sub>e tons emitted.

(e) An annual fee due within the first one-hundred twenty days of a particular calendar year shall be referred to as the annual fee for that particular year. For example, the 2001 annual fee shall be due within the first one-hundred twenty days of calendar year 2001 and shall be based on regulated air pollutants emitted in 2000.

(f) An annual fee shall be assessed for each ton or CO<sub>2</sub>e ton of regulated air pollutant emitted by a covered source except for:

- (1) Carbon monoxide emissions;

- (2) Fugitive emissions if fugitive emissions are not included in the applicable requirements or AP-42; and
- (3) Emissions from insignificant activities listed in subsections 11-60.1-82(f) and (g).
- (g) The annual fee assessed for each regulated air pollutant shall be determined by multiplying the appropriate dollar per ton charge pursuant to subsections (i) and (j) by the covered source emissions in tons or CO<sub>2</sub>e tons per year pursuant to section 11-60.1-115. The dollar per ton charge assessed for all regulated air pollutants (both toxic and non-toxic) shall be determined pursuant to the following subsections:

<u>Annual Fees Due</u>	<u>Subsection(s)</u>
Prior to 2002	As provided for in subchapter 6, amended October 26, 1998
2002, except GHGs	(i)(1) and (2)
2003 and thereafter, except GHGs	(i)(1) and (2), and (j)
2015 for GHGs	(i)(4) and (5)
2016 and thereafter for GHGs	(i)(4) and (5), and (j)

(h) The submittal of an additional annual fee determined by the dollar per ton charge pursuant to paragraph(i)(3) and subsection (j) for toxic pollutants shall begin as established by rulemaking.

(i) The dollar per ton charge for each regulated air pollutant emitted by a covered source shall be as follows:

- (1) All regulated pollutants, except GHGs (toxic and non-toxic)- \$39.00 per ton (made payable to the Clean Air Special Fund-COV);
- (2) All regulated pollutants, except GHGs (toxic and non-toxic) - \$9.50 per ton (made payable to the Clean Air Special Fund-NON);

- (3) Toxic pollutant emissions - additional charge to be set by rulemaking specifically for regulated toxic pollutants;
- (4) GHGs, including biogenic CO<sub>2</sub>, nitrous oxide, and methane emissions - \$ 0.07 per CO<sub>2</sub>e ton (made payable to the Clean Air Special Fund-COV); and
- (5) GHGs, including biogenic CO<sub>2</sub>, nitrous oxide, and methane emissions - \$ 0.05 per CO<sub>2</sub>e ton (made payable to the Clean Air Special Fund-NON).

(j) On January 1, 2002 and at the beginning of each subsequent year, the previous dollar per ton charge shall be adjusted by the percentage, if any, by which the consumer price index for the last calendar year exceeds the consumer price index for the calendar year before. The consumer price index for any calendar year is the average of the consumer price index for all urban consumers published by the United States Department of Labor, as of the close of the twelve-month period ending on August 31 of each calendar year. The adjusted annual fee rate shall be applied to those air pollutants emitted during the same calendar year.

(k) When submitting the annual fee, the owner or operator of a covered source shall submit a written report of emissions of all regulated air pollutants (toxic and non-toxic).

(l) The minimum annual fee shall be \$500 for each covered source facility in operation or each valid covered source permit held during the prior calendar year, or \$42 per month for any fraction of the year the covered source facility was in operation or the covered source permit was valid. For purposes of this subsection, "covered source facility" means a covered source under common control of the same person or persons that is located on one or more contiguous or adjacent properties.

(m) If any part of the annual fee is not paid within thirty days after the due date, a late payment penalty of five per cent of the amount due shall at once accrue and be added thereto. Thereafter, on the

first day of each calendar month during which any part of the annual fee or any prior accrued late payment penalty remains unpaid, an additional late payment penalty of five per cent of the then unpaid balance shall accrue and be added thereto.

(n) If any annual fee, including the late payment penalty required by this chapter is not paid in full within thirty days after the due date, the director may terminate or suspend any or all of the owner or operator's covered source permits, after affording the opportunity for a hearing in accordance with chapters 91 and 342B, HRS.

(o) The owner or operator of a covered source may at any time request a meeting with the department to discuss the annual fee assessment or the computational methods used to determine the annual fee. If the owner or operator still feels that the annual fee is being miscalculated after meeting with the department, the owner or operator may request a contested case hearing in accordance with chapters 91 and 342B, HRS. [Eff 11/26/93; am and comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14; comp ]  
(Auth: HRS §§342B-3, 342B-12, 342B-29, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-29; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)

**§11-60.1-115 Basis of annual fees for covered sources.** (a) For purposes of calculating annual fees for covered sources under section 11-60.1-114, the covered source actual emissions in tons and CO<sub>2</sub>e tons per year shall be determined by using the following parameters:

- (1) Data from continuous emission monitoring (CEMS) or predictive emission monitoring (PEM) certified in accordance with the applicable EPA Performance Specifications shall always be used if available. The PEM

data shall not be used if CEMS data is available;

- ~~[(1)]~~ (2) An emission factor derived from the actual rate of emissions as substantiated through stack test reports, continuous emissions monitoring data, or any other certified record as deemed acceptable by the director;
- ~~[(2)]~~ (3) The actual production, operating hours, amount of materials processed or stored, or fuel usage of the covered source during the prior calendar year the annual fee is due. Other operating parameters of the covered source may be used in the fee calculation if approved by the director; and
- ~~[(3)]~~ (4) If not already included in the emission factor identified in paragraph (1), a percentage reduction factor based upon the efficiency of the air pollution control equipment, as provided by AP-42 or any verifiable documentation demonstrating the actual performance of the air pollution control equipment.

(b) If an actual rate of emissions referenced in paragraph (a)(1) cannot be substantiated, the allowable emission rate shall be used to calculate the total annual tonnage of pollutants emitted. If an allowable emission rate is not specified in an air permit or an applicable requirement, the appropriate permit application or AP-42 air pollutant emission factor; 40 CFR Part 98, Mandatory GHG Reporting methodology or emission factor shall be used. If the owner or operator of a covered source cannot provide verifiable documentation on the parameters referenced in paragraph (a)(2), the maximum allowable production, operating hours, amount of material processed or stored, or fuel usage shall be used in calculating the total annual tonnage or CO<sub>2</sub>e tonnage of regulated air pollutants emitted from the covered source. For GHG emissions, results, methodologies, and emission factors used in complying with 40 CFR Part 98, Mandatory GHG Reporting, are acceptable for reporting

actual emissions for the individual emission units, provided appropriate unit conversions are made, and verifiable documentation is provided for any on-site measured parameter used in the calculation. Any fraction of a ton or CO<sub>2</sub>e ton calculated shall be disregarded for fee purposes. Only the annual tonnage in whole tons of each regulated air pollutant or whole CO<sub>2</sub>e ton for GHGs shall constitute the basis of annual fees.

(c) The annual fee shall be calculated on fee worksheets furnished by the director. If a fee worksheet is not available for a particular covered source, the owner or operator of a covered source shall provide their own worksheet showing the method, assumptions, emission factors, and calculations used to obtain the total annual emissions in tons and CO<sub>2</sub>e tons per year, for each regulated air pollutant emitted, as applicable. [Eff 11/26/93; am and comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp

] (Auth: HRS §§342B-3, 342B-12, 342B-29, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-29; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)

**§11-60.1-116** REPEALED. [R 9/15/01]

**§11-60.1-117 General fee provisions for noncovered sources.** (a) Every applicant for a noncovered source permit shall pay an application fee pursuant to section 11-60.1-118.

(b) Except as specified in subsection (e) below, every owner or operator of a noncovered source for which a permit is required under section 11-60.1-62 shall pay an annual fee as set forth in section 11-60.1-119.

(c) All application and annual fees for noncovered sources required by this chapter shall be submitted by check or money order made payable to the Clean Air Special Fund-NON, and are not refundable, except for any amount that constitutes an overpayment, as determined by the director.

(d) Checks returned for any reason (e.g., insufficient funds, closed account, etc.) shall be considered a failure to pay. Returned checks are subject to an additional \$25 handling charge. If a returned check results in a late payment, the owner or operator shall also be assessed a late payment penalty in accordance with section 11-60.1-119(g).

(e) Upon the approval of a waiver for covered source annual fees pursuant to section 11-60.1-112(h), the director may waive the annual fees due from owners or operators of noncovered sources. The waiver shall be for the same calendar year as the annual fee waiver for the covered sources. Nothing in this subsection shall be construed to allow a waiver of any application fee, or a waiver of any other requirements under this chapter, including reporting requirements, such as annual emissions reporting as required by permit. [Eff 11/26/93; am and comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12, 342B-29; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12, 342B-29; 42 U.S.C. §§7407, 7416)

**§11-60.1-118 Application fees for noncovered sources.** (a) An application fee shall be submitted with the noncovered source permit application and shall not be applied to any subsequent application, except for any amount that constitutes an overpayment, as determined by the director. No noncovered source permit application shall be deemed complete unless the application fee is paid in full.

(b) The fee schedule for filing a noncovered source permit application shall be as follows:

- (1) Non-toxic sources:
  - (A) Initial permit \$ 150
  - (B) Renewal \$ 100
  - (C) Administrative permit amendment \$ 50
  - (D) Modification resulting in an increase of emissions less than:
    - (i) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs,
    - (ii) one tpy of any hazardous air pollutant, or
    - (iii) 40,000 tpy CO<sub>2</sub>e of GHGs \$ 100
  - (E) Modification resulting in an increase of emissions greater than or equal to:
    - (i) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs,
    - (ii) one tpy of any hazardous air pollutant, or
    - (iii) 40,000 tpy CO<sub>2</sub>e of GHGs \$ 150
- (2) Temporary noncovered sources:
  - (A) Initial permit for a non-toxic source \$ 150
  - (B) Initial permit for a toxic source \$ 200
  - (C) Renewal of a non-toxic source \$ 100
  - (D) Renewal of a toxic source \$ 150
  - (E) Change in location for a non-toxic source \$ 50
  - (F) Change in location for a toxic source \$ 100
  - (G) Administrative permit amendment \$ 50
  - (H) Modification to a non-toxic source resulting in an increase of emissions less than:



- (i) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs,
  - (ii) one tpy of any hazardous air pollutant, or
  - (iii) 40,000 tpy CO<sub>2</sub>e of GHGs \$ 100
- (I) Modification to a non-toxic source resulting in an increase of emissions greater than or equal to:
  - (i) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs,
  - (ii) one tpy of any hazardous air pollutant, or
  - (iii) 40,000 tpy CO<sub>2</sub>e of GHGs \$ 150
- (J) Modification to a toxic source resulting in an increase of emissions less than:
  - (i) one tpy of any hazardous air pollutant,
  - (ii) 40,000 tpy CO<sub>2</sub>e of GHGs, or
  - (iii) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs \$ 150
- (K) Modification to a toxic source resulting in an increase of emissions greater than or equal to:
  - (i) one tpy of any hazardous air pollutant,
  - (ii) 40,000 tpy CO<sub>2</sub>e of GHGs, or
  - (iii) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs \$ 200
- (3) Sources seeking coverage under a general noncovered source permit:

- (A) Initial permit \$20 for each remaining year before expiration of a general permit at the time of application submittal. Any fraction of a remaining year shall be rounded up to the next full year.
- (B) Renewal \$ 50
- (C) Administrative permit amendment \$ 25
- (4) Toxic sources:
  - (A) Initial permit \$ 200
  - (B) Renewal \$ 150
  - (C) Administrative permit amendment \$ 50
  - (D) Modification resulting in an increase of emissions less than:
    - (i) one tpy of any hazardous air pollutant,
    - (ii) 40,000 tpy CO<sub>2</sub>e of GHGs, or
    - (iii) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs \$ 150
  - (E) Modification resulting in an increase of emissions greater than or equal to:
    - (i) one tpy of any hazardous air pollutant,
    - (ii) 40,000 tpy CO<sub>2</sub>e of GHGs, or
    - (iii) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs \$ 200

(c) Except for individual sources seeking coverage under a general noncovered source permit, if a noncovered source can be categorized under two or more types of sources listed in the fee schedule, the owner or operator of that source shall pay the highest application fee that is applicable to the source.

