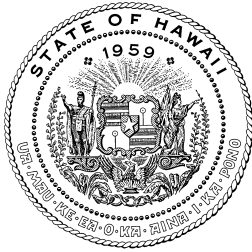


Small Business Regulatory Review Board Meeting

July 16, 2020

10:00 a.m.



SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel: 808 586-2419

AGENDA

Thursday, July 16, 2020 ★ 10:00 a.m.

David Y. Ige
Governor

Michael McCartney
DBEDT Director

Members

Robert Cundiff
Chairperson
O'ahu

Mary Albitz
Vice Chairperson
Maui

Garth Yamanaka
2nd Vice Chairperson
Hawai'i

Harris Nakamoto
O'ahu

Dr. Nancy Atmospera-
Walch
O'ahu

William Lydgate
Kaua'i

James (Kimo) Lee
Hawai'i

Jonathan Shick
O'ahu

Taryn Rodighiero
Kaua'i

Director, DBEDT
Voting Ex Officio

As authorized under the Governor's June 10, 2020, Ninth Supplementary Proclamation Related to the COVID-19 Emergency, the meeting will be held remotely with Board Members, Staff, and Agencies participating via online meeting venue. The public can participate in the meeting via video-audio livestream; to join the meeting, go to:

<https://zoom.us/j/97016228663>

Copies of the Board Packet will be available on-line for review at: <https://sbrrb.hawaii.gov/meetings/agendas-minutes?yr=2020>.

An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

Members of the public may submit written testimony via e-mail to: DBEDT.sbrrb.info@hawaii.gov or via postal mail to **SBRRB 250 South Hotel Street, Room 506A, Honolulu, Hawaii 96813**.

Please include the word "Testimony" and the subject matter following the address line. All written testimony should be **received no later than 4:30 p.m., Wednesday, July 15, 2020**.

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 June 18, 2020 Meeting Minutes

III. Old Business – After Public Hearing

- A. Discussion and Action on the Amendments and the Small Business Statement After Public Hearing of Hawaii Administrative Rules (HAR) Title 13 Chapter 146-6, **Fees**, promulgated by Department of Land and Natural Resources – **Discussion Leader – Mary Albitz**

IV. New Business – Before Public Hearing

- A. Discussion and Action on the following Proposals to Title 11, promulgated by Department of Health – **Discussion Leader – Harris Nakamoto**

1. New HAR Chapter 53, Section 401, **Water Quality Certifications**;
2. Amendments to HAR Chapter 54, **Water Quality Standards**;
3. Amendments to HAR Chapter 55, **Water Pollution Control**;
4. New HAR Chapter 56, **Nonpoint Source Pollution Control**

V. Administrative Matters

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

1. “Discussion Leader Assignments” for Board Members’ State and County Agencies’ Administrative Rule Review
2. Board’s Outreach Opportunities:
 - a. Draft Letter to Business Organizations
 - b. PowerPoint Presentation

VI. Next Meeting: Thursday, August 20, 2020, at 10:00 a.m.

VII. Adjournment

II. Approval of June 18, 2020 Meeting Minutes

Small Business Regulatory Review Board

MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING - DRAFT

June 18, 2020

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

MEMBERS PRESENT:

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

ABSENT MEMBERS:

- Dr. Nancy Atmospera-Walsh
- James (Kimo) Lee

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Jennifer Polk-Waihee

II. **APPROVAL OF MAY 21, 2020 MINUTES**

Chair Cundiff officially welcomed Ms. Taryn Rodighiero as this Board's newest member. Ms. Rodighiero stated that she is originally from California but has been in Hawaii for about fourteen years. She started Kaikini, LLC in 2010, having taught herself to sew and now sells the Kaikini line of clothing all over the world. She is very involved in Hawaii's fashion industry, is involved in Kauai's small business community and is very excited to be part of this Board.

Second Vice Chair Lydgate made a motion to accept the May 21, 2020 meeting minutes, as presented. Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

III. **STRATEGIC PLANNING DISCUSSION**

- A. Discussion and Action on the Board's fiscal year-to-date 2020 actual budget and projected fiscal year 2021 budget

Chair Cundiff briefed the members on this Board's budget, explaining that it will end fiscal year 2020 spending about \$10,400, slightly below the budgeted figures. This is largely due to the Board saving expenses by not having three (3) live board meetings during the year. Saving on expenses has allowed the Board to purchase two brand new computers to enable DBEDT staff to work remotely.

Anticipated expenses for fiscal year 2021 total \$18,600. The increase includes a presumption that all neighbor island board members will participate in “live” board meetings each month. However, DBEDT’s 2021 expected budget for this Board is \$12,000, which would result in a sizeable budget shortfall; the Board’s final budget will depend on the results from the Legislative session, which begins June 22, 2020.

Second Vice Chair Lydgate stated that given the projected shortfall in the Board’s upcoming budget, he would be willing to continue attending the monthly board meetings remotely in order to help save on travel costs to and from the neighbor island.

Mr. Ritchie noted that once the Sunshine Law restrictions no longer allow for leniency due to COVID-19, neighbor island board members would be required to post the meetings’ addresses on the agendas to allow the general public to attend board meetings. He suggested that attending a board meeting in a County office would be more amenable than having a meeting held in one’s own home. Ms. Albitz added that she could offer public space on Maui, which is also handicapped-accessible, should she need to work remotely.

Deputy Attorney General Polk-Waihee confirmed that Sunshine Law requires that addresses of each location must be shown on the agendas and made available to the public. However, the law does not require a board member, who is sick or disabled at home, to post his or her home address.

B. Discussion and Action on the Board’s Strategic Plan regarding: 1) Outreach Activities, and 2) Events to Attend during Fiscal 2021 pursuant to Section 201M-5, HRS

1. Outreach Activities

a. ThinkTech Hawaii and Akaku-Maui Community Media – Approach media platforms with small business audience to plan, schedule and participate in information program segment

As an overview, Chair Cundiff explained where the Board is right now and how to improve upon its effectiveness and awareness regarding outreach to Hawaii’s small business community. He reminded the members that he and Ms. Albitz participated in a ThinkTech Hawaii presentation recently and that representatives from ThinkTech were interested in doing more live presentations with this Board. Through Ms. Albitz, the Board was approached by Akaku-Maui Community Media which is another way in which this Board can perform outreach.

Chair Cundiff confirmed with Ms. Rodighiero that many of the Hawaii chambers of commerce have been extremely supportive of this Board, and it would be a very positive move to bring information about the Board to various chamber trade association meetings.

The Board's social media outreach includes monthly posts from the Board's Instagram account, Facebook page, and Twitter account. Mr. Ritchie stated that Phase 2 of the Board's website, created last year, would allow small businesses to sign up for specific industry-related administrative rules; this has been placed on hold due to the circumstances of COVID-19.

Chair Cundiff added that Hawaii Information Consortium created the Board's website, which was very well done. The website's Phase 2 will address how this Board can be more proactive with the small business community and allow the website to be more user-friendly so business owners can navigate more easily and smoothly.

- b. Discussion and outreach letter to send to various organizations, review draft letter for approval, and create a list of organizations and contact information

Chair Cundiff stated that one way to improve upon this Board's awareness is to send out a letter to industry associations to help educate and promote this Board by asking to attend meetings, as well as for board members to provide outreach through presentations and distributing collateral material.

DBEDT staff will email a list of the organizations that receive monthly newsletters and agendas for the board members' review.

- c. Association Meetings – Discussion on attending meetings to educate associations, when, who, and talking points

It is important for board members to have enough information for “talking points” available for inquiries about this Board. This type of information could then be used to distribute and share at association meetings.

Mr. Ritchie suggested that outreach to the Hawaii Chamber of Commerce would be helpful in order to refresh and reconnect with the legislative bodies at the Chamber; Chair Cundiff added that other organizations and chambers should be reconnected as well.

- d. Board Brochures / Handouts – Review all current marketing material and update / change as needed

The Board's brochures and up-to-date PowerPoint presentation were distributed to the members for review. The presentation is a key marketing tool for outreach and is located on the Board's website; the presentation's script, which will be sent to each member, clarifies the PowerPoint.

The vision and mission statements noted in the PowerPoint were reviewed and discussed. The vision statement states, “Make Hawaii the most business-friendly state in the nation,” and the mission statement states, “Work toward a regulatory environment that encourages & supports the vitality of small business in Hawaii.”

Mr. Ritchie suggested that rather than use the term “business-friendly” the Board instead use “business-supportive” as the Board wants to help grow and support businesses in the regulatory arena. Ms. Rodighiero agreed that “business-friendly” may be a bit too general.

- e. State/County Agency Meetings – Review meetings conducted to date; formalize a plan for Board members to visit State and County Agencies to include talking points

The list of the Board members’ previously accomplished meetings with the State agencies’ directors was reviewed. The purpose of the meetings is to introduce the “discussion leader” board members of the respective agencies and to discuss the administrative rule process.

2. Other Considerations

- a. U.S. Small Business Administration (SBA) on Oahu and Maui – Explore working with local SBA offices for purposes of outreach and other small business purposes

Chair Cundiff asked that if anyone is aware of upcoming events or venues that this Board may attend, to share that information with the Board. Mr. Ritchie suggested that the Board create a webinar with factual information about this Board that can be included on the website. He also suggested that the SBA’s current Hawaii regional director might be included in the webinar.

- b. Discussion on identifying other small business organizations to explore cooperative outreach

Chair Cundiff stated that when Board members attend small business events, such as the annual Maui small business event, it allows the Board to perform outreach to not only small businesses but to the community at large. He added that he would like to keep in contact with the Maui Chamber of Commerce.

- c. Discussion on attending Industry/Association events – which events, who to attend, materials to share

Moving forward, this Board will discuss which industries and which events to attend. DBEDT staff will email the organization lists currently used to send out the Board’s e-newsletters.

IV. ELECTION BY THE BOARD OF THE FOLLOWING OFFICERS:

A. Chairperson, under Section 201M-5 (c), HRS

Mr. Yamanaka made a motion to elect Mr. Cundiff as Chair of the Board under Section 201M-5 (c), HRS; Ms. Albitz seconded the motion and the Board members unanimously agreed.

B. Vice Chair

Mr. Yamanaka made a motion to elect Ms. Albitz as Vice Chair of the Board; Mr. Ritchie seconded the motion and the Board members unanimously agreed.

C. Second Vice Chair

Ms. Albitz made a motion to elect Mr. Yamanaka as the Second Vice Chair of the Board; Mr. Ritchie seconded the motion and the Board members unanimously agreed.

V. NEXT MEETING - Thursday, July 16, 2020 at 10:00 a.m.

VI. ADJOURNMENT – Mr. Shick made a motion to adjourn the meeting and Mr. Ritchie seconded the motion; the meeting adjourned at 11:33 a.m.

III. Old Business – After Public Hearing

A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing of HAR Title 13 Chapter 146-6 Fees, promulgated by DLNR

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

Department or Agency: _____

Administrative Rule Title and Chapter: _____

Chapter Name: _____

Contact Person/Title: _____

Phone Number: _____

E-mail Address: _____ Date: _____

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

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

Yes No

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

I. Rule Description: New Repeal Amendment Compilation

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

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

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

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

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

Yes No

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

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

Yes No

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

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

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

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

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

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

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

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

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

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

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

November 2019 Meeting Minutes

Small businesses affected include those that want to operate ocean activity tours for profit in Kaneohe Bay. Overall, the changes will clarify ambiguous language relating to educational and not-for-profit operations in Kaneohe Bay. DOBOR could not find any other methods of compliance that would still be within the recommendations of the Kaneohe Bay Master Plan to limit commercial activity in Kaneohe Bay.

DOBOR met with affected businesses to discuss proposals that would be fair and compliant with the Kaneohe Bay Master Plan. While small businesses recommended allowing increased commercial activity, DOBOR could not implement this because of the guidelines of the Kaneohe Bay Master Plan. Mr. Underwood added that the BLNR already approved the rules to move forward to public hearing.

Ms. Albitz made a motion to move the proposed rules on to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed New HAR Title 13, Chapter 146, Fees, promulgated by DLNR

Mr. Curt Cottrell, Administrator at DLNR's Division of State Parks, explained that Hawaii's state parks are one of the State's crown jewels in terms of providing for its residents, cultural access, and the tourism industry; he introduced Property Manager Mr. Sang Pil Kim, and Legal Fellow Mr. Robert Park.

Prior to 2016, the only state park charging an entrance fee was Diamond Head; fees were not charged to residents. As most of the existing fees are based on 1999 rates, DLNR is now looking to increase the fees to today's levels. The following parks are currently collecting fees via public/private partnerships: Iao Valley State Monument, Haena State Park, Hapuna Beach State Park, Akaka Falls, Waimea Canyon, Koke'e State Park, Makena State Park, and Nuuanu Pali Lookout.

He noted that Hawaii has record-breaking tourism numbers, however, the parks are beginning to show wear and tear. He distributed rate sheets along with expenses of the State parks, noting that roughly \$4,000,000 was spent last year. There is also a current \$40,000,000 backlog in maintenance. Another handout depicted current vehicle rate charges versus the proposed new rates.

In response to a question posed by Mr. Ritchie regarding charging fees, Deputy Attorney General Ahn explained that fees are a perfect example as to what should go through the administrative rule process as people should be able to comment on the fees without an Agency quietly increasing fees without transparency.

Mr. Cottrell stated that the proposed rules are trying to navigate through the high level of tourism and provide future flexibility. Mr. Kim added that ideally, they would like to reassess the rules every five years. Currently, there is no income stream from residents as the ratio is primarily 98% visitors.

During the discussion, Ms. Dawson added that the Film Office supports the Division of Parks' work and what it is currently doing. The film industry is directly impacted by the

condition of the state parks, which is the number one permit request for filming, partly due to the beauty of the parks. She concurred that the State has been charging substandard fees.

Chair Cundiff thanked DLNR's representatives for their insightful presentation noting that the fees and expenses need balancing with the park's beauty and natural resources and land. Clearly, waiting twenty years to increase fees is quite long. While everybody recognizes the fees necessity, the push-back is, "what am I getting for this?"

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

V. ADMINISTRATIVE MATTERS

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

a. Discussion and Action on the Board's Draft Annual Report Summary for Submission to the Hawaii State Legislature, under Section 201M-5, (f) HRS

Ms. Albitz has a change to her business name listed in the Report and Chair Cundiff will change the Chair's Message. Mr. Ritchie suggested sending the Report once more before formal submittal. If there are any last-minute changes, please let DBEDT staff know.

Mr. Ritchie made a motion to accept the Board's draft Annual Report Summary for submission to the Hawaii State Legislature subject to the suggested changes. Mr. Shick seconded the motion, and the Board members unanimously agreed.

b. Meetings with Board Members and State Department Directors

Ms. Albitz met with DLNR, DOBOR, on October 17, 2019. She complimented DLNR on stakeholder feedback.

VI. NEXT MEETING – The next meeting is scheduled for Thursday, December 12, 2019 in Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Honolulu, Hawaii at 10:00 a.m.

VII. ADJOURNMENT – Mr. Ritchie made a motion to adjourn the meeting and Ms. Atmospera-Walch seconded the motion; the meeting adjourned at 12:17 p.m.

RECEIVED
By AlcosJ at 10:15 am, Jul 08, 2020

Amendment and Compilation of Chapter 13-146
Hawaii Administrative Rules

(Date)

1. Chapter 13-146, Hawaii Administrative Rules, entitled "Hawaii State Park System", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 6 STATE PARKS

CHAPTER 146

HAWAII STATE PARK SYSTEM

Subchapter 1 General Provisions

- §13-146-1 Purpose
- §13-146-2 Definitions
- §13-146-3 Penalties
- §13-146-4 Closing of areas
- §13-146-5 User fees
- §13-146-6 Fees

Subchapter 2 Permitted & Prohibited Uses
of the Premises

- §13-146-7 Abandonment and unattended property
- §13-146-8 Agricultural use of premises
- §13-146-9 Aircraft
- §13-146-10 Animals
- §13-146-11 Historic property and burial sites
- §13-146-12 Audio devices
- §13-146-13 Boating
- §13-146-14 Camping

- §13-146-15 Communication equipment
- §13-146-16 Disorderly conduct
- §13-146-17 Explosives
- §13-146-18 False report
- §13-146-19 Firearms and other weapons
- §13-146-20 Fires
- §13-146-21 Fishing
- §13-146-22 Gambling
- §13-146-23 Geological features
- §13-146-24 Golfing
- §13-146-25 Intoxication; drug incapacitation
- §13-146-26 Lost and found articles
- §13-146-27 Memorialization
- §13-146-28 Modelcraft operation; kite flying
- §13-146-29 Parking
- §13-146-30 Picknicking
- §13-146-31 Portable engines and motors
- §13-146-32 Public property
- §13-146-33 Report of injury or damage
- §13-146-34 Residence prohibited
- §13-146-35 Sanitation and litter
- §13-146-36 Skating; skateboards; bicycling
- §13-146-37 Repealed
- §13-146-38 Swimming; nudity
- §13-146-39 Tampering with vehicle or vessel
- §13-146-40 Motorized vehicle operation
- §13-146-41 Wildlife
- §13-146-42 to 13-146-49 (Reserved)

Subchapter 3 Permits

- §13-146-50 General provisions
- §13-146-51 Camping permits
- §13-146-52 Lodging permits
- §13-146-53 Group use permits
- §13-146-54 Special use permits
- §13-146-55 to 13-146-64 (Reserved)

Subchapter 4 Commercial and Private
Operations

- §13-146-65 Advertisements
- §13-146-66 Business operations
- §13-146-67 Commercial photography
- §13-146-68 Commercial activities

Subchapter 5 `Iolani Palace State
Monument

- §13-146-69 Purpose
- §13-146-70 `Iolani Palace State Monument restrictions
- §13-146-71 `Iolani Monument permit limits
- §13-146-72 Penalties

Historical Note: Chapter 146 of Title 13,
Administrative Rules, is based substantially upon
Chapter 145, Title 13, Administrative Rules entitled
"Rules of the Hawaii State Park System." [Eff 6/22/81;
R 4/16/90] Chapter 145 of Title 13, Administrative
Rules, was based substantially upon the Division of
State Parks Regulation 1 entitled, "Relating to the
Regulation and Control of the State Parks System."
[Eff 12/9/43; am 8/12/76; R 9/28/81]

SUBCHAPTER 1

GENERAL PROVISIONS

§13-146-1 Purpose. The purpose of this chapter is to govern the use and protection of all lands, and historical and natural resources within the state park system. [Eff 4/16/90; comp 6/8/99; comp]
(Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-2 Definitions. As used in this chapter unless otherwise provided:

"Abandoned property" means any and all property, including personal property, items, materials, equipment, fixtures, motor vehicles or vessels that have been left unattended on land owed or controlled by the State for a continuous period of more than twenty-four hours without the written permission of the board or its authorized representative.

"Authorized representative" means any person authorized by the board of land and natural resources to act for the board including the chairperson, deputy directors, park administrators, park superintendents, park managers, and conservation enforcement officers.

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

"Camper" means any person engaged in a camping activity.

"Camping" means remaining within a designated camping area during closed hours or remaining within a state park while in possession of a sleeping bag, tent, tarpaulin, or other camping paraphernalia within the state park one hour after sunset until sunrise.

"Chairperson" means the chairperson of the board of land and natural resources.

"Commercial activity" means the use of or activity in a state park for which compensation is received by any person for goods or services or both

rendered to customers or participants in that use or activity. Display of merchandise, demanding or requesting gifts, money, or services, except as allowed by chapter 13-7, shall be considered commercial activity. Commercial activities include activities whose base of operations are outside the boundaries of the state park, or provide transportation to or from the state park.

"Compensation" includes, but is not limited to, monetary fees, barter, or services in-kind.

"Department" means the department of land and natural resources.

"Lodging" means cabin or shelter units available in certain parks for rental to the public as temporary living quarters.

"Motorized vehicle" means a motor vehicle of any type, including, but not limited to, automobiles, trucks, off highway vehicles such as all terrain vehicles, motorcycles, motor bikes, go-carts, motorcycles, motor scooters, mopeds, and dune buggies whether the vehicle is licensed or unlicensed.

"Nude" means uncovered post-pubertal human genitals, pubic areas, or the nipple or areola of post-pubertal human female breast.

"Picnic" means an outing with food provided by members of the group and eaten in the open.

"Premises" means any lands within the state park system.

"Recreational trailer" means a vehicle propelled by its own power or some independent power and used as a dwelling.

"State park system" means those public lands or lands under the control and management of the division of state parks.

"Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a roadway or highway, including mopeds, but excluding bicycles and devices other than bicycles moved by human power. [Eff 4/16/09; am and comp 6/8/99; am 12/9/02; am 1/22/10; comp]
(Auth: HRS §184-5) (Imp: HRS §§171-1, 184-5)

§13-146-3 Penalties. Any person violating any provision of this chapter, or any term or condition of any permit issued hereunder, shall be subject to administrative, civil and criminal penalties, and any materials, tools, equipment, or vehicles used in the violation may be seized and forfeited as provided by HRS section 184-5, section 199-7 and chapter 712A. [Eff 4/16/97; comp 6/8/99; am 1/22/10; comp] (Auth: HRS §184-5) (Imp: HRS §§171-6, 171-6.5, 171-31.6, 184-5, 184-5.5, 199-7, 712A-4)

§13-146-4 Closing of areas. (a) The board or its authorized representative may establish a reasonable schedule of visiting hours for all or portions of the premises and close or restrict the public use of all or any portion thereof, when necessary for the protection of the area or the safety and welfare of persons or property, by the posting of appropriate signs indicating the extent and scope of closure. All persons shall observe and abide by the officially posted signs designating closed areas and visiting hours.

(b) Vehicles left unattended in closed areas may be impounded by the board or its authorized representative at any time.

(c) All impounded vehicles shall be towed to a place of storage. Towing, storage and other related 13-146-7 costs shall be assessed pursuant to section 290-11, HRS. [Eff 4/16/90; am and comp 6/8/99; comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-5 User Fees. Fees, as set by the board may be charged for:

- (1) Permits as noted in sections 13-146-50; 13-146-51; 13-146-52; 13-146-54; 13-146-66; 13-

- 146-67; 13-146-68;
- (2) Parking, and;
- (3) Entrance. [Eff and comp 6/8/99; am 1/22/10; comp] (Auth: HRS §184-3) (Imp: HRS §184-3)

§13-146-6 Fees. (a) The following state park camping and cabin fees ~~[are hereby established:]~~ shall be set according to the amounts in "Exhibit 2. Hawaii State Park System Camping and Cabin Rental Fee Schedule dated February 4, 2020" and "Exhibit 3. Hawaii State Park System Entrance and Parking Fee Schedule dated February 4, 2020."

~~**[STATE PARK CAMPING FEES:]**~~

~~For all state park areas that allow camping, except for the Napali Coast State Wilderness Park, the camping fee shall be as follows:~~

~~Residents:~~

~~\$12 per night per camp site (up to six people)
\$2 per night for each additional person, with a maximum of ten people total per camp site~~

~~Nonresidents:~~

~~\$18 per night per camp site (up to six people)
\$3 per night for each additional person, with maximum of ten people total per camp site~~

~~NAPALI COAST STATE WILDNERNESS PARK~~

~~RESIDENTS: \$15/person per night~~

~~Nonresidents: \$20/person per night~~

~~**CABIN RENTAL FEES:**~~

~~HAPUNA BEACH STATE RECREATION AREA~~

~~Residents: \$30/night per A-Frame~~

~~Nonresidents: \$50/night per A-Frame~~

~~KALOPA STATE RECREATION AREA, POLIPOLI SPRINGS STATE
RECREATION AREA, WAI`ANAPANAPA STATE PARK~~

~~Residents: \$60/night per cabin~~

~~Non-residents: \$90/night per cabin~~

~~FEES FOR CHANGE OR CANCELLATION OF CAMPING OR RENTAL CABIN RESERVATIONS:~~

~~\$3 per change
\$5 per cancellation~~

~~WAILOA STATE RECREATION AREA DAY USE PAVILIONS~~

~~Large pavilions: _____ \$125 rental fee, with a \$150
_____ deposit~~

~~Small pavilions: _____ \$5 hour, with a \$50 deposit~~

~~PARKING FEES~~

~~NU'UANU PALI STATE WAYSIDE~~

~~Residents: _____ No charge~~

~~Nonresidents: _____ \$3~~

~~Commercial PUC vehicles:~~

~~1-7 _____ passenger vehicles: _____ \$6~~

~~8-25 _____ passenger vehicles: _____ \$12~~

~~26 + _____ passenger vehicles: _____ \$24~~

~~IAO VALLEY STATE MONUMENT~~

~~Residents: _____ No charge~~

~~Nonresidents: _____ \$5~~

~~Commercial PUC vehicles:~~

~~1-7 _____ passenger vehicles: _____ \$10~~

~~8-25 _____ passenger vehicles: _____ \$20~~

~~26 + _____ passenger vehicles: _____ \$40~~

~~MAKENA STATE PARK~~

~~Residents: _____ No charge~~

~~Nonresidents: _____ \$5~~

~~Commercial PUC vehicle fees:~~

~~1-7 _____ passenger vehicles: _____ \$10~~

~~8-25 _____ passenger vehicles: _____ \$20~~

~~26 + _____ passenger vehicles: _____ \$40~~

~~HĀPUNA BEACH STATE RECREATION AREA~~

~~Residents: _____ No charge~~

~~Nonresidents: _____ \$5~~
~~Commercial PUC vehicle:~~
~~1-7 passenger vehicles: _____ \$10~~
~~8-25 passenger vehicles: _____ \$20~~
~~26+ passenger vehicles: _____ \$40~~

~~ENTRANCE FEES~~

~~DIAMOND HEAD STATE MONUMENT~~

~~Daily Rates: _____~~
~~Pedestrians: _____ \$1~~
~~Noncommercial vehicles (except mopeds): \$5~~
~~Mopeds: _____ \$1~~
~~Others (not listed): _____ \$1~~

~~Commercial Vehicles:~~

~~1-15 passenger vehicles: _____ \$10~~
~~16-25 passenger vehicles: _____ \$20~~
~~26+ passenger vehicles: _____ \$40~~

~~Annual Pass:~~

~~Pedestrians: _____ \$10~~
~~Private Vehicles: _____ \$30~~

~~AKAKA FALLS STATE PARK~~

~~Residents: _____ No charge~~
~~Nonresidents: _____ \$5 per vehicle~~
~~Others (not listed): _____ \$1 per person~~
~~Commercial PUC vehicle:~~
~~1-7 passenger vehicles: _____ \$10~~
~~8-25 passenger vehicles: _____ \$20~~
~~26+ passenger vehicles: _____ \$40~~

~~WAIMEA CANYON STATE PARK AND KOKEE STATE PARK~~

~~Residents: _____ No charge~~
~~Nonresidents: _____ \$5 per vehicle~~
~~Others: _____ \$1 per person~~
~~Commercial PUC vehicle:~~
~~1-7 passenger vehicles: _____ \$10~~
~~8-25 passenger vehicles: _____ \$20~~
~~26+ passenger vehicles~~

~~at Waimea Canyon State Park: _____ \$40~~

~~HA`ENA STATE PARK~~

Residents: _____	No charge
Visitors: _____	\$5 per vehicle
Others (not listed): _____	\$1 per person
Commercial PUC vehicles:	
1-7 passenger vehicles: _____	\$10
8-25 passenger vehicles: _____	\$20
26+ passenger vehicles: _____	\$40]

(b) For purposes of this section, the following definitions shall apply:

"Commercial PUC vehicle" means a vehicles that is regulated by the Hawaii Public Utilities Commission.

"Resident" means a resident of the State with a valid State of Hawaii identification card or State of Hawaii driver's license." [Eff 12/24/15; am and comp _____] (Auth: HRS § 184-5) (Imp: HRS §§ 184-3, 184-5)

SUBCHAPTER 2

PERMITTED AND PROHIBITED USES OF THE PREMISES

§13-146-7 Abandonment and unattended property.

(a) No person shall abandon motor vehicles or other property. All such property may be confiscated or impounded by the board or its authorized representative.

(b) In the event vehicles or other property left unattended interferes with the safe or orderly management of the premises, it may be impounded by the board or its authorized representative at any time.

(c) All impounded vehicles shall be towed to a place of storage. Towing, storage, and other related costs shall be assessed pursuant to section 290-11, HRS.

(d) All impounded or confiscated property, other than vehicles, shall be moved to a place of storage, and the owner shall be assessed moving, storage, and other related costs. Additionally, the owner of this property shall bear the responsibility for the risk of any loss or damage to their property.

(e) Abandoned vehicles may be sold at public auction pursuant to section 290-11, HRS. All other impounded or confiscated property shall be disposed of pursuant to section 171-31.5, HRS. [Eff 4/16/90; am and comp 6/8/99; am 1/22/10; comp] (Auth: HRS §184-5) (Imp: HRS §§184-5, 290-11, 171-31.5)

§13-146-8 Agricultural use of premises. No person shall run at large, herd, drive across, or graze animals or use the premises for any other agricultural purpose except under a valid lease, contract, or special use permit issued by the board. [Eff and comp 6/8/99; comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-9 Aircraft. No person shall land or launch aircraft, as defined in section 261-1, HRS, including airplanes, airships, balloons, gliders, hang gliders, helicopters, parachutes, dirigibles, and other similar means of conveyance except with the written permission of the board or its authorized representative or in the case of an emergency. [Eff 4/16/90; am and comp 6/8/99; comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-10 Animals. (a) No person shall enter the premises with dogs, cats, and other animals unless

they are crated, caged, on a leash which shall not exceed six feet in length, or otherwise under physical restrictive control at all times.

(b) No person shall enter public eating places, food stores, designated swimming areas, or beaches with animals. The board or its authorized representative may also designate, by the posting of appropriate signs, any portion of the premises where animals shall not be allowed. This section shall not apply to guide, signal, or service animals accompanying their masters.

(c) Persons responsible for any animal on the premises shall also be responsible for the clean up and proper disposal of animal droppings, for restoration and restitution for any damages caused by the animal, and, if the animal is loose, for restitution for any costs incurred in trapping and removing the animal.

(d) No person shall have, possess, or ride horses except in areas designated for this purpose by the board or its authorized representative, by permit or appropriate signs. [Eff 4/16/90; am and comp 6/8/99; am 1/22/10; comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-11 Historic property and burial sites.

No person, natural or corporate or other legal entity, shall knowingly take appropriate, excavate, injure, destroy, or alter any historic property or burial site in the state park system, provided, however, that:

- (1) The board or its authorized representative may permit a person to conduct activities that would alter historic properties or burial sites;
- (2) The person issued the permit meets professional qualifications established in accordance with chapter 6E, Hawaii Revised Statute, and its implementing administrative rules; and

- (3) The person issued the permit possesses an annual permit to conduct archaeological activities in Hawaii when archaeological activities will be undertaken; and

The work undertaken shall comply with all applicable requirements of chapter 6E, Hawaii Revised Statutes, and its implementing administrative rules. [Eff 4/16/90; comp 6/8/99; am 1/22/10; comp] (Auth: HRS § 184-5) (Imp: HRS §§ 6E-3, 6E-7, 6E-8, 6E-11, 6E-43, 6E-43.6)

§13-146-12 Audio devices. (a) No person shall operate or use any audio device including, but not limited, to radios, tape recorders, television sets musical instruments, compact disc players, and noise producing devices such as electric generating plants, or other equipment driven by motors or engines in a manner and at times which creates excessive noise or annoyance to park users or others outside the premises except with the written permission of the board or its authorized representative.

(b) No person shall operate or use public address systems whether fixed, portable, or vehicle mounted, on land, water, and roadways except when the use or operation is in connection with public gatherings or special events for which permits have been issued by the board or its authorized representative or when the use is in conjunction with emergency or rescue operations. [Eff 4/16/90; comp 6/8/99; comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-13 Boating. (a) No person shall operate, leave unattended, beach, park, or launch vessels, as defined in section 200-6, HRS, including but not limited to boats, motorboats, houseboats, rowboats, powerboats, jet skis, sailboats, fishing

boats, towboats, scows, flatboats, cruisers, motor vessels, ships, barges, tugs, floating cabanas, party boats, charter boats, windsurfers, catamarans, ferryboats, canoes, rafts, kayaks, or any similar buoyant devices permitting or capable of free flotation where prohibited by the posting of appropriate signs, except with written permission of the board or its authorized representative, or in cases of emergency.