(d) If a modification changes the classification of a source, the modification fee shall no longer apply. The fee associated with the initial permit for the new source category shall apply. For example, a modification triggering a covered source review will be subject to the fee associated with the initial permit for a covered source and not to the fee associated with a noncovered source modification.

(e) An application fee for an administrative permit amendment shall be assessed only if the administrative permit amendment is requested by the owner or operator of the noncovered source. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14; comp ] (Auth: HRS §§342B-3, 342B-12, 342B-29, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12, 342B-29; 42 U.S.C. §§7407, 7416)

**§11-60.1-119 Annual fees for noncovered sources.**

(a) Except as specified in section 11-60.1-117(e), an annual fee shall be paid in full within the first sixty days of each calendar year and a closure fee shall be paid within thirty days after the permanent discontinuance of the noncovered source.

(b) The director, at the director's sole discretion, or upon written request from the owner or operator of a noncovered source, may extend the annual fee submittal deadline if the director determines that reasonable justification exists for the extension. The owner or operator's written request for an extension shall be submitted at least fifteen days prior to the required submission due date, unless the director with reasonable justification approves a lesser period, and shall include the following information:

- (1) Justification for the extension;
- (2) Description of the problems being encountered and reasons for any delays in meeting the annual fee deadline; and

- (3) The projected date of submitting the annual fee.

If the director disapproves an extension for submitting the annual fee, the owner or operator shall pay the required annual fee within thirty days of receipt of the disapproval notice or by the original submittal deadline, whichever is later. If the director approves an extension for submitting the annual fee, the owner or operator shall pay the required annual fee by the extended approved date.

(c) An annual fee, due within the first sixty days of each calendar year, shall be imposed on an owner or operator who has a valid noncovered source permit or permit to operate during the prior calendar year.

(d) A closure fee due within thirty days after permanent discontinuance of the noncovered source shall be based upon the months the noncovered source permit or permit to operate was valid during the year of permanent discontinuance. Any fraction of a month shall be deemed a full month.

(e) An annual fee due within sixty days of a particular calendar year shall be referred to as the annual fee for that particular year. For example, the 2001 annual fee shall be due within the first sixty days of calendar year 2001 and shall be imposed on an owner or operator of a noncovered source having a valid noncovered source permit or permit to operate in 2000.

(f) The owner or operator of a noncovered source shall be assessed an annual fee of \$500 for each valid permit to operate (issued pursuant to repealed chapter 11-60) or each noncovered source permit held during the prior calendar year, or \$42 per month for any fraction of the year the permit to operate or noncovered source permit is valid.

(g) If any part of the annual fee is not paid within thirty days after the due date, a late payment penalty of five per cent of the amount due shall at once accrue and be added thereto. Thereafter, on the first day of each calendar month during which any part of the annual fee or any prior accrued late payment

penalty remains unpaid, an additional late payment penalty of five per cent of the then unpaid balance shall accrue and be added thereto.

(h) If any annual fee, including the late payment penalty required by this chapter, is not paid in full within thirty days after the due date, the director may terminate or suspend any or all of the owner or operator's noncovered source permits, after affording the opportunity for a hearing in accordance with chapters 91 and 342B, HRS. [Eff 11/26/93; am and comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ]  
(Auth: HRS §§342B-3, 342B-12, 342B-29; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12, 342B-29; 42 U.S.C. §§7407, 7416)

**§11-60.1-120** REPEALED. [R 9/15/01]

**§11-60.1-121 Application fees for agricultural burning permits.** (a) Every applicant for an agricultural burning permit shall pay an application fee pursuant to this section. The application fee shall be made payable to the Clean Air Special Fund-NON.

(b) An application fee shall be submitted with the application for an agricultural burning permit and shall not be refunded nor applied to any subsequent application. No application for an agricultural burning permit shall be acted upon or considered unless the application fee is paid in full.

(c) Checks returned for any reason (e.g., insufficient funds, closed account, etc.) shall be considered a failure to pay. Returned checks are subject to an additional \$15 handling charge.

(d) From the effective date of this chapter, the fee schedule for filing an agricultural burning permit shall be as follows:

(1) Less than ten acres \$ 50

- (2) Ten to less than one hundred acres \$ 150
- (3) One hundred to less than one thousand acres \$ 750
- (4) One thousand or more acres \$ 1,500
- (e) The acreage shall be the total acreage designated to be burned or cleared for burning as specified in the permit. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp ]  
 (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)  
 (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

## SUBCHAPTER 7

### PREVENTION OF SIGNIFICANT DETERIORATION REVIEW

**§11-60.1-131 Definitions.** All of the definitions in 40 CFR 52.21(b) as they existed on [~~November 19, 2013~~] May 1, 2022 are hereby incorporated by reference. This section incorporates these definitions to support the implementation of 40 CFR Section 52.21, Prevention of Significant Deterioration of Air Quality. Selected definitions are included here for convenience. If a conflict is found, the definition in 40 CFR Section 52.21 shall apply.

"Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase as defined in 40 CFR 52.21(b)(40) of a regulated NSR pollutant, and a significant net emissions increase as defined in 40 CFR 52.21(b)(3) of that pollutant from the major stationary source. Any significant emissions increase from any emissions unit or net emissions increase at a major stationary source that is significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

A physical change or change in the method of operation shall not include:

- (1) Routine maintenance, repair, and replacement;
- (2) Use of an alternative fuel or raw material by reason of an order pursuant to Sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 or any superseding legislation or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
- (3) Use of an alternative fuel by reason of an order or rule under Section 125 of the Act;
- (4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
- (5) Use of an alternative fuel or raw material by a stationary source which:
  - (A) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited pursuant to any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR Section 52.21 or to regulations approved pursuant to 40 CFR Part 51 Subpart I or 40 CFR Section 51.166; or
  - (B) The source is approved to use under any permit issued pursuant to 40 CFR Section 52.21 or regulations approved pursuant to 40 CFR Section 51.166;
- (6) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR Section 52.21 or regulations approved pursuant to 40 CFR Part 51 Subpart I or 40 CFR Section 51.166;
- (7) Any change in ownership at a stationary source;
- (8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project as defined in 40 CFR

52.21(b)(36), provided the project complies with:

- (A) Hawaii state implementation plan; and
  - (B) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;
- (9) The installation or operation of a permanent clean coal technology demonstration project as defined in 40 CFR 52.21(b)(34-35) that constitutes repowering as defined in 40 CFR 52.21(b)(37), provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis; or
- (10) The reactivation of a very clean coal-fired electric utility steam generating unit as defined in 40 CFR 52.21(b)(38);

This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 40 CFR Paragraph 52.21[~~(a)-(a)~~] (aa) for a Plant Applicability Limitation (PAL) for that pollutant. Instead, the definition at 40 CFR Paragraph 52.21[~~(a)-(a)~~] (aa)(2)(viii) shall apply.

"Major stationary source" means:

- (1) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any regulated NSR pollutant[÷] other than the pollutant greenhouse gases:
- (A) Fossil fuel fired steam electric plants of more than two hundred fifty million BTU per hour heat input;
  - (B) Coal cleaning plants (with thermal dryers);
  - (C) Kraft pulp mills;
  - (D) Portland cement plants;
  - (E) Primary zinc smelters;
  - (F) Iron and steel mills;



- (G) Primary aluminum ore reduction plants (with thermal dryers);
  - (H) Primary copper smelters;
  - (I) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;
  - (J) Hydrofluoric, sulfuric, and nitric acid plants;
  - (K) Petroleum refineries;
  - (L) Lime plants;
  - (M) Phosphate rock processing plants;
  - (N) Coke oven batteries;
  - (O) Sulfur recovery plants;
  - (P) Carbon black plants (furnace process);
  - (Q) Primary lead smelters;
  - (R) Fuel conversion plants;
  - (S) Sintering plants;
  - (T) Secondary metal production plants;
  - (U) Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140);
  - (V) Fossil fuel boilers (or combinations thereof) totaling more than two hundred fifty million BTU per hour heat input;
  - (W) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;
  - (X) Taconite ore processing plants;
  - (Y) Glass fiber processing plants; and
  - (Z) Charcoal production plants;
- (2) Notwithstanding the stationary source size specified in this definition, any stationary source which emits, or has the potential to emit two hundred fifty tons per year or more of a regulated NSR pollutant~~+~~ other than the pollutant greenhouse gases; or
- (3) Any physical change that would occur at a stationary source not otherwise qualifying under this definition as a major stationary

source, if the changes would constitute a major stationary source by itself.

A major stationary source that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone. The fugitive emissions of a stationary source shall not be included in determining whether the source is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (1) Coal cleaning plants (with thermal dryers);
- (2) Kraft pulp mills;
- (3) Portland cement plants;
- (4) Primary zinc smelters;
- (5) Iron and steel mills;
- (6) Primary aluminum ore reduction plants;
- (7) Primary copper smelters;
- (8) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;
- (9) Hydrofluoric, sulfuric, or nitric acid plants;
- (10) Petroleum refineries;
- (11) Lime plants;
- (12) Phosphate rock processing plants;
- (13) Coke oven batteries;
- (14) Sulfur recovery plants;
- (15) Carbon black plants (furnace process);
- (16) Primary lead smelters;
- (17) Fuel conversion plants;
- (18) Sintering plants;
- (19) Secondary metal production plants;
- (20) Chemical process plants - the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- (21) Fossil fuel boilers (or combination thereof) totaling more than two hundred fifty million BTU per hour heat input;
- (22) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;

- (23) Taconite ore processing plants;
- (24) Glass fiber processing plants;
- (25) Charcoal production plants;
- (26) Fossil fuel fired steam electric plants of more than two hundred fifty million BTU per hour heat input; and
- (27) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

"NSR" means New Source Review and is synonymous to PSD Review.

"Regulated NSR pollutant" means the following:

- (1) Any pollutant for which a national ambient air quality standard has been promulgated and any pollutant identified under this paragraph as a constituent or precursor for such pollutant. Precursors identified by the Administrator for purposes of NSR are the following:
  - (A) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;
  - (B) Sulfur dioxide is a precursor to PM<sub>2.5</sub> in all attainment and unclassifiable areas; and
  - (C) Nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all attainment and unclassifiable areas.
- (2) Any pollutant that is subject to any standard promulgated under section 111 of the Act;
- (3) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act;
- (4) Any pollutant that otherwise is subject to regulation under the Act as defined in this subchapter.
- (5) Notwithstanding paragraphs (1) through (4) of this definition, the term "regulated NSR pollutant" shall not include any or all hazardous air pollutants either listed in section 112 of the Act, or added to the list

pursuant to section 112(b) (2) of the Act, and which have not been delisted pursuant to section 112(b) (3) of the Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Act.

- (6) PM<sub>2.5</sub> and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. Compliance with emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to January 1, 2011 shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the Hawaii state implementation plan. Applicability determinations made prior to January 1, 2011 without accounting for condensable particulate matter shall not be considered in violation of this subchapter.