(b) No person shall moor or anchor vessels as defined in subsection (a) without the written permission of the board or its authorized representative, except anchoring in cases of emergency. [Eff 4/16/90; am and comp 6/8/99; comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-14 Camping. No person shall camp or use recreational trailers or other camper units, except with the prior written authorization of the board or its authorized representative. [Eff 4/16/90; am and comp 6/8/99; comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-15 Communication equipment. No person shall install or operate aerials, antennas, transmitters or other radio, telephone, television, or other communication equipment except hand held devices or equipment installed within vehicles without the permission of the board or its authorized representative. [Eff 4/16/90; am and comp 6/8/99; comp] (Auth: HRS §184-5) (Imp: HRS §§184-5)

§13-146-16 Disorderly conduct. No person shall

engage in disorderly conduct, as defined in section 711-1101, HRS, within the premises. [Eff 4/16/90; am and comp 6/8/99; comp] (Auth: HRS §184-5) (Imp: HRS §§184-5, 711-1101)

§13-146-17 Explosives. No person shall use or possess fireworks, firecrackers, or explosives, except with the written permission of the board or its authorized representative and subject to federal, state, and county laws, ordinances, rules and regulations. [Eff 4/16/90; am and comp 6/8/99; comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-18 False report. No person shall give a false or fictitious report or other information to any authorized representative investigating an accident or any violation of law or administrative rule. [Eff 4/16/90; am and comp 6/8/99; comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-19 Firearms and other weapons. (a) No person shall use or possess bow and arrows, crossbows, firearms, pellet or BB guns, paintball guns, slingshots, or other implements designed to discharge missiles except as provided herein.

(b) Firearms and other weapons may be used or possessed if in accordance with section 13-146-41. The use or possession of firearms, and other weapons, when permitted, shall be subject to all federal, state, and county laws, ordinances, rules and regulations. Firearms and other weapons shall be unloaded when transported through nonhunting areas of the premises. [Eff 4/16/90; am and comp 6/8/99; am 1/22/10; comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-20 Fires. (a) Fires are permitted only:

- (1) In picnicking and designated camping grounds where the fire will be confined in fireplaces or in grills;
- (2) In other locations, including backcountry, wilderness, and remote sections of the premises when a written permit has been secured from the board or its authorized representative;
- (3) On portions of the premises designated by the board or its authorized representative for fires. No permit is required for fires in the designated areas, which shall be posted; or
- (4) In stoves or lanterns using gasoline, kerosene, propane, butane, wood, charcoal, briquettes, gas, alcohol or other fuels.

(b) No person shall allow a fire to burn in a manner that surrounding shrubs, grasses, trees, or other combustible matter, or structures will be burned, scorched, or damaged.

(c) When no longer needed, fires shall be completely extinguished. No person shall leave a fire unattended.

(d) No person shall discard unextinguished cigarettes, cigars, pipe heels, matches, live coals, other burning material, provided, however that live coals may be deposited in ash pits wherever they are provided. [Eff 4/16/90; am and comp 6/8/99; comp

] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-21 Fishing. Unless specifically restricted herein or by other administrative rule, a person may fish or take mollusks and crustaceans, subject to all applicable federal, state, and county laws, ordinances, rules and regulations. [Eff 4/16/90; am and comp 6/8/99; comp]

(Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-22 Gambling. No person shall gamble or operate gambling devices. [Eff 4/16/90; comp 6/8/99; comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-23 Geological features. No person shall destroy, disturb, or mutilate any geological features or dig or remove sand, earth, gravel, mineral, rock, fossil, coral, or any other substance except for digging in sand areas of beaches or as provided in section 13-146-32(f). No person shall excavate or quarry any stone, or lay, set, or cause any blast or explosion, or assist in these acts, except as provided by law or with the written permission of the board or its authorized representative. [Eff 4/16/90; am and comp 6/8/99; comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-24 Golfing. No person shall play golf, or hit or drive golf balls except in areas designated for those activities. [Eff 4/16/90; am and comp 6/8/99; comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-25 Intoxication; drug incapacitation.
(a) No person shall use or possess narcotics, or drugs, provided that a person may use or possess drugs legally prescribed by a physician. No person shall enter or remain within the premises when manifestly under the influence of alcohol, narcotics, or drugs.
(b) No person shall use or possess alcohol except with written permission of the board or its

authorized representative. [Eff 4/16/90; comp 6/8/99;
comp] (Auth: HRS §184-5) (Imp:
HRS §184-5)

§13-146-26 Lost and found articles. Any person finding lost articles shall deposit them at the nearest police station, leaving their name and address. [Eff 4/16/90; comp 6/8/99;
comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-27 Memorialization. No person shall install any monument, memorial, tablet, or other commemorative installation, except with the written permission of the board or its authorized representative. [Eff 4/16/90; comp 6/8/99;
comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-28 Modelcraft operation; kite flying. No person shall operate motorized aircraft, automobile, watercraft and other similar models except with the, written permission of the board or its authorized representative. Kites shall not be flown where kite flying is specifically prohibited by the posting of appropriate signs [Eff 4/16/90; comp 6/8/99; comp] (Auth: HRS §184-5)
(Imp: HRS §184-5)

§13-146-29 Parking. (a) No person shall park, stop, or stand vehicles except on roads and parking areas laid out, designed, or provided for parking. All persons shall observe the official traffic signs, wherever posted, restricting the parking, stopping, or

standing of vehicles. No person shall reserve parking spaces without the permission of the board or its authorized representative.

(b) No person shall park vehicles in designated handicapped stalls without a disabled persons placard displayed in that vehicle.

(c) No person shall park vehicles beyond the time limit indicated by the posting of appropriate signs.

(d) In the event a vehicle is parked in a manner that interferes with the safe or orderly management of the premises, or is parked in violation of any provision in this section, it may be impounded by the board or its authorized representative at any time.

(e) All impounded vehicles shall be towed to a place of storage. Towing, storage, and other related costs shall be assessed pursuant to section 290-11, HRS. [Eff 4/16/90; am and comp 6/8/99; comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-30 Picnicking. A person may picnic except in designated campgrounds and in those locations prohibited by the board or its authorized representative by the posting of appropriate signs. The board or its authorized representative may also establish reasonable limitations on the length of time any person may use picnicking facilities by the posting of appropriate signs when limitations are necessary for the accommodation of the general public. [Eff 4/16/90; comp 6/8/99; comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-31 Portable engines and motors. No person shall operate or use a portable motor driven electric generating plant, pump, compressor, or any other equipment driven by a portable engine or motor

without the written permission from the board or its authorized representative. [Eff 4/16/90; comp 6/8/99; comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

- §13-146-32 Public property.** (a) No person shall destroy, deface, or remove any natural or historical feature or natural or historical resource.
- (b) No person shall intentionally or wantonly destroy, injure, deface, remove, disturb, or possess in any manner any public building, sign, equipment, monument, marker, or other structure.
- (c) A person may gather or collect for personal use, reasonable quantities of natural products of a renewable nature, including, but not limited to, seashells, fruits, berries, flowers, seeds, pine cones, seaweeds, driftwood, and marine objects of natural origin; provided, that the board or its authorized representative may establish seasons for picking of plums on Kauai. No person shall gather or collect these products for the purpose of sale. The quantities of these products may also be restricted by the board or its authorized representative.
- (d) A person may only gather dead material on the ground for use as fuel in campsites or picnic areas, except where gathering is prohibited by the board or its authorized representative by the posting of appropriate signs.
- (e) No person shall damage, destroy, dig, remove, or possess any tree, shrub or other plant, except for noxious weeds, as defined in chapter 4-68 unless authorized by the board or its authorized representative at any time.
- (f) A person may gather or collect small quantities of pebbles or small rocks by hand for personal use, except in prohibited areas which shall be posted. The quantities of these items, however, may be restricted by the board or its authorized representative. No person shall collect these objects for the purpose of sale.

(g) No person shall introduce animals, fish, or plants, including their reproductive bodies, into the premises.

(h) No person shall possess or use a mineral or metal detector, magnetometer, or other metal detecting device except on sand areas of beaches. [Eff 4/16/90; am and comp 6/8/99; am 1/22/10; comp]
(Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-33 Report of injury or damage. All incidents resulting in injury or death to persons or damage to property shall be reported as soon as possible to the board or its authorized representative. This report does not relieve persons from the responsibility of making any other report which may be required under federal, state, or county laws, ordinances, rules and regulations. [Eff 4/16/90; am and comp 6/8/99; comp]
(Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-34 Residence prohibited. No person shall establish a temporary or permanent residence on the premises except with a permit or other written agreement with the board. [Eff 4/16/90; comp 6/8/99; comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-35 Sanitation and Litter. (a) All persons shall dispose of garbage, trash, refuse, waste material, and rubbish of any kind only at places designated for its disposal or shall remove it from the premises. No person shall remove refuse or garbage from refuse containers nor remove or relocate these containers.

(b) No person shall drain or dump garbage, trash, rubbish, refuse, or waste except in places or

receptacles provided for this use.

(c) A person may only clean food or wash cooking and eating utensils and clothes or articles of household use in designated areas.

(d) No person shall pollute or contaminate any watershed, or water used for drinking purposes in any manner.

(e) No person shall dispose of fish entrails or other parts of fish or animals into salt waters within two hundred feet of boat docks or swimming areas or into fresh waters or in areas of public concentration.

(f) No person shall deposit any body waste in or on any portion of any comfort station or other public structure except into customary and proper receptacles provided by the State or by the permittee for that purpose. No person shall place any bottle, can, cloth, rag, metal, wood, stone, or any foreign substance in any of the fixtures in the station or structure. All comfort stations shall be used in a clean, sanitary, and orderly manner.

(g) No person shall urinate or defecate on the premises other than in the toilet facilities provided.

(h) No person shall bring, carry, or transport garbage, trash, rubbish, refuse, or waste from outside the premises for deposit or dumping on the premises.

[Eff 4/16/90; am and comp 6/8/99; am 1/22/10;
comp] (Auth: HRS §184-5) (Imp:
HRS §184-5)

§13-146-36 Skating; skateboards; bicycling. No person shall roller skate, skateboard, or bicycle in areas where prohibited by the posting of appropriate signs. [Eff 4/16/90; comp 6/8/99; comp]
(Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-37 Repealed. [R 12/9/02]

§13-146-38 Swimming; nudity. (a) A person may swim or bathe except in waters and at times where these activities are prohibited in the interest of public health or safety. These waters shall be designated by posting of appropriate signs. No person shall bathe, swim, walk, sunbathe, or remain on the premises in the nude, or take outdoor showers in the nude, except for bathing or changing clothes within enclosed facilities provided for these purposes or for the exposed breast of a nursing mother in the act of breastfeeding an infant.

(b) No person shall use flotation devices within designated swimming areas when prohibited by the board or its authorized representative, by the posting of appropriate signs.

(c) No person shall use surfboards and similar devices within the limits of designated swimming beach areas. [Eff 4/16/90; am and comp 6/8/99; comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-39 Tampering with vehicle or vessel. No person shall tamper or attempt to tamper with any vehicle, vessel, or other equipment, or enter or go upon, move, or manipulate any of the parts or components of any vehicle, vessel, or other equipment or start or set the same in motion, except when it is under one=s lawful ownership or control. [Eff 4/16/90; am and comp 6/8/99; comp] (Auth: HRS § 184-5) (Imp: HRS §184-5)

§13-146-40 Motorized vehicle operation. (a) No person shall drive or operate any motorized vehicles including but not limited to, automobiles, trucks, vans, off highway vehicles such as all terrain vehicles, motorcycles, motor bikes, mopeds, scooters, and trail bikes except on designated trails and roads

that are managed for motorized use, provided, however, that the use of a motorized wheelchair by an individual whose disability requires the use of a wheelchair shall not be considered driving or operating a motorized vehicle.

(b) No person shall drive or operate any motorized vehicles faster than posted speed limits, or in a reckless manner, or in a manner that endangers any person or property, or damages park resources.

(c) No person shall drive or operate motorized vehicles or any other motorized or drawn equipment over, on, or across any road or bridge if the gross load of the vehicle exceeds the posted weight limits unless authorized by the board or its authorized representative.

(d) No person shall drive or possess unlicensed vehicles and off highway vehicles in any park area except for use on trails, roads and in other areas designated for off highway vehicle use by appropriate signage. [Eff 4/16/90; am and comp 6/8/99; am 1/22/10; comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-41 Wildlife. No person shall molest, disturb, injure, trap, take, catch, possess, poison, introduce, or kill any wild bird or mammal, or disturb their habitat except when authorized by federal, state, and county laws, ordinances, rules, and regulations. [Eff 4/16/90; am and comp 6/8/99; comp] (Auth: HRS § 184-5) (Imp: HRS §184-5)

§§13-146-42 to 13-146-49 (Reserved).

SUBCHAPTER 3

PERMITS

§13-146-50 General provisions. (a) Permits governing the use of public facilities and areas within the premises shall consist of the following types:

- (1) Camping;
- (2) Lodging;
- (3) Group use;
- (4) Special use

(b) The board or its authorized representative may issue permits. The following conditions shall apply to all permits:

- (1) Permits shall be issued on a first-come first-served basis. The board or its authorized representative may withhold a portion of the available permits to be issued to walk-in applicants on a first-come first-served basis.
- (2) All responsible persons eighteen years of age or older shall be eligible to secure permits.
- (3) Permits shall be obtained by the means determined by the board, including, but not limited to, from the district offices of the department, through concessionaires, telephone or electronically through the Internet.
- (4) Permits obtained at the district offices shall be obtained between the hours of 8 a.m. and 3:30 p.m. on regular working days of the department.
- (5) Permits shall not be transferable.
- (6) Persons or organizations to whom permits are issued are bound by the permit conditions stipulated on or attached to the permit and any applicable federal, state, and county laws, ordinances, rules and regulations.
- (7) The size of groups as well as the length of time any permit may be in effect may be limited by the board or its authorized

- representative.
- (8) Fees and charges as set by the board shall be assessed for permits to defray the cost of special facilities, services, or supplies provided by the State, or to meet other conditions as the board or its authorized representative may prescribe to carry out the provisions of chapter 184, HRS. Charges may be waived by the board if, in their opinion, the waiver is in the public interest and benefits the State.
 - (9) All payments of fees and charges shall be in U.S. funds, and by credit card, in cash, cashier's check, certified check, traveler's check, postal money order, or bank money order, provided that personal or business checks may be used to pay for events that will occur thirty or more days after the date of payment.
 - (10) All permittees shall, upon request, show the permit to any law enforcement officer, the board or its authorized representative.
 - (11) Other procedures, terms and conditions deemed by the board or its authorized representative necessary to carry out the provisions of chapter 184, HRS, this chapter, or any applicable federal, state, or county statute, ordinance, or rule.
- (c) Permits may be denied when:
- (1) The premises or park facilities are closed or will be closed because of damages, or because of scheduled or ongoing construction, repairs, or maintenance activities, or because of other reasons.
 - (2) A state of emergency is declared by the board or other proper authorities.
 - (3) Natural or civil disturbances occur or threaten to occur, including, but not limited to, tsunamis, floods, earthquakes, storms, riots, demonstrations, and employee strikes.
 - (4) There are inadequate facilities to meet the

- needs of the applicant for the permit.
- (5) The premises or facilities will be used by other permittees.
 - (6) The applicant has a prior record of noncompliance with permit conditions or violations of this chapter.
- (d) Permits may be denied, canceled or terminated at any time without advance notice when:
- (1) A state of emergency is declared by the board or other proper authorities.
 - (2) Natural or civil disturbances occur or threaten to occur, including, but not limited to, tsunamis, floods, earthquakes, storms, riots, demonstrations, and employee strikes.
 - (3) Permittees violate or have previously violated permit conditions or provision of this chapter within a year of permit application.
 - (4) Fees, as required, are not paid. [Eff 4/16/90; am and comp 6/8/99; am 1/22/10; comp] (Auth: HRS §184-5)
(Imp: HRS §184-5)

§13-146-51 Camping permits. (a) The following provisions shall apply to camping:

- (1) Camping and the use of recreational trailers or other camper units is only permitted at locations designated by the board or its authorized representative.
- (2) The board or its authorized representative may establish check-in and check-out times for camping facilities.
- (3) The installation or construction of permanent camping facilities is prohibited except as authorized by the board or its authorized representative.
- (4) The digging or leveling of the ground at any campsite is prohibited except with the written permission of the board or its

authorized representative.

- (5) Camping equipment shall be completely removed and the campsite cleaned before departure from the site.

(b) All persons, groups, organizations, or associations desiring to camp shall obtain a camping permit authorizing the use of specific camping areas and facilities:

- (1) Applicants for camping permits shall provide their name, address, telephone numbers, identification numbers and the names of all persons three years of age or older covered by the permit, and identification satisfactory to the board or its authorized representative, if requested.
 - (2) Each permit will reserve the use of the desired camping area for a specified date or dates.
 - (3) Requests for camping permits and confirmation of the same for state operated campsites shall be made either through the internet, a direct visit to the district offices, by telephone, or through the mail. Reservations for campsites operated by concessionaires shall be made directly with the concessionaire.
 - (4) The maximum camping duration under each permit at any one park or campground shall be five consecutive nights.
 - (5) Persons three years of age or older shall have their names printed on the permit to be allowed to camp.
- (c) Camping permits shall be denied when:
- (1) The size of the group exceeds the capacity of the existing facilities; or
 - (2) The applicant or any person to be covered by the permit has camped in or has been issued a camping permit for the same park or campground within a period of thirty days preceding the requested camping dates.
- (d) No person, group, organization, or

association shall remain at any one specified park, camping area, or backcountry, or in isolated sections of the premises for a period longer than five consecutive nights; provided however, that the board or its authorized representative may extend the stay for good cause. The board or its authorized representative may establish lower maximum camping periods for specific areas.

(e) Payment of fees and charges for camping permits shall be set by the board and the following shall apply:

- (1) Payment of the total cost of camping is required to received a permit. The fee shall be paid on the date of the reservation is made.
- (2) A service fee may be charged for permit issuance, changes to, or cancellation of an issued camping permit.
- (3) Refund of the total cost of the permit less any service fee, may be made through the internet or by notifying the district office, in writing, of the cancellation a minimum of fifteen days prior to the first day of permitted use.
- (4) Permits which are paid in full, and not canceled by the permittee, shall remain valid for the entire duration of the permit period. [Eff 4/16/90; am and comp 6/8/99; am 1/22/10; comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-52 Lodging permits. (a) All persons, groups, organizations, or associations desiring to use a cabin facility shall obtain a lodging permit authorizing the use of specific cabin or cabins and facilities:

- (1) Applicants for lodging permits shall provide their name, address, telephone numbers and identification numbers, and the names of all persons three years of age or older covered

by the permit, and identification satisfactory to the board or its authorized representative, if requested.

- (2) Each permit shall reserve the use of the cabin facility named in the permit for a specified date or dates.
- (3) Requests for lodging permits and confirmation of the same for state operated lodging units shall be made either through the internet, a direct visit to the district offices, by means of telephone, or through the mail. Reservations for lodging units operated by concessionaires shall be made directly with the concessionaire.
- (4) The maximum stay at any one or more cabins in a specific park shall be five consecutive nights. The board or its authorized representative may extend the permit for good cause.
- (5) Persons three years of age or older must have their names printed on the permit to be allowed to stay in cabin facilities.

(b) A lodging permit shall not be issued if the applicant or any person to be covered by the permit has occupied or will occupy a cabin in the same park within a period of thirty days preceding the requested lodging dates.

(c) Payment of fees and charges for lodging permits shall be as follows:

- (1) Payment of the total cost of lodging is required to confirm the reservation. The fee shall be paid on the date the reservation is made.
- (2) A service fee may be charged for permit issuance, changes to, or cancellation of an issued lodging permit.
- (3) A security deposit of \$30 per cabin may be required if an applicant for a lodging permit has a prior record of noncompliance with the permit conditions or violations of this chapter. Refund of the security deposit will be made provided that the

permittee complies with permit conditions and with this chapter.

- (4) Refund of the total cost of the lodging, less any service fee, may be made through the internet or by notifying the district office, in writing, of the cancellation a minimum of fifteen days prior to the first occupancy date designated on the permit.

(d) Lodging permits shall be issued subject also to the following conditions:

- (1) Permittee shall be responsible for clean up of the cabin.
- (2) Permittee shall be responsible for the repair or replacement of any missing or damaged property.
- (3) The department shall not be responsible for any personal article left or lost by permittee.
- (4) If the permittee fails to properly notify the department or fails to occupy the cabin on the first scheduled day of occupancy, the permit shall be canceled and any deposit forfeited; provided that if the permittee prepaid the entire rental fee, the permit will remain valid for the entire duration of the permit period. [Eff 4/16/90; am and comp 6/8/99; am 1/22/10; comp]
(Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-53 Group use permits. (a) Any group larger than twenty-five members shall be required to obtain a group use permit to remain within the premises. t no charge shall obtain a collecting permit authorizing the collection in a specific area.

(b) Group use permits may be denied to any person, group, organization, or association when space is inadequate to accommodate the group or as otherwise provided in 13-146-50.

(c) Group use permits shall set forth the day and time the group shall be allowed to remain on the

premises as follows:

- (1) Permits may be issued for hours between 7 a.m. and midnight of the same day, except for park areas that are normally closed before midnight.
- (2) An earlier starting time may be granted by the board or its authorized representative to accommodate special functions.
- (3) Minors below the age of eighteen may be allowed to remain on the premises on their own, if the adult who secures the permit for them will be responsible for them and also provided that their use is between the hours 7 a.m. to 7 p.m. of the same day. Minors staying beyond 7 p.m. in park areas that normally stay open past 7 p.m. shall be under the supervision of adults on a ten minors to one adult ratio. All minors from the same family, who are accompanied by at least one of their parents, shall be allowed to remain in the area past the 7 p.m. deadline, where permitted, without regard to the adult-minor ratio.

(d) The board or its authorized representative may require the permittee at the permittees own cost, to provide licensed security services or protection in the interest of public safety and welfare and for the protection of property, when the number of persons under the permit is one hundred or more.

[Eff 4/16/90; am and comp 6/8/99; comp]
(Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-54 Special use permits. (a) Special uses shall be permitted only with a special use permit issued by the board or its authorized representative. Special uses are all types of uses other than camping, lodging, group use and activities permitted under chapter 13-7 which are considered compatible with the functions and purposes of each individual area, facility, or unit of the premises.

(b) Requests for permits for special uses shall each be considered on its own merits, including its effect on the park area, facilities, and the public use and enjoyment.

(c) Special uses include but are not limited to:

(1) Day use permits, commercial tours, and weddings; and

(2) Such activities as assemblies, carnivals, celebrations, concerts, demonstrations, festivals, gatherings, meetings, pageants, parades, and other community or ethnic oriented events, or activities, or other spectator attractions that are open to the general public or to restricted groups.

[Eff 4/16/90; am and comp 6/8/99; am 1/22/10; comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§§13-146-55 to 13-146-64 (Reserved).

SUBCHAPTER 4

COMMERCIAL AND PRIVATE OPERATIONS

§13-146-65 Advertisements. No person shall display, post, or distribute notices or advertisements, except with the prior written permission of the board or its authorized representative. Permission may be granted only if the notice or advertisement relates to services, goods, or facilities available within the premises and the notices and advertisements are found by the board or its authorized representative to be desirable and necessary for the convenience and guidance of the public, or as allowed by chapter 13-7. [Eff 4/16/90; am and comp 6/8/99; comp] (Auth: §184-5) (Imp: §184-5)

§13-146-66 Business operations. No person shall engage in or solicit any business, except in accordance with the provisions of a permit, contract, license, lease, concession, or other written agreement with the board or its authorized representative, or as allowed by chapter 13-7. [Eff 4/16/90; am and comp 6/8/99; comp] (Auth: HRS §184-5)
(Imp: HRS §184-5)

§13-146-67 Commercial filming, photography, and videotaping. (a) Before any motion picture is filmed or any video recordings, television production, or sound track is made, which involves the use of professional casts, models, settings, or crews, by any person other than bonafide, newsreel or news television personnel, a person shall obtain a written permit approved by the board or its authorized representative which shall be subject to the terms, conditions, and fees set by the board.

(b) Before any still photograph may be taken by a commercial photographer for commercial purposes, a person shall obtain a written permit approved by the board or its authorized representative. The permit shall be subject to terms, conditions, and fees set by the board. [Eff 4/15/90; am and comp 6/8/99; comp] (Auth: HRS §184-5) (Imp: HRS §184-5)

§13-146-68 Commercial activities. No person shall engage in commercial activities of any kind, without a written permit from the board or its authorized representative. [Eff 12/09/02; comp] (Auth: §184-5) (Imp: §184-5)

‘IOLANI PALACE STATE MONUMENT

§13-146-69 Purpose. The purpose of this subchapter is to provide rules specific to the ‘Iolani Palace State Monument in order to recognize, protect, and preserve the historic and cultural significance of the Monument and to meet the Monument’s educational mission to preserve the character of the era of Hawaii’s monarchy.

‘Iolani Palace State Monument (‘Iolani Monument) consists of ‘Iolani Palace, Barracks, Coronation Pavilion, Kanaina Building (Old Archives Building), Kekauluohi Building (State Archives Building) and Grounds consisting of 11 acres of land, including the perimeter wall and wrought iron fence bordered by King Street, Likelike Street, Hotel Street Mall and Richards Street.

‘Iolani Monument is one of the most important historical and cultural resources in Hawaii. Before the arrival of the missionaries in the 1820’s, a Hawaiian temple or heiau, known as “Kaahimauli,” was sited in this area. Later, a small mausoleum was built on the grounds to house the remains of King Liholiho and Queen Kamamalu. While the remains of these Royalty were moved to their new resting place in 1865, accounts state that the bones of certain chiefs remain on the site. King Kalakaua, out of respect for this sacred and hallowed place, raised a mound over it. Hawaiian culture demands great respect and care for the location of ancient burial sites of Hawaiian chiefs.

In 1882, ‘Iolani Palace was built and served to house Hawaii’s last Monarchs, King Kalakaua and Queen Lili’uokalani. This is the only palace of official royal residence in the United States. It is listed in the National Register of Historic Places and designated a National Historic Landmark. The State designated the area a Monument in recognition of its historic importance, and to utilize these unique resources to educate and promote awareness of the

historic and cultural character of the era of the Hawaiian monarchy.

The Friends of 'Iolani Palace, a non-profit organization which acts as the State's steward of the Palace under a lease agreement, holds the official designation as the State of Hawaii Museum of Monarchy History. Their mission is, "To preserve, restore, interpret, share and celebrate the unique cultural, historic and spiritual qualities of 'Iolani Palace and its Grounds for the benefit of Native Hawaiians, the People of Hawaii and the world."

'Iolani Monument also includes the Kekauluohi Building, the Hawaii State Archives Building. The Archives houses thousands of priceless and irreplaceable records generated by the State and the former territorial government and monarchy.

'Iolani Monument is a public gathering site. People are welcome to gather on the Grounds and to have limited and managed access to the Palace, Archives, Barracks and Coronation Pavilion. However, the sacred cultural sites, the rare historic resources, and the mission of the entire 'Iolani Monument to maintain the historic character of the Monarchy era, requires specific rules dedicated to protect and preserve the character, buildings, cultural sites and grounds for future generations. These rules serve the significant government interest of protecting the Monument and the safety of the persons who visit it. The Monument and the valuable historic property and records it holds must be preserved for the use and enjoyment of all of the people of Hawaii and visitors to the islands for generations to come. [Eff 10/30/08; comp]
(Auth: HRS §184-5) (Imp: HRS §§6E-7, 6E-35, 171-6, 184-5)

§13-146-70 'Iolani Palace State Monument restrictions. (a) All other rules in this chapter shall apply to 'Iolani Palace State Monument except as provided herein. These rules do not infringe upon any

rights or privileges to gather and express opinion as provided by Chapter 13-7. However, these rules govern the time, place and manner in which such activities may occur for the purposes stated herein.

- (b) The following shall be prohibited:
 - (1) obstructing public access to the grounds, buildings, or structures;
 - (2) access on or in the Burial Mound located in the Diamond Head-Makai quadrant, as designed on the map attached as Exhibit 1;
 - (3) unauthorized occupation of any structure on the grounds, including but not limited to, 'Iolani Palace, Coronation Pavilion, Kanaina Building, 'Iolani Barracks Building and the Kekauluohi (Archives) Building;
 - (4) entering or remaining on the grounds during the hours they are closed, provided that persons with parking permits issued by the state Department of Accounting and General Services may enter and exit during the hours the grounds are closed for the purposes of parking and removing their cars;
 - (5) engaging in any activity so as to obstruct or impede pedestrians or vehicles, or harass or intimidate visitors, volunteers or employees traversing or on the premises either verbally or with physical contact or barriers; including but not limited to hindering or interfering with the public's use of one or more of the entry gates to the premises or building entrances;
 - (6) interference with the public's use of the premises or facilities, including but not limited to, the interpretive services, visitor services, government activities, enjoyment of the premises and programs by the general public;
 - (7) signs of a size greater than twelve (12) square feet;
 - (8) signs or flags left in place on the grounds for duration of greater than eight (8) hours;

- (9) taking showers or bathing;
- (10) sale or consumption of alcoholic beverages, with the sole exception that the Friends of 'Iolani Palace may allow alcohol at permitted events for the purpose of meeting their mission, subject to the conditions and insurance requirements established by the department under a lease agreement or permit;
- (11) gathering or collecting any material, natural or man-made, on the grounds or within the buildings;
- (12) weapons of any type, except those specifically permitted by the Department for ceremonial and reenactment events;
- (13) climbing, trimming or cutting any tree;
- (14) washing and polishing vehicles.

(c) The following activities and items shall be permitted but only with a permit issued by the department and subject to the limitations contained in this Subchapter:

- (1) activities with permits issued under chapter 13-7. Chapter 13-7 permits for the use of an area of the 'Iolani Monument shall be subject to all of the provisions of § 13-146-71 and § 13-146-72;
- (2) amplified music, amplified noise, or any kind of loudspeaker in excess of the noise limits of this Subchapter;
- (3) barbeques and cooking;
- (4) constructing, manufacturing, or repairing anything on the premises;
- (5) animals, including animals on leashes, except for service, guide, or signal animals;
- (6) weddings;
- (7) overnight parking, unless the person has a parking permit for the area issued by the Department of Accounting and General Services;
- (8) use of an artificial light source on the grounds;

- (9) tents, awnings or similar structures;
- (10) operating a generator;
- (11) signs, flags or bunting applied to any building, wall, fence, or gate provided that the department may require insurance prior to authorizing posting on any historical structure;
- (12) portable toilets.

(d) The department shall issue permits for the Monument on a first come first serve basis. In the event multiple permits are requested, the department shall accommodate the requests provided space is available and the historic structures and their contents are not jeopardized. The department shall issue permits without unreasonable delay, but no more than two business days after receipt of any permit application for a HAR 13-7 activity at 'Iolani Monument, and no more than forty-five days for other permits.

- (e) Entry to 'Iolani Palace shall be only by:
- (1) admission ticket issued by the Friends of 'Iolani Palace;
 - (2) permit issued by the department;
 - (3) a representative of the department or an authorized representative of the Friends of 'Iolani Palace.

(f) Public parking on the grounds of 'Iolani Palace State Monument may be restricted by the department due to activities on the grounds or by the Department of Accounting and General Services for maintenance purposes. [Eff 10/30/08; comp]
(Auth: HRS §184-5) (Imp: HRS §§6E-7, 6E-35, 171-6, 184-5)

§13-146-71 'Iolani Monument permit limits.

Permits for items or activities listed under § 13-146-70(c) and any permits issued for the 'Iolani Monument under Title 13, Chapters 7 and 146, Hawaii Administrative Rules, shall be subject to the

following limitations:

(a) Time Limits: Permits shall not exceed a period of three (3) days in any seven (7) day period, with the sole exception that the Friends of 'Iolani Palace may allow signs, flags or bunting to be applied to the historic structures for longer periods as permitted by the department for the purpose of meeting their mission, subject to the conditions and insurance requirements established by the department under a lease agreement or permit. An individual or group may be limited in the number of permits issued in a given month based on the ability to accommodate multiple permit requests. Permits shall not be granted during the hours the Monument is closed, with the exception of state holidays and Sundays when permits may be issued for educational and commemorative activities;

(b) Noise Limits: Amplified music or noise may be limited to no more than 60 dba (decibels "A" weighted) during the period of tours of 'Iolani Palace and the Royal Hawaiian Band concerts on the premises, and no more than 75 dba (decibels "A" weighted) at any other time period;

(c) Location Limits: Permits issued for the 'Iolani Monument shall be limited to an area designated by the department. Permits issued under Title 13 Chapter 7 for the 'Iolani Monument shall be limited to the two Ewa quadrants on Monday-Thursday, and to the Ewa-Mauka quadrant on Fridays, as designated on the map attached as Exhibit 1, in order to avoid interference with the 'Iolani Palace tours and the Royal Hawaiian Band concerts. [Eff 10/30/08; comp] (Auth: HRS §184-5) (Imp: HRS §§6E-7, 6E-35, 171-6, 184-5)

§13-146-72 Penalties. Permits issued under Title 13, Chapters 7 and 146, Hawaii Administrative Rules, for 'Iolani Monument may be subject to permit revocation if the terms and conditions of the permit are violated. Persons who have violated permit conditions or the rules may be ordered by the

department to leave the Monument. Permittees who have violated permit conditions or the rules may be denied future permits for 'Iolani Monument or subject to the imposition of additional permit restrictions." [Eff 10/30/08; comp] (Auth: HRS §184-5) (Imp: HRS §§6E-7, 6E-35, 171-6, 184-5)

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

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

4. These amendments to and compilation of chapter 13-146, 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.

Suzanne D. Case
Chairperson
Board of Land and Natural
Resources

APPROVED FOR PUBLIC HEARING:

DEPUTY ATTORNEY GENERAL

Chapter 13-146

Exhibit 1. Quadrant Map.

(Date)

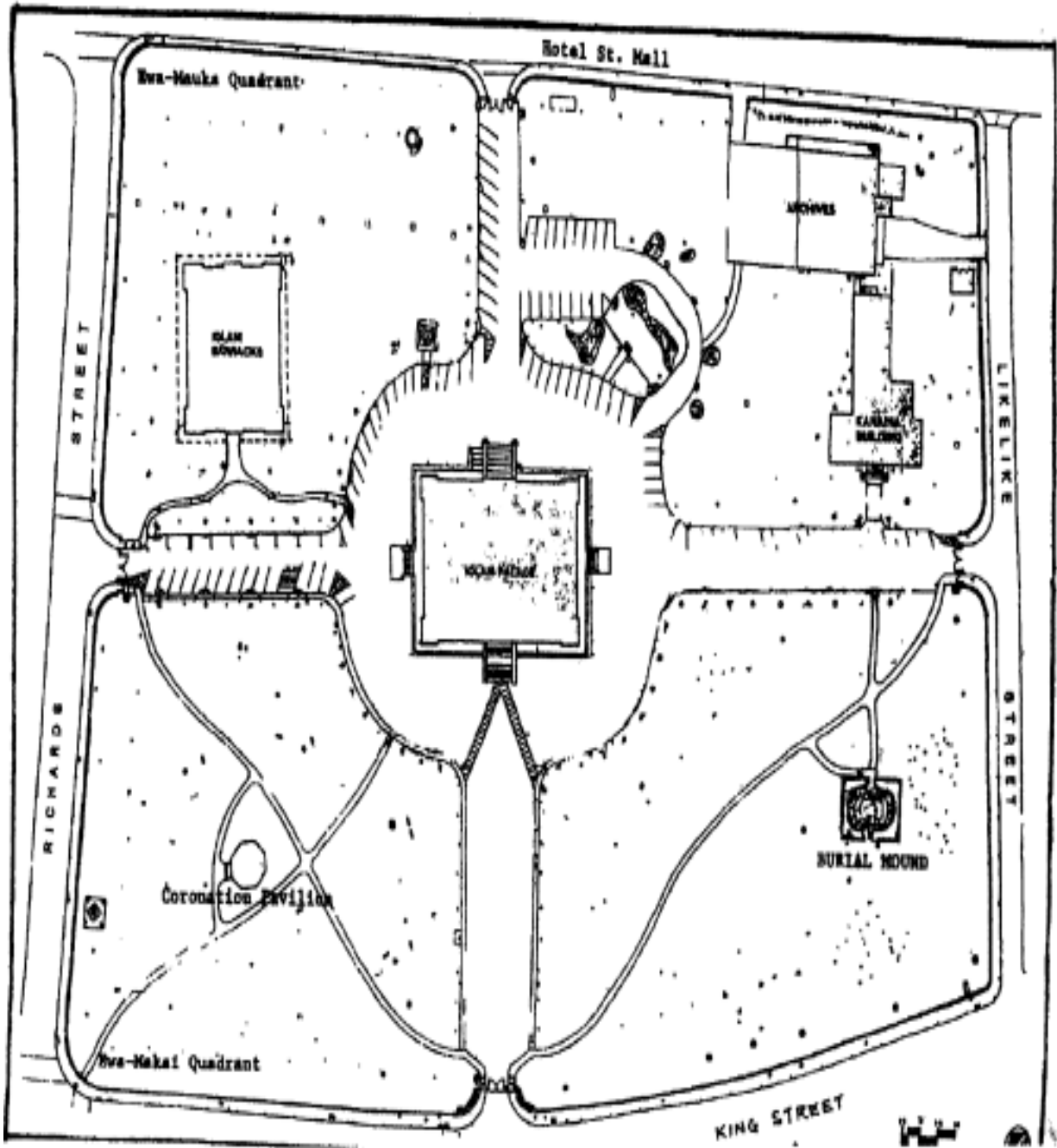


Exhibit 2. Hawaii State Park System Camping and Cabin Rental Fee Schedule.
(February 4, 2020)

	Resident Fee	Nonresident Fee
Camping Fees:		
State Park Camping Fees (except Napali Coast SWP)	\$20.00 night/campsite	\$30.00 night/campsite
Napali Coast State Wilderness Park Camping Fees	\$25.00 per person/night	\$35.00 per person/night
Cabin Rental Fees:		
Hapuna Beach SRA	\$40.00 per night/A-Frame	\$70.00 per night/ A- Frame
Kalopa SRA, Polipoli Springs SRA, Wai'anapanapa State Park	\$70.00 per night/cabin	\$100.00 per night/cabin
Camping or Cabin Rental Change Fee	\$3.00	\$3.00
Cancellation Fee	\$5.00	\$5.00
Day Use Pavilion Rental Fees:		
Large pavilions (Capacity of 150 or more persons)		\$250.00 flat day use fee
Medium pavilions (Capacity of 61-150 persons)		\$15.00/hour
Small pavilions (Capacity of 60 or fewer persons)		\$10.00/hour

Exhibit 3. Hawaii Park System Entrance and Parking Fee Schedule. (February 4, 2020)

Entrance Fees	
State Parks	Residents: No charge Nonresidents: \$5.00 per person
State Monuments	Residents: No charge Nonresidents: \$5.00 per person
State Recreational Areas	Residents: No charge Nonresidents: \$5.00 per person
State Historic Parks	Residents: No charge Nonresidents: \$5.00 per person
State Wilderness Parks	Residents: No charge Nonresidents: \$5.00 per person
State Scenic Shorelines	No charge
State Recreational Piers	No charge
State Wayside Parks	No charge

Parking Fees	
State Parks	
Per noncommercial vehicle	Residents: No charge Nonresidents: \$10.00 per vehicle
Per Commercial PUC vehicle	
1 to 7 passengers per vehicle	\$25.00
8 to 25 passengers per vehicle	\$50.00
26+ passengers per vehicle	\$90.00
State Monuments	
Per noncommercial vehicle	Residents: No charge Nonresidents: \$10.00 per vehicle
Per Commercial PUC vehicle	
1 to 7 passengers per vehicle	\$25.00
8 to 25 passengers per vehicle	\$50.00
26+ passengers per vehicle	\$90.00
State Recreational Areas	

Exhibit A

Per noncommercial vehicle	Residents: No charge Nonresidents: \$10.00 per vehicle
Per Commercial PUC vehicle	
1 to 7 passengers per vehicle	\$25.00
8 to 25 passengers per vehicle	\$50.00
26+ passengers per vehicle	\$90.00
State Historic Parks	
Per noncommercial vehicle	Residents: No charge Nonresidents: \$10.00 per vehicle
Per Commercial PUC vehicle	
1 to 7 passengers per vehicle	\$25.00
8 to 25 passengers per vehicle	\$50.00
26+ passengers per vehicle	\$90.00
State Wilderness Parks	

Per noncommercial vehicle	Residents: No charge Nonresidents: \$10.00 per vehicle
Per Commercial PUC vehicle	
1 to 7 passengers per vehicle	\$25.00
8 to 25 passengers per vehicle	\$50.00
26+ passengers per vehicle	\$90.00
State Scenic Shorelines	
Per Noncommercial vehicle	No charge
Per Commercial PUC vehicle	
1 to 7 passengers per vehicle	\$15.00
8 to 25 passengers per vehicle	\$30.00
26+ passengers per vehicle	\$50.00
State Recreational Piers	
Per Noncommercial vehicle	No charge
Per Commercial PUC vehicle	
1 to 7 passengers per vehicle	\$15.00
8 to 25 passengers per vehicle	\$30.00
26+ passengers per vehicle	\$50.00

State Wayside Parks	
Per Noncommercial vehicle	Residents: No charge Nonresidents: \$7.00 per vehicle
Per Commercial PUC vehicle	
1 to 7 passengers per vehicle	\$15.00
8 to 25 passengers per vehicle	\$30.00
26+ passengers per vehicle	\$50.00
All State Park Facilities	Overnight Parking Fee
Noncommercial vehicle	\$20.00
Commercial vehicle	Prohibited

IV. New Business – Before Public Hearing

A. Discussion and Action on the following Proposals to HAR Title 11, promulgated by DOH:

- 1. New Chapter 53, Section 401, Water Quality Certifications;**
- 2. Amendments to Chapter 54, Water Quality Standards;**
- 3. Amendments to Chapter 55, Water Pollution Control;**
- 4. New Chapter 56, Nonpoint Source Pollution Control**

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

Date: 6/19/2020

Department or Agency: Hawaii Department of Health, Clean Water Branch

Administrative Rule Title and Chapter: HAR 11-53

Chapter Name: Section 401 Water Quality Certification (WQC)

Contact Person/Title: Darryl Lum

E-mail: darryl.lum@doh.hawaii.gov Phone: (808) 586-4309

- A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.
Please see attached.
- B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

Yes No

If "Yes," provide details: _____

I. Rule Description:

New Repeal Amendment Compilation

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

Yes No

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

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

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

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

Yes No

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

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

Yes No

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

* * *

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

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

See attachment.

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 attachment.

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 attachment.

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.

See attachment.

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

See attachment.

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.

See attachment.

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

See attachment.

- 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.

See attachment.

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.
See attachment.

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

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

* * *

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

This Statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

Small Business Regulatory Review Board Small Business Impact Statement

For Proposed Promulgation of Hawaii Administrative Rules (HAR) Chapter 11-53 Section 401 Water Quality Certification (WQC)

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

Public Hearing Approval Request

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

- Summary of changes
 - Why is this section of Hawaii Administrative Rules being amended? What problem is the rule change meant to solve? List all changes that are being made.

DOH proposes to remove the Section 401 WQC rules in HAR 11-54-9.1 and create a new chapter (HAR 11-53) that incorporates the substance of the existing Section 401 WQC rules. A Section 401 WQC does not require EPA approval and, therefore, does not belong in HAR 11-54, which is the body of State Water Quality Standards (WQS) approved by the EPA that describe the desired condition of water bodies and certain means by which that condition will be protected or achieved. In addition to moving the certification rules, DOH also proposes revisions, detailed below, intended to streamline, or clarify or codify practices intended to rationalize application processing.

Section 401 WQC. Congress enacted Section 401 of the Clean Water Act (CWA) to provide states with an important tool to help protect water quality within their borders in collaboration with federal agencies. Pursuant to Section 401, a federal agency may not issue a permit or license to conduct an activity that may result in any discharge into waters of the United States unless a state where the discharge would originate (1) issues a Section 401 Water Quality Certification (WQC) verifying compliance with existing water quality requirements or (2) waives the certification requirement. When granting a Section 401 WQC, states are

authorized by Section 401(d) of the CWA to include conditions, limitations, and requirements that are necessary to assure that the applicant for a federal permit or license will comply with appropriate provisions of CWA Sections 301, 302, 306, and 307, and with any other appropriate requirement of State law. Those state-imposed conditions become a condition of the federal permit or license.

In Hawaii, the Department of Health (DOH) processes and issues Section 401 WQCs. Hawaii Revised Statutes (HRS), §342D-53 authorizes DOH to act as the certifying agency. Hawaii Administrative Rules (HAR), §11-54-9.1 sets forth the existing Section 401 WQC rules.

Related to the process of issuing Section 401 WQCs, DOH issued a Blanket Section 401 WQC that applies to projects (or parts of a project) that qualify for coverage under certain federal Nationwide Permits. Such qualifying projects would not be required to apply for a Section 401 WQC. It is estimated that approximately 80% to 90% of projects in Hawaii that would otherwise need a Section 401 WQC can qualify under the Blanket Section 401 WQC, with the result that only a few large projects would need to apply for a Section 401 WQC.

In most instances, the affected stakeholders are applicants for a federal permit or license conducting an activity that may result in a discharge to Waters of the United States. This includes federal, State, and county government agencies, land developers, private businesses, and homeowners. That is true with respect to most of the specific revisions summarized below.

Attached are the proposed new rules in Ramseyer format and accompanying fact sheet. A summary of the substantive revisions to existing rules, the reason for the revision, and the problem the rule change was meant to solve, follow:

- **Proposed revision: Revise the contents of the Section 401 WQC application to match minimum federal requirements in 40 CFR §121.3.**

Reason for amendment: To be consistent with minimum federal requirements.

Problem meant to be solved: Potential inconsistency with federal requirements.

How rule change addresses the problem: Matching minimum federal requirements for the contents of a Section 401 WQC application ensures consistency with federal requirements.

Stakeholders: Refer to summary.

Potential problems with the rule change: None.

Fiscal impact: Positive. The proposed amendment will reduce cost and effort by government agencies preparing applications.

Economic impact to the State: Positive. The proposed amendment will reduce the cost of preparing applications. Non-governmental stakeholders will be less hampered from pursuing a permitted activity, which may encourage them to pursue projects that were less economically viable due to processing time and cost.

Consequences if the rule change does not get adopted: Applicants that do not qualify for coverage under the Blanket Section 401 WQC will be required to submit applications with more information requirements than the minimum federal requirements.

- **Proposed Revision: Eliminate the filing fee for applications based on Standard Operating Procedures (SOPs) pre-approved by DOH.**

Reason for amendment: DOH has a streamlined Section 401 WQC process where applicants can develop SOPs for their different activities, get the SOPs pre-approved by DOH, then use the pre-approved SOPs in their applications. If more applicants utilize pre-approved SOPs, application preparation and processing time will be reduced. DOH proposes to eliminate filing fees for such applications to incentivize SOP development.

Problem meant to solved: The pre-approved SOP process, which takes time and effort by applicants to develop, can reduce application and processing time for applicants with multiple projects that can utilize SOPs. Eliminating filing fees for applications with pre-approved SOPs should incentivize SOP development.

How rule change addresses the problem: Eliminating filing fees for such applications should incentivize SOP development by applicants that frequently submit applications for Section 401 WQCs. In addition projects following pre-approved SOPs may be covered under the Blanket Section 401 WQC and would not need to submit an application.

Stakeholders: Refer to summary

Potential problems with the rule change: None.

Fiscal impact: Negligible. Such filing fees are not a significant source of revenue for the State.

Economic impact to the State: Positive. The proposed revision should incentivize applicants, particularly State agencies, to develop pre-approved SOPs that can be applied to multiple projects, which will reduce application preparation and processing effort.

Consequences if the rule change does not get adopted: The Blanket Section 401 WQC covering projects following pre-approved SOPs expires midnight, March 18, 2022. If the proposed rule change is not adopted and the Blanket Section 401 WQC cannot be renewed, applicants with DOH-pre-approved SOPs will have to pay the current filing fee of \$1000, reducing their incentive to develop such SOPs.

- **Proposed Revision: Establish a 60-calendar day deadline for DOH to act on a complete application.**

Reason for amendment: The existing Section 401 WQC rules allow for one year to act on a complete application. Applicants have complained about the processing times of Section 401 WQCs. Shortening this time frame ensures that DOH's processing does not delay important government projects requiring Section 401 WQCs.

Problem meant to be solved: There are projects that take significantly more than 60 calendar days to process.

How rule change addresses the problem: In most instances, DOH will act within the 60-calendar day deadline, thereby shortening processing time.

Stakeholders: Refer to summary

Potential problems with the rule change: None.

Fiscal impact: None.

Economic impact to the State: Positive. Shortening the deadline to act on a complete application will allow projects to obtain Section 401 WQCs quicker, and government projects, which are meant to provide public benefit, will experience fewer permitting delays.

Consequences if the rule change does not get adopted: The current one-year deadline to act on a complete application will continue to apply.

- **Proposed Revision: Simplify the application for Hawaiian fishpond projects that do not meet the waiver requirements of HRS §342D-6.5(b).**

Reason for amendment: HRS §342D-6.5 requires DOH to prioritize and expedite processing of applications for the reconstruction, restoration, repair, or reuse of any loko i'a or Hawaiian fishpond (as defined in HRS §183B-1), and waive the certification requirement (i.e. not require a Section 401 WQC). There are Hawaiian fishpond projects that do not qualify for a waiver pursuant to HRS §342D-6.5, yet are substantially no different from qualifying projects from the standpoint of protecting water quality. Drawing from DOH experience to date, a simplified application will provide sufficient information to determine the activity's impact on water quality. Coupled with BMP requirements in HAR §11-53-7, DOH believes water quality will still be adequately protected.

Problem meant to be solved: The application burden on Hawaiian fishpond projects that do not qualify for a waiver under HRS §342D-6.5(b) will be reduced.

How rule change addresses the problem: This revision clarifies and codifies that only a simplified application will be required.

Stakeholders: Hawaiian fishpond practitioners whose project does not qualify for a waiver of the Section 401 WQC requirements under HRS §342D-6.5(b).

Potential problems with the rule change: None.

Fiscal impact: Negligible. There are few such applications.

Economic impact to the State: None anticipated, although there may be an unquantifiable benefit to the State in reducing obstacles to fostering traditional Hawaiian cultural practices.

Consequences if the rule change does not get adopted: A Hawaiian fishpond project that does not qualify for a waiver of the Section 401 WQC requirements under HRS 342D-6.5(b) will have to submit a full application.

- **Proposed Revision: Codify certain conditions and Best Management Practices (BMPs) or pollution control requirements.**

Reason for amendment: The proposed conditions and BMP requirements are based on control measures DOH believes to be protective of water quality and broad enough to address water

pollutant issues from different types of projects/activities. The current practice allows applicants to propose BMPs with no performance metrics or guidelines. This practice results in longer application processing times when DOH finds the proposed BMPs to be deficient.

Problem meant to be solved: Undesirably long application processing time due to deficient pollution control measures proposed.

How rule change addresses the problem: Specifying certain conditions and BMP requirements will ensure that such protections are included in a Section 401 WQC, as well as providing applicants with greater certainty as to conditions and BMPs that have to be utilized when planning and budgeting their projects.

Stakeholders: Refer to summary.

Potential problems with the rule change: None.

Fiscal impact: None.

Economic impact to the State: Positive. Applicants (the majority of which are government agencies) will have greater certainty in the conditions and BMPs that have to be utilized when planning and budgeting their projects.

Consequences if the rule change does not get adopted: The DOH would continue the practice of allowing applicants to propose BMPs, and continue evaluating each proposal on a case by case basis.

- **Proposed Revision: Clarify and codify the circumstances when a Section 401 WQC can be modified. A filing fee is proposed for all modifications requested by the applicant.**

Reason for amendment: There are no existing rules for modifying issued Section 401 WQCs. Consequently, whenever the circumstances described in the proposed rules occurred, DOH has required a new Section 401 WQC application with the \$1000 filing fee. The proposed filing fee for a modification is the same as that for a new application.

Problem meant to be solved: It is unclear to applicants what circumstances allow for an issued Section 401 WQC to be modified.

How rule change addresses the problem: Codifies specific circumstances when a Section 401 WQC can be modified.

Stakeholders: Refer to summary

Potential problems with the rule change: None.

Fiscal impact: This proposal is revenue neutral. The proposed rules for modifications are already implemented in practice – new application filing fees are replaced by modification filing fees.

Economic impact to the State: None anticipated.

Consequences if the rule change does not get adopted: It will continue to be unclear to applicants when an issued Section 401 WQC can be modified.

- **Proposed Revision: Clarifies that DOH can waive or not require a Section 401 WQC.**

Reason for amendment: To clarify that DOH can waive or not require a Section 401 WQC, which is a discretionary action allowed for under the CWA. The proposed rules also make explicit that the State's WQS must still be complied with even if a person is issued a certification or if the certification is waived.

Problem meant to be solved: DOH does not have unambiguous authority to waive or not require Section 401 WQCs.

How rule change addresses the problem: The proposed rule give DOH explicit authority.

Stakeholders: Refer to summary.

Potential problems with the rule change: None.

Fiscal impact: Negligible. Such filing fees are not a significant source of revenue for the State.

Economic impact to the State: None anticipated.

Consequences if the rule change does not get adopted: DOH's authority to waive or not require a Section 401 WQC will be unclear.

- **Proposed Revision: Add requirements to handle after-the-fact activities.**

Reason for amendment: DOH does not condone after-the fact activities. The proposed rule now limits certifications to be issued

only for portions of the activity that are not already initiated. Also, in the past, federal agencies were unable to move forward with enforcing after-the-fact activities without the State's grant or denial of a Section 401 WQC request. DOH is explicitly authorized to inform the federal agency that a Section 401 WQC is not required for after-the-fact activities so that the federal agency can move forward with their enforcement of the activity.

Problem meant to be solved: Federal agency enforcement will not be delayed when a Section 401 WQC for an after-the-fact activity is at issue.

How rule change addresses the problem: DOH will be authorized to issue Section 401 WQCs for the portion of an after-the-fact activity that was not already initiated. Also, DOH will be authorized to issue a statement that will allow the federal permitting agency to move forward with their enforcement action on the after-the-fact activity.

Stakeholders: Federal permitting agencies that issue permits or licenses that require a Section 401 WQC.

Potential problems with the rule change: None.

Fiscal impact: None.

Economic impact to the State: None anticipated.

Consequences if the rule change does not get adopted: DOH will not be able to issue Section 401 WQCs for the portion of the activity that is not already initiated, and the federal permitting agency will not be able to move forward with their enforcement action on the after-the-fact activity.

- **Proposed Revision: Removes the existing rule that requires a discharger to comply with newly adopted WQS after their Section 401 WQC was issued.**

Reason for amendment: Once a Section 401 WQC is issued or waived, it is not fair to the discharger to have to comply with new water quality standards for their activity. This treatment is similar to National Pollutant Discharge Elimination System (NPDES) permits in HAR Chapter 11-55 where, after the NPDES permit is issued, the discharger is not required to comply with new water quality standards until DOH issues a renewal or modification to the NPDES permit.

Problem meant to be solved: An unfair situation where a discharger has to comply with a WQS adopted after their Section 401 WQC was issued.

How rule change addresses the problem: Removes the existing rule.

Stakeholders: Refer to summary.

Potential problems with the rule change: None.

Fiscal impact: None.

Economic impact to the State: None.

Consequences if the rule change does not get adopted:
Dischargers will have to comply with WQSs adopted after their Section 401 WQC was issued.

HRS §201M Determination of Small Business Impact

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

The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules are those businesses within the State of Hawaii that require a Section 401 WQC. This may include large, medium, and small businesses.

Attached are the proposed rules in Ramseyer format and accompanying fact sheet. A summary of the substantive revisions to existing rules, the reason for the revision, and the problem the rule change was meant to solve is set forth in the Public Hearing Approval Request above. **DOH does not expect any of the proposed revisions to the rules to adversely affect small business.**

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

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

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

There is no direct cost increase for small businesses (no increase in fees or fines). There is no indirect cost increase expected for small businesses.

- (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.

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

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

Promulgating HAR Chapter 11-53 will put Section 401 WQC rules in a stand-alone chapter and explicit address ambiguities or deficiencies in existing rules. This will not have an adverse impact on small business, therefore, alternative methods to reduce the impact on small business were not explored.

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

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

- (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.

Promulgating HAR Chapter 11-53 will not have an adverse impact on small business. Therefore, alternative methods of compliance for small businesses were not explored. Further, DOH believes the rules may provide greater flexibility for small businesses by shortening application processing time, and reducing application preparation burdens where warranted.

- (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.

The DOH considered impacts of these proposed revisions and did not believe they would adversely impact small business, therefore, consultation during the review process was not pursued.

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

The proposed rules do not include provisions that are more stringent than existing State standards or those mandated by comparable or related federal, state or county standards.

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

- 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.

Not applicable.

- 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.

Not applicable.

Fact Sheet, Hawaii Administrative Rules (HAR) Chapter 11-53 Section 401 Water Quality Certification (WQC)

Current	Proposed	Rationale
<p>Section 401 WQC rules are in HAR 11-54-9.1.</p>	<p>DOH proposes to remove the Section 401 WQC rules in HAR 11-54-9.1 and incorporate the substance in a new chapter (HAR 11-53) for certifications.</p>	<p>HAR 11-54 is the body of State Water Quality Standards (WQS) approved by EPA that describe the desired condition of water bodies and certain means by which that condition will be protected or achieved. The certification is issued by the State for projects requiring a federal license or permit that may result in a water pollutant discharge into State waters. The certification does not require EPA approval and does not belong in the WQS. Therefore, DOH proposes to create a new chapter for the certification rules.</p> <p>DOH also proposes revisions to the certification rules, as described below, to streamline processing.</p>
<p>11-54-9.1 Definitions.</p>	<p>11-53-1 Definitions are imported from 11-54-9.1 with certain revisions.</p> <p>Adds definition of “blanket Section 401 WQC” and “pre-approved SOP”.</p> <p>Updates CFR reference dates.</p>	<p>New definitions were added as needed.</p> <p>This change references the most current relevant federal regulations.</p>

Current	Proposed	Rationale
	Removes definitions of “agent”, “duly authorized representative”, “navigable waters”, “territorial seas”, and “Waters of the United States”.	These definitions are no longer referenced in the proposed rules. For example, a duly authorized representative is no longer needed with the streamlined certification process.
None.	11-53-2 General Policy of Section 401 Water Quality Certifications.	Added Section 401 WQC background information to clarify its relationship with the federal license or permit.
<p>11-54-9.1.02 Water quality certification; contents of water quality certification application.</p> <p>None.</p> <p>11-54-9.1.02(e)</p>	<p>11-53-3 Application.</p> <p>Adds a requirement in the application to include a description of Best Management Practices (BMPs).</p> <p>Eliminates the filing fee for applications based on DOH pre-approved Standard Operating Procedures (SOPs).</p>	<p>The contents of the application are revised to match minimum federal requirements in 40 CFR 121.3.</p> <p>The description of BMPs that will be used to comply with proposed requirements in 11-53-7 are a tool to ensure protection of State waters. See also the rationale for 11-53-7.</p> <p>DOH has a streamlined Section 401 WQC process where applicants can develop SOPs for their different activities, get the SOPs pre-approved by DOH, then use the pre-approved SOPs in their applications. Since the pollution control measures in the SOPs would already have been reviewed and approved, DOH does not need to review the SOPs again with every application. Therefore, processing time is streamlined. DOH is proposing to eliminate filing fees for applications with pre-approved SOPs to incentivize SOP development.</p>

Current	Proposed	Rationale
<p>11-54-9.1.02(c).</p> <p>11-54-9.1.01(c).</p> <p>None.</p>	<p>Establishes deadlines for informing applicants that their application is deficient or complete.</p> <p>Proposes a simplified application for Hawaiian fishponds.</p> <p>Clarifies that Hawaiian fishponds that have DLNR authorization to proceed do not require an application.</p>	<p>The current Section 401 WQC rules have a 1-year deadline to act on a complete application. Shortening this time frame ensures that DOH's processing does not delay important government projects requiring Section 401 WQCs.</p> <p>HRS 342D-6.5(a) requires DOH to prioritize and expedite processing of applications for the reconstruction, restoration, repair, or reuse of any loko i'a or Hawaiian fishpond (as defined in HRS 183B-1). Drawing from DOH experience to date, a simplified application will provide sufficient information. Coupled with BMP requirements in 11-53-7, DOH believes water quality can still be adequately protected while allowing DOH to comply with HRS 342D-6.5(a).</p> <p>HRS 342D-6.5(b) provides that DOH waives the certification requirement. This provision makes it clear to qualifying persons that DOH will not require an application in a situation where DOH will not even be required to consider the content. See also 11-53-12(c) which clarifies that a certification is not required.</p>
None.	11-53-4 Determination.	This section proposes deadlines for DOH to act on a complete application. As noted above, shortening this time frame ensures that DOH's processing does not delay important government projects requiring Section 401 WQCs.
11-54-9.1.03 Water quality certification; notice and hearing.	11-53-5 Public Notice and Hearing.	Proposed rules maintain public notice and hearing requirements substantially similar to existing requirements.
11-54-9.1.01 Water quality certification; contents of certification.	11-53-6 Certification.	Subsection (a) specifies the contents of the certification and matches minimum federal requirements set forth in 40 CFR 121.2. The maximum 5-year term of the certification parallels the term of NPDES permits under HRS 342D-6.

Current	Proposed	Rationale
None.	11-53-7 General Conditions.	Proposed conditions and BMP requirements are based on control measures DOH believes to be protective of water quality and broad enough to address water pollutant issues from different types of projects/activities. BMP conditions are included in the proposed rule to reform the practice of allowing applicants to propose BMPs with no performance metrics or guidelines. This practice has resulted in long application processing times when DOH found the proposed BMPs to be deficient.
11-54-9.1.06 Water quality certification; inspection of facility or activity before operation.	11-53-8 Right to Inspect.	Replaces current inspection language with a reference to HRS 342D-8, which allows DOH to enter and inspect any facility or activity.
None.	11-53-9 Modification.	Proposed rule outlines the circumstances when a certification can be modified. A filing fee is proposed for all modifications requested by the applicant.
11-54-9.1.08 Water quality certification; termination or suspension.	11-53-10 Revocation.	Proposed rule outlines the circumstances when a certification can be revoked.
11-54-9.1.09 Water quality certification; review and advice.	11-53-11 Review and Advice.	Proposed rule does not substantively revise requirements for review and advice to the federal licensing and permitting agency.
11-54-9.1.04 Water quality certification; waiver.	11-53-12 Activities That Do Not Require Certification.	Clarifies that DOH can waive or not require a Section 401 WQC, which is a discretionary action allowed under the Clean Water Act. The proposed rules also clarify that the State's WQS must still be complied with even if a person is issued a certification or if the certification is waived.