"Significant" means in reference to a net emissions increase or the potential of a source to emit any of the following pollutants:

- (1) A rate of emissions that would equal or exceed any of the following pollutant emission rates:
- (A) Carbon monoxide: one hundred tpy;
  - (B) Nitrogen oxides: forty tpy;
  - (C) Sulfur dioxide: forty tpy;
  - (D) Particulate matter: twenty-five tpy of particulate matter emissions;
  - (E) PM<sub>10</sub>: fifteen tpy;
  - (F) PM<sub>2.5</sub>: ten tpy of direct PM<sub>2.5</sub> emissions; forty tpy of sulfur dioxide emissions; forty tpy of nitrogen oxide emissions unless demonstrated not to be a PM<sub>2.5</sub> precursor under 40 CFR 52.21(b) (50);
  - (G) Ozone: forty tpy of volatile organic compounds or nitrogen oxides;
  - (H) Lead: 0.6 tpy;

- (I) Fluorides: three tpy;i
  - (J) Sulfuric acid mist: seven tpy;i
  - (K) Hydrogen sulfide (H<sub>2</sub>S): ten tpy;i
  - (L) Total reduced sulfur (including H<sub>2</sub>S): ten tpy;i
  - (M) Reduced sulfur compounds (including H<sub>2</sub>S): ten tpy;i
  - (N) Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans):  $3.2 \times 10^{-6}$  megagrams per year ( $3.5 \times 10^{-6}$  tpy);i
  - (O) Municipal waste combustor metals (measured as particulate matter): fourteen megagrams per year (fifteen tpy);i
  - (P) Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): thirty-six megagrams per year (forty tpy);i
  - (Q) Municipal solid waste landfills emissions (measured as nonmethane organic compounds): forty-five megagrams per year (50 tpy);i or
  - (R) Greenhouse gases: as specified in paragraphs (3) and (4) under the definition of "Subject to Regulation" of this subchapter.
- (2) Any net emissions increase or the potential of a major stationary source to emit a regulated NSR pollutant that is not listed in paragraph (1), any emissions rate.
  - (3) Notwithstanding paragraph (1), any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten kilometers of a Class I area, and have an impact on such area equal to or greater than 1 µg/m<sup>3</sup> , (twenty-four-hour average).

"Subject to Regulation" means for any air pollutant, that the pollutant is subject to either a

provision in the Clean Air Act, or a nationally-applicable regulation codified in Title 40 CFR Chapter I, Subchapter C, Air Programs, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

- (1) Greenhouse gases (GHGs), the air pollutant defined in 40 CFR Subsection 86.1818-12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in [~~paragraphs (4) to (5)~~] paragraph(4) of this definition[-] and shall not be subject to regulation if the stationary source maintains its total source-wide emissions below the GHG PAL level, meets the requirements of paragraphs 40 CFR 52.21(aa)(1) through(15), and complies with the PAL permit containing the GHG PAL.
- (2) For purposes of [~~paragraphs (3) to (5)~~] paragraphs (3) and (4) of this definition, the term tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e) shall represent an amount of GHGs emitted, and shall be computed as follows:
  - (A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR Part 98-Global Warming Potentials.
  - (B) Sum the resultant value from paragraph (2)(A) above for each gas to compute a tpy CO<sub>2</sub>e.
- (3) The term "emissions increase" as used in [~~paragraphs(4) and (5)~~] paragraph (4) of this definition shall mean that both a

significant emissions increase (as calculated using the procedures in 40 CFR 52.21(a)(2)(iv)) and a significant net emissions increase (as defined in 40 CFR 52.21(b)(3) and (b)(23)) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO<sub>2</sub>e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO<sub>2</sub>e instead of applying the value in 40 CFR 52.21(b)(23)(ii).

- ~~[(4) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:~~
- ~~(A) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO<sub>2</sub>e or more; or~~
  - ~~(B) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO<sub>2</sub>e or more; and,~~
- ~~(5) Beginning July 1, 2011, in addition to the provisions in paragraph (4) of this definition, the pollutant GHGs shall also be subject to regulation at:~~
- ~~(A) A new stationary source that will emit or have the potential to emit 100,000 tpy or more CO<sub>2</sub>e; or~~
  - ~~(B) An existing stationary source that emits or has the potential to emit 100,000 tpy or more CO<sub>2</sub>e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO<sub>2</sub>e or more.]~~

(4) GHGs are subject to regulation for major stationary source prevention of significant

deterioration permits as follows:

- (A) For existing stationary sources, GHGs are subject to regulation (GHG BACT analysis) only if:
- (i) the stationary source is major due to the potential to emit of a non-GHG pollutant;
  - (ii) the project would cause both a significant emissions increase and significant net emissions increase for a non-GHG pollutant; and
  - (iii) the project would cause both CO<sub>2</sub>e emissions increase and CO<sub>2</sub>e net emissions increase equal to or greater than 75,000 tpy.
- (B) For new stationary sources, GHGs are subject to regulation (BACT analysis for GHGs) only if the stationary source:
- (i) is major due to the potential to emit another pollutant; and
  - (ii) would have the potential to emit equal to or greater than 75,000 tpy of CO<sub>2</sub>e emissions. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp
- ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7475; 40 C.F.R. Part 52) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7475; 40 C.F.R. Part 52)

**§11-60.1-132 Source applicability.** (a) This subchapter incorporates by reference, provisions of 40 CFR Section 52.21, Prevention of Significant Deterioration of Air Quality, as it existed on ~~[November 19, 2013]~~ May 1, 2022 and applies to owners



or operators planning to construct a major stationary source or to make a major modification to such a stationary source. Provisions of 40 CFR Section 52.21 are additional requirements for considering an application for a covered source permit required by subchapter 5.

(b) No stationary source or modification to which the requirements of this subchapter apply shall begin actual construction without a covered source permit which states that the stationary source or modification would meet the requirements of 40 CFR Section 52.21. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7475; 40 C.F.R. Part 52) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7475; 40 C.F.R. Part 52)

§11-60.1-133 REPEALED. [R 6/30/14]

§11-60.1-134 REPEALED. [R 6/30/14]

§11-60.1-135 REPEALED. [R 6/30/14]

§11-60.1-136 REPEALED. [R 6/30/14]

§11-60.1-137 REPEALED. [R 6/30/14]

§11-60.1-138 REPEALED. [R 6/30/14]

§11-60.1-139 REPEALED. [R 6/30/14]

§11-60.1-140 REPEALED. [R 6/30/14]

§11-60.1-141 REPEALED. [R 6/30/14]

§11-60.1-142 REPEALED. [R 6/30/14]

§11-60.1-143 REPEALED. [R 6/30/14]

§11-60.1-144 REPEALED. [R 6/30/14]

§11-60.1-145 REPEALED. [R 6/30/14]

§11-60.1-146 REPEALED. [R 6/30/14]

§11-60.1-147 REPEALED. [R 6/30/14]

§11-60.1-148 REPEALED. [R 6/30/14]

§11-60.1-149 REPEALED. [R 6/30/14]

§11-60.1-150 REPEALED. [R 6/30/14]

## SUBCHAPTER 8

### STANDARDS OF PERFORMANCE FOR STATIONARY SOURCES

#### **§11-60.1-161 New source performance standards.**

(a) This section applies to an owner or operator subject to a promulgated federal standard of performance for new stationary sources. An owner or operator of an affected facility shall comply with all applicable provisions of 40 CFR Part 60, entitled "Standards of Performance for New Stationary Sources," including the following subparts:

- (1) Subpart A, General Provisions;
- (2) Subpart D, Standards of Performance for Fossil Fuel Fired Steam Generators for Which Construction is Commenced After August 17, 1971;
- (3) Subpart Da, Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978;
- (4) Subpart Db, Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units;
- (5) Subpart Dc, Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units;
- (6) Subpart E, Standards of Performance for Incinerators;
- (7) Subpart Ea, Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989 and on or Before September 20, 1994;

- (8) Subpart Eb, Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996;
- (9) Subpart Ec, Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996;
- (10) Subpart F, Standards of Performance for Portland Cement Plants;
- (11) Subpart I, Standards of Performance for Hot Mix Asphalt Facilities;
- (12) Subpart J, Standards of Performance for Petroleum Refineries;
- (13) Subpart Ja, Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007;
- ~~[(13)]~~ (14) Subpart K, Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978;
- ~~[(14)]~~ (15) Subpart Ka, Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984;
- ~~[(15)]~~ (16) Subpart Kb, Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984;
- ~~[(16)]~~ (17) Subpart O, Standards of Performance for Sewage Treatment Plants;
- ~~[(17)]~~ (18) Subpart Y, Standards of Performance for Coal Preparation Plants;

- ~~[(18)]~~ (19) Subpart AA, Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983;
- ~~[(19)]~~ (20) Subpart AAa, Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983;
- ~~[(20)]~~ (21) Subpart GG, Standards of Performance for Stationary Gas Turbines;
- (22) Subpart UU, Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture;
- ~~[(21)]~~ (23) Subpart VV, Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry~~+~~ for which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006;
- (24) Subpart VVa, Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006;
- ~~[(22)]~~ (25) Subpart WW, Standards of Performance for the Beverage Can Surface Coating Industry;
- ~~[(23)]~~ (26) Subpart XX, Standards of Performance for Bulk Gasoline Terminals;
- ~~[(24)]~~ (27) Subpart GGG, Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries~~+~~ for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or Before November 7, 2006;
- (28) Subpart GGGa, Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006;

- ~~[(25)]~~ (29) Subpart JJJ, Standards of Performance for Petroleum Dry Cleaners;
- ~~[(26)]~~ (30) Subpart NNN, Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations;
- ~~[(27)]~~ (31) Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants;
- ~~[(28)]~~ (32) Subpart QQQ, Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems;
- ~~[(29)]~~ (33) Subpart VVV, Standards of Performance for Polymeric Coating of Supporting Substrates Facilities;
- ~~[(30)]~~ (34) Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills;
- (35) Subpart XXX, Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014;
- ~~[(31)]~~ (36) Subpart AAAA, Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction Commenced After June 6, 2001;~~[-and]~~
- ~~[(32)]~~ (37) Subpart CCCC, Standards of Performance for Commercial and Industrial Solid Waste Incineration Units ~~[-for Which Construction is Commenced After November 30, 1999 or for Which Modification or Reconstruction is Commenced on or After June 1, 2001.];~~
- (38) Subpart EEEE, Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006;

- (39) Subpart IIII, Standards of Performance for Stationary Compression Ignition Internal Combustion Engines;
- (40) Subpart JJJJ, Standards of Performance for Stationary Spark Ignition Internal Combustion Engines;
- (41) Subpart KKKK, Standards of Performance for Stationary Combustion Turbines;
- (42) Subpart LLLL, Standards of Performance for New Sewage Sludge Incineration Units; and
- (43) Subpart TTTT, Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units.

(b) ~~[Each federal standard of performance for new stationary sources (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources. Unless specifically exempted from Title V permitting requirements by an applicable federal standard, any]~~ Any owner or operator who constructs, reconstructs, modifies, or operates an affected facility subject to covered source permitting is subject to the application and permitting requirements of subchapter 5. If there is a conflict between the application deadlines in subchapter 5 and the applicable federal standard, the earlier deadline shall apply. Each federal standard of performance for new stationary sources (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources. If there is a conflict between an applicable requirement of subchapter 5, or any other subchapter of these rules, and the applicable federal standard, the most stringent requirement shall apply. "Affected facility" as used in this section shall have the same meaning as in 40 CFR §60.2.

(c) Any owner or operator who constructs, reconstructs, modifies, or operates an affected facility subject to noncovered source permitting requirements is subject to the application and permitting requirements of subchapter 4. Each federal standard of performance for new stationary sources (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 4, Noncovered Sources. "Affected facility" as used in this section shall have the same meaning as in 40 CFR §60.2. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14, am and comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416; 40 C.F.R. Part 60) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416; 40 C.F.R. Part 60)

**§11-60.1-162** REPEALED. [R 9/15/01]

**§11-60.1-163 Federal plans.** (a) This section applies to an owner or operator subject to a promulgated federal plan for designated or affected facilities, where the facility is not covered by an EPA approved state plan. "State plan" as used in this subsection means a plan submitted pursuant to section 111(d) and section 129(b)(2) of the Clean Air Act and 40 CFR Part 60, subpart B that implements and enforces 40 CFR Part 60, subpart C.