Current	Proposed	Rationale
11-54-9.1.02(f)	11-53-13 After-The-Fact Activities. Added requirements to handle after-the-fact activities.	DOH does not condone after-the fact activities. The proposed rule now limits certifications to only be issued for portions of the activity that are not already initiated. Also, DOH is explicitly authorized to inform the federal agency that a Section 401 WQC is not required for after-the-fact activities so that the federal agency can move forward with their enforcement of the activity. In the past, the lack of this clarification to EPA resulted in delays in their enforcement.
None.	11-53-14 Severability.	Added severability clause.
11-54-9.1.05 Water quality certification; adoption of new water quality standards.	Did not carry over to proposed rules.	Once a Section 401 WQC is issued or waived, it is not fair to the discharger to have to comply with new water quality standards for their activity. This treatment is similar to National Pollutant Discharge Elimination System (NPDES) permits in HAR 11-55 where, after the NPDES permit is issued, the discharger is not required to comply with new water quality standards until DOH issues a renewal or modification to the NPDES permit.
11-54-9.1.07 Water quality certification; notification to licensing or permitting agency.	Did not carry over to proposed rules.	Proposed 11-53-7 requires the owner and operator of an activity or facility for which a certification is issued to report to the federal licensing or permitting agency any non-compliance with the condition of the certification. DOH also has broad enforcement authority over the WQS. If DOH determines after an inspection is performed that the activity or facility will violate applicable WQS, DOH can exercise its enforcement powers.

Department of Health

Adoption of Chapter 11-53
Hawaii Administrative Rules

(insert adoption date)

Chapter 11-53, Hawaii Administrative Rules, is adopted to read as follows.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 53

SECTION 401 WATER QUALITY CERTIFICATIONS

- §11-53-1 Definitions
- §11-53-2 General policy of section 401 water quality certifications
- §11-53-3 Application
- §11-53-4 Determination
- §11-53-5 Public notice and hearing
- §11-53-6 Certification
- §11-53-7 General conditions
- §11-53-8 Right to inspect
- §11-53-9 Modification
- §11-53-10 Revocation
- §11-53-11 Review and advice
- §11-53-12 Activities that do not require certification
- §11-53-13 After-the-fact activities
- §11-53-14 Severability

Historical Note: This chapter is based substantially on chapter 11-54, Water Quality Standards, Department of Health, State of Hawaii. [Eff 11/15/14]

§11-53-1 Defintions. As used in this chapter:

'33 CFR" means the Code of Federal Regulations, Title 33, Navigation and Navigable Waters, revised as of July 1, 2018, unless otherwise specified.

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

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

'Activity"' means any activity or project that may result in a water pollutant discharge and that requires a certification.

"Applicant" means the owner or operator, as applicable, who requests a certification from the director by applying in accordance with this chapter

"Application" means any forms provided by the department for use in obtaining the certification.

"Best management practices" or "BMPs" means schedules of activities, prohibitions or designations of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of state waters. Best management practices include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. Best management practices also include methods, measures, or practices to meet nonpoint source pollution control needs, and structural and nonstructural controls. BMPs can be applied before, during, and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving state waters.

'Blanket section 401 WQC" is a certification issued to the U.S. Army Corps of Engineers, Honolulu District, for the purpose of certifying regional or nationwide permits, in accordance with 33 CFR Parts 325 and 330.

"Certification"' or "'WQC" means a statement which asserts that a proposed discharge resulting from an activity or facility will not violate applicable water quality standards and the applicable provisions of sections 301, 302, 303, 306 and 307 of the Act.

'Certifying person"' is a person described in section 11-55-7(a), their duly authorized representative as

described in section 11-55-7(b), or if not a legal entity, the person conducting the activity or owner of the real property where the facility is situated.

'Department' means state department of health.

'Director' means the director of health or any person to whom the director has legally delegated such power and authority vested in the director in chapter 342D, HRS.

'Discharge' means the same thing as defined in section 502(16) of the Act.

'Discharge of a pollutant' means the same thing as defined in section 502(12) of the Act.

'Existing uses' means those uses actually attained in the water body on or after November 28, 1975 whether or not they are included in the water quality standards.

'Facility' means any facility that may result in a water pollutant discharge and that requires a certification.

'License or permit' means any permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission granted by an agency of the federal government to conduct any activity which may result in any discharge.

'Licensing or permitting agency' means any agency of the federal government to which a federal application is made for a license or permit.

'Owner' or 'operator' means the person who owns or operates any facility or activity that requires a certification.

'Pollutant' means the same thing as defined in section 502(6) of the Act.

'Pre-approved SOP' means standard operating procedures pre-approved by the department for use in activities.

'State waters' means the same thing as defined in section 342D-1, HRS,

'Water pollutant' means the same thing as defined in section 502(12) of the Act.

'Water quality standards' means state-adopted and U.S. Environmental Protection Agency-approved water quality standards in chapter 11-54.

[Eff] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-53-2 General policy of section 401 water quality certifications. (a) Section 401 of the Act provides that no license or permit can be issued to conduct any activity, including commencing construction or operation of a

facility, that may result in a water pollutant discharge into state waters unless the State issues, waives, or does not require a section 401 water quality certification.

(b) The department is the state agency that may issue or waive a certification in accordance with this chapter. The director is authorized to act as a certifying agency, as defined in 40 CFR section 121.1(e).

(c) An owner or operator of an activity or facility may request a section 401 water quality certification from the director by applying for certification in accordance with this chapter.

(d) A certification issued pursuant to this chapter is not a permit, but becomes an enforceable condition when incorporated into a license or permit. The licensing or permitting agency is responsible for enforcing a certification issued by the director for the activity or facility.

(e) The issuance or waiver of a certification does not absolve any person from complying with the requirements of applicable water quality standards. The director may take any enforcement action authorized under the Act or chapter 3420, HRS, on water quality standards violations.

[Eff J (Auth: HRS §§3420-4, 3420-5, 3420-53) (Imp: HRS §§3420-4, 3420-5, 3420-6)

11-53-3 Application. (a) Except as provided in subsection (c), the application shall include, at a minimum:

- (1) The certifying person's legal name, company or organization name, street or mailing address, telephone number, and email address;
- (2) The activity or facility name, location, island, and tax map key number(s);
- (3) The estimated beginning and ending dates of the activity or facility operations, as applicable;
- (4) Associated existing, pending, or denied federal and environmental permits and corresponding file numbers, and a statement of the approval or review status of each at the time of filing the application;
- (5) The scope of work or a description of the overall activity (e.g. upland and in-water) including: the construction or operation of facilities which may result in discharges into state waters; all water pollutant discharges that may result from the activity or facility; and specific

- biological, chemical, physical, thermal, and other pertinent characteristics of the discharge resulting from an activity or facility;
- (6) The name(s) of the state water where the discharge occurs, the latitude and longitude of the discharge point(s), the classification of the state water, and the associated existing uses;
 - (7) A description of any BMPs that will be utilized to control the discharge of water pollutants and will assure compliance with section 11-53-7;
 - (8) Certification that the BMPs utilized will comply with section 11-53-7;
 - (9) A description of the methods and means to monitor the quality of the discharge, the equipment used to treat and control the discharge, and measures planned to treat or control the discharge;
 - (10) A filing fee of \$1000, submitted with the application;
 - (A) Fees shall be made payable to the ''State of Hawaii'' in the form of a check or other method specified by the department;
 - (B) Application(s) for blanket section 401 WQCs or with department pre-approved SOPs are exempt from the payment of filing fees;
 - (C) In the event application processing is withdrawn, either automatically pursuant to 11-53-3(b) (2) or voluntarily by the applicant, or certification is finally denied, this filing fee shall not be refunded nor applied to any subsequent application;
 - (11) Any additional information requested by the director;
 - (12) The certification paragraph below, signed by the certifying person electronically or by original wet signature at the director's discretion:

''I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and

complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing **violations.**";

(b) Within sixty calendar days of the application submission that includes the certified statement in 11-53-3(a)(12) or the certifying person's response to a notice of deficiency under this subsection (b) that includes the certified statement in 11-53(a)(12), the director shall notify the certifying person, in writing or by email, if the application is complete or deficient.

- (1) If the application is deficient, the notice shall include a description of any additional information necessary to correct the deficiency.
- (2) If the certifying person does not correct the deficiency within thirty days from the date of notice, application processing shall be automatically withdrawn without prejudice.
- (3) The director shall not extend the thirty-day time frame for the certifying person to correct the application deficiency.

(4) Nothing in this subsection (b) precludes the director from requesting additional information in accordance with 11-53-3(a)(11).

(c) The application for certification for the reconstruction, restoration, repair, or reuse of any loko i'a, or Hawaiian fishpond as defined in section 183B-1, HRS, shall be processed in accordance with section 342D-6.5(b), HRS, and shall include:

- (1) The certifying person's legal name, company or organization name, street or mailing address, telephone number, and email address;
 - (2) The activity or facility name, location, island, and tax map key number(s); and
 - (3) A copy of the federal permit application.
- (d) A filing fee shall not be required for an application submitted pursuant to subsection (c).

(e) Activities authorized pursuant to section 342D-6.5(b), HRS, do not require an application.

[Eff] (Auth: HRS §§3420-4, 342D-5, 342D-6.5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6, 342D-6.5)

11-53-4 Determination. (a) The director shall act on an application within sixty days of acknowledging

receipt of a complete application. Acting on an application means:

- (1) Issuing, reissuing, revoking and reissuing, modifying, denying, or initiating public notice of the certification;
- (2) Notifying the certifying person and federal licensing or permitting agency that the director requires additional time to process the application; or
- (3) Waiving the State's authority to issue a certification by notifying the certifying person and the federal licensing or permitting agency.

(b) The director may deny applications for a certification from persons who are respondents in open enforcement actions associated with water pollution, who fail to make payments as required for permit or certification fees or penalties, or who have a history of violating water pollution laws.

(c) Notwithstanding subsection (a)(2), if the director fails or refuses to make a final determination on an application within one year of acknowledging receipt of a complete application, the director shall be considered to have waived the State's authority to issue a certification.
 [Eff) (Auth: HRS §§3420-4, 3420-5, 3420-53) (Imp:HRS §§3420-4, 3420-5, 3420-6)

11-53-5 Public notice and hearing. (a) The director may provide or require the applicant to provide opportunity for public comment or hearing(s), or both, to consider issuance of a certification. Public notice procedures shall include at least the following:

- (1) Notice shall be circulated within the geographical areas covered by the proposed certification. Circulation includes any or all of the following:
 - (A) Posting in the post office and public places of the municipality nearest the location of the activity or facility;
 - (B) Posting near the activity or entrance to the facility, and in nearby places;
 - (C) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation; or
 - (0) Published on a publicly available department website.

- (2) Notice shall be mailed or sent electronically to any person or group upon request; and
- (3) The director shall add the name of any person or group upon request to a mailing or electronic notification list to receive copies of notices for all certifications within the State or within a certain geographical area.

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

- (1) Name and address of the agency issuing the certification;
- (2) Name and address of the applicant and the name and address of the activity or facility;
- (3) A brief description of the activities or facility operations which are requested to be certified;
- (4) Name of the state water affected by the certification, and whether the activity or facility is new or existing;
- (5) A statement of the tentative determination to issue or deny a certification for the activity or facility described in the application;
- (6) A brief description of the procedures for formulating a final determination, including procedures for public comment, requesting a public hearing, and any other means of public participation offered; and
- (7) Name, address, and telephone number of a person at the State agency where interested persons may:
 - (A) Obtain further information;
 - (B) Request a copy of the draft certification; and
 - (C) Inspect and copy forms and related documents.

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

(d) The director may hold a public hearing before ruling on an application for a certification if the director determines the public hearing to be in the public interest. In determining the public interest, the director shall consider the factors set forth in section 3420-6(g), HRS.

(e) All coordination, publication costs, and mailing costs associated with public notification with respect to the application shall be paid by the applicant to the appropriate publishing agency or agencies determined by the director. The applicant shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of a certification. At the director's sole discretion, the director may:

- (1) Coordinate and arrange for publication in lieu of the applicant; and
- (2) Require the applicant to bear all publication and mailing costs associated with the public notification, including those incurred by the department on behalf of the applicant.

(f) The director is not required to provide for public notice if the director finds that the federal licensing or permitting agency has or will provide for public notice concerning a certification. [Eff
] (Auth: HRS §§3420-4, 3420-5, 3420-53)
(Imp: HRS §§3420-4, 3420-5, 3420-6)

11-53-6 Certification. (a) A certification issued by the director shall include:

- (1) The certifying person's legal name and street address, and the owner's and operator's corresponding information if different from the certifying person;
- (2) A statement that asserts that when all requirements and conditions contained in the certification are fully complied with, there is reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards and applicable provisions of sections 301, 302, 303, 306, and 307 of the Act;
- (3) The term of the certification, which shall not exceed five years; provided, that the director

may administratively extend the expiration date of the section 401 WQC upon written request from the certifying person;

- (4) Any condition which the director considers necessary or desirable with respect to the discharge resulting from an activity or facility, including the general conditions set forth in section 11-53-7; and
- (5) Other information the director determines to be appropriate.

(b) Within thirty days from the final date of issuance of the certification, any interested party who submitted written comments during the public notice period or submitted written testimony in the public hearing may appeal the final certification decision issued under this chapter by filing a request for a contested case hearing, in accordance with chapter 91, HRS. "Interested" means any person with "'standing'" as defined by the Hawaii Constitution, statutes, rules, and court decisions. The appeal shall be limited to specific issues raised in writing during the public comment period or public hearing for the certification being appealed. [Eff _____]
(Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

11-53-7 General conditions. The owner and operator of an activity or facility for which a certification is issued shall comply with the following conditions:

- (1) Report to the federal licensing or permitting agency any non-compliance with the conditions of the issued certification;
- (2) Maintain records at the activity or facility site or in a nearby field office demonstrating that all certification requirements have been fully complied with;
- (3) Ensure that all activities are conducted or facilities operated in a manner that will comply with all applicable state water quality standards in chapter 11-54;
- (4) Ensure that all material(s) placed or to be placed in state waters are free of waste metal products, organic materials, debris, and any pollutants in concentrations toxic or potentially hazardous to aquatic life as specified in section 11-54-4;

- (5) Ensure that the activities will not permanently interfere with or adversely impact any designated uses or existing uses, or both, of the receiving state water. Any permanent interference with or adverse impacts to the designated uses or existing uses, or both, of the receiving state water is a violation of chapter 11-54;
- (6) Ensure that pollution control measures and BMPs that prevent water pollutants from leaving the in-water work area authorized by the federal licensing or permitting agency are utilized. Any chemical or visual plume emanating from the authorized in-water work area is a violation of chapter 11-54;
- (7) Ensure that:
 - (A) No construction material or construction-related materials shall be stockpiled in the aquatic environment or stored or placed in ways that will disturb the aquatic **environment;**
 - (B) All construction debris shall be contained and prevented from entering or reentering state waters;
 - (C) All construction debris from any portion of the activity that may generate debris that may float in the state water, create a plume, or travel with the current shall be collected, including debris caused by using hydraulic saws, water jets, or drilling equipment; and
 - (D) All construction debris shall be removed from the aquatic environment and disposed of at an upland site in accordance with state or county, or both, approvals;
- (8) Collect and remove all sidecast material and dispose at an upland state or county, or both, approved site.
- (9) There shall be no discharge of any type of wash water or effluent, or both, into state waters without first obtaining a National Pollutant Discharge Elimination System permit authorizing such type of water pollutant discharge to state **waters;**
- (10) Runoff, return flow, or airborne particulate pollutants, if any, shall be contained on land and not allowed to enter state waters. Runoff or

return flow, or both, authorized by the federal licensing or permitting agency may be discharged to state waters. [Eff _____] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp:HRS §§342D-4, 342D-5, 342D-6)

11-53-8 Right to inspect. The department may enter and inspect any activity or facility in accordance with section 342D-8, HRS, before, during, or after, or any combination thereof, any activity, construction, or facility operation. [Eff _____] (Auth: HRS §§342D-4, 342D-5, 342D-8, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

11-53-9 Modification. (a) At the request of the certifying person or at the director's initiative, the director may modify, revoke, or revoke and reissue an issued certification under the following circumstances:

- (1) Alterations or modifications to the activity or facility that will result in or have the potential to result in significant alteration in the nature or quantity of permitted materials to be stored, processed, discharged, emitted, or disposed of by the owner or operator;
- (2) The director receives information previously unavailable to the department that shows that the terms and conditions of the certification do not accurately represent the actual circumstances relating to the activity or facility;
- (3) The State or federal government promulgates a new or amended pollution standard, limitation, or effluent guideline that is applicable to the activity or facility;
- (4) A court of competent jurisdiction invalidates or modifies a State or federal statute or rule or federal guideline upon which a condition of the certification is based;
- (5) The director finds that the activity or facility endangers human health or the environment and that a change in the conduct of the activity or operation of the facility would remove the danger to human health or the environment; or
- (6) The director finds that the applicant falsified information on the application or did not disclose relevant information in the application.

- compliance with water quality standards and requirements;
- (3) Unresolved noncompliance with applicable State and federal pollution statutes and rules or a condition of the certification at the activity or facility exists, where the owner or operator refuses to resolve the noncompliance;
 - (4) Certification conditions are violated;
 - (5) Water quality standards, applicable federal law, or other appropriate requirements of State law have changed since the certification was issued;
 - (6) The applicant failed to fully disclose any facts relevant to issuing the certification or submitted false or misleading information to the department or the director;
 - (7) The director finds that the activity or facility endangers human health or the environment and that the danger cannot be removed by modifying the certification conditions certification;
 - (8) The permittee has failed to comply with certain requirements or has failed to pay a penalty owed under certain statutes.

(b) An issued certification is automatically revoked without the need for a public hearing when the federal license or permit for the activity or facility is revoked or terminated. [Eff _____] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

11-53-11 Review and advice. The director may, and upon request shall, provide federal licensing and permitting agencies with determinations, definitions, and interpretations of the meaning and content of state water quality standards. [Eff _____] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

11-53-12 Activities that do not require certification. (a) The director may determine activities that qualify for a certification waiver or that do not require a certification. Activities with a certification waiver or that do not require a certification must still comply with water quality standards.

(b) Certification for an activity shall be waived if the director fails to notify the certifying person of a deficient application per section 11-53-3(b); or

(c) Reconstruction, restoration, repair, or reuse of any Hawaiian fishpond by any person who has received notice of authorization to proceed as set forth in section 342D-6.5(b), HRS shall not require a certification. [Eff] (Auth: HRS §§342D-4, 342D-5, 342D-6.5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6, 342D-6.5)

11-53-13 After-the-fact activities. (a) If an activity is initiated without a certification, the director may issue or waive the certification for portions of the activity that were not initiated. No certification or waiver shall retroactively apply to any portion of an activity that has already occurred.

(b) If an activity is completed the director may not issue or waive a certification. No certification or waiver shall retroactively cover an activity that has already occurred.

(c) The department may notify the federal licensing or permitting agency enforcing the after-the-fact activity that certification is not required so that enforcement actions may proceed. [Eff and comp] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

11-53-14 Severability. If any provisions of this chapter, or the application thereof to any person or circumstances, is held invalid, the invalidity does not affect other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

Chapter 11-53, Hawaii Administrative Rules, entitled "Section 401 Water Quality Certifications" dated [September 18, 2018], was adopted following a public hearing held [September 18, 2018], after public notice was given in the Honolulu Star-Advertiser, West Hawaii Today, Hawaii Tribune Herald, Maui News and The Garden Isle on [August 16, 2018]

The adoption of chapter 11-53 shall take effect ten days after filing with the office of the Lieutenant Governor.

BRUCE S. ANDERSON, Ph.D.
Director
Department of Health

Approved:

DAVID Y. IGE
Governor
State of Hawaii

Dated:

APPROVED AS TO FORM:

Dale K. Sakata

Dale K. Sakata
Deputy Attorney General

Filed

Pre-Public Hearing Small Business Impact Statement
To The
Small Business Regulatory Review Board
(Hawaii Revised Statutes §201M-2)

Date: July 6, 2020

Department or Agency: Department of Health/Clean Water Branch

Administrative Rule Title and Chapter: Title 11, Chapter 54

Chapter Name: Water Quality Standards

Contact person/Title: Alec Wong / Program Manager, Clean Water Branch

E-mail: cleanwaterbranch@doh.hawaii.gov

Phone: 586-4309

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 rule or a general description of the subjects involved.

This amendment to HAR 11-54 proposes to adopt numeric criteria for toxic chemical pollutants that were published in the Environmental Protection Agency's (EPA) 2015 Final Updated Human Health Ambient Water Quality Criteria. No significant changes have been made to the numeric standards for toxic chemical pollutants listed in HAR 11-54 since their adoption in 1990. This proposed amendment will update Hawaii's existing numeric human health water quality standards with the latest criteria recommended by EPA. The proposed criteria may be represented by higher or lower numeric values for specific chemical pollutants than those currently specified in HAR 11-54 (i.e., the proposal may reflect less stringent or more stringent water quality standards, respectively). The proposed numeric criteria reflect the latest scientific information and EPA policies to determine human health risk associated with the consumption of these pollutants and represent specific levels of pollutants or conditions in a water body that are not expected to cause adverse effects to human health.

The proposed amendment updates numeric criteria for 70 toxic chemical pollutants currently specified in HAR 11-54 and adds 40 new toxic chemical pollutants identified by EPA that are not currently listed in HAR 11-54. The proposed amendment also updates the names of applicable toxic chemical pollutants to be consistent with the names listed in the current EPA Human Health Criteria Table and will include unique numerical identifiers registered by the Chemical Abstract Services, known as CAS numbers. CAS numbers are assigned for all chemical substance described in the open scientific literature. This change is expected to make it easier for permitted pollutant dischargers and the public to find information on specific pollutants, including, but not limited to analytical testing, discharge treatment methods, and health effects by identifying the pollutants in a consistent, and standardized manner. This change is not expected to have adverse financial impacts on small businesses.

The proposed amendment also removes permit implementation language from HAR 11-54 and places them into HAR 11-55, Water Pollution Control and removes Water Quality Certification implementation and places it into the newly created HAR 11-53, Water Quality Certification. There are also minor typographical, grammatical, and style changes throughout the document. These changes are not expected to have any impact to small businesses.

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

Yes No

I. Rule Description:

New Repeal Amendment Compilation

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

Yes No

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

IV. Is the proposed rule being adopted pursuant to emergency rulemaking?

Yes No

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

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

The businesses that will be required to comply with the proposed rules are those businesses that discharge pollutants into State waters as permitted under the Hawaii Revised Statutes (HRS) section 342D-6. They may be adversely affected by increased cost to analyze their discharges for the pollutants at the new concentration levels and, potentially, may incur increased cost required to treat their effluent prior to discharges to meet the revised numeric criteria.

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.

There are no direct costs such as fees or fines associated with the proposed rule. There may be increased indirect costs such as laboratory analytical fees or costs associated with updating treatment technology or prevention measures.

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.

There are no fees or fines associated with this rule.

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

There is no proposed increase in fee or fine associated with this rule.

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

Not applicable.

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

Not applicable.

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.

There is no monetary costs or benefits to the Department of Health or other agencies directly affected. The department does not expect to collect any fees as a result of this rule change.

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

The proposed rule change revises Hawaii's water quality standards by adopting updated EPA-recommended national numeric human health criteria for toxic chemical pollutants. These updates reflect the latest scientific information and EPA policies and may be more or less stringent than the criteria currently specified in Hawaii's water quality standards. The proposed change provides consistency with national human health water quality criteria for the listed toxic chemical pollutants. The proposed rule change adopts new regulatory flexibilities that are allowable by EPA which may benefit certain permitted dischargers.

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

None.

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

None. This rule change provides measures for the department to grant regulatory flexibility to qualified dischargers, as allowed by federal regulations.

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

The department is required by federal regulations to review its water quality standards at least once every three years and to review and consider new recommendations made by

the EPA. The department held its triennial review in 2019, during which time the department stated its intention to adopt the changes specified in this proposed amendment. A notice of a public comment period was issued and responses to the comments were prepared by the department. Responses to public comments are available on the Clean Water Branch website at: <https://health.hawaii.gov/cwb/files/2019/06/WQS-Triennial-RTC-062119.pdf>.

- 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.**

There were no recommendations made by small business.

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

The proposed rule change does not include provisions that are more stringent than those mandated by federal regulation, but the proposed rule may be more stringent than existing state rule. The proposed rule takes into account new scientific information and national policies published by the EPA which resulted in some of the existing Hawaii water quality standards for individual toxic chemical pollutants to become less stringent while others have become more stringent. Forty new chemicals have also been added to the list. Hawaii's water quality standard will become more closely aligned with EPA's nationwide criteria.

Some changes to the rule may allow for greater flexibilities for businesses that are permitted to discharge pollutants into State waters to comply with State rule, and therefore maybe considered to be less stringent than existing State rule.

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**
The proposed rule includes updated numeric water quality standards for 70 existing and 40 new toxic chemical pollutants. The numeric criteria were developed by the EPA using updated scientific information and are intended to provide increased protection of human health. There is no direct cost comparison.

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

The full text of the related federal law is available at:

<https://www.govinfo.gov/content/pkg/FR-2015-06-29/pdf/2015-15912.pdf>

The full text of the proposed rule and rationale for the change is attached.

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

A comparison of the existing and proposed rule is attached.

- 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.**

There is no monetary cost or benefit to deferring to related federal, state or county law. No additional fees are proposed in this rule change.

- 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.**

There are no anticipated adverse effects on small business imposed by the proposed rule.

Public Hearing Approval

A. Summary of Changes

i. Why is this section of Hawaii Administrative Rules being amended?

The Hawaii Administrative Rules, Title 11, Department of Health, Chapter 54, Water Quality Standards (HAR 11-54) are being amended to update the numeric human health water quality criteria for toxic chemical pollutants with the latest scientific information and policies provided for by the United States Environmental Protection Agency (EPA).

Under the Federal Clean Water Act (CWA) states are required to review applicable changes to federal water quality criteria at least once every three years, a process known as the “water quality standards triennial review,” or “triennial review.” The triennial review requires states to review updated federal water quality criteria and adopt the criteria published by EPA, modify the criteria to reflect site-specific conditions, or adopt different criteria based on other scientifically defensible methods. All changes to state water quality standards must be approved by the EPA before they may be used for Clean Water Act purposes.

As part of its most recent triennial review in 2019, the Hawaii Department of Health (HDOH) reviewed the most current updated federal water quality criteria published by the EPA, and after soliciting public comments, proposes to adopt the updated numeric human health criteria for 70 toxic chemical pollutants that already exist in HAR 11-54 and proposes to add 40 new toxic chemical pollutants and their associated numeric human health criteria identified by the EPA.

In addition to the updated human health criteria, HDOH proposes to add authorizing language to HAR 11-54 to provide regulatory flexibilities, as allowed under federal regulations, to facilities permitted under the National Pollutant Discharge Elimination System (NPDES). The proposed amendment will also include minor modifications to correct typographic and grammatical errors and to edit for style, consistency and clarity.

This amendment also proposed to remove NPDES implementation language from HAR 11-54 and places them into the more appropriate HAR 11-55, Water Pollution Control. In addition, the proposed amendment will remove Water Quality Certification implementation language and will place it into the newly created HAR 11-53, Water Quality Certification.

ii. What problem is the rule change meant to solve?

The current Hawaii water quality standards for toxic chemical pollutants has been in effect and has remained essentially unchanged since 1990. Since then, advances in scientific research has shed new light on specific levels of pollutants or conditions in a water body that may cause adverse effects to human health. EPA has published these updated national criteria which states are required to

review and consider. After reviewing these criteria during its triennial review, the department is proposing to adopt the revised EPA recommended ambient water quality criteria and to update State water quality standards for the protection of human health. When compared to the current federal recommendations, existing Hawaii water quality standards may either be too restrictive or not restrictive enough. This rule amendment is meant to harmonize human health criteria for toxic chemical pollutants in Hawaii's water quality standards with the national criteria.

In addition to harmonizing the water quality criteria for the individual toxic chemical pollutants, the proposed rule will rename chemical compounds to be consistent with the names used by the EPA. Over the years, certain chemical compounds that once were classified as related groups of compounds, known as isomers, were assigned a single numeric criterion. New scientific information has led to the development of individual numeric criteria for each of the specified isomers, thereby making the group numeric criterion obsolete. These isomeric groups are proposed to be eliminated and the adoption of specific individual isomers is proposed.

Over the years, scientific literature has used various synonyms for certain chemicals leading to some confusion, especially when referring to chemical isomers. This amendment proposes to adopt and use the Chemical Abstract Services (CAS) numbers to identify chemical pollutants for consistency with the EPA and to reduce ambiguity. A CAS number is a unique numeric identifier assigned by the CAS organization to a chemical substance described in open scientific literature. The use of CAS numbers to identify specific pollutants reduces the possibility of confusion caused by the different synonyms and chemical isomers referred to in scientific literature and references. CAS numbers also provide more convenient and more efficient searches of databases for specific chemical information, including analytical detection methods. CAS numbers have been in use by the EPA for many years and this amendment proposes to adopt its use for consistency with the EPA and with the general scientific and national regulatory community.

The federal water quality standards regulations were revised to include certain regulatory flexibilities to permitted dischargers to allow them to more reasonably meet water quality standards within a specified time period, including water quality standards variances and schedules of compliance. Other regulatory flexibilities previously allowable under federal regulations have also been considered during the triennial review, including the development of site-specific water quality criteria. The proposed amendment will adopt the regulatory flexibilities allowed by federal regulations into Hawaii's water quality standards.

iii. List all changes that are being made

Below is a summary of the changes being proposed. For a complete list of all changes and the rationale, please see the attached draft rules and rationale.

- Adoption of the updated EPA human health numeric criteria for 70 individual toxic chemical pollutants that currently exist in HAR 11-54.
- Addition of human health numeric criteria for 40 new toxic chemical pollutants.
- Renaming of toxic chemical pollutants for consistency with EPA nomenclature to reduce confusion and for easier referencing.
- Inclusion of Chemical Abstract Services (CAS) numbers for toxic chemical pollutants referenced by EPA to reduce ambiguity and for easier referencing.
- Removal of chemical isomers that are listed as classes in HAR 11-54 where individual isomers have been specified by EPA and no other chemical class has been listed.
- The creation of a new Toxic Chemical Pollutant table as an appendix and the removal of the list in HAR 11-54(c).
- Addition of regulatory flexibilities, including:
 - New language authorizing Use Attainability Analyses (UAA) that is consistent with regulations in 40 CFR 131.3(g)
 - New language authorizing water quality standards variances that are mostly consistent with 40 CFR 131. The proposed rule change only allows variances for individual permitted dischargers and unlike the federal regulation, does not allow water quality standards variances for an entire waterbody
 - New language authorizing site-specific aquatic life criteria consistent with 40 CFR 131.11(b)(1)(ii), including:
 - Recalculation procedure
 - Water-Effect Ratio and streamlined Water-Effect Ratio procedures for certain metals
 - Biotic Ligand Methods for copper and potentially other metals
 - Natural Conditions Framework for temperature, pH, and dissolved oxygen criteria
- Miscellaneous minor modifications to address typographic errors and grammatical and style changes for consistency
- Renumbering of certain sections to accommodate the removal of Water Quality Certifications in HAR 11-54-9.1. Water Quality Certifications will be placed in a new chapter, HAR 11-53, Water Quality Certification.
- Miscellaneous removal of NPDES permit-specific implementation requirements and placement into the existing and more appropriate HAR 11-55, Water Pollution Control.

B. Impact of changes

i. How does the rule change address this problem?

This rule change will bring Hawaii's water quality standards up to date and consistent with federal criteria. Hawaii will benefit by being able to protect

marine and inland waters using standards that are based on the latest scientific information and EPA policies.

ii. Who are the stakeholders? Positive and negative.

Stakeholders include all members of the population that recreate in and on Hawaii's inland and marine waters; people who fish and consume fish and shellfish in Hawaii's waters; and facilities that are subject to NPDES permits and Water Quality Certifications.

iii. What are the potential problems with the rule change?

No potential problems are anticipated by this rule change.

iv. What is the fiscal impact?

No fiscal impact is anticipated by this rule.

v. What is the economic impact to the State?

By adopting water quality standards developed or modified using the latest scientific information, the State will be better equipped to protect users of its inland and marine waters.

This proposed rule change also adds authorizing provisions for regulatory flexibility which may provide temporary regulatory relief for certain permitted dischargers by specifying extended time periods by which water quality improvements must be made. This allows, for example, additional time for technological developments in treatment or analytical methods to be developed and evaluated.

C. Consequences if changes are not made

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

When Hawaii held its triennial water quality standards review in 2019, the public and EPA was notified of the intention to adopt EPA's current national human health water quality criteria. If the changes are not made, Hawaii will need to provide a justification to EPA on why the updated criteria will not be adopted after conducting its triennial review. If the rule is not adopted, Hawaii will continue using the existing water quality standards and will not benefit from the updated scientific information and EPA policies.

The proposed rule change also authorizes regulatory flexibilities for certain permitted dischargers, as allowable by the EPA. These flexibilities authorize the creation of site-specific water quality standards for certain dischargers, which is still subject to public comment, EPA approval, and rule amendment. If the rule change is not adopted, then these regulatory flexibilities will not be available to eligible permitted dischargers.

BACKGROUND

The administrative rule for Water Quality Standards in Hawaii (State WQS) dates to January 1968, when Chapter 37-A, Public Health Regulations, first became effective. These regulations were authorized under the Federal Water Pollution Control Act Amendments of 1965. After the enactment of the Federal Water Pollution Control Act Amendments of 1972, commonly known as the Clean Water Act (CWA), Hawaii made additional amendments to State WQS. Much of the existing content of State WQS is based on regulations from the 1968 and 1974 State WQS. Subsequent amendments to State WQS were adopted in 1979 to satisfy the CWA Section 208 Basin Plan requirements. Later amendments included site-specific standards for the Kona Coast on the west side of the island of Hawaii. Some phrases and terms from the first Federal Water Pollution Control Act of 1948 have been retained in the existing CWA and State WQS; for example, the current designated uses have remained basically unchanged since 1948.

In 1990, the Hawaii Department of Health (HDOH) amended State WQS to include numeric standards for toxic chemicals for the protection of beneficial uses of State surface waters by preventing direct impacts from toxic pollutants to aquatic life, and indirect impacts to human health and wildlife from the bioaccumulation of toxic pollutants in edible aquatic organisms. Prior to this amendment, regulations were limited due in part to the lack of numeric criteria or any specific limitations for toxic pollutants. Except for a few changes, the State WQS adopted in 1990 have remained relatively unchanged.

Under the CWA, a State is required to evaluate and adopt new or revised criteria for parameters for which the U.S. Environmental Protection Agency (EPA) has published new or updated CWA section 304(a) criteria recommendations. If a State does not adopt new or revised criteria for which EPA has published new or updated CWA section 304(a) criteria recommendations, then it must provide, to the Regional Administrator, an explanation when submitting the results of its triennial review. A State may modify the recommended criteria to reflect site-specific conditions. EPA must approve all new WQS adopted by a State before they can be used for CWA purposes.

In its previous revision to State WQS in 2014, HDOH adopted the recreational water quality criteria that were recommended by EPA in 2012. In this triennial review of State WQS, HDOH proposes to revise numeric standards of toxic chemicals for the protection of human health. At this time, HDOH does not propose to either revise or adopt in HAR 11-54 any aquatic life standards that are intended to protect freshwater and saltwater organisms from the effects of short-term and long-term exposure to toxic pollutants. Additional time is needed for HDOH to evaluate and to adopt any, new or revised, national acute and chronic criteria that are recommended by EPA.

RATIONALE

HDOH has conducted the required triennial review of State WQS specified in the Hawaii Administrative Rules, Title 11, Chapter 54 (HAR 11-54), and reviewed new and updated CWA section 304(a) recommended water quality criteria that were published by EPA since May 30, 2000. During this triennial review, HDOH proposes to adopt EPA recommended human health criteria that are based on the latest adjusted national fish consumption rate. These recommended human health criteria for toxic pollutants are necessary to protect any designated uses related to the ingestion of water and aquatic organisms. These uses can include, but are not limited to, recreation in and on the water, consumption of fish or shellfish, and the protection of drinking water supplies.

In 2015, EPA updated its national recommended water quality criteria for human health for ninety-four toxic pollutants. The EPA 2015 Final Updated Human Health Ambient Water Quality Criteria¹ contains the latest scientific information to determine the risk associated with the consumption of these ninety-four pollutants, including updated body weight, drinking water consumption rate, fish consumption rate, bioaccumulation factors, toxicity values, and relative source contributions. The latest water quality criteria for these toxic pollutants are incorporated into the current EPA “National Recommended Water Quality Criteria Table for the protection of Human Health”² or “Human Health Criteria Table” (as it is commonly called).

Water quality criteria developed under the CWA section 304(a) are based on data and scientific judgments on the relationship between pollutant concentrations and human health effects. The criteria recommended by EPA represent specific levels of pollutants or conditions in a water body that are not expected to cause adverse effects to human health. Adopting the updated section 304(a) criteria ensures that the WQS of a State reflect current science and protect applicable designated uses. New scientific risk information obtained since EPA last published its recommended criteria may lead to updated recommended criteria that may be more stringent or less stringent than the existing WQS of a State. HDOH proposes **to adopt EPA recommended ambient water quality criteria and to update State WQS for the protection of human health.**

First, HDOH proposes to adopt the recommended numeric criteria of the ninety-four pollutants that are listed in the 2015 Final Updated Human Health Ambient Water Quality Criteria. Of these ninety-four pollutants, fifty-six are already included in HAR 11-54 and thirty-eight are not. Second, HDOH proposes to adopt the recommended numeric criteria of sixteen additional pollutants that were updated by EPA prior to 2015. Of these sixteen additional pollutants, fourteen are already included in HAR 11-54 and two are not. Overall, HDOH proposes **to update existing standards for a total of seventy pollutants (i.e., fifty-six from 2015 plus fourteen before 2015), and to add recommended criteria for a total of forty pollutants (i.e., thirty-eight from 2015 plus two before 2015); all updated and added pollutants are listed in the current EPA Human Health Criteria Table.**

¹ <https://www.epa.gov/wqc/2015-epa-updated-ambient-water-quality-criteria-protection-human-health>

² <https://www.epa.gov/wqc/national-recommended-water-quality-criteria-human-health-criteria-table>

All criteria listed in the EPA current Human Health Criteria Table are single numeric values except for benzene. Specifically, the water quality criterion, recommended for benzene, is expressed as a numeric range of 16-58 micrograms per liter. This range reflects the use of two toxicity values in the equations for deriving the criteria values.³ These toxicity values are expressed as Cancer Slope Factors (CSF) for carcinogenic compounds and reflect the information obtained from EPA Integrated Risk Information System (IRIS). The CSF is used to assess the risk associated with exposure to a carcinogen and is represented by the 95% confidence limit on the increased risk of cancer from a lifetime of exposure to a carcinogenic chemical by ingestion.

For benzene, the CSF used to determine the recommended criteria is based on EPA 2000 IRIS assessment and is represented by a CSF range from 0.015 per mg/kg-day to 0.055 per mg/kg-day. Using the lower CSF in the calculation, the ambient water quality criteria for benzene is 58 micrograms per liter. Using the upper CSF, the criteria is calculated to be 16 micrograms per liter. HDOH proposes to use the more conservative calculation in which the upper CSF is used to provide a higher level of public health protection and proposes a numeric standard of 16 micrograms per liter for benzene in the protection of human health.

In addition to the above water quality criteria, HDOH proposes **to adopt the recommended fish tissue residue water quality criterion for methylmercury** as specified in EPA-823-R-01-001, *Water Quality Criterion for the Protection of Human Health: Methylmercury*, Final, January 2001. The methylmercury criterion specified by EPA is a fish (or shellfish) tissue residue water quality criterion rather than a water column-based water quality criterion. As such, HDOH proposes to adopt the fish tissue residue water quality standard that is expressed as milligrams of methylmercury per kilogram of fish rather than micrograms per liter of water. The proposed standard of 0.3 mg of methylmercury per kilogram of fish or shellfish is the first EPA-recommended criterion that specifies a tissue value rather than a water column value. The reasons for proposing a fish tissue-based criterion are 1) the representation of the dominant human exposure route for methylmercury, and 2) the integration of spatial and temporal complexities, that occur in aquatic systems and that affect bioaccumulation.

NUMERIC STANDARDS FOR TOXIC POLLUTANTS

In summary, there are seventy proposed updates to current fish consumption standards in HAR 11-54. There are forty proposed chemicals to be added: thirty-nine new chemicals and their respective water column criteria from the current EPA Human Health Criteria Table, plus methylmercury and the fish tissue criterion from EPA 2001 Recommended Water Quality Criterion for the Protection of Human Health from Methylmercury. As mentioned earlier, no revisions to aquatic life toxicity standards are proposed at this time.

For seventy chemicals currently specified in HAR 11-54, the table below shows the proposed revisions to the toxic chemical list in HAR 11-54-4(c)(3). Thirty-one of these seventy chemicals have names that need updating to be consistent with the ones listed in the current EPA Human Health Criteria Table. All chemical names and standards currently specified in HAR 11-54 are

³ <https://www.regulations.gov/document?D=EPA-HQ-OW-2014-0135-0165>

listed in italics. The abbreviation “*ns*” (shown in italics) means “no standards” in the current version of HAR 11-54. For thirty-one chemicals, the proposed new chemical names reflect the pollutant names in the current EPA Human Health Criteria Table. All proposed standards reflect the fish consumption criteria in the current EPA Human Health Criteria Table; all fish consumption standards are expressed in micrograms per liter ($\mu\text{g/L}$).

<i>Current chemical name</i> [Proposed new chemical name]	(Fish Consumption) <i>Current standard</i> ($\mu\text{g/L}$)	(Fish Consumption) Proposed standard ($\mu\text{g/L}$)
<i>Acenaphthene</i>	<i>ns</i>	90
<i>Acrolein</i>	250	400
<i>Acrylonitrile</i>	0.21	7.0
<i>Aldrin</i>	0.000026	0.00000077
<i>Antimony</i>	15,000	640 *
<i>Arsenic</i>	<i>ns</i>	0.14 *
<i>Benzene</i>	13	16
<i>Benzidine</i>	0.00017	0.011
<i>Carbon Tetrachloride</i>	2.3	5
<i>Chlordane</i>	0.00016	0.00032
<i>Chloroethers-ethyl(bis-2)</i> [Bis(2-Chloroethyl) Ether]	0.44	2.2
<i>Chloroethers-isopropyl)</i> [Bis(2-Chloro-1-Methylethyl) Ether]	1,400	4,000
<i>Chloroethers-methyl(bis)</i> [Bis(Chloromethyl) Ether]	0.00060	0.017
<i>Chloroform</i>	5.1	2,000
<i>Chlorophenol(2)</i> [2-Chlorophenol]	<i>ns</i>	800
<i>Cyanide</i>	<i>ns</i>	400

* Proposed standards are recommended criteria that were updated by EPA prior to 2015.

Current chemical name [Proposed new chemical name]	(Fish Consumption) Current standard (µg/L)	(Fish Consumption) Proposed standard (µg/L)
<i>DDT</i> [p,p'-Dichlorodiphenyltrichloroethane (DDT)]	0.000008	0.000030
<i>DDT metabolite TDE</i> [p,p'-Dichlorodiphenyldichloroethane (DDD)]	<i>ns</i>	0.00012
<i>Dichloro-benzidine</i> [3-3'-Dichlorobenzidine]	0.007	0.15
<i>Dichloro-ethane(1,2)</i> [1,2-Dichloroethane]	79	650
<i>Dichloro-phenol(2,4)</i> [2,4-Dichlorophenol]	<i>ns</i>	60
<i>Dichloro-propene(1,3)</i> [1,3-Dichloropropene]	4.6	12
<i>Dieldrin</i>	0.000025	0.0000012
<i>Dinitro-o-cresol(4,6)</i> [2-Methyl-4,6-Dinitrophenol]	250	30
<i>Dioxin</i> [2,3,7,8-TCDD (Dioxin)]	5.0×10^{-9}	5.1×10^{-9} *
<i>Diphenyl-hydrazine(1,2)</i> [1,2-Diphenylhydrazine]	0.018	0.2
<i>Endrin</i>	<i>ns</i>	0.03
<i>Ethylbenzene</i>	1,070	130
<i>Fluoranthene</i>	18	20
<i>Heptachlor</i>	0.00009	0.0000059
<i>Hexachlorobenzene</i>	0.00024	0.000079
<i>Hexachlorobutadiene</i>	16	0.01

* Proposed standards are recommended criteria that were updated by EPA prior to 2015.

Current chemical name [Proposed new chemical name]	(Fish Consumption) Current standard (µg/L)	(Fish Consumption) Proposed standard (µg/L)
<i>Hexachloro-cyclohexane-alpha</i> [alpha-Hexachlorocyclohexane (HCH)]	0.010	0.00039
<i>Hexachloro-cyclohexane-beta</i> [beta-Hexachlorocyclohexane (HCH)]	0.018	0.014
<i>Hexachlorocyclohexane (HCH)-Technical</i>	0.014	0.010
<i>Hexachlorocyclopentadiene</i>	ns	4
<i>Hexachloroethane</i>	2.9	0.1
<i>Isophorone</i>	170,000	1,800
<i>Lindane</i> [gamma-Hexachlorocyclohexane (HCH)]	0.020	4.4
<i>Methoxychlor</i>	ns	0.02
<i>Nickel</i>	33	4,600 *
<i>Nitrobenzene</i>	ns	600
<i>Nitrosamines</i>	0.41	1.24 *
<i>Nitrosodibutylamine-N</i> [Nitrosodibutylamine]	0.19	0.22 *
<i>Nitrosodiethylamine-N</i> [Nitrosodiethylamine]	0.41	1.24 *
<i>Nitrosodimethylamine-N</i> [N-Nitrosodimethylamine]	5.3	3.0 *
<i>Nitrosodiphenylamine-N</i> [N-Nitrosodiphenylamine]	5.3	6.0 *
<i>Nitrosopyrrolidine-N</i> [Nitrosopyrrolidine]	30	34 *
<i>Pentachlorobenzene</i>	28	0.1
<i>Pentachlorophenol</i>	ns	0.04
<i>Phenol</i>	ns	300,000
<i>Phenol 2,4-dimethyl</i> [2,4-Dimethylphenol]	ns	3,000

* Proposed standards are recommended criteria that were updated by EPA prior to 2015.

Current chemical name [Proposed new chemical name]	(Fish Consumption) Current standard (µg/L)	(Fish Consumption) Proposed standard (µg/L)
<i>Phthalate esters dibutyl</i> [Di-n-Butyl Phthalate]	50,000	30
<i>Phthalate esters diethyl</i> [Diethyl Phthalate]	590,000	600
<i>Phthalate esters di-2-ethylhexyl</i> [Bis(2-Ethylhexyl) Phthalate]	16,000	0.37
<i>Phthalate esters dimethyl</i> [Dimethyl Phthalate]	950,000	2,000
<i>Polychlorinated Biphenyls (PCBs)</i>	0.000079	0.000064 *
<i>Selenium</i>	ns	4,200 *
<i>Tetrachloro-benzene(1,2,4,5)</i> [1,2,4,5-Tetrachlorobenzene]	16	0.03
<i>Tetrachloro-ethane(1,1,2,2)</i> [1,1,2,2-Tetrachloroethane]	3.5	3
<i>Tetrachloroethylene</i>	2.9	29
<i>Thallium</i>	16	0.47 *
<i>Toluene</i>	140,000	520
<i>Toxaphene</i>	0.00024	0.00071
<i>Trichloro-ethane(1,1,1)</i> [1,1,1-Trichloroethane]	340,000	200,000
<i>Trichloro-ethane(1,1,2)</i> [1,1,2-Trichloroethane]	14	8.9
<i>Trichloroethylene</i>	26	7
<i>Trichloro-phenol(2,4,6)</i> [2,4,6-Trichlorophenol]	1.2	2.8
<i>Vinyl Chloride</i>	170	1.6
<i>Zinc</i>	ns	26,000 *

* Proposed standards are recommended criteria that were updated by EPA prior to 2015.

As shown in the above table, HDOH proposes to update the names of thirty-one toxic chemicals to reflect the names as listed in the current EPA Human Health Criteria Table. The updated names are synonyms of the same toxic chemicals. By adopting the naming convention used by

EPA, HDOH hopes to reduce ambiguity and potential confusion in the application of State WQS. HDOH also proposes to update the name of two chemicals, Pentachloroethanes and Tetrachlorophenol(2,3,5,6), which are not included in the current EPA Human Health Criteria Table. First, Pentachloroethane is incorrectly listed in the plural (i.e., Pentachloroethanes) to represent all isomers of this chemical when there is a single isomer. The name of this chemical in HAR 11-54 is updated to Pentachloroethane. Second, the chemical Tetrachlorophenol(2,3,5,6) does not follow the naming convention that the EPA uses for isomers. The name of this chemical in HAR 11-54 is updated to 2,3,5,6-Tetrachlorophenol.

For forty chemicals not currently specified in HAR 11-54, the table below shows the proposed additions to the toxic chemical list in HAR 11-54-4(c)(3). All proposed additions have no current fish consumption standards in HAR 11-54. The proposed new chemical names and standards reflect the pollutant names and fish consumption criteria in the current EPA Human Health Criteria Table. All proposed fish consumption standards are expressed in micrograms per liter ($\mu\text{g/L}$) except for methylmercury which is expressed in milligrams of methylmercury per kilogram of fish (mg/kg). As mentioned earlier, no aquatic life standards are updated for these proposed new chemicals at this time.

Proposed new chemical name	(Fish Consumption) No current standard ($\mu\text{g/L}$)	(Fish Consumption) Proposed new standard ($\mu\text{g/L}$ except Methylmercury +)
1,1-Dichloroethylene	<i>blank</i>	20,000
1,2,4-Trichlorobenzene	<i>blank</i>	0.076
1,2-Dichlorobenzene	<i>blank</i>	3,000
1,2-Dichloropropane	<i>blank</i>	31
1,3-Dichlorobenzene	<i>blank</i>	10
1,4-Dichlorobenzene	<i>blank</i>	900
2,4,5-Trichlorophenol	<i>blank</i>	600
2,4-Dinitrophenol	<i>blank</i>	300
2,4-Dinitrotoluene	<i>blank</i>	1.7
2-Chloronaphthalene	<i>blank</i>	1,000
3-Methyl-4-Chlorophenol	<i>blank</i>	2,000
alpha-Endosulfan	<i>blank</i>	30
Anthracene	<i>blank</i>	400
Benzo(a)anthracene	<i>blank</i>	0.0013
Benzo(a)pyrene	<i>blank</i>	0.00013
Benzo(b)fluoranthene	<i>blank</i>	0.0013
Benzo(k)fluoranthene	<i>blank</i>	0.013

Proposed new chemical name	(Fish Consumption) No current standard (µg/L)	(Fish Consumption) Proposed new standard (µg/L except Methylmercury +)
beta-Endosulfan	<i>blank</i>	40
Bromoform	<i>blank</i>	120
Butylbenzyl Phthalate	<i>blank</i>	0.10
Chlorobenzene	<i>blank</i>	800
Chlorodibromomethane	<i>blank</i>	21
Chlorophenoxy Herbicide (2,4-D)	<i>blank</i>	12,000
Chlorophenoxy Herbicide (2,4,5-TP) [Silvex]	<i>blank</i>	400
Chrysene	<i>blank</i>	0.13
Dibenzo(a,h)anthracene	<i>blank</i>	0.00013
Dichlorobromomethane	<i>blank</i>	27
Dinitrophenols	<i>blank</i>	1,000
Endosulfan Sulfate	<i>blank</i>	40
Endrin Aldehyde	<i>blank</i>	1
Fluorene	<i>blank</i>	70
Heptachlor Epoxide	<i>blank</i>	0.000032
Indeno(1,2,3-cd)pyrene	<i>blank</i>	0.0013
Methyl Bromide	<i>blank</i>	10,000
Methylene Chloride	<i>blank</i>	1,000
Methylmercury	<i>blank</i>	0.3 mg/kg fish (+) *
N-Nitrosodi-n-Propylamine	<i>blank</i>	0.51 *
p,p'-Dichlorodiphenyldichloroethylene (DDE)	<i>blank</i>	0.000018
Pyrene	<i>blank</i>	30
Trans-1,2-Dichloroethylene	<i>blank</i>	4,000

(+) As recommended by EPA, the standard for methylmercury is expressed as a fish (or shellfish) tissue residue water quality criterion rather than a water column-based water quality criterion.⁴

* Proposed new standards are recommended criteria that were updated by EPA prior to 2015.

⁴ <https://www.epa.gov/sites/production/files/2019-02/documents/wqc-final-methylmercury-factsheet-2001.pdf>

The current version of HAR 11-54 includes numeric standards for chemicals that are mixtures of isomers, and for chemicals that belong to the same class. Specifically, there are fish consumption standards in HAR 11-54 for the following four chemicals; the first three are mixtures of isomers and the fourth is a class of chemicals:

- 1) Dichlorobenzenes,
- 2) Dinitrotoluenes,
- 3) Endosulfan, and
- 4) Polynuclear Aromatic Hydrocarbons (PAHs).

As listed in the above table, the proposed additions to the toxic chemical list of HAR 11-54-4(c)(3) include fish consumption standards for isomers of dichlorobenzene, dinitrotoluene, and endosulfan, and specific PAH chemicals. Due to the addition of fish consumption standards for isomers of specific compounds or for chemicals from the PAH class of compounds, HDOH proposes **to remove the current fish consumption standards in HAR 11-54 for dichlorobenzenes, dinitrotoluenes, endosulfan, and PAHs.**

- 1) There are three isomers of dichlorobenzene. Since HDOH is proposing to add fish consumption standards for all three isomers (1,2-, 1,3-, and 1,4-) of dichlorobenzene, the current fish consumption standard in HAR 11-54 for dichlorobenzenes (i.e., mixtures of dichlorobenzene isomers) is removed.
- 2) There are six isomers of dinitrotoluene. According to the EPA Technical Fact Sheet on Dinitrotoluene (EPA 505-F-17-010 dated September 2017), the (2,4- and 2,6-) isomers of this chemical are the two major forms. Moreover, 2,4-dinitrotoluene makes up about 76.5% (i.e., more than three-quarters) of technical grade dinitrotoluene which is a mixture of all six isomers. Since HDOH is proposing to add the fish consumption standard for 2,4-dinitrotoluene, the current fish consumption standard in HAR 11-54 for dinitrotoluenes (i.e., mixtures of dinitrotoluene isomers) is removed.
- 3) There are two isomers of endosulfan. By convention, the total endosulfan residue level in samples is the sum of the (alpha- and beta-) isomers of endosulfan plus endosulfan sulfate (i.e., the major oxidation product of endosulfan). Since HDOH is proposing to add fish consumption standards for the (alpha- and beta-) isomers of endosulfan and also for endosulfan sulfate, the current fish consumption standard in HAR 11-54 for endosulfan (i.e., mixtures of endosulfan isomers) is removed.
- 4) There are over one-hundred PAH chemicals. Only three PAH chemicals (acenaphthene, fluoranthene, and naphthalene) are specified in HAR 11-54. There are fish consumption standards in HAR 11-54 for only one of these three PAH chemicals (fluoranthene) and also for PAHs (as a class of chemicals). Since HDOH is proposing to add or update fish consumption standards for specific PAH chemicals, the current fish consumption standard in HAR 11-54 for PAHs (as a class of chemicals) is removed. Overall, HDOH is proposing to add fish consumption standards for anthracene, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)-anthracene, fluorene, indeno(1,2,3-cd)pyrene, and pyrene, to update fish consumption standards for acenaphthene and fluoranthene, and to remove the fish consumption standard for PAHs. There is no fish consumption standard in HAR 11-54 for naphthalene. However, this PAH chemical remains specified in the proposed version of HAR 11-54

since there are existing aquatic life standards in the current version of HAR 11-54. As mentioned earlier, aquatic life standards are not updated at this time.

The table below summarizes the removal of four current fish consumption standards specified in HAR 11-54. The abbreviation “ns” means “no standards.” For PAHs, there are no aquatic life standards specified in HAR 11-54. ~~Strikethrough text~~ is used to denote that PAHs (as a class of chemicals) are removed entirely from HAR 11-54.

<i>Current chemical name</i>	(Fish Consumption) Current standard (µg/L)	(Fish Consumption) Proposed standard (µg/L)
<i>Dichlorobenzenes</i>	850	ns
<i>Dinitrotoluenes</i>	3.0	ns
<i>Endosulfan</i>	52	ns
<i>Polynuclear Aromatic Hydrocarbons (PAHs)</i>	0.01	ns

Current standards in HAR 11-54 include carcinogen indicators which are represented by an asterisk next to each applicable chemical. HDOH proposes to remove all * symbols next to applicable chemicals and to transfer these carcinogen indicators to a new “Carcinogen” data column. In this new data column, the X symbol is used to indicate a carcinogen. For each of the following seven chemicals, currently specified in HAR 11-54, the carcinogen indicator is added based on the carcinogenicity of 10⁻⁶ risk specified in the current EPA Human Health Criteria Table:

- 1) 1,2-Diphenylhydrazine, currently listed in HAR 11-54 as *Diphenyl-hydrazine(1,2)*,
- 2) 1,3-Dichloropropene, currently listed in HAR 11-54 as *Dichloro-propene(1,3)*,
- 3) Arsenic,
- 4) Bis(2-Ethylhexyl) Phthalate, currently listed in HAR 11-54 as *Phthalate esters di-2-ethylhexyl*,
- 5) Copper,
- 6) Isophorone, and
- 7) Pentachlorophenol.

For each of the following four chemicals, currently specified in HAR 11-54, the carcinogen indicator is removed based on no carcinogenicity risk specified in the current EPA Human Health Criteria Table:

- 1) Beryllium,
- 2) Chloroform,
- 3) Dichlorobenzenes, and
- 4) gamma-Hexachlorocyclohexane (HCH), currently listed in HAR 11-54 as *Lindane*.

Since each of the three isomers (1,2-, 1,3-, and 1,4-) of dichlorobenzene has no carcinogenicity risk specified in the current EPA Human Health Criteria Table, the carcinogen indicator is removed for Dichlorobenzenes.

Current standards in HAR 11-54 do not include Chemical Abstracts Service (CAS) numbers whereas recommended criteria from EPA include CAS numbers. A CAS number is a unique numerical identifier assigned, by the CAS organization, to a chemical substance described in the open scientific literature. There are clear advantages to the use of CAS numbers:

- Easy identification of chemicals by reducing any possible confusion due to the various synonyms and isomers that chemical compounds may have.
- Convenient search of databases for specific chemical information, including analytical detection methods.

For most chemicals, the corresponding CAS numbers are obtained from the current EPA National Recommended Water Quality Criteria Tables for the protection of Human Health⁵ and Aquatic Life.⁶ For naphthalene, the CAS number is obtained from EPA 2002 National Recommended Water Quality Criteria.⁷ For applicable chemicals, HDOH proposes to include CAS numbers in HAR 11-54. CAS numbers are not assigned to the following eleven chemicals:

- 1) 2,3,5,6-Tetrachlorophenol (updated name in proposed rule revisions to HAR 11-54),
- 2) Dichlorobenzenes,
- 3) Dichloropropanes,
- 4) Dinitrotoluenes,
- 5) Endosulfan,
- 6) Nitrophenols,
- 7) Nitrosamines (specified in the current EPA Human Health Criteria Table),
- 8) Pentachloroethane (updated name in proposed rule revisions to HAR 11-54),
- 9) Polychlorinated Biphenyls (specified in the current EPA Human Health Criteria Table),
- 10) Tetrachloroethanes, and
- 11) Tributyltin (specified in the current EPA Aquatic Life Criteria Table).

Nitrosamines, polychlorinated biphenyls, and tributyltin are currently listed in either the EPA Human Health Criteria Table or the EPA Aquatic Life Criteria Table without CAS numbers. The remaining eight chemicals (i.e., 2,3,5,6-tetrachlorophenol, dichlorobenzenes, dichloropropanes, dinitrotoluenes, endosulfan, nitrophenols, pentachloroethane, and tetrachloroethanes) are not currently listed in these two EPA Criteria Tables. However, these eight chemicals remain specified in the proposed version of HAR 11-54 since there are aquatic life standards in the current version of HAR 11-54. As mentioned earlier, aquatic life standards are not updated at this time, and they will be evaluated in subsequent triennial reviews.

⁵ <https://www.epa.gov/wqc/national-recommended-water-quality-criteria-human-health-criteria-table>

⁶ <https://www.epa.gov/wqc/national-recommended-water-quality-criteria-aquatic-life-criteria-table>

⁷ <https://www.epa.gov/sites/production/files/2018-12/documents/national-recommended-hh-criteria-2002.pdf>

For both carcinogen indicators and CAS numbers, the table below shows the proposed additions to the toxic chemical list in HAR 11-54-4(c)(3). The following algorithm is used to list the chemicals in this table:

- Chemicals are sorted alphabetically.
- Chemicals are sorted alphabetically by their actual names. For example, Chlorophenoxy Herbicide (2,4,5-TP), where TP is an acronym of trichlorophenoxy, is listed after the (2,4,6-) isomer of trichlorophenol.
- Chemicals with isomers are listed together. For example, Dichlorobenzenes (i.e., mixtures of isomers of dichlorobenzene) and the (1,2-, 1,3-, and 1,4-) isomers of dichlorobenzene are sequentially listed as a group.
- Isomers of a chemical, which is not specified in HAR 11-54, are listed “as if” this chemical is specified. For example, Trichlorophenols (i.e., mixtures of isomers of trichlorophenol) are not specified in HAR 11-54, and the (2,4,5- and 2,4,6-) isomers of trichlorophenol are sequentially listed after trichloroethylene.
- Chemicals, which are formed by adding or bonding atoms (such as carbon, hydrogen, oxygen, or methyl group) to a parent chemical, are listed together. For example, benzo(a)anthracene, which is formed by adding four carbon atoms to anthracene, and dibenzo(a,h)anthracene by adding eight carbon atoms are sequentially listed after anthracene.
- Chemicals formed by adding or bonding atoms to a parent chemical, which is not specified in HAR 11-54, are listed “as if” this chemical is specified. For example, chloromethyl is not specified in HAR 11-54, and Bis(Chloromethyl) Ether, which is formed from the bonding of an oxygen atom and two compounds of chloromethyl, is listed after chloroform.

A total of one hundred thirty-five chemicals are specified in this table. Of this total, thirty-one chemicals have proposed new names and forty chemicals are proposed additions. In this table, the proposed new names are listed in upright script and the current names are listed in italics.

Current chemical name or Proposed new chemical name	Carcinogen	Chemical Abstracts Service (CAS) #
<i>Acenaphthene</i>	-	83-32-9
<i>Acrolein</i>	-	107-02-8
<i>Acrylonitrile</i>	X	107-13-1
<i>Aldrin</i>	X	309-00-2
<i>Aluminum</i>	-	7429-90-5
Anthracene	-	120-12-7
Benzo(a)anthracene	X	56-55-3
Dibenzo(a,h)anthracene	X	53-70-3
<i>Antimony</i>	-	7440-36-0
<i>Arsenic</i>	X	7440-38-2
<i>Benzene</i>	X	71-43-2
<i>Benzidine</i>	X	92-87-5
<i>Beryllium</i>	-	7440-41-7
Bromoform	X	75-25-2
Butylbenzyl Phthalate	X	85-68-7
<i>Cadmium</i>	-	7440-43-9
<i>Carbon Tetrachloride</i>	X	56-23-5
<i>Chlordane</i>	X	57-74-9
<i>Chlorine</i>	-	7782-50-5
Chlorobenzene	-	108-90-7
Chlorodibromomethane	X	124-48-1
Bis(2-Chloroethyl) Ether	X	111-44-4
<i>Chloroform</i>	-	67-66-3
Bis(Chloromethyl) Ether	X	542-88-1
2-Chloronaphthalene	-	91-58-7
2-Chlorophenol	-	95-57-8
3-Methyl-4-Chlorophenol	-	59-50-7
<i>Chlorpyrifos</i>	-	2921-88-2
<i>Chromium (VI)</i>	-	18540-29-9
Chrysene	X	218-01-9
<i>Copper</i>	X	7440-50-8
<i>Cyanide</i>	-	57-12-5

<i>Current chemical name or Proposed new chemical name</i>	Carcinogen	Chemical Abstracts Service (CAS) #
<i>Demeton</i>	-	8065-48-3
Di-n-Butyl Phthalate	-	84-74-2
<i>Dichlorobenzenes *</i>	-	-
1,2-Dichlorobenzene	-	95-50-1
1,3-Dichlorobenzene	-	541-73-1
1,4-Dichlorobenzene	-	106-46-7
3,3'-Dichlorobenzidine	X	91-94-1
Dichlorobromomethane	X	75-27-4
p,p'-Dichlorodiphenyldichloroethane (DDD)	X	72-54-8
p,p'-Dichlorodiphenyldichloroethylene (DDE)	X	72-55-9
p,p'-Dichlorodiphenyltrichloroethane (DDT)	X	50-29-3
1,2-Dichloroethane	X	107-06-2
1,1-Dichloroethylene	-	75-35-4
Trans-1,2-Dichloroethylene	-	156-60-5
2,4-Dichlorophenol	-	120-83-2
Chlorophenoxy Herbicide (2,4-D)	-	94-75-7
<i>Dichloropropanes *</i>	-	-
1,2-Dichloropropane	X	78-87-5
1,3-Dichloropropene	X	542-75-6
<i>Dieldrin</i>	X	60-57-1
Diethyl Phthalate	-	84-66-2
Dimethyl Phthalate	-	131-11-3
2,4-Dimethylphenol	-	105-67-9
Dinitrophenols	-	25550-58-7
2,4-Dinitrophenol	-	51-28-5
2-Methyl-4,6-Dinitrophenol	-	534-52-1
<i>Dinitrotoluenes *</i>	X	-
2,4-Dinitrotoluene	X	121-14-2
1,2-Diphenylhydrazine	X	122-66-7

* Chemicals are not listed in current EPA Human Health and Aquatic Life Criteria Tables.