(b) An owner or operator of a designated or affected facility, as defined in the applicable federal plan, shall comply with all applicable requirements of the federal plan, including the following:

- (1) 40 CFR Part 62, Subpart FFF, Federal Plan Requirements for Large Municipal Waste



Combustors Constructed on or Before  
September 20, 1994;

- (2) 40 CFR Part 62, Subpart GGG, Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991;
- (3) 40 CFR Part 62, Subpart HHH, Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or Before June 20, 1996; [and]
- (4) 40 CFR Part 62, Subpart III, Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999;
- ~~[(4)]~~ (5) 40 CFR Part 62, Subpart JJJ, Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999[-];
- (6) 40 CFR Part 62, Subpart LLL, Federal Plan Requirements for Sewage Sludge Incineration Units Constructed on or Before October 14, 2010; and
- (7) 40 CFR Part 62, Subpart OOO, Federal Plan Requirements for Municipal Solid Waste Landfills that Commenced Construction On or Before July 17, 2014 and Have Not Been Modified or Reconstructed Since July 17, 2014.

(c) ~~[Each federal plan for designated or affected facilities (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources. Unless specifically exempted from Title V permitting by applicable federal plan, any owner or operator of a designated or affected facility]~~ Any owner or operator who constructs, reconstructs, modifies, or operates a designated or affected facility subject to covered source permitting is

subject to the application and permitting requirements of subchapter 5. Each federal plan for designated or affected facilities (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources.

(d) Any owner or operator who constructs, reconstructs, modifies, or operates an affected facility subject to noncovered source permitting requirements is subject to the application and permitting requirements of subchapter 4. Each federal plan for designated or affected facilities (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 4, Noncovered Sources. [Eff and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14, am and comp ]

(Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)

## SUBCHAPTER 9

### HAZARDOUS AIR POLLUTANT SOURCES

**§11-60.1-171 Definitions.** As used in this subchapter:

"Accidental release" means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

"Affected source" means the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to Section 112 of the Act.

"Area source" means any stationary source of hazardous air pollutants that is not a major source but shall not include motor vehicles or nonroad vehicles subject to regulation approved pursuant to Title II of the Act.

"Carcinogenic hazardous air pollutant" means any hazardous air pollutant recognized as known, probable, or potential human carcinogen by the EPA's Integrated Risk Information System (IRIS), or other documented studies or information by recognized authorities and approved by the director.

"Category" means any category of major sources and area sources of hazardous air pollutants listed pursuant to Section 112(c) of the Act.

"Commenced" as used in this subchapter means, with respect to construction or reconstruction of an affected source, that an owner or operator has undertaken a continuous program of construction or reconstruction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction.

"Construction" means the on-site fabrication, erection, or installation of an affected source as defined in 40 CFR §63.2.

"EPA risk assessment guidelines" means the U.S. Environmental Protection Agency's Guidelines for Carcinogenic Risk Assessment, 51 FR 33992 (September 24, 1986).

"Emission standard" means a national standard, limitation, prohibition, or other regulation promulgated in 40 CFR Part 63 pursuant to Sections 112(d), 112(h), or 112(f) of the Act.

"Equivalent MACT" means the MACT emission limitation or requirements which are applicable to major sources of hazardous air pollutants and are approved by the director on a case-by-case basis, pursuant to Sections 112(g) or 112(j) of the Act.

"Existing source" means any affected source that is not a new source as defined in this subchapter.

"MACT" means maximum achievable control technology.

"New source", unless otherwise defined in an applicable Section 112 standard, means any affected source which is:

- (1) Major, or located within a major source of hazardous air pollutants, and in a category or subcategory for which construction or reconstruction is commenced after the Section 112(j) deadline, or after the Administrator proposes a relevant emission standard pursuant to Sections 112(d) or (h) of the Act, whichever comes first;
- (2) Major, subject to 112(g) of the Act, and for which construction or reconstruction commenced after January 27, 1997; or
- (3) Nonmajor, in a category or subcategory, and for which construction or reconstruction is commenced after the Administrator first proposes a relevant emission standard pursuant to Section 112(d) or (h) of the Act.

"Reconstruction", unless otherwise defined in an applicable Section 112 standard, means the replacement of components of an affected or a previously unaffected stationary source to such an extent that:

- (1) The fixed capital cost of the new components exceeds fifty per cent of the fixed capital cost that would be required to construct a comparable new source; and
- (2) It is technologically and economically feasible for the reconstructed source to meet the applicable MACT or equivalent MACT standard(s). Upon reconstruction, an affected source, or a stationary source that becomes an affected source, is subject to the applicable standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from the source.

"Regulated substance" means a substance listed pursuant to Section 112(r)(3) of the Act.

"Risk management plan" means a plan to detect and prevent or minimize accidental releases of regulated

substances from a stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

"Section 112(j)" means Section 112(j) of the Act.

"Section 112(j) deadline" means the date 18 months after the date by which a relevant standard is scheduled to be promulgated by the Administrator pursuant to Section 112(e) of the Act; except that for all major sources listed in the source category schedule for which a relevant standard is scheduled to be promulgated by November 15, 1994, the Section 112(j) deadline is November 15, 1996, and for all major sources listed in the source category schedule for which a relevant standard is scheduled to be promulgated by November 15, 1997, the Section 112(j) deadline is December 15, 1999.

"Stationary regulated substance source" means buildings, structures, equipment, installations, or substance-emitting stationary activities:

- (1) Which belong to the same industrial group;
- (2) Which are located on one or more contiguous properties;
- (3) Which are under the control of the same person or persons under common control; and
- (4) From which an accidental release may occur.

"Subcategory" means any subcategory of major sources and area sources of hazardous air pollutants listed pursuant to Section 112(c) of the Act.

"Threshold limit value" means the airborne concentration of a substance that, according to the American Conference of Governmental Industrial Hygienists, represents conditions under which nearly all workers may be repeatedly exposed day after day without adverse effects.

"Threshold limit value-time weighted average" means the threshold limit value for a normal eight-hour workday and a forty-hour workweek as specified in the TLV book.

"TLV-TWA" means threshold limit value-time weighted average.

"TLV book" means the "Documentation of the Threshold Limit Value and Biological Exposure

Indices," [~~sixth~~] seventh edition, published by the American Conference of Governmental Industrial Hygienists, Inc. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14, am and comp ]  
 (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70)

**§11-60.1-172 List of hazardous air pollutants.**

The following are hazardous air pollutants:

	<u>CAS number</u>	<u>Chemical name</u>
(1)	75070	Acetaldehyde
(2)	60355	Acetamide
(3)	75058	Acetonitrile
(4)	98862	Acetophenone
(5)	53963	2-Acetylaminofluorene
(6)	107028	Acrolein
(7)	79061	Acrylamide
(8)	79107	Acrylic acid
(9)	107131	Acrylonitrile
(10)	107051	Allyl chloride
(11)	92671	4-Aminobiphenyl
(12)	62533	Aniline
(13)	90040	o-Anisidine
(14)	1332214	Asbestos
(15)	71432	Benzene (including benzene from gasoline)
(16)	92875	Benzidine
(17)	98077	Benzotrichloride
(18)	100447	Benzyl chloride
(19)	92524	Biphenyl
(20)	117817	Bis(2-ethylhexyl)phtha-late (DEHP)
(21)	542881	Bis(chloromethyl)ether
(22)	75252	Bromoform
(23)	106990	1,3-Butadiene
(24)	156627	Calcium cyanamide
(25)	133062	Captan
(26)	63252	Carbaryl

(27)	75150	Carbon disulfide
(28)	56235	Carbon tetrachloride
(29)	463581	Carbonyl sulfide
(30)	120809	Catechol
(31)	133904	Chloramben
(32)	57749	Chlordane
(33)	7782505	Chlorine
(34)	79118	Chloroacetic acid
(35)	532274	2-Chloroacetophenone
(36)	108907	Chlorobenzene
(37)	510156	Chlorobenzilate
(38)	67663	Chloroform
(39)	107302	Chloromethyl methyl ether
(40)	126998	Chloroprene
(41)	1319773	Cresols/Cresylic acid (isomers and mixture)
(42)	95487	o-Cresol
(43)	108394	m-Cresol
(44)	106445	p-Cresol
(45)	98828	Cumene
(46)	94757	2,4-D, salts and esters
(47)	3547044	DDE
(48)	334883	Diazomethane
(49)	132649	Dibenzofurans
(50)	96128	1,2-Dibromo-3-chloro-propane
(51)	84742	Dibutylphthalate
(52)	106467	1,4-Dichlorobenzene (p)
(53)	91941	3,3-Dichlorobenzidene
(54)	111444	Dichloroethyl ether (Bis(2-chloroethyl)-ether)
(55)	542756	1,3-Dichloropropene
(56)	62737	Dichlorvos
(57)	111422	Diethanolamine
(58)	121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
(59)	64675	Diethyl sulfate
(60)	119904	3,3-Dimethoxybenzidine
(61)	60117	Dimethyl aminoazobenzene
(62)	119937	3,3-Dimethyl benzidine
(63)	79447	Dimethyl carbamoyl chloride
(64)	68122	Dimethyl formamide
(65)	57147	1,1-Dimethyl hydrazine

(66)	131113	Dimethyl phthalate
(67)	77781	Dimethyl sulfate
(68)	534521	4,6-Dinitro-o-cresol, and salts
(69)	51285	2,4-Dinitrophenol
(70)	121142	2,4-Dinitrotoluene
(71)	123911	1,4-Dioxane (1,4-Diethyleneoxide)
(72)	122667	1,2-Diphenylhydrazine
(73)	106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)
(74)	106887	1,2-Epoxybutane
(75)	140885	Ethyl acrylate
(76)	100414	Ethyl benzene
(77)	51796	Ethyl carbamate (Urethane)
(78)	75003	Ethyl chloride (Chloroethane)
(79)	106934	Ethylene dibromide (Dibromoethane)
(80)	107062	Ethylene dichloride (1,2-Dichloroethane)
(81)	107211	Ethylene glycol
(82)	151564	Ethyleneimine (Aziridine)
(83)	75218	Ethylene oxide
(84)	96457	Ethylene thiourea
(85)	75343	Ethylidene dichloride (1,1-Dichloroethane)
(86)	50000	Formaldehyde
(87)	76448	Heptachlor
(88)	11874	Hexachlorobenzene
(89)	87683	Hexachlorobutadiene
(90)	77474	Hexachlorocyclopentadiene
(91)	67721	Hexachloroethane
(92)	82206	Hexamethylene-1,6-diisocyanate
(93)	680319	Hexamethylphosphoramide
(94)	110543	Hexane
(95)	302012	Hydrazine
(96)	7647010	Hydrochloric acid
(97)	7664393	Hydrogen fluoride (Hydrofluoric acid)
(98)	123319	Hydroquinone
(99)	78591	Isophorone
(100)	58899	Lindane (all isomers)
(101)	108316	Maleic anhydride
(102)	67561	Methanol