Current chemical name or Proposed new chemical name	Carcinogen	Chemical Abstracts Service (CAS) #
<i>Endosulfan</i> *	-	-
alpha-Endosulfan	-	959-98-8
beta-Endosulfan	-	33213-65-9
Endosulfan Sulfate	-	1031-07-8
<i>Endrin</i>	-	72-20-8
Endrin Aldehyde	-	7421-93-4
<i>Ethylbenzene</i>	-	100-41-4
Bis(2-Ethylhexyl) Phthalate	X	117-81-7
<i>Fluoranthene</i>	-	206-44-0
Benzo(b)fluoranthene	X	205-99-2
Benzo(k)fluoranthene	X	207-08-9
Fluorene	-	86-73-7
<i>Guthion</i>	-	86-50-0
<i>Heptachlor</i>	X	76-44-8
Heptachlor Epoxide	X	1024-57-3
<i>Hexachlorobenzene</i>	X	118-74-1
<i>Hexachlorobutadiene</i>	X	87-68-3
<i>Hexachlorocyclohexane (HCH)- Technical</i>	X	608-73-1
alpha-Hexachlorocyclohexane (HCH)	X	319-84-6
beta-Hexachlorocyclohexane (HCH)	X	319-85-7
gamma-Hexachlorocyclohexane (HCH) [Lindane]	-	58-89-9
<i>Hexachlorocyclopentadiene</i>	-	77-47-4
<i>Hexachloroethane</i>	X	67-72-1
<i>Isophorone</i>	X	78-59-1
<i>Lead</i>	-	7439-92-1

* Chemicals are not listed in current EPA Human Health and Aquatic Life Criteria Tables.

Current chemical name or Proposed new chemical name	Carcinogen	Chemical Abstracts Service (CAS) #
<i>Malathion</i>	-	121-75-5
<i>Mercury</i>	-	7439-97-6
<i>Methoxychlor</i>	-	72-43-5
Methyl Bromide	-	74-83-9
Methylene Chloride	X	75-09-2
Bis(2-Chloro-1-Methylethyl) Ether	-	108-60-1
Methylmercury	-	22967-92-6
<i>Mirex</i>	-	2385-85-5
<i>Naphthalene</i> *	-	91-20-3
<i>Nickel</i>	-	7440-02-0
<i>Nitrobenzene</i>	-	98-95-3
<i>Nitrophenols</i> *	X	-
<i>Nitrosamines</i>	X	-
Nitrosodibutylamine	X	924-16-3
Nitrosodiethylamine	X	55-18-5
N-Nitrosodimethylamine	X	62-75-9
N-Nitrosodiphenylamine	X	86-30-6
N-Nitrosodi-n-Propylamine	X	621-64-7
Nitrosopyrrolidine	X	930-55-2
<i>Parathion</i>	-	56-38-2
<i>Pentachlorobenzene</i>	-	608-93-5
Pentachloroethane *	-	-
<i>Pentachlorophenol</i>	X	87-86-5
<i>Phenol</i>	-	108-95-2
<i>Polychlorinated Biphenyls (PCBs)</i>	X	-
Pyrene	-	129-00-0
Benzo(a)pyrene	X	50-32-8
Indeno(1,2,3-cd)pyrene	X	193-39-5
<i>Selenium</i>	-	7782-49-2
<i>Silver</i>	-	7440-22-4

* Chemicals are not listed in the current EPA Human Health and Aquatic Life Criteria Tables.

<i>Current chemical name or Proposed new chemical name</i>	Carcinogen	Chemical Abstracts Service (CAS) #
1,2,4,5-Tetrachlorobenzene	-	95-94-3
2,3,7,8-TCDD (Dioxin)	X	1746-01-6
<i>Tetrachloroethanes</i> *	-	-
1,1,2,2-Tetrachloroethane	X	79-34-5
<i>Tetrachloroethylene</i>	X	127-18-4
2,3,5,6-Tetrachlorophenol *	-	-
<i>Thallium</i>	-	7440-28-0
<i>Toluene</i>	-	108-88-3
<i>Toxaphene</i>	X	8001-35-2
<i>Tributyltin (TBT)</i>	-	-
1,2,4-Trichlorobenzene	X	120-82-1
1,1,1-Trichloroethane	-	71-55-6
1,1,2-Trichloroethane	X	79-00-5
<i>Trichloroethylene</i>	X	79-01-6
2,4,5-Trichlorophenol	-	95-95-4
2,4,6-Trichlorophenol	X	88-06-2
Chlorophenoxy Herbicide (2,4,5-TP) [Silvex]	-	93-72-1
<i>Vinyl Chloride</i>	X	75-01-4
<i>Zinc</i>	-	7440-66-6

* Chemicals are not listed in the current EPA Human Health and Aquatic Life Criteria Tables.

Finally, HDOH proposes to move the amended toxicity table from sub-section HAR 11-54-4(c) to a newly created Appendix E of HAR 11-54 in order to accommodate the landscape format of this amended table. This new toxicity table includes both current standards from HAR 11-54 and new criteria recommended by EPA. A total of one hundred thirty-five chemicals are listed in Appendix E dated **Month DD, 2021**, entitled “Numeric Standards for Toxic Pollutants Applicable to All Waters.” This placeholder (i.e., Month DD, 2021) for the actual date will be appropriately modified to reflect the next compilation date of all proposed amendments to the current version of HAR 11-54.

The following major amendments are proposed for section HAR 11-54-4. Along with these major amendments, minor amendments are also proposed to add missing punctuation marks, to correct miscellaneous formatting and typographical errors, to spell out numbers, to convert "State" in "State waters" to lower case, to replace "U.S. Environmental Agency" with the acronym "EPA" and "per cent" with "percent" for consistency, to clarify unclear specifications, to update incorrect references, and to hyphenate two or more words that are used together as compound adjectives.

§11-54-4 Basic water quality criteria applicable to all waters.

- (a) All waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants, including:
- (1) Materials that will settle to form objectionable sludge or bottom deposits;
 - (2) Floating debris, oil, grease, scum, or other floating materials;
 - (3) Substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts sufficient to produce objectionable color, [~~turbidity~~]turbidity, or other conditions in the receiving waters;
 - (4) High or low temperatures, biocides, pathogenic organisms, toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water;
 - (5) Substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life; and
 - (6) Soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways; subdivisions; recreational, commercial, or

industrial developments; or the cultivation and management of agricultural lands.

(b) The director is authorized to impose by order the penalties and fines and corrective measures as specified in chapters 342D and 342E, HRS, against any person who discharges or otherwise causes or allows water pollutants to enter [State]state waters and cause violation of this chapter, unless that person acted in compliance with a permit or variance issued by the director pursuant to [chapters]chapter 342D, HRS, for that person's discharges. Each day that the person has caused each water quality standard not to be met shall constitute a separate offense.

(c) To ensure compliance with [paragraph (a) (4)]section 11-54-4(a) (4), all [State]state waters are subject to monitoring and to the following standards for acute and chronic toxicity and the protection of human health.

(1) As used in this section:

"Acute Toxicity" means the degree to which a pollutant, discharge, or water sample causes a rapid adverse impact to aquatic organisms. The acute toxicity of a discharge or receiving water is measured using the methods in section 11-54-10, unless other methods are specified by the director.

"Chronic Toxicity" means the degree to which a pollutant, discharge, or water sample causes a long-term adverse impact to aquatic organisms, such as a reduction in growth or reproduction. The chronic toxicity of a discharge or receiving water is measured using the methods in section 11-54-10, unless other methods are specified by the director.

"Dilution" means, for discharges through submerged outfalls, the average and minimum values calculated using the models in the EPA publication, Initial Mixing Characteristics of Municipal Ocean

Discharges (EPA/600/3-85/073, November, 1985), or in the EPA publication, Expert System for Hydrodynamic Mixing Zone Analysis of Conventional and Toxic Submerged Single Port Discharges (Cormix 1) (EPA/600/3-90/012), February, 1990.

"In-Stream Waste Concentration" (IWC) means the concentration of a toxicant in the receiving water, or for a discharge, the concentration of the effluent after minimum dilution authorized by the department. A discharge of one hundred divided by the minimum dilution is the IWC when the dilution is authorized by the director. A discharge of one hundred ~~[per cent]~~percent effluent is the IWC when dilution is not authorized by the director.

"No Observed Effect Concentration" (NOEC), means the highest ~~[per cent]~~percent concentration of a discharge or water sample, in dilution water, which causes no observable adverse effect in a chronic toxicity test. For example, ~~[an]~~a NOEC of ~~[100 per cent]~~one hundred percent indicates that an undiluted discharge or water sample causes no observable adverse effect to the organisms in a chronic toxicity test.

"Test of Significant Toxicity" (TST) means the alternative statistical method for analyzing and interpreting valid whole effluent toxicity test data as described in the EPA publications, National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document, EPA 833-R-10-003 (June 2010), and National Pollutant Discharge Elimination System Test of Significant Toxicity Technical Document, EPA 833-R-10-004 (June 2010).

- (2) Narrative toxicity and human health standards.

- (A) Acute Toxicity Standards: All [State]state waters shall be free from pollutants in concentrations which exceed the acute standards listed in [~~paragraph (3)~~]Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter. All [State]state waters shall also be free from acute toxicity as measured using the toxicity tests listed in section 11-54-10, or other methods specified by the director.
- (B) Chronic Toxicity Standards: All [State]state waters shall be free from pollutants in concentrations which on average during any [~~twenty-four~~] twenty-four-hour period exceed the chronic standards listed in [~~paragraph (3)~~]Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter. All [State]state waters shall also be free from chronic toxicity as measured using the toxicity tests listed in section 11-54-10, or other methods specified by the director.
- (C) Human Health Standards: All [State]state waters shall be free from pollutants in concentrations which, on average during any [~~thirty~~]thirty-day period, exceed the "fish consumption" standards for non-carcinogens in [~~paragraph (3)~~]Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter. All [State]state waters shall also be free from pollutants in concentrations, which on average during

any [12] twelve-month period, exceed the "fish consumption" standards for pollutants identified as carcinogens in [paragraph (3)] Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter.

[(3) Numeric standards for toxic pollutants applicable to all waters. The freshwater standards apply where the dissolved inorganic ion concentration is less than 0.5 parts per thousand; saltwater standards apply above 0.5 parts per thousand. Values for metals refer to the dissolved fraction. All values are expressed in micrograms per liter.

Pollutant	Freshwater		Saltwater		Fish Consumption
	Acute	Chronic	Acute	Chronic	
Acenaphthene	570	ns	320	ns	ns
Acrolein	23	ns	18	ns	250
Acrylonitrile*	2,500	ns	ns	ns	0.21
Aldrin*	3.0	ns	1.3	ns	0.000026
Aluminum	750	260	ns	ns	ns
Antimony	3,000	ns	ns	ns	15,000
Arsenic	360	190	69	36	ns
Benzene*	1,800	ns	1,700	ns	13
Benzidine*	800	ns	ns	ns	0.00017
Beryllium*	43	ns	ns	ns	0.038

Pollutant	Freshwater		Saltwater		Fish
	Acute	Chronic	Acute	Chronic	Consumption
Cadmium	3+	3+	43	9.3	ns
Carbon tetra- chloride*	12,000	ns	16,000	ns	2.3
Chlordane*	2.4	0.0043	0.09	0.004	0.00016
Chlorine	19	11	13	7.5	ns
Chloroethers-					
ethyl (bis-2)*	ns	ns	ns	ns	0.44
isopropyl	ns	ns	ns	ns	1,400
methyl (bis)*	ns	ns	ns	ns	0.00060
Chloroform*	9,600	ns	ns	ns	5.1
Chlorophenol (2)	1,400	ns	ns	ns	ns
Chlorpyrifos	0.083	0.041	0.011	0.0056	ns
Chromium (VI)	16	11	1,100	50	ns
Copper	6+	6+	2.9	2.9	ns
Cyanide	22	5.2	1	1	ns
DDT*	1.1	0.001	0.013	0.001	0.000008
metabolite TDE*	0.03	ns	1.2	ns	ns
Demeton	ns	0.1	ns	0.1	ns
Dichloro-					
benzenes*	370	ns	660	ns	850
benzidine*	ns	ns	ns	ns	0,007
ethane (1,2)*	39,000	ns	38,000	ns	79
phenol (2,4)	670	ns	ns	ns	ns
propanes	7,700	ns	3,400	ns	ns
propene (1,3)	2,000	ns	260	ns	4.6

Pollutant	Freshwater		Saltwater		Fish
	Acute	Chronic	Acute	Chronic	Consumption
Dieldrin*	2.5	0.0019	0.71	0.0019	0.000025
Dinitro					
o-cresol (4,6)	ns	ns	ns	ns	250
toluenes*	110	ns	200	ns	3.0
Dioxin*	0.003	ns	ns	ns	5.0x10 ⁻⁹
Diphenyl-					
hydrazine (1,2)	ns	ns	ns	ns	0.018
Endosulfan	0.22	0.056	0.034	0.0087	52
Endrin	0.18	0.0023	0.037	0.0023	ns
Ethylbenzene	11,000	ns	140	ns	1,070
Fluoranthene	1,300	ns	13	ns	18
Guthion	ns	0.01	ns	0.01	ns
Heptachlor*	0.52	0.0038	0.053	0.0036	0.00009
Hexachloro-					
benzene*	ns	ns	ns	ns	0.00024
butadiene*	30	ns	11	ns	16
cyclohexane-					
alpha*	ns	ns	ns	ns	0.010
beta*	ns	ns	ns	ns	0.018
technical*	ns	ns	ns	ns	0.014
cyclopentadiene	2	ns	2	ns	ns
ethane*	330	ns	310	ns	2.9
Isophorone	39,000	ns	4,300	ns	170,000
Lead	29+	29+	140	5.6	ns
Lindane*	2.0	0.08	0.16	ns	0.020

Pollutant	Freshwater		Saltwater		Fish
	Acute	Chronic	Acute	Chronic	Consumption
Malathion	ns	0.1	ns	0.1	ns
Mercury	2.4	0.55	2.1	0.025	0.047
Methoxychlor	ns	0.03	ns	0.03	ns
Mirex	ns	0.001	ns	0.001	ns
Naphthalene	770	ns	780	ns	ns
Nickel	5+	5+	75	8.3	33
Nitrobenzene	9,000	ns	2,200	ns	ns
Nitrophenols*	77	ns	1,600	ns	ns
Nitrosamines*	1,950	ns	ns	ns	0.41
Nitroso					
dibutylamine-N*	ns	ns	ns	ns	0.19
diethylamine-N*	ns	ns	ns	ns	0.41
dimethylamine-N*	ns	ns	ns	ns	5.3
diphenylamine-N*	ns	ns	ns	ns	5.3
pyrrolidine-N*	ns	ns	ns	ns	30
Parathion	0.065	0.013	ns	ns	ns
Pentachloro-					
ethanes	2,400	ns	130	ns	ns
benzene	ns	ns	ns	ns	28
phenol	20	13	13	ns	ns
Phenol	3,400	ns	170	ns	ns
2,4-dimethyl	700	ns	ns	ns	ns
Phthalate esters					
dibutyl	ns	ns	ns	ns	50,000
diethyl	ns	ns	ns	ns	590,000

Pollutant	Freshwater		Saltwater		Fish Consumption
	Acute	Chronic	Acute	Chronic	
di-2-ethylhexyl	ns	ns	ns	ns	16,000
dimethyl	ns	ns	ns	ns	950,000
Polychlorinated biphenyls*	2.0	0.014	10	0.03	0.000079
Polynuclear aromatic hydrocarbons*	ns	ns	ns	ns	0.01
Selenium	20	5	300	71	ns
Silver	1+	1+	2.3	ns	ns
Tetrachloroethanes	3,100	ns	ns	ns	ns
benzene (1,2,4,5)	ns	ns	ns	ns	16
ethane (1,1,2,2)*	ns	ns	3,000	ns	3.5
ethylene*	1,800	ns	3,400	145	2.9
phenol (2,3,5,6)	ns	ns	ns	440	ns
Thallium	470	ns	710	ns	16
Toluene	5,800	ns	2,100	ns	140,000
Toxaphene*	0.73	0.0002	0.21	0.0002	0.00024
Tributyltin	ns	0.026	ns	0.01	ns
Trichloroethane (1,1,1)	6,000	ns	10,400	ns	340,000
ethane (1,1,2)*	6,000	ns	ns	ns	14
ethylene*	15,000	ns	700	ns	26
phenol (2,4,6)*	ns	ns	ns	ns	1.2
Vinyl chloride*	ns	ns	ns	ns	170
Zinc	22+	22+	95	86	ns

ns - No standard has been developed.

* ~~Carcinogen.~~

+ ~~The value listed is the minimum standard. Depending upon the receiving water CaCO₃ hardness, higher standards may be calculated using the respective formula in the U.S. Environmental Protection Agency publication Quality Criteria for Water (EPA 440/5-86-001, Revised May 1, 1987).~~

Note ~~Compounds listed in the plural in the "Pollutant" column represent complex mixtures of isomers. Numbers listed to the right of these compounds refer to the total allowable concentration of any combination of isomers of the compound, not only to concentrations of individual isomers.]~~

- [~~(4)~~] (3) The following are basic requirements applicable to discharges to [~~State~~]state waters. These standards shall be enforced through effluent limitations or other conditions in discharge permits. The director may apply more stringent discharge requirements to any discharge if necessary to ensure compliance with all standards in [~~paragraph (2)~~] Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter.
- (A) Continuous discharges through submerged outfalls.
- (i) The No Observed Effect Concentration (NOEC), expressed as [~~per cent~~]percent effluent, of continuous discharges through submerged outfalls shall not be less than [~~100~~]one hundred divided by the minimum dilution; or,
- (ii) The Test of Significant Toxicity (TST), as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010), shall be used to demonstrate no unacceptable level of chronic toxicity at the In-stream Waste Concentration (IWC). The chronic toxicity criterion is expressed using a

- regulatory management decision (b value) of 0.75 for chronic toxicity where, a 0.25 effect level (or more) at the IWC demonstrates an unacceptable level of chronic toxicity.
- (B) Continuous discharges through submerged outfalls shall not contain:
- (i) Pollutants in [~~twenty-four~~] twenty-four-hour average concentrations greater than the values obtained by multiplying the minimum dilution by the standards [~~in paragraph (3) for the prevention of chronic toxicity]~~for the prevention of chronic toxicity in Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter.
 - (ii) Non-carcinogenic pollutants in [~~thirty~~] thirty-day average concentrations greater than the values obtained by multiplying the minimum dilution by the standards [~~in paragraph (3) for fish consumption]~~for fish consumption in Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter.
 - (iii) Carcinogenic pollutants in [~~twelve~~] twelve-month average concentrations greater than the values obtained by multiplying the average dilution by the standards [~~in paragraph (3) for fish consumption]~~for fish consumption in Appendix E dated Month DD,

2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter.

- (C) Discharges without submerged outfalls.
- (i) The survival of test organisms in an undiluted acute toxicity test of any discharge shall not be less than eighty [~~per cent~~]percent;
 - (ii) Compliance with the acute toxicity NPDES effluent limit is demonstrated by using the Test of Significant Toxicity (TST) as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010). The acute toxicity criterion is expressed using a regulatory management decision (b value) of 0.80 for acute toxicity test methods listed in 11-54-10, where, in an undiluted acute toxicity test, a 0.20 effect level (or more) at the IWC demonstrates an unacceptable level of acute toxicity; or,
 - (iii) The Test of Significant Toxicity (TST), as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010), shall be used to demonstrate no unacceptable level of chronic toxicity at the IWC. The chronic toxicity criterion is expressed using a regulatory management decision (b value) of 0.75 for chronic toxicity where, a 0.25 effect level (or more) at the IWC demonstrates an unacceptable level of chronic toxicity. Toxicity is considered significant if the mean response in the IWC is greater

than 0.75 multiplied by the mean response of the control.

No discharge shall contain pollutants in concentrations greater than the standards ~~[in paragraph (3) for the prevention of acute toxicity to aquatic life]~~ for the prevention of acute toxicity to aquatic life in Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter. The director may make a limited allowance for dilution for a discharge in this category if it meets the following criteria: the discharge velocity is greater than ~~[3]~~ three meters per second; the discharge enters the receiving water horizontally, and; the receiving water depth at the discharge point is greater than zero.

(d) The requirements of ~~[paragraph (a) (6)]~~ section 11-54-4(a) (6) shall be deemed met upon a showing that:

- (1) ~~[the]~~ The land on which the erosion occurred or is occurring is being managed in accordance with soil conservation practices acceptable to the applicable soil and water conservation district and the director, and ~~[that]~~ a comprehensive conservation program is being actively pursued~~[7]~~; or ~~[that]~~
- (2) ~~[the]~~ The discharge has received the best degree of treatment or control, and ~~[that]~~ the severity of impact of the residual soil reaching the receiving body of water is deemed to be acceptable.

(e) In order to reduce a risk to public health or safety arising out of any violation or probable violation of this chapter, the director may post or order posted any ~~[State]~~ state waters. Posting is the placement, erection, or use of a sign or signs warning people to stay out of, avoid drinking, avoid contact with, or avoid using the water. This posting authority shall not limit the director's authority to

post or order posting in any other appropriate case or to take any enforcement action.

(f) Pesticide Application.

(1) As used in this section:

"Declared pest emergency situation" means an event defined by a public declaration by the President of the United States, state governor or, with the concurrence of the director, county mayor of a pest problem determined to require control through application of a pesticide beginning less than ten days after identification of the need for pest control.

"Pest" means [any]

(A) Any insect, rodent, nematode, fungus, weed[7]; or

~~[(A)]~~ (B) Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator of the EPA declares to be a pest under 7 U.S.C. [~~§136w(e)(1)~~] section 136w(c)(1).

"Pesticide" means

(A) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest;

(B) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

(C) Any nitrogen stabilizer[7].

~~[except]~~ Except that the term "pesticide" shall not include any article that is a "new animal drug" within the meaning of 21 U.S.C. [~~321(w)~~] section 321(v), that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal

feed within the meaning of 21 U.S.C.

~~[321(x)]~~ section 321(w) bearing or containing a new animal drug.

The term "pesticide" does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical device or a semi-critical device, as defined in ~~[section 201 of]~~ 21 U.S.C. ~~[§321]~~ section 321. For purposes of the preceding sentence, the term "critical device" includes any device which is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term "semi-critical device" includes any device which contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body. The term "pesticide" applies to insecticides, herbicides, fungicides, rodenticides, and various other substances used to control pests. The definition encompasses all uses of pesticides authorized under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) including uses authorized under 7 U.S.C. sections ~~[3]~~ 136a (~~[registration]~~ Registration of pesticides), ~~[5]~~ 136c (~~[experimental]~~ Experimental use permits), ~~[18]~~ 136p (~~[emergency exemptions]~~ Exemption of Federal and State agencies), ~~[24(e)]~~ 136v(c) (~~[special local needs registrations]~~ Additional uses), and ~~[25(b)]~~ 136w(b) (~~[exemptions from FIFRA]~~ Exemption of pesticides).

Note: drugs used to control diseases of humans or animals (such as livestock, fishstock and pets) are not considered pesticides; such drugs are regulated by the Food and Drug Administration. Fertilizers,

nutrients, and other substances used to promote plant survival and health are not considered plant growth regulators and thus are not pesticides. Biological control agents, except for certain microorganisms, are exempted from regulation under FIFRA. (Biological control agents include beneficial predators such as birds or ladybugs that eat insect pests, parasitic wasps, fish, etc.).

- (2) Pesticide applications may be made to ~~[State]~~state waters if the pesticide applications are:
- (A) Registered by the ~~[U.S. Environmental Protection Agency]~~EPA and licensed by the state department of agriculture or other state agency regulating pesticides;
 - (B) Used for the purpose of controlling mosquito and other flying insect pests; controlling weed and algae pests; controlling animal pests; controlling forest canopy pests; or protecting public health or the environment in a declared pest emergency situation or as determined by the director;
 - (C) Applied in a manner consistent with the labeling of the pesticide under FIFRA;
 - (D) Applied under permits required by the director and issued pursuant to [HRS] chapter 342D, [if the director requires such permits under chapter 342D,]HRS; and
 - (E) Applied in a manner so applicable narrative and numeric state water quality criteria as required in chapter 11-54 are met. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; am and comp 06/15/09; am

and comp 10/21/12; am and comp 12/6/13;
am and comp 11/15/14; am and comp
] (Auth: HRS §§342D-1,
342D-4, 342D-5, Ch. 342E) (Imp: HRS
§§342D-4, 342D-5, Ch. 342E)

See the attached “HAR 11-54 Appendix E (20202.05.04)” PDF file for the proposed additional Appendix E of HAR 11-54. Note that the proposed Appendix E is in landscape format and it is four-page long.

Appendix E
Month DD, 2021

Numeric Standards for Toxic Pollutants Applicable to All Waters

The freshwater standards apply where the dissolved inorganic ion concentration is less than 0.5 parts per thousand; saltwater standards apply above 0.5 parts per thousand. Values for metals refer to the dissolved fraction. Except for Methylmercury, all values are expressed in micrograms per liter.

Pollutant Name	Carcinogen	Chemical Abstracts Service (CAS) #	Freshwater (µg/L)		Saltwater (µg/L)		Fish Consumption (µg/L) (except Methylmercury *)
			Acute	Chronic	Acute	Chronic	
Acenaphthene	=	83-32-9	570	ns	320	ns	90
Acrolein	=	107-02-8	23	ns	18	ns	400
Acrylonitrile	X	107-13-1	2,500	ns	ns	ns	7.0
Aldrin	X	309-00-2	3.0	ns	1.3	ns	0.0000077
Aluminum	=	7429-90-5	750	260	ns	ns	ns
Anthracene	=	120-12-7	ns	ns	ns	ns	400
Benzo(a)anthracene	X	56-55-3	ns	ns	ns	ns	0.0013
Dibenzo(a,h)anthracene	X	53-70-3	ns	ns	ns	ns	0.00013
Antimony	=	7440-36-0	3,000	ns	ns	ns	640
Arsenic	X	7440-38-2	360	190	69	36	0.14
Benzene	X	71-43-2	1,800	ns	1,700	ns	16
Benzidine	X	92-87-5	800	ns	ns	ns	0.011
Beryllium	=	7440-41-7	43	ns	ns	ns	0.038
Bromoform	X	75-25-2	ns	ns	ns	ns	120
Butylbenzyl Phthalate	X	85-68-7	ns	ns	ns	ns	0.10
Cadmium	=	7440-43-9	3+	3+	43	9.3	ns
Carbon Tetrachloride	X	56-23-5	12,000	ns	16,000	ns	5
Chlordane	X	57-74-9	2.4	0.0043	0.09	0.004	0.00032
Chlorine	=	7782-50-5	19	11	13	7.5	ns
Chlorobenzene	=	108-90-7	ns	ns	ns	ns	800
Chlorodibromomethane	X	124-48-1	ns	ns	ns	ns	21
Bis(2-Chloroethyl) Ether	X	111-44-4	ns	ns	ns	ns	2.2
Chloroform	=	67-66-3	9,600	ns	ns	ns	2,000
Bis(Chloromethyl) Ether	X	542-88-1	ns	ns	ns	ns	0.017
2-Chloronaphthalene	=	91-58-7	ns	ns	ns	ns	1,000
2-Chlorophenol	=	95-57-8	1,400	ns	ns	ns	800
3-Methyl-4-Chlorophenol	=	59-50-7	ns	ns	ns	ns	2,000
Chlorpyrifos	=	2921-88-2	0.083	0.041	0.011	0.0056	ns
Chromium (VI)	=	18540-29-9	16	11	1,100	50	ns
Chrysene	X	218-01-9	ns	ns	ns	ns	0.13
Copper	X	7440-50-8	6+	6+	2.9	2.9	ns
Cyanide	=	57-12-5	22	5.2	1	1	400

Pollutant Name	Carcinogen	Chemical Abstracts Service (CAS) #	Freshwater (µg/L)		Saltwater (µg/L)		Fish Consumption (µg/L) (except Methylmercury *)
			Acute	Chronic	Acute	Chronic	
Demeton	=	8065-48-3	ns	0.1	ns	0.1	ns
Di-n-Butyl Phthalate	=	84-74-2	ns	ns	ns	ns	30
Dichlorobenzenes	=	=	370	ns	660	ns	ns
1,2-Dichlorobenzene	=	95-50-1	ns	ns	ns	ns	3,000
1,3-Dichlorobenzene	=	541-73-1	ns	ns	ns	ns	10
1,4-Dichlorobenzene	=	106-46-7	ns	ns	ns	ns	900
3,3'-Dichlorobenzidine	X	91-94-1	ns	ns	ns	ns	0.15
Dichlorobromomethane	X	75-27-4	ns	ns	ns	ns	27
p,p'-Dichlorodiphenyldichloroethane (DDD)	X	72-54-8	0.03	ns	1.2	ns	0.00012
p,p'-Dichlorodiphenyldichloroethylene (DDE)	X	72-55-9	ns	ns	ns	ns	0.000018
p,p'-Dichlorodiphenyltrichloroethane (DDT)	X	50-29-3	1.1	0.001	0.013	0.001	0.000030
1,2-Dichloroethane	X	107-06-2	39,000	ns	38,000	ns	650
1,1-Dichloroethylene	=	75-35-4	ns	ns	ns	ns	20,000
Trans-1,2-Dichloroethylene	=	156-60-5	ns	ns	ns	ns	4,000
2,4-Dichlorophenol	=	120-83-2	670	ns	ns	ns	60
Chlorophenoxy Herbicide (2,4-D)	=	94-75-7	ns	ns	ns	ns	12,000
Dichloropropanes	=	=	7,700	ns	3,400	ns	ns
1,2-Dichloropropane	X	78-87-5	ns	ns	ns	ns	31
1,3-Dichloropropane	X	542-75-6	2,000	ns	260	ns	12
Dieldrin	X	60-57-1	2.5	0.0019	0.71	0.0019	0.000012
Diethyl Phthalate	=	84-66-2	ns	ns	ns	ns	600
Dimethyl Phthalate	=	131-11-3	ns	ns	ns	ns	2,000
2,4-Dimethylphenol	=	105-67-9	700	ns	ns	ns	3,000
Dinitrophenols	=	25550-58-7	ns	ns	ns	ns	1,000
2,4-Dinitrophenol	=	51-28-5	ns	ns	ns	ns	300
2-Methyl-4,6-Dinitrophenol	=	534-52-1	ns	ns	ns	ns	30
Dinitrotoluenes	X	=	110	ns	200	ns	ns
2,4-Dinitrotoluene	X	121-14-2	ns	ns	ns	ns	1.7
1,2-Diphenylhydrazine	X	122-66-7	ns	ns	ns	ns	0.2
Endosulfan	=	=	0.22	0.056	0.034	0.0087	ns
alpha-Endosulfan	=	959-98-8	ns	ns	ns	ns	30
beta-Endosulfan	=	33213-65-9	ns	ns	ns	ns	40
Endosulfan Sulfate	=	1031-07-8	ns	ns	ns	ns	40
Endrin	=	72-20-8	0.18	0.0023	0.037	0.0023	0.03
Endrin Aldehyde	=	7421-93-4	ns	ns	ns	ns	1
Ethylbenzene	=	100-41-4	11,000	ns	140	ns	130
Bis(2-Ethylhexyl) Phthalate	X	117-81-7	ns	ns	ns	ns	0.37
Fluoranthene	=	206-44-0	1,300	ns	13	ns	20
Benzo(b)fluoranthene	X	205-99-2	ns	ns	ns	ns	0.0013
Benzo(k)fluoranthene	X	207-08-9	ns	ns	ns	ns	0.013
Fluorene	=	86-73-7	ns	ns	ns	ns	70
Guthion	=	86-50-0	ns	0.01	ns	0.01	ns

Pollutant Name	Carcinogen	Chemical Abstracts Service (CAS) #	Freshwater (µg/L)		Saltwater (µg/L)		Fish Consumption (µg/L) (except Methylmercury *)
			Acute	Chronic	Acute	Chronic	
Heptachlor	X	76-44-8	0.52	0.0038	0.053	0.0036	0.0000059
Heptachlor Epoxide	X	1024-57-3	ns	ns	ns	ns	0.000032
Hexachlorobenzene	X	118-74-1	ns	ns	ns	ns	0.000079
Hexachlorobutadiene	X	87-68-3	30	ns	11	ns	0.01
Hexachlorocyclohexane (HCH)-Technical	X	608-73-1	ns	ns	ns	ns	0.010
alpha-Hexachlorocyclohexane (HCH)	X	319-84-6	ns	ns	ns	ns	0.00039
beta-Hexachlorocyclohexane (HCH)	X	319-85-7	ns	ns	ns	ns	0.014
gamma-Hexachlorocyclohexane (HCH) [Lindane]	-	58-89-9	2.0	0.08	0.16	ns	4.4
Hexachlorocyclopentadiene	-	77-47-4	2	ns	2	ns	4
Hexachloroethane	X	67-72-1	330	ns	310	ns	0.1
Isophorone	X	78-59-1	39,000	ns	4,300	ns	1,800
Lead	-	7439-92-1	29+	29+	140	5.6	ns
Malathion	-	121-75-5	ns	0.1	ns	0.1	ns
Mercury	-	7439-97-6	2.4	0.55	2.1	0.025	0.047
Methoxychlor	-	72-43-5	ns	0.03	ns	0.03	0.02
Methyl Bromide	-	74-83-9	ns	ns	ns	ns	10,000
Methylene Chloride	X	75-09-2	ns	ns	ns	ns	1,000
Bis(2-Chloro-1-Methylethyl) Ether	-	108-60-1	ns	ns	ns	ns	4,000
Methylmercury	-	22967-92-6	ns	ns	ns	ns	0.3 mg/kg *
Mirex	-	2385-85-5	ns	0.001	ns	0.001	ns
Naphthalene	-	91-20-3	770	ns	780	ns	ns
Nickel	-	7440-02-0	5+	5+	75	8.3	4,600
Nitrobenzene	-	98-95-3	9,000	ns	2,200	ns	600
Nitrophenols	X	-	77	ns	1,600	ns	ns
Nitrosamines	X	-	1,950	ns	ns	ns	1.24
Nitrosodibutylamine	X	924-16-3	ns	ns	ns	ns	0.22
Nitrosodiethylamine	X	55-18-5	ns	ns	ns	ns	1.24
N-Nitrosodimethylamine	X	62-75-9	ns	ns	ns	ns	3.0
N-Nitrosodiphenylamine	X	86-30-6	ns	ns	ns	ns	6.0
N-Nitrosodi-n-Propylamine	X	621-64-7	ns	ns	ns	ns	0.51
Nitrosopyrrolidine	X	930-55-2	ns	ns	ns	ns	34
Parathion	-	56-38-2	0.065	0.013	ns	ns	ns
Pentachlorobenzene	-	608-93-5	ns	ns	ns	ns	0.1
Pentachloroethane	-	-	2,400	ns	130	ns	ns
Pentachlorophenol	X	87-86-5	20	13	13	ns	0.04
Phenol	-	108-95-2	3,400	ns	170	ns	300,000
Polychlorinated Biphenyls (PCBs)	X	-	2.0	0.014	10	0.03	0.000064
Pyrene	-	129-00-0	ns	ns	ns	ns	30
Benzo(a)pyrene	X	50-32-8	ns	ns	ns	ns	0.00013
Indeno(1,2,3-cd)pyrene	X	193-39-5	ns	ns	ns	ns	0.0013
Selenium	-	7782-49-2	20	5	300	71	4,200
Silver	-	7440-22-4	1+	1+	2.3	ns	ns

Pollutant Name	Carcinogen	Chemical Abstracts Service (CAS) #	Freshwater (µg/L)		Saltwater (µg/L)		Fish Consumption (µg/L) (except Methylmercury *)
			Acute	Chronic	Acute	Chronic	
1,2,4,5-Tetrachlorobenzene	=	95-94-3	ns	ns	ns	ns	0.03
2,3,7,8-TCDD (Dioxin)	X	1746-01-6	0.003	ns	ns	ns	5.1 x 10 ⁻⁹
Tetrachloroethanes	=	=	3,100	ns	ns	ns	ns
1,1,2,2-Tetrachloroethane	X	79-34-5	ns	ns	3,000	ns	3
Tetrachloroethylene	X	127-18-4	1,800	ns	3,400	145	29
2,3,5,6-Tetrachlorophenol	=	=	ns	ns	ns	440	ns
Thallium	=	7440-28-0	470	ns	710	ns	0.47
Toluene	=	108-88-3	5,800	ns	2,100	ns	520
Toxaphene	X	8001-35-2	0.73	0.0002	0.21	0.0002	0.00071
Tributyltin (TBT)	=	=	ns	0.026	ns	0.01	ns
1,2,4-Trichlorobenzene	X	120-82-1	ns	ns	ns	ns	0.076
1,1,1-Trichloroethane	=	71-55-6	6,000	ns	10,400	ns	200,000
1,1,2-Trichloroethane	X	79-00-5	6,000	ns	ns	ns	8.9
Trichloroethylene	X	79-01-6	15,000	ns	700	ns	7
2,4,5-Trichlorophenol	=	95-95-4	ns	ns	ns	ns	600
2,4,6-Trichlorophenol	X	88-06-2	ns	ns	ns	ns	2.8
Chlorophenoxy Herbicide (2,4,5-TP) [Silvex]	=	93-72-1	ns	ns	ns	ns	400
Vinyl Chloride	X	75-01-4	ns	ns	ns	ns	1.6
Zinc	=	7440-66-6	22+	22+	95	86	26,000

* - As recommended by the EPA, the standard for Methylmercury is expressed as a fish (or shellfish) tissue residue water quality criterion rather than a water column-based water quality criterion. (<https://www.epa.gov/sites/production/files/2019-02/documents/wqc-final-methylmercury-factsheet-2001.pdf>)

ns - No standard has been developed.

+ - The value listed is the minimum standard. Depending upon the receiving water calcium carbonate hardness, higher standards may be calculated using the respective formula in the EPA publication Quality Criteria for Water 1986 (EPA 440/5-86-001, Revised May 1, 1986).

Note - Compounds listed in the plural in the "Pollutant Name" column (except for PCBs) represent mixtures of isomers. Values listed refer to the total allowable concentration of any combination of isomers of these compounds.

BACKGROUND

Water Quality Standards (WQS) are the foundation of various water pollution control programs mandated by the Clean Water Act (CWA). The three core components of WQS are designated uses, water quality criteria, and antidegradation requirements. Specifically, designated uses identify the beneficial values of all surface waters, water quality criteria define the necessary conditions for achieving designated uses, and antidegradation requirements provide the regulatory framework for protecting existing uses. The core of WQS regulations has been in place since 1983, and it provides the regulatory basis for assessing, protecting and restoring water bodies in the United States.

In August 2015, the U.S. Environmental Protection Agency (EPA) published revisions to the federal WQS regulations found in the Code of Federal Regulations (CFR) at Title 40, Part 131 (40 CFR §131). Overall, these revisions clarified the requirements in six major areas of WQS¹:

1. Administrator's Determinations
2. Designated Uses
3. Triennial Reviews
4. Antidegradation
5. WQS Variances
6. Provisions Authorizing the Use of Schedules of Compliance

The Hawaii State Department of Health (HDOH) is required to review State WQS and EPA promulgated WQS at least once every three years, and to modify and adopt appropriate State WQS regulations found in Hawaii Administrative Rules (HAR) at Title 11, Chapter 54 (HAR 11-54). As part of the latest triennial review, HDOH solicited input, from the public and various stakeholders, about the State's intent to revise certain areas of WQS regulations. All revisions to State WQS regulations must be subject to the public participation process, and they must be adopted by the State and approved by the EPA.

HDOH provided a 45-day public comment period and held a public hearing, on 15 March 2019, about the State's intent to revise certain WQS regulations. Six distinct commenters, including federal and municipal entities, a commercial business, a non-governmental organization, and interested individuals, submitted about forty comments to HDOH during this period. Some of the comments addressed issues that are beyond the current scope of the proposed WQS revisions, and that may be considered by HDOH in future WQS revisions. A copy of the HDOH responses to these public comments can be viewed online at the HDOH Clean Water Branch (CWB) website² in the "Public Notices and Updates" section. As stated in the responses, HDOH intends to amend HAR 11-54 with authorizing language that is consistent with federal statutes and regulations, and that allows the use of flexibilities including use attainability analyses, WQS variances, and site-specific criteria.

¹ <https://www.epa.gov/sites/production/files/2018-10/documents/wqs-regulatory-revisions-final-rule-factsheet.pdf>

² <https://health.hawaii.gov/cwb/files/2019/06/WQS-Triennial-RTC-062119.pdf>

RATIONALE FOR ADDING REGULATIONS FOR USE ATTAINABILITY ANALYSES

The CWA mandates a comprehensive program whose ultimate objective is to restore and to maintain the chemical, physical, and biological integrity of all waters. The goal of the CWA is to attain water quality that provides for the protection and propagation of fish, shellfish, and wildlife, and for recreation in and on all waters. All designated uses, that reflect the “fishable/swimmable” goal stated in section 101(a)(2) of the CWA, are presumed attainable unless demonstrated otherwise.

The CWA also mandates States to establish and adopt (subject to EPA approval) WQS regulations to protect public health or welfare, and the quality of all surface waters. States must establish WQS by taking into consideration the use and value of water bodies for propagation of fish and wildlife, recreation, and other uses such as public water supply, agriculture, industry, and navigation. These beneficial uses are stated in section 303(c)(2)(A) of the CWA and they are to be protected or achieved through State WQS regulations. Per 40 CFR §131.3(q), the “other uses” are referred to as non-101(a)(2) uses (i.e., uses that are unrelated to the protection and propagation of fish, shellfish, wildlife or recreation in and on the water).

Since the enactment of the CWA, many States, including Hawaii, have established water body classification systems whereby all similar types of water bodies were assigned uniform WQS. Most States do not generally revise assigned uses. However, some State have recognized the uniqueness of different water bodies, and as a result, they have revised WQS of individual water systems, and assigned to them appropriate uses and applicable WQS. HDOH is interested in **adopting regulatory language that allows the specification of appropriate uses and applicable WQS for individual water systems.**

Per 40 CFR §131.3(g), a Use Attainability Analysis (UAA) is defined as a structured scientific assessment of physical, chemical, biological, or economic factors to determine the attainable uses for a water body. Specifically, a UAA can be conducted to demonstrate that attaining a use is not feasible because of one of the six factors listed in 40 CFR §131.10(g):

1. Naturally occurring pollutant concentrations prevent the attainment of the use.
2. Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met.
3. Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place.
4. Dams, diversions, or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use.
5. Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude the attainment of aquatic life protection uses.
6. Controls more stringent than those required by sections 301(b) and 306 of the CWA would result in substantial and widespread economic and social impact.

The latest revisions to the federal WQS regulations clarify when a UAA is and is not required for 101(a)(2) and non-101(a)(2) uses. Per 40 CFR §131.10(j), a UAA is required in the following situations:

- when designating a non-101(a)(2) use.
- when designating a sub-category of a 101(a)(2) use to specify criteria less stringent than previously applicable.
- when removing a 101(a)(2) use.
- when removing a sub-category of a 101(a)(2) use.

Per 40 CFR §131.10(k), a UAA is not required in the following situations:

- when designating a 101(a)(2) use.
- when designating a sub-category of a 101(a)(2) use to specify criteria as stringent as previously applicable.
- when removing a non-101(a)(2) use.
- when revising a non-101(a)(2) use.

Per 40 CFR §131.10(h), it is important to stress that a State may not remove a designated use if it is an existing one or an attainable one. The CWA provides various tools, including limitations in NPDES permits for point sources and best management practices for non-point sources, to control or to reduce discharges of pollutants, and hence, to attain water quality goals.

The adoption of a use based on a UAA is a WQS revision that is subject to both the public participation and EPA approval processes. A State must provide both public notice and public hearing for a UAA. If a State adopts a new or revised WQS based on a UAA then it shall also adopt a Highest Attainable Use (HAU). Per 40 CFR §131.3(m), a HAU is defined as a modified 101(a)(2) use that can be attained based on a UAA, and any other information or analyses. There are no requirements for a HAU if it can be demonstrated that a relevant 101(a)(2) use, and sub-categories of this use, are not attainable. Although such situations are rare, it is conceivable for a State to completely remove a 101(a)(2) use and to concurrently adopt another designated use.

Since the adoption of a use less than a HAU could lower WQS and also affect public health, a scientific assessment (i.e., a UAA) of factors affecting the attainment of a use must include analyses of both the current and prospective conditions of a water body. Specifically, a UAA must not only determine a use that is attainable right now but also one that is deemed attainable in the future (i.e., HAU) pending the implementation of effluent limits and best management practices. To ensure the determination of a HAU, HDOH intends **to require that a UAA or a scientifically defensible analysis be conducted to demonstrate the non-attainment of a use.**

The following additional section is proposed for HAR 11-54:

§11-54-9.1.5 Use Attainability Analysis. (a)

As used in this section:

"Highest attainable use" or "HAU" means the modified use that is both closest to the uses specified in section 303(c)(2)(A) of the Act and attainable based on a UAA or other scientifically defensible analyses that were used to evaluate attainability.

"Use attainability analysis" or "UAA" means a structured scientific assessment of the factors affecting the attainment of the use, which may include factors as described in 40 C.F.R. §131.10(g).

(b) A UAA or other scientifically defensible analyses may be conducted to demonstrate the non-attainment of a use, as described in this chapter.

(c) A UAA shall not be inconsistent with federal regulations on protecting and designating uses as described in 40 C.F.R. §131.10.

(d) A HAU shall be adopted whenever a use, as described in this chapter, is demonstrated to be non-attainable based on a UAA or other scientifically defensible analyses.

(e) The decision to adopt the results of a UAA or other scientifically defensible analyses, demonstrating the non-attainment of a use, shall be subject to public participation requirements. The department shall hold one or more public hearings when adopting the results of a UAA or other scientifically defensible analyses in accordance with applicable provisions of chapter 91, HRS, and 40 C.F.R. §25. The results of a UAA or other scientifically defensible analyses, and supporting information shall be made available to the public prior to the hearing.

(f) The results of a UAA or other scientifically defensible analyses, demonstrating the non-attainment of a use, shall not be effective until they are adopted by the department and approved by the EPA.

[Eff and comp _____] (Auth: HRS §§342D-4, 342D-5) (Imp: §§342D-4, 342D-5; 40 C.F.R. §§25.5, 131.10; 33 U.S.C. §1313(303))

RATIONALE FOR WQS VARIANCES

Per Hawaii Revised Statutes (HRS) at Title 19, Health, Chapter 342D, Water Pollution, Section 7, Variances (HRS 342D-7), HDOH has the authority to grant variances that allow for the discharge of water pollutants in excess of applicable standards when there are no substantial risks to human health or safety. Specifically, HRS 342D-7 allows for a variance when it can be shown that 1) full compliance with the standards would produce serious hardship without equal or greater benefits to the public, and 2) practicable means for the adequate prevention, control, or abatement of the water pollution involved are not available. The length of a variance is a period not exceeding five years, and only until the necessary means for prevention, control, or abatement become practicable. As described, the statutes provide HDOH the authority to grant water quality variances (i.e., WQS variances), and they leave regulatory requirements for the protection of water quality to the discretion of HDOH. Therefore, HDOH now intends **to adopt regulations for administering WQS variances, only applicable to dischargers and not to water bodies, in order to promote the incremental attainment of water quality goals, and to allow, as necessary, the temporary and conditional downgrading of water quality criteria that are applicable to specific dischargers.**

In August 2015, the EPA promulgated new WQS regulations at 40 CFR §131 to clarify the use of WQS variances when a designated use is not attainable in the near-term but is deemed attainable in the future. Specifically, the EPA amended federal WQS regulations to allow the temporary and conditional downgrading of the WQS applicable to a segment of a water body, an entire water body, a permittee, or a group of permittees. The EPA has stressed the utility of multiple permittee WQS variances when addressing situations where various dischargers (i.e., a group of permittees) are all experiencing similar challenges in meeting the limit for a specific pollutant, regardless of whether they are located on the same water body. Depending on the parameters being considered, a State could streamline its WQS variance process by adopting a single rule that applies to all affected permittees. As a pre-requisite to the adoption of multiple permittee WQS variances, a State can list group characteristics and establish eligibility requirements for each permittee in the group. Group characteristics may include the type of permittee (public or private), the size of a permittee (small or large), the source of revenue (tax or service), or the type of effluent (sanitary or industrial). Eligibility requirements may include same designated use and applicable criterion, same water body, or similar treatment technology.

A temporary and modified WQS becomes applicable through the adoption of a “variance” to WQS³, and it is subject to both the public participation and EPA approval processes. Per 40 CFR §131.3(o), a WQS variance is defined to be a time-limited designated use and criterion, for specific pollutant(s) or water quality parameter(s), that reflect the Highest Attainable Condition (HAC) throughout the term of this WQS variance. This HAC must not lower the water quality that is currently attained. A State has the flexibility to express the HAC as a numeric pollutant concentration, a numeric effluent condition, or any other quantitative expression of pollutant reduction that is achievable with the installation of pollutant control technologies, and if applicable, the adoption and implementation of a Pollutant Minimization Program (PMP). Per 40

³ <https://www.govinfo.gov/content/pkg/FR-2013-09-04/pdf/2013-21140.pdf>

CFR §131.3(p), a PMP is defined to be a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loadings. Specifically, a PMP is a plan that is tailored to address the circumstances of a discharger, and it includes activities ranging from control to offset strategies. The aim of these strategies is to reduce the loadings of an applicable water pollutant from upstream and other sources.

Per 40 CFR §131.14(b)(1)(iv), the term of a WQS variance must only be as long as necessary to achieve the HAC. Per 40 CFR §131.14(b)(1)(v), if a WQS variance has a term greater than five years then a re-evaluation, using all existing and readily available information, of the HAC must occur no less frequently than every five years. A State has the flexibility to determine how it intends to obtain public input on the re-evaluation of a HAC, and it must submit the results of this re-evaluation to the EPA within thirty days of its completion.

Per 40 CFR §131.14(b)(2)(i), the documents required to demonstrate the need for a WQS variance depend on the type of use: either 101(a)(2) or non-101(a)(2). For a 101(a)(2) use, a State must demonstrate that attaining the designated use and criterion, for the term of a WQS variance, is not feasible because of one of the six factors listed in 40 CFR §131.10(g). Besides these six factors, actions, which are necessary to facilitate lake, wetland, or stream restoration, through dam removal or other significant reconfiguration activities can also be used as a factor to preclude attainment of the designated use and criterion for the term of a WQS variance. For a non-101(a)(2) use, a State must submit documentation justifying how its consideration of the use and value of a water body supports the WQS variance and term.

Per 40 CFR §131.14(a)(4), a State may not adopt a WQS variance if the designated use and criterion, that are addressed, can be achieved by implementing technology-based effluent limits as required in sections 301(b) and 306 of the Act. Once adopted by a State and approved by the EPA, a State may use a WQS variance, including the applicable HAC, for the purpose of developing and incorporating effluent limitations in NDPES permits. For the term of a WQS variance, a State must retain, in its standards, the underlying designated use and original specified criterion that are addressed. All other standards, which are not specifically addressed by a WQS variance, remain applicable.

As described above, the requirements for a WQS variance can be broken into distinct areas. They are:

- Non-attainment
- Applicability
- Interim condition and HAC
- Term
- Re-evaluation
- Renewal

For each area, there are differences between federal regulations and Hawaii statutes for administering WQS variances. HDOH intends **to administer requirements like those specified in the federal regulations at 40 CFR §131.14, and to include, in HAR 11-54, the following three requirements:**

1. **Demonstration of non-attainment based on one of seven factors**
2. **Determination of a HAC**
3. **Re-evaluation of interim conditions**

First, Hawaii statutes only allow for a discharge of water pollutant in excess of applicable standards (i.e., a WQS variance) when compliance with the standards would produce serious hardship without equal or greater benefits to the public. For a 101(a)(2) use, the federal regulations allow the adoption of a WQS variance when the attainment of a designated use and criterion is not feasible because of one of the six factors, listed in 40 CFR §131.10(g), or the restoration-related factor. For the 40 CFR §131.10(g)(6) factor, there is guidance, especially from the EPA, on the methodologies for estimating the financial cost of pollution controls, and for demonstrating the economic burden of these controls. In order to conform with federal regulations and in a manner similar to its proposed process for conducting UAAs, HDOH intends **to require for all uses, including both 101(a)(2) and non-101(a)(2) uses, an assessment of one of the 40 CFR §131.10(g) factors or the utilization of the restoration-related factor to demonstrate the non-attainment of a criterion throughout the term of a WQS variance.**

Second, Hawaii statutes only allow WQS variances for dischargers while federal regulations allow WQS variances for dischargers, as well as for water bodies. For a WQS variance applicable to a discharger or dischargers, federal regulations require a State to specify the highest attainable interim condition (i.e., the HAC) as a quantifiable expression or a narrative requirement. Hawaii statutes do not currently have requirements for a highest attainable interim condition throughout the term of a WQS variance. HDOH intends **to require the specification of a HAC, as either the highest attainable criterion or the interim effluent condition reflecting the greatest pollutant reduction achievable, which is applicable to a discharger or dischargers for the term of a WQS variance.** In order to monitor the interim condition, each discharger shall be required to sample effluent and/or receiving waters, and to report these sampling results to HDOH.

Third, Hawaii statutes only allow the issuance of a WQS variance with a period not exceeding five years, or until the necessary means for the adequate prevention, control, or abatement of the water pollution involved will become practicable. These statutes are different from federal regulations that allow for a term longer than five years, or as long as necessary to achieve the HAC with the implementation of pollutant control activities, and, if applicable, other activities identified through a PMP. For a WQS variance with a term greater than five years, federal regulations also require a re-evaluation of the HAC to occur no less frequently than every five years. A WQS variance granted by HDOH has a maximum period of five years; however, the statutes allow for the renewal of a WQS variance for periods not exceeding five years provided that all requirements of the immediately preceding WQS variance are met. **For situations when the term required to achieve a HAC exceeds a period of five years, HDOH intends to allow the issuance of a WQS variance administered by a series of NPDES permits, with each NPDES permit having a duration not exceeding five years. HDOH also intends to require the re-evaluation of the HAC, at a frequency no less frequently than every five years, with the aim of determining the water quality progress achieved.**

The following additional section is proposed for HAR 11-54:

§11-54-9.2 Water Quality Standards Variance.

(a) As used in this section:

"Permit" means an authorization, license, or equivalent control document issued by the department to implement the requirements specified in chapter 11-55. Permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit.

"Pollutant Minimization Program" or "PMP" means a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loadings.

"WQS variance" or "variance" means a time-limited criterion, for a specific pollutant or a water quality parameter, which reflects the highest attainable condition (HAC) during the term of the variance.

(b) A time-limited change to a criterion, as described in this chapter, shall be consistent with the provisions of section 342D-7, HRS. The following requirements shall apply when considering the application for a variance:

(1) A variance may be considered if a criterion can be demonstrated as not feasibly attainable throughout the term of the variance. Complete assessments, detailed descriptions, supporting analyses, water quality data, and any additional information requested by the department shall be submitted to demonstrate that the attainment of a criterion is not feasible throughout the term based on any of the factors listed in 40 C.F.R. §131.10(g);

(2) A variance may be considered if a criterion cannot be attained while restoration or other significant

reconfiguration activities are being implemented; and

- (3) A variance shall not be considered if a criterion addressed by the variance can be achieved by implementing technology-based effluent limits required under chapter 11-55.

(c) A variance shall identify a discharger or dischargers subject to the variance. A variance shall also identify the criterion and the water body to which the variance applies. All other criteria not specifically addressed by a variance shall remain applicable.

(d) A highest attainable condition (HAC) shall be quantifiably specified as either the highest attainable interim condition or the interim effluent condition that reflects the greatest pollutant reduction achievable throughout the term of a variance. The following requirements shall apply when specifying a HAC:

- (1) A HAC shall not result in any lowering of the currently attained ambient water quality unless restoration activities are necessary, as described in section 11-54-9.2(b)(2);
- (2) A HAC shall take into consideration the installation of pollutant control technologies and, if applicable, the adoption and implementation of a PMP; and
- (3) If the length of time required to achieve a HAC exceeds five years, the HAC of each succeeding permit, in a series of permits, shall be at least as stringent as the HAC of the preceding permit.

(e) The term of a variance shall be only as long as necessary to achieve the HAC; provided no permit shall have a term exceeding five years. The following requirements shall apply when specifying the term of a variance:

- (1) A term may start from the date EPA approves the variance or from a date specified by the department; and
- (2) If the length of time required to achieve a HAC exceeds five years, the department may consider issuing a series of permits; provided no permit, in a series of permits, shall have a term exceeding five years.

(f) The decision to approve the application for a variance shall be subject to public participation requirements. The department shall hold one or more public hearings when approving the application for a variance in accordance with applicable provisions of chapter 91, HRS, and 40 C.F.R. §25. The application for a variance and supporting information shall be made available to the public prior to the hearing.

(g) A variance shall not be effective until it is adopted by the department and approved by the EPA.

(h) Re-evaluation of a variance or a permit in a series of permits shall be conducted no less frequently than every five years, and at least one hundred eighty days prior to the end of such a variance or such a permit to review the HAC using all existing and readily available information. The following requirements shall apply when conducting a re-evaluation:

- (1) A re-evaluation shall determine the water quality progress achieved. Available documents, supporting analyses, water quality data, and any additional information requested by the department shall be submitted to determine the water quality progress achieved;
- (2) The results of a re-evaluation may modify the HAC of a variance or the HAC(s) of succeeding permits in a series of permits;

- (3) The department shall obtain, in accordance with chapter 91, HRS, public comment on a re-evaluation;
- (4) The department shall submit, in accordance with 40 C.F.R. §131.14(b) (1) (v), the results of a re-evaluation to the EPA; and
- (5) If the department does not conduct a re-evaluation as specified or does not submit the results of a re-evaluation as required, then a variance shall no longer be applicable.

(i) All specified conditions of an expiring variance must have been met in order for a discharger to request a renewal. The following requirements shall apply when requesting a renewal of a variance:

- (1) A renewal shall provide for a HAC at least as stringent as the expiring HAC; and
- (2) A renewal shall take into consideration the installation of pollutant control technologies and, if applicable, the adoption and implementation of a PMP. [Eff and comp _____] (Auth: HRS §§342D-4, 342D-5, 342D-7, Ch. 342E) (Imp: §§342D-4, 342D-5, 342D-6, 342D-7, Ch. 342E; 40 §§131.10, 131.14)

RATIONALE FOR SITE-SPECIFIC AQUATIC LIFE CRITERIA

The CWA mandates the development and implementation of WQS that may include numerical or narrative criteria. Numerical criteria for specific chemicals, especially toxic pollutants, are crucial for the protection against potential impacts to human health and aquatic ecosystems. For aquatic life numerical criteria, the EPA uses the results from tests conducted in controlled laboratory environments. Specifically, data about acute (i.e., short-term) and chronic (i.e., long-term) toxicities are determined for various freshwater and saltwater aquatic species. These toxicology tests are conducted on the premise that data for the species selected to derive the national criteria (i.e., those recommended by the EPA) are representative of the sensitivities of untested species.

There are inherent differences in species between laboratory environments, where aquatic life WQS criteria are derived, and aquatic ecosystems, where these criteria are implemented. Moreover, there are actual differences in water characteristics that can affect the toxicity of pollutants. Per 40 CFR §131.11(b)(1)(ii), a State has the flexibility to adopt, based on scientifically defensible rationale and methods, numeric WQS that are modified to reflect site-specific conditions. Overall, a site-specific (i.e., “modified”) WQS criterion must be as stringent as necessary to protect the applicable designated use.

A site-specific aquatic life WQS criterion is derived by considering the physical, chemical, and biological conditions that characterize a water body. Typically, chemical conditions include water characteristics such as hardness and temperature, while biological conditions include species compositions for fishes and plants. In order to address the differences in physical, chemical and biological conditions between laboratory environments and aquatic ecosystems, a State may adopt site-specific criteria under one or more of the following situations:

1. Species sensitivity. The main species present at a specific water body are either more or less sensitive than those utilized in the national criteria dataset. For example, the national criteria dataset contains data for various aquatic species that are very sensitive to a specific toxic pollutant. However, if none of these species are found at a specific water body where traces of this toxic pollutant have been detected in water samples, then the applicable criteria may be modified.
2. Toxicity variation. The toxicity of a water pollutant is significantly altered by the physico-chemical characteristics of a specific water body. In freshwater environments, the acute and chronic toxicity criteria for metals decrease as hardness increases. For copper, the EPA recommends using the freshwater Biotic Ligand Model (BLM) to derive the acute and chronic toxicity criteria in fresh waters.⁴ In July 2016, the EPA issued a peer-reviewed draft to update its recommendation for using the saltwater BLM to estimate the toxicities of copper in marine and estuarine waters.⁵ The BLM requires the input of physical and chemical parameters that characterize a specific water body.
3. Natural background. The aquatic life criteria, recommended by the EPA, may require adjustments to reflect the natural background conditions of a specific water body. By

⁴ <https://www.epa.gov/sites/production/files/2019-02/documents/al-freshwater-copper-2007-revision.pdf>

⁵ <https://www.epa.gov/sites/production/files/2016-08/documents/copper-estuarine-marine-draft-factsheet.pdf>

definition, natural background is a background concentration that is only due to non-anthropogenic (i.e., non-manmade) sources. The EPA has recognized that certain pollutants may naturally occur in concentrations greater than the applicable criteria.⁶ Accordingly, the EPA has provided States with guidance on setting certain site-specific aquatic life criteria, for a specific water body, equal to background concentrations.