(103)	72435	Methoxychlor
(104)	74839	Methyl bromide (Bromomethane)
(105)	74873	Methyl chloride (Chloromethane)
(106)	71556	Methyl chloroform (1,1,1-Trichloroethane)
(107)	78933	Methyl ethyl ketone (2-Butanone)
(108)	60344	Methyl hydrazine
(109)	74884	Methyl iodide (Iodomethane)
(110)	108101	Methyl isobutyl ketone (Hexone)
(111)	624839	Methyl isocyanate
(112)	80626	Methyl methacrylate
(113)	1634044	Methyl tert butyl ether
(114)	101144	4,4-Methylene bis(2-chloroaniline)
(115)	75092	Methylene chloride (Dichloromethane)
(116)	101688	Methylene diphenyl diisocyanate (MDI)
(117)	101779	4,4-Methylenedianiline
(118)	91203	Naphthalene
(119)	98953	Nitrobenzene
(120)	92933	4-Nitrobiphenyl
(121)	100027	4-Nitrophenol
(122)	79469	2-Nitropropane
(123)	684935	N-Nitroso-N-methylurea
(124)	62759	N-Nitrosodimethylamine
(125)	59892	N-Nitrosomorpholine
(126)	56382	Parathion
(127)	82688	Pentachloronitrobenzene (Quintobenzene)
(128)	87865	Pentachlorophenol
(129)	108952	Phenol
(130)	106503	p-Phenylenediamine
(131)	75445	Phosgene
(132)	7803512	Phosphine
(133)	7723140	Phosphorus
(134)	85449	Phthalic anhydride
(135)	1336363	Polychlorinated biphenyls- (Aroclors)
(136)	1120714	1,3-Propane sultone
(137)	57578	beta-Propiolactone
(138)	123386	Propionaldehyde

(139)	114261	Propoxur (Baygon)
(140)	78875	Propylene dichloride (1,2-Dichloropropane)
(141)	75569	Propylene oxide
(142)	75558	1,2-Propylenimine (2-Methylaziridine)
(143)	91225	Quinoline
(144)	106514	Quinone
(145)	100425	Styrene
(146)	96093	Styrene oxide
(147)	1746016	2,3,7,8-Tetrachlorodiben- zo-p-dioxin
(148)	79345	1,1,2,2-Tetrachloroethane
(149)	127184	Tetrachloroethylene (Perchloroethylene)
(150)	7550450	Titanium tetrachloride
(151)	108883	Toluene
(152)	95807	2,4-Toluene diamine
(153)	584849	2,4-Toluene diisocyanate
(154)	95534	o-Toluidine
(155)	8001352	Toxaphene (chlorinated camphene)
(156)	120821	1,2,4-Trichlorobenzene
(157)	79005	1,1,2-Trichloroethane
(158)	79016	Trichloroethylene
(159)	95954	2,4,5-Trichlorophenol
(160)	88062	2,4,6-Trichlorophenol
(161)	121448	Triethylamine
(162)	1582098	Trifluralin
(163)	540841	2,2,4-Trimethylpentane
(164)	108054	Vinyl acetate
(165)	593602	Vinyl bromide
(166)	75014	Vinyl
(167)	75354	Vinylidene chloride (1,1-Dichloroethylene)
(168)	1330207	Xylenes (isomers and mixture)
(169)	95476	o-Xylenes
(170)	108383	m-Xylenes
(171)	106423	p-Xylenes
(172)	0	Antimony Compounds
(173)	0	Arsenic Compounds (inorganic including arsine)
(174)	0	Beryllium Compounds

(175)	0	Cadmium Compounds
(176)	0	Chromium Compounds
(177)	0	Cobalt Compounds
(178)	0	Coke Oven Emissions
(179)	0	Cyanide Compounds <sup>1</sup>
(180)	0	Glycol ethers <sup>2</sup>
(181)	0	Lead Compounds
(182)	0	Manganese Compounds
(183)	0	Mercury Compounds
(184)	0	Fine mineral fibers <sup>3</sup>
(185)	0	Nickel Compounds
(186)	0	Polycyclic Organic Matter <sup>4</sup>
(187)	0	Radionuclides (including radon) <sup>5</sup>
(188)	0	Selenium Compounds
(189)	106945	1-Bromopropane (1-BP)

NOTE: For all listings above which contain the word "compounds" and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of that chemical's infrastructure.

<sup>1</sup> X'CN where X = H' or any other group where a formal dissociation may occur. For example, KCN or Ca(CN)<sub>2</sub>.

<sup>2</sup> Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH<sub>2</sub>CH<sub>2</sub>)<sub>n</sub>-OR' where:

n = 1, 2, or 3

R = alkyl or aryl groups

R' = R, H, or groups which, when removed, yield glycol ethers with the structure: R-(OCH<sub>2</sub>CH)<sub>n</sub>-OH. Polymers are excluded from the glycol category.

<sup>3</sup> Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter one micrometer or less.

<sup>4</sup> Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100EC.

<sup>5</sup> A type of atom which spontaneously undergoes radioactive decay. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14, am and comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70)

**§11-60.1-173 Applicability.** The provisions of this subchapter are applicable to any stationary source which emits or has the potential to emit any hazardous air pollutant. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14, comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70)

**§11-60.1-174 Maximum achievable control technology (MACT) emission standards.** (a) This section applies to an owner or operator of a major or area source of hazardous air pollutants that has or will have affected source(s) in a category or subcategory subject to a promulgated MACT emission standard. An owner or operator of an affected source shall comply with all applicable provisions of 40 CFR Part 63, entitled "National Emission Standards for Hazardous Air Pollutants for Source Categories," including the following subparts:

- (1) Subpart A, General Provisions;
- (2) Subpart D, Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants;

- (3) Subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks;
- (4) Subpart M, National [~~Perchloroethylene~~] Perchloroethylene Air Emission Standards for Dry Cleaning Facilities;
- (5) Subpart N, National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Anodizing Tanks;
- (6) Subpart O, Ethylene Oxide Emissions Standards for Sterilization Facilities;
- (7) Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers;
- (8) Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations);
- (9) Subpart T, National Emission Standards for Halogenated Solvent Cleaning;
- (10) Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins;
- (11) Subpart W, National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production;
- (12) Subpart Y, National Emission Standards for Marine Tank Vessel Loading Operations;
- (13) Subpart CC, National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries;
- (14) Subpart DD, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations;
- (15) Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities;
- (16) Subpart II, National Emission Standards for Shipbuilding and Ship Repair (Surface Coating);

- (17) Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations;
- (18) Subpart KK, National Emission Standards for the Printing and Publishing Industry;
- (19) Subpart OO, National Emission Standards for Tanks-Level 1;
- (20) Subpart PP, National Emission Standards for Containers;
- (21) Subpart QQ, National Emission Standards for Surface Impoundments;
- (22) Subpart RR, National Emission Standards for Individual Drain Systems;
- (23) Subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process;
- ~~[(+23)]~~ (24) Subpart VV, National Emission Standards for Oil-Water Separators and Organic Water Separators;
- (25) Subpart WW, National Emission Standards for Storage Vessels (Tanks)–Control Level 2;
- ~~[(+24)]~~ (26) Subpart JJJ, National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins;
- ~~[(+25)]~~ (27) Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units;
- ~~[(+26)]~~ (28) Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works;
- (29) Subpart AAAA, National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills;
- ~~[(+27)]~~ (30) Subpart HHHH, National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production; [and]
- ~~[(+28)]~~ (31) Subpart VVVV, National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing[-];

- (32) Subpart YYYY, National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines;
- (33) Subpart ZZZZ, National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines;
- (34) Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters;
- (35) Subpart PPPPP, National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stand;
- (36) Subpart UUUUU, National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units;
- (37) Subpart BBBBBB, National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities;
- (38) Subpart CCCCCC, National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities;
- (39) Subpart HHHHHH, National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources; and
- (40) Subpart JJJJJJ, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources.

(b) ~~[Each MACT emission standard (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources.]~~ Any owner or operator who constructs, reconstructs, modifies, or operates an affected source subject to covered source permitting is subject to the application and

permitting requirements of subchapter 5. Each MACT emission standard (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources.

(c) Any owner or operator who constructs, reconstructs, modifies, or operates an affected source subject to noncovered source permitting requirements is subject to the application and permitting requirements of subchapter 4. Each MACT emission standard (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 4, Noncovered Sources.

~~[(e)]~~ (d) The deadlines for submitting the required initial notification, and applying for or obtaining a noncovered or covered source permit to address the MACT emission standard are as follows:

- (1) The owner or operator of a new affected source subject to noncovered or covered source permitting shall submit a complete noncovered or covered source permit application for and obtain a noncovered or covered source permit prior to commencing construction or reconstruction of an affected source, except as provided below.
- (2) The owner or operator of a new major affected source for which construction or reconstruction had commenced, and initial startup had not occurred before the standard's effective date, shall submit a complete and timely covered source permit application within sixty calendar days after the standard's effective date. The covered source permit application may be used to fulfill the initial notification requirements of 40 CFR §63.9(b).
- (3) The owner or operator of:



- (A) an existing affected source;
- (B) a new nonmajor affected source for which construction or reconstruction had commenced and initial startup had not occurred before the standard's effective date; or
- (C) a new affected source for which construction or reconstruction had commenced and initial startup had occurred before the standard's effective date;

shall submit written notification to the director of being subject to the MACT emission standard within 120 calendar days after the effective date of the applicable standard or within 120 calendar days after the source becomes subject to the applicable standard. The owner or operator may submit an initial notification later than the deadline required above, if the applicable MACT standard sets a later deadline. Notification shall be provided pursuant to 40 CFR §63.9(b)(2). The owner or operator shall also submit a complete and timely noncovered or covered source permit application, as applicable, within twelve months after the effective date of the standard, or within twelve months after the source becomes subject to the standard.

~~[(d)]~~ (e) In addressing the MACT emission standard, the owner or operator of an affected source shall provide as part of the noncovered or covered source permit application, any other additional information listed in 40 CFR 63.5(d)(1)(ii), (2), and (3). [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14, am and comp ]  
 (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70)

**§11-60.1-175 Equivalent maximum achievable control technology (MACT) limitation.** (a) This section applies to:

- (1) an owner or operator of a major source of hazardous air pollutants which includes one or more stationary sources that are within a source category or subcategory for which the Administrator has failed to promulgate an applicable emission standard under 40 CFR Part 63 by the section 112(j) deadline; and
- (2) an owner or operator who constructs or reconstructs a major source (as defined in 40 CFR §63.41) of hazardous air pollutants after January 27, 1997, and an owner or operator of an area source that converts to a major source of hazardous air pollutants after January 27, 1997, unless the major source has been specifically regulated or exempted from regulation under a standard issued pursuant to section 112(d), 112(h), or 112(j) of the Act.

(b) An owner or operator subject to this section is subject to an equivalent MACT limitation and shall comply with the applicable provisions of 40 CFR Part 63, entitled National Emission Standards for Hazardous Air Pollutants for Source Categories:

- (1) Subpart A, General Provisions; and
- (2) Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections 112(g) and 112(j) (40 CFR §63.40 to §63.44 and §63.50 to §63.56).

(c) The director shall determine, on a case-by-case basis, the equivalent MACT emission limitation in accordance with applicable provisions of 40 CFR Part 63, Subpart B, and impose any other requirements necessary to ensure the enforceability of the equivalent MACT emission limitation.

(d) Each equivalent MACT limitation (including emission limits, control, operational, and maintenance requirements, compliance dates, and any associated

recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources. Any owner or operator who constructs, reconstructs, modifies, or operates an affected source is subject to the application and permitting requirements of subchapter 5.

(e) An owner or operator subject to paragraph (a)(1) shall comply with the following deadlines for applying for and obtaining a covered source permit to address the equivalent MACT limitation:

(1) For existing sources:

(A) The owner or operator of a major source or an affected source within a major source shall submit a complete and timely covered source permit application by the Section 112(j) deadline.

(B) The owner or operator who reconstructs a major source or an affected source within a major source, and the owner or operator of an area source that becomes a major source by the addition or reconstruction of an affected source or by the increase in the source's potential to emit (e.g., increased hours of operation or fuel usage, etc.) shall submit a complete covered source permit application and obtain a covered source permit prior to reconstruction or conversion to a major source.

(C) The owner or operator of an area source that becomes major and subject to paragraph (a)(1) due to the Administrator establishing a lesser quantity emission rate for a "major source" under Section 112(a)(1) of the Act shall submit a complete and timely covered source permit application within six months from the date that the source becomes major.

(2) For new sources:

- (A) The owner or operator who constructs or reconstructs a major source or an affected source within a major source, and the owner or operator of an area source that becomes a major source by the addition or reconstruction of an affected source or by the increase in the source's potential to emit (e.g., increased hours of operation or fuel usage, etc.) shall submit a complete covered source permit application and obtain a covered source permit prior to construction, reconstruction, or conversion to a major source.
- (B) The owner or operator of an area source that becomes major and subject to paragraph (a)(1) due to the Administrator establishing a lesser quantity emission rate for a "major source" under Section 112(a)(1) of the Act shall submit a complete and timely covered source permit application within six months from the date that the source becomes major.

In addressing equivalent MACT, the owner or operator of the source shall provide, as part of the covered source permit application, any additional information required by 40 CFR §63.53.

(f) An owner or operator subject to paragraph (a)(2) who constructs or reconstructs a major source, and the owner or operator of an area source that becomes a major source by the increase in the source's potential to emit (e.g., increased hours of operation or fuel usage, etc.) shall submit a complete covered source permit application and obtain a covered source permit prior to construction, reconstruction, or conversion to a major source. In addressing equivalent MACT, the owner or operator of the affected major source shall provide, as part of the covered source permit application, any additional information required by 40 CFR §63.43(e). [Eff 11/26/93; comp

10/26/98; am and comp 9/15/01; am and comp 11/14/03;  
comp 1/13/12; am and comp 6/30/14, comp  
] (Auth: HRS §§342B-3, 342B-12;  
42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70)  
(Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412,  
7416; 40 C.F.R. Part 70)

**§11-60.1-176** REPEALED. [R 9/15/01]

**§11-60.1-177 Early reduction.** (a) [~~Upon~~  
~~program approval and a~~]Notwithstanding sections 11-  
60.1-174 and 11-60.1-175, the director may allow an  
existing source, for which the owner or operator  
demonstrates that the source has achieved a reduction  
pursuant to 40 CFR Part 63, Subpart D, to meet an  
alternative emission limitation reflecting that  
reduction in lieu of an emission limitation  
promulgated pursuant to Section 112(d) of the Act.

(b) The alternative emission limitation  
specified in subsection (a) shall be considered an  
applicable requirement pursuant to subchapter 5. [Eff  
11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03;  
comp 1/13/12; comp 6/30/14, comp  
(Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412,  
7416; 40 C.F.R. Parts 63 and 70) (Imp: HRS §§342B-3,  
342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Parts  
63 and 70)

**§11-60.1-178 Accidental releases.** The owner or  
operator of a stationary regulated substance source  
shall comply with any standard or other requirement  
concerning accidental releases, including the  
preparation, submittal, and implementation of a risk  
management plan pursuant to Section 112(r) of the Act.  
[Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp  
11/14/03; comp 1/13/12; comp 6/30/14, comp

] (Auth: HRS §§342B-3, 342B-12;  
42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70)  
(Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412,  
7416; 40 C.F.R. Part 70)

**§11-60.1-179 Ambient air concentrations of hazardous air pollutants.** (a) No person shall emit or cause to emit from any stationary source, hazardous air pollutants in such quantities that result in, or contribute to, an ambient air concentration which endangers human health.

(b) The director shall not approve any application for a permit required by this chapter, for a new major source of hazardous air pollutants, or for the modification or reconstruction of any major source of hazardous air pollutants, or for any stationary source that the director has reason to believe that the emissions of hazardous air pollutants from the source may result in an unacceptable ambient air concentration, unless the owner or operator of the source, and except as provided in subsection (d), complies with one or more of the following:

- (1) Demonstrate that the emissions of hazardous air pollutants from the source will not result in, or contribute to, any significant ambient air concentrations as defined in subsection (c); or
- (2) Demonstrate that the applicable significant ambient air concentration in subsection (c) is inappropriate for the hazardous air pollutant in question and that the emissions of hazardous air pollutants from the source will not result in, or contribute to, any ambient air concentration which endangers human health. The demonstration shall include documented studies or information by recognized authorities on the specific health effects of such hazardous air pollutants and a detailed analysis, including a risk assessment, that

demonstrates that the emissions from the sources will not endanger human health.

(c) For purposes of this subchapter, "significant ambient air concentration of any hazardous air pollutant" shall be defined as follows:

- (1) For any non-carcinogenic hazardous air pollutant with a TLV-TWA, and except as provided in subsection (e), any eight-hour average ambient air concentration in excess of 1/100 of the TLV-TWA, and any annual average ambient air concentration in excess of 1/420 of the TLV-TWA;
- (2) For any non-carcinogenic hazardous air pollutant not having a TLV-TWA, any ambient air concentration greater than the concentration which the director determines to cause, to have the potential to cause, or to contribute to, the unreasonable endangerment of human health. The determination shall be made on a case-by-case basis, consider documented studies or information by recognized authorities on the specific health effects of such hazardous air pollutants, and include a reasonable margin of safety for the protection of the general public; or
- (3) For any carcinogenic hazardous air pollutant, any ambient air concentration that may result in an excess individual lifetime cancer risk of more than ten in one million assuming continuous exposure for seventy years. The ambient air concentration of a carcinogenic hazardous air pollutant shall be determined by performing a risk assessment based on procedures consistent with EPA's risk assessment guidelines or other alternative risk assessment procedures approved by the director.

(d) The emission of any hazardous air pollutants from a stationary source shall be exempt from the provisions of subsection (b) if:

- (1) The total allowable emissions of the hazardous air pollutant from the stationary source are below 0.1 pounds per hour; and
- (2) The significant ambient air concentration for the hazardous air pollutant as determined in accordance with subsection (c) is greater than two hundred  $\mu\text{g}/\text{m}^3$  for all applicable averaging periods.
- (e) Notwithstanding paragraph (c)(1), the director may at any time establish a lower concentration than the significant ambient air concentration specified in paragraph (c)(1) if the director determines that such lower concentration is required for the protection of the public health or welfare. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14, comp ] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70)

**§11-60.1-180 National emission standards for hazardous air pollutants.** (a) This section applies to an owner or operator of a major or area source of hazardous air pollutants that has or will have source(s) that emit designated hazardous air pollutants listed in 40 CFR Part 61. An owner or operator of a stationary source shall comply with all applicable provisions of 40 CFR Part 61, entitled National Emission Standards for Hazardous Air Pollutants, including the following subparts:

- (1) Subpart A, General Provisions;
- (2) Subpart C, National Emission Standard for Beryllium;
- (3) Subpart D, National Emission Standard for Beryllium Rocket Motor Firing;
- (4) Subpart E, National Emission Standard for Mercury;



- (5) Subpart J, National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene;
- (6) Subpart V, National Emission Standard for Equipment Leaks (Fugitive Emission Sources);
- (7) Subpart Y, National Emission Standard for Benzene Emissions from Benzene Storage Vessels;
- (8) Subpart BB, National Emission Standard for Benzene Emissions from Benzene Transfer Operations; and
- (9) Subpart FF, National Emission Standard for Benzene Waste Operations.

(b) ~~[Each emission standard in 40 CFR Part 61 (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources.]~~ Any owner or operator who constructs, reconstructs, modifies, or operates an applicable source subject to covered source permitting is subject to the application and permitting requirements of subchapter 5. Each emission standard in 40 CFR Part 61 (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources.

c) Any owner or operator who constructs, reconstructs, modifies, or operates an applicable source subject to noncovered source permitting requirements is subject to the application and permitting requirements of subchapter 4. Each emission standard in 40 CFR Part 61 (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 4, Noncovered Sources. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03;

comp 1/13/12; comp 6/30/14, am and comp  
] (Auth: HRS §§342B-3, 342B-12;  
42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 61)  
(Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416;  
40 C.F.R. Part 61)

## SUBCHAPTER 10

### FIELD CITATIONS

**§11-60.1-191 Purpose.** The purpose of this subchapter is to create a field citation program that facilitates the effective and expeditious settlement of easily verifiable violations of chapter 342B, HRS, and this chapter, as listed in §11-60.1-192(a). The field citation program creates an expedited administrative settlement process that is an alternative to the often costly and lengthy traditional administrative enforcement process. [Eff and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14, comp ] (Auth: HRS §342B-42)

**§11-60.1-192 Offer to settle; penalties.** (a) A field citation is an offer to settle an administrative case. In lieu of issuing a formal notice and finding of violation and order, the director may, at the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to a person who:

- (1) Causes or permits visible fugitive dust to become airborne without taking reasonable precautions, in violation of [~~section~~] subsection 11-60.1-33(a);
- (2) Causes or permits the discharge of visible fugitive dust beyond the property lot line on which the fugitive dust originates, in violation of [~~section~~] subsection 11-60.1-33(b);

- (3) Cause or permit visible fugitive dust emissions equal to or in excess of twenty percent opacity for more than twenty-four individual readings recorded during any one hour period, as determined by using EPA 40 CFR 51 Appendix M, Method 203B, in violation of subsection 11-60.1-33(c);
- ~~[-(3)-]~~ (4) Causes or allows open burning in violation of [section] subsection 11-60.1-52(a);
- ~~[-(4)-]~~ Fails to submit timely location change information for the permittee's temporary noncovered or covered source permit, in violation of subsection 11-60.1-69(e) or 11-60.1-91(f), respectively;
- (5) Fails to comply with the notification requirement for fires found in subsection 11-60.1-52(c);
- (6) Fails to comply with any approved condition or requirement for fires described in subsection 11-60.1-52(d);
- (7) Fails to comply with any approved condition or requirement for fires described in subsection 11-60.1-52(e) and allowed under subsections 11-60.1-52(f) and 11-60.1-55;
- (8) Fails to comply with any condition found in a permittee's agricultural burning permit, in violation of the specific condition found in the permittee's applicable agricultural burning permit;
- (9) Fails to comply with any condition or requirement found in a permittee's noncovered source permit, in violation of the specific condition or requirement found in the permittee's applicable noncovered source permit;
- (10) Fails to comply with any condition or requirement found in a permittee's covered source permit, in violation of the specific condition or requirement found in the permittee's applicable covered source permit;

~~[-5-]~~ (11) Fails to obtain a noncovered source permit, in violation of subsection 11-60.1-62(a); or

~~[-6-]~~ (12) Fails to obtain a covered source permit, in violation of subsection 11-60.1-82(a).

(b) The notice of citation shall assess the following penalties for the violations in subsection (a):

(1) Any person who violates paragraph (a)(1) shall be fined \$300 for a first violation, and \$500 for a subsequent violation.

(2) Any person who violates paragraph (a)(2) shall be fined \$500 for a first violation, and \$1000 for a subsequent violation.

(3) Any person who violates paragraph (a)(3) shall be fined \$200 for a first violation, and \$400 for a subsequent violation.

~~[-3-]~~ (4) Any person who violates paragraph (a)~~[-3-]~~ (4) shall be fined \$100 for a first violation, and \$300 for a subsequent violation.

~~[-4-] Any person who violates paragraph (a)(4) shall be fined \$500 for a first violation, and \$1000 for a subsequent violation.]~~

(5) Any person who violates paragraph (a)(5) shall be fined \$250 for a first violation, and \$500 for a subsequent violation.

(6) Any person who violates paragraph (a)(6) shall be fined \$250 for a first violation, and \$500 for a subsequent violation.

(7) Any person who violates paragraph (a)(7) shall be fined \$250 for a first violation, and \$500 for a subsequent violation.

(8) Any person who violates paragraph (a)(8) shall be fined \$250 for a first violation, and \$500 for a subsequent violation.

(9) Any person who violates paragraph (a)(9) shall be fined \$500 for a first violation, and \$1,000 for a subsequent violation.

(10) Any person who violates paragraph (a)(10) shall be fined \$750 for a first violation,

and \$1,500 for a subsequent violation.

~~[(5)]~~ (11) Any person who violates paragraph  
(a) ~~[(5)]~~ (11) shall be fined \$750 for a first  
violation, and \$1500 for a subsequent  
violation.

~~[(6)]~~ (12) Any person who violates paragraph  
(a) ~~[(6)]~~ (12) shall be fined \$1000 for a  
first violation, and \$2000 for a subsequent  
violation. [Eff and comp 9/15/01; comp  
11/14/03; am and comp 1/13/12; am and comp  
6/30/14, am and comp ]  
(Auth: HRS §342B-42)

**§11-60.1-193 Acceptance or withdrawal of  
citation.** (a) To accept the director's offer to  
settle, the person to whom a field citation was issued  
must, within twenty days of its issuance, correct the  
violations, sign the settlement agreement, and deliver  
the signed agreement with payment of the penalty by  
check or money order to the State of Hawaii. The  
director, on the director's own initiative, or upon  
request from the person to whom a field citation was  
issued, may extend the deadline to accept the offer to  
settle if the director determines that reasonable  
justification exists for the extension.

(b) By signing the settlement agreement, the  
person to whom a field citation was issued agrees to:

- (1) waive the person's right to a contested case  
hearing pursuant to chapter 91, HRS;
- (2) waive any challenge to the field citation;
- (3) pay the penalty assessed;
- (4) correct the violation; and
- (5) enter into the settlement agreement.

(c) The settlement agreement is not effective  
until it is signed by both the person to whom the  
field citation was issued and by the director.  
Approval by the director shall be at the director's  
sole discretion.

(d) The director may withdraw the field citation  
if the person to whom it is issued:

- (1) declines to accept the director's offer to settle;
- (2) fails to satisfactorily meet any of the conditions set forth in subsection 11-60.1-193(a); or
- (3) fails to satisfactorily meet any of the conditions set forth in [~~§11-60.1-193(b)~~,] subsection 11-60.1-193(b), in which case the director may bring a formal administrative action under HRS, §342B-42 and pursue any remedies available under this chapter, HRS, chapter 342B, or any other law. [Eff and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14, am and comp  
] (Auth: HRS §342B-42)

**§11-60.1-194 Form of citation.** A field citation issued pursuant to this section shall be in the form prescribed by the department. [Eff and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14, comp  
] (Auth: HRS §342B-42)

## SUBCHAPTER 11

### GREENHOUSE GAS EMISSIONS

**§11-60.1-201 Purpose.** The purpose of this subchapter is to further implement the goals of Act 234, 2007 Hawaii Session Laws. A statewide greenhouse gas emission (GHG) limit, to be achieved by 2020, is set to equal or below the 1990 statewide greenhouse gas emission levels. Greenhouse gas emissions from airplanes shall not be included. [Eff and comp 6/30/14, comp  
] (Auth: HRS §§342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§ 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416)

**§11-60.1-202 Definitions.** As used in this subchapter:

"Carbon sink or carbon dioxide sink" means a carbon reservoir that removes a greenhouse gas or a precursor of a greenhouse gas or aerosol from the atmosphere, and is the opposite of a carbon source. The main sinks are the oceans and growing vegetation that absorb CO<sub>2</sub>.

"Facility-wide GHG emissions cap" means a permit emissions limitation, applicable to a covered source, limiting the entire source's annual non-biogenic greenhouse gas, and biogenic nitrous oxide and methane emissions. A facility-wide GHG emissions cap may also be defined in multiple covered source permits to identify partnering facilities with an approved combined GHG emissions cap as described in subparagraph 11-60.1-204(d)(6)(A).

"Municipal waste combustion operations" means a permitted covered source that combusts solid, liquid, or gasified household, commercial/retail, and/or institutional waste.

"On-the-Book" means control measures or operational practices affecting GHG emissions that the owner or operator of a facility plans, or is undertaking to implement because of regulatory or legal obligations; or as demonstrated through financial and resource commitments. Examples include required controls or practices mandated by a state or federal law; or budgeted and contracted/funded projects or resources.

"Permitted covered source" means a stationary source or facility issued or required to hold a covered source permit pursuant to this chapter, and has begun construction or operation by the effective date of this subchapter. [Eff and comp 6/30/14, comp ] (Auth: HRS §§ 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§ 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416)

**§11-60.1-203 Greenhouse gas emission limit.**

The statewide GHG emission limit to be achieved by 2020, is equal to or below 13.66 million metric tons (or 15.06 million tons) per year of CO<sub>2</sub>e, based on Hawaii's 1990 GHG emission estimates prepared under Act 234, 2007 Hawaii Session Laws. The GHG limit excludes aviation and international bunker fuel emissions, and includes carbon sinks. The director may update the numerical GHG emission limit should improved methodologies and data become available for estimating emissions. The limit serves as an indicator to measure progress of the state's GHG reduction measures and to determine the achievement and maintenance of the state's GHG limit by 2020.

[Eff and comp 6/30/14, comp ]  
(Auth: HRS §§ 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§ 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416)

**§11-60.1-204 Greenhouse gas emission reduction plan.** (a) This section applies to an owner or operator of a permitted covered source, except for municipal waste combustion operations, with the potential to emit GHG emissions (biogenic plus non-biogenic) equal to or above 100,000 tons per year CO<sub>2</sub>e. Each owner or operator of an affected source shall submit a GHG emission reduction plan for the director's approval within twelve (12) months of the effective date of this section. An owner or operator may submit a written request for an extension 30 days prior to the deadline.

(b) The GHG emission reduction plan will be used to evaluate and establish an annual facility-wide GHG emissions cap for the affected source in support of achieving and maintaining the statewide GHG limit. The approved facility-wide GHG emissions cap and the associated provisions will be made a part of the



covered source permit, and may be revised through the permit process to respond to new rules, updated technology, GHG reduction initiatives, and any other circumstances deemed necessary by the director to facilitate the state's GHG limit.

(c) Unless substantiated by the owner or operator of an affected source and approved by the director to be unattainable pursuant to the GHG control assessment described in subsection 11-60.1-204(d), each GHG emission reduction plan shall establish a minimum facility-wide GHG emissions cap in tons per year CO<sub>2</sub>e, to be achieved by 2020 and maintained thereafter. The minimum facility-wide GHG emissions cap shall be sixteen percent (16%) below the facility's total baseline GHG emission levels less biogenic CO<sub>2</sub> emissions, as follows:

$$\begin{array}{l} \text{Facility-} \\ \text{wide cap} = (1-0.16) \times \\ \text{(tpy CO}_2\text{e)} \end{array} \left| \begin{array}{ll} \text{Facility} & \text{Facility} \\ \text{Total} & - \text{Baseline} \\ \text{Baseline} & \text{Biogenic} \\ \text{Emissions} & \text{CO}_2 \text{ Emissions} \end{array} \right| \\ \text{(tpy CO}_2\text{e)} \quad \quad \quad$$

Where:

Facility Total Baseline Emissions (tpy CO<sub>2</sub>e) =  
Baseline[Biogenic [CO<sub>2</sub>] + Non-Biogenic GHG  
Emissions]

Calendar year 2010 shall be used as the baseline year, unless the owner or operator can provide records for the director's approval demonstrating another year or an average of other years to be more representative of normal operations. Newly permitted sources without an operating history, shall estimate normal operations for the director's approval in establishing the facility-wide GHG emissions cap.

(d) The GHG emission reduction plan required of affected sources shall at a minimum include:

- (1) The facility-wide baseline annual emission rate (tpy CO<sub>2</sub>e). Calendar year 2010 annual emissions shall be used as the baseline

emissions to calculate the required facility-wide GHG emissions cap, unless another baseline year or period is approved by the director. Baseline emissions shall be determined in accordance with section 11-60.1-115, separated between biogenic and non-biogenic emissions, and exclude all emissions of noncompliance with an applicable requirement or permit limit. The owner or operator shall include the data and calculations used to determine the baseline emissions. If calendar year 2010 is deemed unrepresentative of normal operations, then the owner or operator may propose an alternate baseline annual emission rate for the director's approval, as follows:

- (A) The owner or operator shall clearly document why calendar year 2010 is not representative of normal operations and why the proposed alternate year or period is more suitable based on trends, existing equipment and controls, scheduled maintenance, operational practices, and any other relevant information. Acceptable methods for determining alternate facility-wide baseline annual emissions include:
  - (i) the facility-wide GHG emissions (less biogenic CO<sub>2</sub>) based on the most recent representative year during the five-year period ending 2010;
  - (ii) average facility-wide GHG emissions (less biogenic CO<sub>2</sub>) over any consecutive two-year period during the five-year period ending in 2010;
  - (iii) average facility-wide GHG emissions (less biogenic CO<sub>2</sub>) for the five-year period ending in 2010; or

- (iv) comparable methods as approved by the director. The director will not consider the use of periods greater than five years from 2010, except for extreme cases such as where an affected source may not have been fully operational for an extended period of time.
- (B) For newly permitted covered sources without a 2010 operating history, the owner or operator shall make the best estimate of normal operations based on contract agreements, available operational records, required scheduled maintenance, market forecast, or any other information for projecting the affected source emissions. Potential emissions shall not be used, unless the owner or operator can clearly demonstrate that the facility will be continually operating at the maximum capacity for each and every year.

The owner or operator shall provide all supporting documentation for the proposed alternate baseline emission rate. The director, based on available information, may reject and modify the baseline emission rate in establishing the final facility-wide GHG emissions cap.
- (2) The 2020 facility-wide GHG emissions cap. Determine the facility-wide GHG emissions cap in accordance with subsection(c), using calendar year 2010 or the proposed GHG baseline emission rate determined by paragraph (1) above. If the required emissions cap requiring a sixteen percent (16%) emission reduction from baseline year emissions is deemed unattainable, the owner or operator shall provide, as part of the reduction plan:

- (A) The justification and supporting documentation of why the required emissions cap cannot be met; and
- (B) A proposal, for the director's approval, of an alternate emissions cap resulting in the maximum achievable GHG reductions.

In determining whether or not the required GHG emissions cap is attainable, the owner or operator of an affected source shall first conduct the GHG control assessment described in paragraphs (3) to (5).

Available EPA guidelines for GHG Best Available Control Technology analysis, and GHG control measures by source type shall be used as applicable for this assessment.

- (3) Available Control Measures. Identify all available control measures with potential application for each source type, and all on-the-book control measures the facility is committed or will be required to implement affecting GHG emissions. At a minimum, the following shall be considered as applicable:
  - (A) Available technologies for direct GHG capture and control;
  - (B) Fuel switching or co-fired fuels;
  - (C) Energy efficiency upgrades;
  - (D) Combustion or operational improvements;
  - (E) Restrictive operations;
  - (F) Planned upgrades, overhaul, or retirement of equipment;
  - (G) Outstanding regulatory mandates, emission standards, and binding agreements; and
  - (H) Other GHG reduction initiatives that may affect the facility's GHG emissions. Unless the owner or operator of the source has direct ownership or legal control over a GHG reduction initiative, that initiative cannot be relied upon as a proposed control strategy. Identification of

GHG reduction initiatives, whether or not the owner or operator has ownership or legal control, will serve to highlight their potential importance for reducing GHG emissions in the state. The owner or operator of an affected source will only benefit from a GHG initiative, if the initiative reduces or helps to reduce and maintain the source's GHG emissions below its permitted facility-wide GHG emissions cap.

- (4) The Technically Feasible Measures. For any new control measure identified for the facility, eliminate all technically infeasible options based on physical, chemical, or engineering principles that would preclude the successful operation of the control with the applicable emission unit or source. Document the basis of elimination, and generate the list of technically feasible control options for further evaluation. All committed and required on-the-book measures shall remain on the list.
- (5) Control Effectiveness and Cost Evaluation. List the technically feasible control options and identify the following for each control measure as applicable. All cost data shall be provided in present dollars.
  - (A) Control effectiveness (percent pollutant removed);
  - (B) Expected emission rate (tons per year CO<sub>2</sub>e, pounds CO<sub>2</sub>e/kilowatt-hour);
  - (C) Expected emission reduction (tons per year CO<sub>2</sub>e);
  - (D) Energy impacts (BTU, kilowatt-hour);
  - (E) Environmental impacts (other media and the emissions of other regulated air pollutants);

- (F) Any secondary emissions or impacts resulting from the production or acquisition of the control measure; and
- (G) Economic impact (cost effectiveness: annualized control cost, dollar/megawatt-hr, dollar/ton CO<sub>2</sub>e removed, and incremental cost effectiveness between the control and status quo).

For committed or required on-the-books control measures and any other GHG control initiatives, identify at a minimum, items (A) through (C) above. Considering the energy, environmental, and economic impact, determine the GHG control or suite of controls found to be feasible in achieving the maximum degree of GHG reductions for the facility. Determine whether the required GHG emissions cap, pursuant to subsection (c) will be met. If an alternate cap must be proposed for approval, declare the proposed percentage GHG reduction and the alternate GHG reduction cap. Provide the justification and associated support information (e.g., references, assumptions, vendor quotes, sample calculations, etc.) to substantiate the control analysis and alternate GHG emissions cap.

- (6) The proposed Control Strategy. Present the listing of control measures to be used for implementation in meeting the required or proposed alternate 2020 facility-wide GHG emissions cap. Include discussion of the control effectiveness, control implementation schedule, and the overall expected GHG CO<sub>2</sub>e emission reductions (tpy) for the entire facility. Owners or operators shall also consider the following:
  - (A) Affected sources may propose to combine their facility-wide GHG emissions caps to leverage emission reductions among partnering facilities in meeting the

combined GHG emissions caps. If approved by the director, each partnering facility will be responsible for complying with its own adjusted GHG facility-wide emissions cap.

- (B) Except for fee assessments and determining applicability to this section, biogenic CO<sub>2</sub> emissions will not be included when determining compliance with the facility-wide emissions cap until further guidance can be provided by EPA, or the director, through rulemaking.
- (C) The approved facility-wide GHG emissions cap and the associated monitoring, recordkeeping, and reporting provisions will be made a part of the covered source permit, enforceable by the director.

(e) Failure to submit an adequate GHG emission reduction plan, or failure to submit relevant facts or correct information upon becoming aware of such failure, constitutes a violation of this chapter. The owner or operator of an affected source has the same duty to certify the GHG emission reduction plan in accordance with section 11-60.1-4, and supplement or correct the GHG emission reduction plan, similar to the provisions in section 11-60.1-84 for covered source permit applications. During the processing of a GHG emission reduction plan, if the director determines that a re-submittal of the plan is required, or submittal of additional information is necessary to evaluate or take final action on the plan, the director may make the request in writing and set a reasonable deadline for the response.

(f) If the owner or operator of an affected source fails to submit an adequate GHG emission reduction plan, or if a facility-wide GHG emissions cap cannot be mutually agreed upon, the director reserves the right to establish, and incorporate into the applicable covered source permit, a facility-wide GHG emissions cap as required or the lowest cap deemed

achievable by the affected source based on the intent of this subchapter.

(g) Once a facility-wide GHG emissions cap is established and placed into the covered source permit, the GHG emission reduction plan shall become a part of the covered source permit application process for renewals and any required modifications pursuant to subchapter 5. With each subsequent GHG emission reduction plan submittal, the owner or operator of the affected source shall report:

- (1) The GHG emission reduction status;
- (2) Factors contributing to the emission changes;
- (3) Any control measure updates; and
- (4) Any new developments or changes that would affect the basis of the facility-wide GHG emissions cap.

(h) The facility-wide GHG emissions cap may be re-evaluated and revised by the director if any of the following events or circumstances exists:

- (1) Consideration for new rules, updated technology, implementation of GHG reduction initiatives, significant changes with renewable energy cost and supply, and any other measures deemed necessary by the director to facilitate the state's GHG limit;
- (2) The basis for establishing the facility-wide GHG emissions cap is found to be incorrect;
- (3) The methodology for calculating GHG emissions is updated or modified;
- (4) Renewable energy producers cease operations or fail to meet contractual obligations with the affected source, and there are no other reasonable alternatives; or
- (5) Reasonably unforeseen events beyond the control of the owner or operator of an affected source, resulting in long-term or temporary emission changes, whereby the maintenance of the GHG emissions cap would be detrimental to the health and welfare of the public.



Any revision to a facility-wide GHG emissions cap is considered a significant modification subject to the application and review requirements of section 11-60.1-104. The owner or operator of an affected source seeking a GHG emissions cap change has the burden of proof to substantiate any requested change for the director's approval. Upon approving any GHG emissions cap revision, the director may impose additional emission limits or requirements on the affected source, or limit the time-frame allowed for the revised GHG emissions cap.

(i) Municipal solid waste landfills required by 40 CFR Part 60, Subpart Cc or 40 CFR Part 60, Subpart WWW to use gas collection and control systems are conditionally exempt from the GHG emission reduction requirements of Subsection 11-60.1-204(c).

(j) Should the permitted facility-wide GHG emissions cap not be met by January 1, 2020 and annually maintained thereafter, the owner or operator of the covered source shall be subject to enforcement action for each year after 2019 that the facility-wide cap is not met. Compliance with the facility-wide cap shall be determined at the end of each calendar year, or January 1 of the following year, starting with the end of 2019 or January 1, 2020. Each CO<sub>2</sub>e ton over the cap shall constitute a separate offense and violation.

(k) The director shall conduct an evaluation in 2016, and annually thereafter, to determine the progress of achieving and if applicable, ongoing maintenance of the statewide GHG emissions limit specified in HRS, Chapter 342B-71 and section 11-60.1-203. The evaluation of the statewide GHG emission limit shall be conducted in a manner consistent with the procedures used to prepare the 1990 emission estimates under Act 234, 2007 Hawaii Session Laws. The director shall produce and make public annual progress reports listing GHG emissions levels for each affected facility and the statewide progress relative to the statewide GHG emission limit. If the director determines that statewide GHG emission limit is met prior to 2020 and GHG emission projections indicate ongoing maintenance of the limit, the requirements of

this section shall no longer be applicable to the affected facilities. Prior to finalizing any determination that the statewide GHG emission limit has been met, the director shall provide for public notice and an opportunity for public comment in accordance with the requirements specified in section 11-60.1-205. Upon achieving the statewide GHG emission limit, the director may revise or adopt additional rules to ensure the ongoing maintenance of the statewide GHG emission limit. [Eff and comp 6/30/14, am and comp ] (Auth: HRS §§ 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§ 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416)

**§11-60.1-205 Public participation.** (a) The director shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment on all draft GHG emission reduction plans from §11-60.1-204. Any person requesting a public hearing shall do so during the public comment period. Any request from a person for a public hearing shall indicate the interest of the person filing the request and the reasons why a public hearing is warranted.

(b) Procedures for public notice, public comment periods, and public hearings shall be as follows:

- (1) The director shall make available for public inspection in at least one location in the county affected by the proposed action, or in which the source is or would be located:
  - (A) Information on the subject matter;
  - (B) Information submitted by the proposing party, except for that determined to be confidential pursuant to section 11-60.1-14;
  - (C) The department's analysis and proposed action; and

- (D) Other information and documents determined to be appropriate by the department;
- (2) Notification of a public hearing shall be given at least thirty days in advance of the hearing date;
- (3) A public comment period shall be no less than thirty days following the date of the public notice, during which time interested persons may submit to the department written comments on:
  - (A) The subject matter;
  - (B) The greenhouse gas emission reduction plan;
  - (C) The department's analysis;
  - (D) The proposed actions; and
  - (E) Other considerations as determined to be appropriate by the department;
- (4) Notification of a public comment period or a public hearing shall be made:
  - (A) By publication in a newspaper which is printed and issued at least twice weekly in the county affected by the proposed action, or in which the source is or would be located;
  - (B) To persons on a mailing list developed by the director, including those who request in writing to be on the list; and
  - (C) If necessary by other means to assure adequate notice to the affected public;
- (5) Notice of public comment and public hearing shall identify:
  - (A) The affected facility;
  - (B) The name and address of the proposing party;
  - (C) The name and address of the agency of the department reviewing the plan;
  - (D) The activity or activities involved in the plan, including, but not limited to, whether the proposing party proposes:

- (i) an alternate baseline year;
    - (ii) an alternate facility-wide GHG emissions cap;
    - (iii) a control strategy involving partnering with one or more facilities.
  - (E) The emissions change involved in the plan;
  - (F) The name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft plan, all relevant supporting materials, and all other materials available to the department that are relevant to the decision, except for information that is determined to be confidential, including information determined to be confidential pursuant to section 11-60.1-14;
  - (G) A brief description of the comment procedures;
  - (H) The time and place of any hearing that may be held, including a statement of procedures to request a hearing if one has not already been scheduled; and
  - (I) The availability of the information listed in paragraph (1), and the location and times the information will be available for inspection; and
- (6) The director shall maintain a record of the commenters and the issues raised during the public participation process and shall provide this information to the Administrator upon request." [Eff and comp 6/30/14, comp ] (Auth: HRS §§ 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§ 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416)

**§11-60.1-206 Public petitions.** (a) The applicant and any person who participated in the public comment or hearing process and objects to the grant or denial of a draft GHG emission reduction plan, may petition the department for a contested case hearing by submitting a written request to the director.

(b) The petition shall be based solely upon objections to the draft GHG emission reduction plan, that were raised with reasonable specificity during the public participation process, unless the petitioner demonstrates that it was impracticable to raise such objections; for example, the grounds for such objections arose after the public participation process.

(c) Any petitioner shall file a petition for a contested case hearing within ninety days of the date of the department's approval or disapproval of the proposed draft GHG emission reduction plan.

(d) Notwithstanding the provisions of subsection (b), if based solely on objections which were impracticable to raise during the public participation process, a petition for a contested case hearing may be filed up to ninety days after the objections could be reasonably raised.

(e) Except as provided in subsection (f), any draft GHG emission reduction plan that has been issued shall not be invalidated by a petition for a contested case hearing. If a draft GHG emission reduction plan is issued by the director, the owner or operator of the source shall not be in violation of the requirement to have submitted a timely and complete application.

(f) The effective date of draft GHG emission reduction plan shall be as specified for permits in 40 CFR Part 124.15 as it existed on ~~[November 19, 2013]~~ May 1, 2022.

(g) Any person may petition for a contested case hearing for the director's failure to take final action on an application for draft GHG emission reduction plan, within the time required for permits

by this chapter. Such petition shall be submitted in writing and may be filed any time before the director issues a proposed draft GHG emission reduction.

(h) Any person aggrieved by a final administrative decision and order, including the denial of any contested case hearing, may petition for judicial review pursuant to section 91-14, HRS. A petition for judicial review shall be filed no later than thirty days after service of the certified copy of the final administrative decision and order." [Eff and comp 6/30/14, am and comp ]  
(Auth: HRS §§ 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§ 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416)

2. Material, except source notes, to be repealed is bracketed and struck out. 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 11-60.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

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

APPROVED AS TO FORM:

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Deputy Attorney General

## **IV. Administrative Matters**

### **A. Update on the Status of the Board's Proposed Phase II Website Project**

*No Attachments*



## **IV. Administrative Matters**

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