As described in the above situations, the EPA has developed scientific procedures and frameworks to derive site-specific aquatic life criteria. Depending on the applicable circumstances, the following processes can be used:

- A. Recalculation Procedure. This process takes into account the differences in sensitivities of the aquatic species tested for the national criteria dataset and those found at a specific site. For a specific site, the basic concept is to retain tested species which are closely related to locally occurring species, and if possible, to replace tested species with other common species which are better substitutes. Special care should be exercised when removing any species from the national criteria dataset since some tested species are needed to represent untested species.
- B. Water-Effect Ratio (WER) and Streamlined WER Procedures for metals. These processes take into account the differences in toxicity of a metal in site-specific water and in laboratory dilution water. By definition, the WER is the ratio of the toxicity of a metal in site water to the toxicity of the same metal in laboratory water. This ratio is, by default, assumed to be equal to one (i.e., unity). When using the WER procedure, collected samples and simulated samples must be representative of the actual conditions at a specific site to ensure the validity of the WER-derived toxicity criterion.
- C. Biotic Ligand Model (BLM) for copper and potentially other metals. This process takes into account water parameters that directly influence the toxicity of copper at a specific site. These parameters may include temperature, pH, alkalinity, salinity, or concentrations of dissolved organic carbon. A very extensive dataset of input parameters is therefore required to estimate the water toxicity of copper. It is possible to use default values, which are developed by the EPA, in place of missing water input parameters.
- D. Natural Conditions Framework for temperature, pH, and dissolved oxygen criteria. This process aims to standardize the methodologies, which are adopted by States, to characterize the natural conditions used in developing the site-specific aquatic life criteria for temperature, pH, and dissolved oxygen. Since manmade disturbances may be widespread or pervasive at a specific site, the task of accurately characterizing natural conditions is inherently tied to the challenge of successfully identifying anthropogenic conditions.

Properly derived site-specific aquatic life criteria protect the designated uses of a specific water body. The adoption of site-specific procedures (i.e., equations to derive site-specific criteria for general or narrow applicability) is a revision to WQS regulations, and therefore, it is subject to the public participation and EPA approval processes. HDOH intends **to introduce authorizing**

⁶ <https://www.epa.gov/sites/production/files/2014-08/documents/naturalbackground-memo.pdf>

language that references scientific procedures, promulgated by the EPA, for the proper derivation of site-specific aquatic life criteria.

The following additional section is proposed for HAR 11-54:

§11-54-9.3 Site-Specific Aquatic Life Criterion.

(a) As used in this section:

"Criterion" means an element of WQS, as described in this chapter, that is expressed as a constituent concentration, a numeric level, or a narrative statement, and that represents a quality of water supporting a particular use. When criteria are met, water quality shall generally protect the designated use.

"EPA PB85-227049" means "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and their Uses," December 2010 unless otherwise noted.

"EPA 823-B-17-001" means "Water Quality Standards Handbook," Chapter 3, Water Quality Criteria, Section 3.5.2, Site-Specific Aquatic Life Water Quality Criteria, November 2017 unless otherwise noted.

(b) A site-specific aquatic life criterion shall be consistent with federal regulations on adopting criteria that protect designated uses as described in 40 C.F.R. §131.11.

(c) A site-specific aquatic life criterion may be derived to address species sensitivity, toxicity variation, natural background, or any combination of these situations.

(d) A site-specific aquatic life criterion may be based on scientific guidelines described in EPA PB85-227049.

(e) A site-specific aquatic life criterion may be derived with scientific processes described in EPA 823-B-17-001 or other scientifically defensible methods.

(f) The decision to adopt a site-specific aquatic life criterion shall be based on a scientific demonstration that the derived criterion protects the designated use, as described in this chapter.

(g) The decision to adopt a site-specific aquatic life criterion shall be subject to public participation requirements. The department shall hold one or more public hearings when adopting a site-specific aquatic life criterion in accordance with applicable provisions of chapter 91, HRS, and 40 C.F.R. §25. The site-specific aquatic life criterion and supporting information shall be made available to the public prior to the hearing.

(h) A site-specific aquatic life criterion shall not be effective until it is adopted by the department and approved by the EPA. [Eff and comp] (Auth: HRS §187A-1, §§342D-4, 342D-5) (Imp: §§342D-4, 342D-5; 40 C.F.R. §§25.5, 131.11)

SUMMARY

The CWA mandates a comprehensive program whose ultimate objective is to restore and to maintain the chemical, physical, and biological integrity of all waters. This goal is achieved through the development and implementation of WQS. The EPA has provided States with regulatory mechanisms to modify WQS on a site-specific basis. These flexible mechanisms allow States to designate uses that better reflect actual conditions and to take measures that incrementally improve water quality.

MODIFICATION RELATED TO SITE-SPECIFIC FLEXIBILITIES

HDOH intends to amend HAR 11-54 with authorizing language that allows the use of other regulatory mechanisms, including UAAs, WQS variances, and site-specific aquatic life criteria, to address site-specific conditions. In order to achieve this, HDOH intends to remove the requirements for “Water Quality Certification” from the existing sections HAR 11-54-9.1, and HAR 11-54-9.1.01 to HAR 11-54-9.1.09, and to include them in the new chapter 53, titled “Section 401 Water Quality Certification,” of the Hawaii Administrative Rules (HAR 11-53). HDOH also intends to transfer the discharge requirements for zones of mixing and intake credits, which are respectively specified in sections HAR 11-54-9 and HAR 11-54-12, to the existing chapter 55, titled “Water Pollution Control,” of the Hawaii Administrative Rules (HAR 11-55). The following modifications are proposed for HAR 11-54:

1. Repeal existing section 9.1 for “Water Quality Certification.” As mentioned above, the water quality certification requirements will be moved to HAR 11-53.
2. Repeal existing sections 9.1.01 to 9.1.09, all related to “Water Quality Certification.” As mentioned above, the water quality certification requirements will be moved to HAR 11-53.
3. Repeal existing section 9 for “Zones Of Mixing.” As mentioned above, the mixing zone requirements will be transferred to HAR 11-55.
4. Repeal existing section 12 for “Intake Credits.” As mentioned above, the intake credit requirements will be transferred to HAR 11-55.
5. Add new section 9.0.5 for “Site-Specific Flexibilities” and include definitions.
6. Add new sections 9.1.5, 9.2, and 9.3 for “Use Attainability Analysis,” “Water Quality Standards Variance,” and “Site-Specific Criterion,” respectively.
7. Renumber existing section 11 as new section 9.4 for “Schedule Of Compliance.”
8. Add reserved sections 11 and 12.0.5.

1. Repeal existing section HAR 11-54-9.1
2. Repeal existing sections HAR 11-54-9.1.01 to HAR 11-54-9.1.09

~~§11-54-9.1 Water quality certification. As used in sections 11-54-9.1.01 to 11-54-9.1.10:~~

~~"33 CFR" means the Code of Federal Regulations, Title 33, Corps of Engineers, Department of the Army, Department of Defense, revised as of July 1, 2011, unless otherwise specified.~~

~~"40 CFR" means the Code of Federal Regulations, Title 40, Protection of the Environment, revised as of July 1, 2011, unless otherwise specified.~~

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

~~"Agent" means a duly authorized representative of the owner as defined in section 11-55-7(b).~~

~~"Discharge" means the same thing as defined in Section 502(16) of the Act.~~

~~"Discharge of a pollutant" and "discharge of pollutants" means the same thing as defined in section 502(12) of the Act.~~

~~"Duly authorized representative" means a person or position as defined in 40 CFR section 122.22(b).~~

~~"License or permit" means any permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission granted by an agency of the federal government to conduct any activity which may result in any discharge into navigable waters.~~

~~"Licensing or permitting agency" means any agency of the federal government to which a federal application is made for a "license or permit."~~

~~"Navigable waters" means the waters of the United States, including the territorial seas.~~

~~"Owner" means the person who owns any "facility"~~

or "activity" which results in any discharge into navigable waters.

"Pollutant" means the same thing as defined in section 502(6) of the Act.

"Territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

"Water quality certification" or "certification" means a statement which asserts that a proposed discharge resulting from an activity will not violate applicable water quality standards and the applicable provisions of sections 301, 302, 303, 306 and 307 of the Act. A water quality certification is required by section 401 of the Act from any applicant for a federal license or permit to conduct any activity, including the construction or operation of facilities which may result in any discharge into navigable waters.

"Water quality certification application" means any forms provided by the director for use in obtaining the water quality certification.

"Water quality standards" means standards established pursuant to section 10(c) of the Act, and state-adopted water quality standards for navigable waters which are not interstate waters.

"Waters of the United States" or "waters of the U.S." means:

- (1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (2) All interstate waters, including interstate "wetlands";
- (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows,

~~playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:~~

- ~~(A) Which are or could be used by interstate or foreign travelers for recreational or other purposes;~~
 - ~~(B) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or~~
 - ~~(C) Which are used or could be used for industrial purposes by industries in interstate commerce;~~
 - ~~(4) All impoundments of waters otherwise defined as waters of the United States under this definition;~~
 - ~~(5) Tributaries of waters identified in paragraphs (1) through (4) of this definition;~~
 - ~~(6) The territorial sea; and~~
 - ~~(7) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6) of this definition.] [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17 /00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; R]~~
- (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

~~[§11-54-9.1.01 Water quality certification; contents of certification. (a) A certification made by the department shall include:~~

- ~~(1) The legal name(s), street address, contact person's name and position title, and telephone and fax numbers of the owner and, if applicable, its duly authorized representative;~~

- ~~(2) A statement that the director has either:~~
- ~~(A) Examined the application made by the owner or its duly authorized representative to the licensing or permitting agency (specifically identifying the number or code affixed to the application) and bases its certification upon an evaluation of the information contained in the application which is relevant to water quality considerations; or~~
 - ~~(B) Examined other information provided by the owner or its duly authorized representative sufficient to permit the director to make the statement described in paragraph (a) (3);~~
- ~~(3) A statement that there is reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;~~
- ~~(4) A statement of any conditions which the director considers necessary or desirable with respect to the discharge resulting from an activity; and~~
- ~~(5) Other information the director determines to be appropriate.~~

~~(b) The director shall issue the certification after evaluating the complete water quality certification application, comments received during the public comment period, any record of a public hearing held pursuant to section 11-54-09.1.03, other information and data the director considers relevant, and after the director determines that there is reasonable assurance that applicable water quality standards will not be violated and the best practicable methods of control will be applied to a discharge resulting from an activity including the construction and operation of a facility~~

~~(c) The department shall process applications for permits and water quality certifications for the reconstruction, restoration, repair, or reuse of any~~

~~Hawaiian fishpond that meets the requirements of chapter 183B, HRS, before all other permits and certifications. The director shall render a decision on the completeness of any application for the permit or water quality certification within thirty days of receipt. Applications for fishpond reconstruction, restoration, or repair that are incomplete shall be denied without prejudice. The director shall render a decision on any complete application for a permit or water quality certification for any fishpond within one hundred fifty days.~~

~~(d) The director, at the director's discretion or after consideration of information presented by the owner or its duly authorized representative, the licensing or permitting agency, other government agencies, or interested parties, may modify or revoke an issued certification or waiver.~~ [Eff and comp 4/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; R] (Auth: HRS §§342D-4, 342D-5, 342D6.5, 342D-53) (Imp: HRS §§342D-342D-6, 342D6.5, 342D-5)

~~[§11-54-9.1.02 Water quality certification; contents of water quality certification application. (a) The owner or its duly authorized representative shall submit a complete water quality certification application for the discharge resulting from an activity. The water quality certification application shall include at a minimum:~~

- ~~(1) The legal name(s), street address, contact person's name and position title, and telephone and fax numbers of the owner and, if applicable, its duly authorized representative;~~
- ~~(2) The company or organization name, contact person's name and position title, and~~

- telephone and fax numbers of the emergency contact(s);
- (3) The name, street address, contact person's name and position title, telephone and fax numbers, island, and tax map key number(s) for the project;
- (4) Associated existing or pending federal and environmental permits and corresponding file numbers;
- (5) The name(s) of the navigable water where the discharge occurs, the latitude and longitude of the discharge point(s), the classification of the navigable water, and the associated existing recreational uses;
- (6) The scope of work or a description of the overall project including: the construction or operation of facilities which may result in discharges into navigable waters; the proposed discharge resulting from an activity; and specific biological, chemical, physical, thermal, and other pertinent characteristics of the discharge resulting from an activity;
- (7) If applicable, a description of the function and operation of equipment or facilities to control discharges, including specification of the methods of control to be used;
- (8) The estimated dates on which the activity will begin and end and the date or dates on which the discharge(s) will take place;
- (9) If applicable, a description of the methods and means being used or proposed to monitor the quality and characteristics of the discharge and the operation of equipment or facilities employed in the control of the proposed discharges and a map showing the location(s) of the monitoring point(s);
- (10) The statement of assurance, statement of choice for publication, and if applicable, an authorization statement, with the owner's original signature. Any signatures required

~~for the water quality certification application shall be provided as described in 40 CFR Section 122.22(a);~~

~~(11) Supporting documentation (e.g. maps, plans, specifications, copies of associated federal permits or licenses, federal applications, Environmental Assessments or Environmental Impact Statements, as applicable, etc.);~~

~~(12) Additional information regarding any irregularities or unique features of the project; and~~

~~(13) Additional information as required by the director.~~

~~(b) The director shall notify the owner or its duly authorized representative in writing if a water quality certification application is incomplete or otherwise deficient. A description of the additional information necessary to complete the water quality certification application or to correct the deficiency shall be included in the written notice. If a water quality certification application is incomplete or otherwise deficient, processing of the water quality certification application shall not be completed until the time the owner or its duly authorized representative has supplied the information or otherwise corrected the deficiency. Failure to provide additional information or to correct a deficiency shall be sufficient grounds for denial of the certification or termination of the processing of the water quality certification application.~~

~~(c) The director shall notify the owner or its duly authorized representative in writing when a water quality certification application is considered complete. The director shall act on a request for certification within a period which shall not exceed one year from the date when the water quality certification application was considered complete.~~

~~(d) The owner or its duly authorized representative shall notify the department in writing of changes which may affect the water quality certification application and certification process.~~

~~(c) Each owner who submits a water quality certification application shall pay a filing fee of \$1,000. This filing fee shall be submitted with the water quality certification application and shall not be refunded nor applied to any subsequent water quality certification application following final action of denial or termination of the processing of the water quality certification application.~~

~~(1) Fees shall be made payable to the "State of Hawaii" in the form of a cashier's check or money order;~~

~~(2) Water quality certification application(s) submitted by the U.S. Army Corps of Engineers, Honolulu Engineer District, for the purpose of adopting regional or nationwide general permit(s), in accordance with 33 CFR Parts 325 and 330, respectively, shall be exempt from the payment of filing fees.~~

~~(f) If a project or activity requiring a federal permit or license involves or may involve the discharge of a pollutant or pollutants and is initiated or completed without a water quality certification, the director may process an after-the-fact water quality certification application as follows: after-the-fact water quality certification application.~~

~~may be accepted and processed only for the limited purpose of deeming projects or activities requiring federal permits or licenses to be properly permitted or licensed forward of the date of the water quality certification or waiver. No water quality certification or waiver shall be issued which allows the retroactive permitting or licensing of projects or activities before the date the water quality certification or waiver was issued. A water quality certification or waiver may be issued if the following criteria are met:~~

~~(1) The project or activity is not the subject of an ongoing enforcement action by the federal, state or county government;~~

~~(2) Any adverse impacts upon water quality resulting from the project or activity have been mitigated to the maximum extent feasible; and~~

~~(3) The project or activity will not cause or contribute to any lack of attainment of water quality standards set forth in this chapter.~~

~~(g) Written notification by the department under subsection (b) is complete upon mailing or sending a facsimile transmission of the document or actual receipt of the document by the owner or its duly authorized representative.]~~

[Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; R] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

~~[§11-54-9.1.03 Water quality certification; notice and hearing. The director may provide the opportunity for public comment or hearing(s) or both to consider the issuance of a water quality certification. A notice shall be published in accordance with chapters 91 and 92, HRS. The director shall inform the owner or its duly authorized representative in writing that the action has been taken. All publication and mailing costs associated with the public notification of the director's tentative determinations with respect to the water quality certification application shall be paid by the owner to the appropriate newspaper agency or agencies determined by the director. Failure to provide and pay for public notification, as considered appropriate by the director, may result in a delay in the certification process.]~~ [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp

10/21/12; comp 12/6/13; comp 11/15/14; R
] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS
 §§342D-4, 342D-5, 342D-6)

~~[§11-54-9.1.04 Water quality certification; waiver. (a) If the director fails or refuses to act on a request for certification within one year after receipt of a complete water quality certification application, then the certification requirements of section 11-54-9.1 shall be waived with respect to the federal application.~~

~~(b) If the discharge resulting from an activity receives a determination to be covered under a nationwide permit authorization, thereby fulfilling specific conditions of that permit pursuant to 33 CFR sections 330.4, 330.5, and 330.6, then the director will determine, on a case-by-case basis, which projects are considered minor and non-controversial. Certification requirements of section 11-54-9.1 shall be waived for minor and non-controversial activities within one year of receipt of a complete water quality certification application.]~~

[Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/2 9/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; R
] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

~~[§11-54-9.1.05 Water quality certification; adoption of new water quality standards. (a) The licensee or permittee shall comply with any new water quality standards as adopted by the department.~~

~~(b) In any case where:~~

~~(1) A certification or waiver was issued without applicable water quality standards;~~

~~(2) Water quality standards applicable to the waters into which the activity may discharge~~

are subsequently established before the activity is completed; or

(3) The director determines that the activity is violating new water quality standards;

The director shall then notify the licensee or permittee and the licensing or permitting agency of the violation.

(c) If the licensee or permittee fails within one hundred eighty days of the date of the notice to cease the violation, the director shall notify the licensing or permitting agency that the licensee or permittee has failed to comply with the standards. The director, at the director's discretion, shall also revoke the certification or waiver or recommend suspension of the applicable license or permit pursuant to section 401 of the Act.

(d) The director shall notify the licensing or permitting agency that, in the director's opinion, there is reasonable assurance that applicable water quality standards will not be violated because the licensee or permittee took appropriate action to comply with the applicable water quality standards after their license or permit was suspended pursuant to subsection (c).

(e) This section shall not preclude the department from taking other enforcement action authorized by law.] [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06 / 15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14;

R] (Auth: HRS §§342D-4, 342D-5, 342D-53s) (Imp: HRS §§342D-4, 342D-5, 342D-6)

~~§11-54-9.1.06 Water quality certification; inspection of facility or activity before operation. Where any facility or activity has received certification or waiver pursuant to sections 11-54-9.1.01 to 11-54-9.1.09 in connection with the issuance of a license or permit for construction, and where the~~

~~facility or activity is not required to obtain an operating license or permit, the director, prior to the initial operation of the facility or activity, shall be afforded the opportunity to inspect the facility or activity for the purpose of determining if the manner in which the facility or activity will be operated or conducted will violate applicable water quality standards.]~~ [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; R] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

~~[§11-54-9.1.07 Water quality certification; notification to licensing or permitting agency. If the director, after an inspection pursuant to section 11-54-9.1.06 determines that operation of the proposed facility or activity will violate applicable water quality standards, the director shall so notify the owner or, if applicable, its duly authorized representative and the licensing or permitting agency.]~~ [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; R] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

~~[§11-54-9.1.08 Water quality certification; termination or suspension. Where a licensing or permitting agency, following a public hearing, suspends a license or permit after receiving the director's notice and recommendation pursuant to section 11-54-9.1.07 the owner or its duly authorized representative may submit evidence to the director, that the facility or activity has been modified so as~~

~~not to violate applicable water quality standards. If the director determines that the applicable water quality standards have not been and will not be violated, the director shall so notify the licensing or permitting agency.]~~ [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; R] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

~~[§11-54-9.1.09 Water quality certification; review and advice. The director may, and upon request shall, provide licensing and permitting agencies with determinations, definitions, and interpretations to the meaning and content of state water quality standards. The director may, and upon request shall, also advise licensing and permitting agencies of the status of compliance by the owner(s) of a water quality certification with the conditions and requirements of applicable water quality standards.]~~
 [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; R] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

Due to the repeal of the above “Water Quality Certification” sections from HAR 11-54, minor modifications are proposed for the definition of “Wetlands,” in section HAR 11-54-1, to respectively reference the HDOH requirements for water quality certifications as the new chapter 53 (HAR 11-53), and for NPDES permits as the existing chapter 55 (HAR 11-55). Amendments are also proposed for section HAR 11-54-1 to include the definitions of “pollutant” and “water quality standards.”

§11-54-1 Definitions. As used in this chapter:

"Pollutant" or "water pollutant", as defined in section 342D-1, HRS, means dredged spoil, solid refuse, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, sediment, cellar dirt and industrial, municipal, and agricultural waste.

"Water quality standards" or "WQS" means provisions of state law which consist of a designated use or designated uses for state waters and water quality criteria for such waters based upon such uses. WQS are to protect the public health or welfare, enhance the quality of state waters, and serve the purposes of the Act.

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

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

Wetlands may be fresh, brackish, or saline and generally include swamps, marshes, bogs, and associated ponds and pools, mud flats, isolated seasonal ponds, littoral zones of standing water bodies, and alluvial floodplains. For the ~~[purpose]~~ purposes of applying for water quality certifications ~~[under Clean Water Act Section 401]~~, as specified in chapter 11-53, and ~~[for]~~ National Pollutant Discharge Elimination System (NPDES) ~~[permit purposes]~~ permits, as specified in chapter 11-55, the identification and delineation of wetland boundaries shall be done following the procedures described in the U.S. Army Corps of Engineers' Wetlands Delineation Manual (USACE 1987).

[Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/02/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp] (Auth: HRS §187A-1, §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E; 40 C.F.R. §§122.2, 130.2, 131.3, 131.12; 22 U.S.C. §1362(14))

3. Repeal existing section HAR 11-54-9

~~§11-54-9 Zones of mixing. (a) As used in this section, "zones of mixing" means limited areas around outfalls and other facilities to allow for the initial dilution of waste discharges.~~

~~(b) Zones of mixing for the assimilation of domestic, agricultural, and industrial discharges which have received the best degree of treatment or control are recognized as being necessary. It is the objective of these limited zones to provide for a current realistic means of control over the placement and manner of discharges or emissions so as to achieve the highest attainable level of water quality or otherwise to achieve the minimum environmental impact considering initial dilution, dispersion, and reactions from substances which may be considered to be pollutants.~~

~~(c) Establishment, renewal, and termination.~~

~~(1) Application for establishment of a zone of mixing shall be made concurrently with any discharge permits whenever applicable and the conditions of a zone of mixing shall be incorporated as conditions of the discharge permits. Every application for a zone of mixing shall be made on forms furnished by the director and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and other information as the director may prescribe.~~

~~(2) Each application for a zone of mixing shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information as may be submitted upon the request of the director, and in light of the effect or probable effect upon water quality standards established pursuant to this chapter.~~

- ~~(3) Whenever an application is approved, the director shall establish the zone of mixing, taking into account the environmental impact, including but not limited to factors such as the protected uses of the body of water, existing natural conditions of the receiving water, character of the effluent, and the adequacy of the design of the outfall and diffuser system to achieve maximum dispersion and assimilation of the treated or controlled waste with a minimum of undesirable or noticeable effect on the receiving water.~~
- ~~(4) Approval of a zone of mixing shall be made either after a public hearing is held by the director in the county where the source is situated, in accordance with chapters 91 and 92, HRS and the rules of practice and procedures of the department, or after the public notification and comment process duly established for a discharge permit in the case when the zone of mixing is being considered concurrently with the discharge permit.~~
- ~~(5) No zone of mixing shall be established by the director unless the application and the supporting information clearly show that:~~
- ~~(A) The continuation of the function or operation involved in the discharge by the granting of the zone of mixing is in the public interest;~~
 - ~~(B) The discharge occurring or proposed to occur does not substantially endanger human health or safety;~~
 - ~~(C) Compliance with the existing water quality standards from which a zone of mixing is sought would produce serious hardships without equal or greater benefits to the public; and~~
 - ~~(D) The discharge occurring or proposed to occur does not violate the basic~~

~~standards applicable to all waters, will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control.~~

~~(6) Any zone of mixing or renewal thereof shall be established within the requirements of this section and for time periods and under conditions consistent with the reasons therefore and within the following limitations:~~

~~(A) If the zone of mixing is established on the grounds that there is no reasonable means known or available for the adequate prevention, control, or abatement of the discharge involved, it shall be allowed only until the necessary means for prevention, control or abatement become practicable, and subject to the taking of any substitute or alternative measures that the director may prescribe. No renewal of a zone of mixing established under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the discharge involved;~~

~~(B) The director may issue a zone of mixing for a period not exceeding five years;~~

~~(C) Every zone of mixing established under this section shall include, but not be limited to, conditions requiring the applicant to perform appropriate effluent and receiving water sampling including monitoring of bottom biological communities and report the results of each sampling to the director. A program of research to develop reasonable alternatives to the~~

methods of treatment or control in use by the applicant may be required if research is deemed prudent by the director; and

(D) In order to prevent high temperature discharges from violating section 11-54-04(a)(4), no new or increased domestic, industrial, or other controllable source shall discharge at a maximum temperature which will cause temperatures to exceed three degrees Celsius above ambient, or thirty degrees Celsius, whichever is less, within one meter of the bottom within a zone of mixing. For discharges with or without submerged outfalls, the director may make a limited allowance for higher discharge temperatures if there is satisfactory demonstration that the elevated temperature will not cause damage to the local aquatic community.

(7) Any zone of mixing established pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial establishment of a zone of mixing, provided that the applicant for renewal had met all of the conditions specified in the immediately preceding mixing, and provided further that the renewal and the zone of mixing established in pursuance thereof shall provide for the discharge not greater in quantity of mass emissions than that attained pursuant to the terms of the immediately preceding zone of mixing at its expiration. Any new zones of mixing or requests for zone of mixing renewals for wastewater treatment plants (WWTP) performing primary treatment shall comply with section 301(h) of the Federal

~~Water Pollution Control Act of 1972 (33 U.S.C. 1251). No renewal shall be allowed except upon application. Any renewal application shall be made at least one hundred and eighty days prior to the expiration of the zone of mixing.~~

~~(8) No zone of mixing established pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.~~

~~(9) The establishment of any zone of mixing shall be subject to the concurrence of the U.S. Environmental Protection Agency.~~

~~(10) Each mixing zone may be subject to revocation, suspension, or modification if, after notice and opportunity for a hearing pursuant to chapter 91, HRS and the rules of practice and procedures of the department, the director determines that the terms specified in section 342D-6, HRS have been violated. In taking any action, the director may consider operating records, compliance investigations, or other information regarding discharge quality or impact on receiving waters. The action shall be effected by giving written notice to the permittee, which shall contain the reasons for the action.~~

~~(11) The director shall be notified within thirty days of the permanent discontinuance of a discharge. The zone of mixing shall terminate thirty days after such notification has been received.~~

~~(12) Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee.] [Eff~~

~~11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am~~

and comp 12/6/13; comp 11/15/14; R
] (Auth: HRS §§342D-1, 342D-4, 342D-5)
 (Imp: HRS §§342D-4, 342D-5)

Due to the repeal of section HAR 11-54-9, an amendment is proposed for section HAR 11-54-1 to include the definition of “zones of mixing.”

§11-54-1 Definitions. As used in chapter:

“Zones of mixing” means limited areas around outfalls and other facilities to allow for the initial dilution of waste discharges. Zones of mixing for the assimilation of domestic, agricultural, and industrial discharges which have received the best degree of treatment or control are recognized as being necessary. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/02/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp] (Auth: HRS §187A-1, §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E; 40 C.F.R. §§122.2, 130.2, 131.3, 131.12; 22 U.S.C. §1362(14))

4. Repeal existing section HAR 11-54-12

~~§11-54-12 Intake credits. (a) An intake credit is an NPDES implementation tool that applies to the implementation of water quality standards through NPDES permits only.~~

~~(b) As used in this section:~~

~~"Background pollutant concentration means the water body concentration immediately upstream/upcurrent of a permitted discharge, regardless of whether those pollutants are natural or result from anthropogenic upstream activity.~~

~~"Intake pollutant" means the background pollutant concentration that is present in the intake water body, which must be the same water body as the receiving water for the discharge at the time it is withdrawn from such waters.~~

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

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

~~The department may consider other site specific factors relevant to the transport and fate of the pollutant in deciding whether a pollutant would or~~

would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

(c) The director may, upon request of the discharger, adjust water quality based effluent limitations or standards to reflect credit for intake pollutants in the discharger's intake water only:

(1) To the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the intake pollutant value; and

(2) If there is no net increase in the concentration of the intake pollutant for which the credit is given. A discharger may add to the mass of the background pollutant concentration if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water.

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

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

(1) One hundred per cent of the intake water containing the intake pollutant is withdrawn from the same body of water into which the discharge is made;

(2) The facility does not chemically or physically alter the intake pollutant in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutant was left in stream;

(3) The timing and location of the discharge would not cause adverse water quality impacts to occur that would not occur if the intake pollutant were left in stream; and,

~~(4) The director finds that the discharge of intake pollutants into the same body of water will not adversely impact narrative or numeric water quality criteria specified in this chapter.~~

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

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

~~(1) Documentation showing a complete and detailed description of present conditions and how present conditions do not conform to standards; and~~

~~(2) Documentation showing that the intake and discharge waterbodies are the "same body of water;" and~~

~~(3) Documentation showing that pollutant(s) for which credits are being request actually come(s) from the intake water.~~

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

~~(1) All permits that include intake credits issued by the department shall include monitoring of all influent, effluent, and ambient water to demonstrate that the conditions in this section are maintained during the permit term.~~

~~(2) All credit for intake pollutants developed under this section shall be re-evaluated upon permit renewal.~~

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

~~(j) All other water quality criteria established under this chapter continue to apply.] [Eff and~~

comp 11/15/14; R] (Auth: HRS §§342D-
4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4,
342D-5, 342D-6, Ch. 342E)

5. Add new section HAR 11-54-9.0.5
6. Add new sections HAR 11-54-9.1.5, HAR 11-54-9.2, and HAR 11-54-9.3 (see respective rationales for rules)

§11-54-9.0.5 Site-Specific Flexibilities. As used in sections 11-54-9.1.5, 11-54-9.2, 11-54-9.3, and 11-54-9.4:

"40 C.F.R. §25" means the Code of Federal Regulations, Title 40, Protection of the Environment, Part 25, Public Participation in Programs under the Resource Conservation And Recovery Act, the Safe Drinking Water Act, and the Clean Water Act, revised as of 16 February 1979 unless otherwise noted.

"40 C.F.R. §131" means the Code of Federal Regulations, Title 40, Protection of the Environment, Part 131, Water Quality Standards, revised as of 21 August 2015 unless otherwise noted. [Eff and comp] (Auth: HRS §§342D-4, 342D-5, 342D-7) (Imp: §§342D-4, 342D-5, 342D-6, 342D-7; 40 C.F.R. §§25.5, 131.10, 131.11)

§11-54-9.1.5 Use Attainability Analysis.

§11-54-9.2 Water Quality Standards Variance.

§11-54-9.3 Site-Specific Aquatic Life Criterion.

7. Renumber existing section HAR 11-54-11 to new section HAR 11-54-9.4

Prior to the renumbering of section HAR 11-54-11, amendments are also proposed to clarify the requirements of sub-section HAR 11-54-11(d) and to replace “CFR” with “C.F.R.”.

§11-54-~~[11]~~9.4 Schedule of compliance. (a) A schedule of compliance is an NPDES implementation tool that applies to the implementation of water quality standards through NPDES permits only.

(b) The director may issue a schedule of compliance in an individual NPDES permit for the implementation of effluent limits derived from the water quality criteria in this chapter if the director makes a finding that the discharger cannot immediately comply with the water quality based effluent limitations upon the effective grant of the permit.

(c) A schedule of compliance may be included in an individual NPDES permit issued by the director pursuant to chapter 342D, HRS.

(d) A schedule of compliance in an NPDES permit is allowed only for water quality-based effluent limits based upon a new, revised, or newly interpreted water quality standard and must:

- (1) Comply with the provisions in 40 [~~CFR~~ section]C.F.R. §122.47, revised as of July 1, 2014[~~, and~~];
- (2) Include an enforceable final effluent limitation that is within the timeframe allowed as specified in sections 11-55-08(a)(2)(B), 11-55-15(d), 11-55-21, 11-55-22, 11-55-23 (10), and 11-55-34.07(3)(B) [~~and~~];
- (3) Require compliance as soon as possible.

(e) A schedule of compliance that exceeds one year in duration must set forth interim requirements, specific dates to meet interim requirements, and a date by which the required water quality-based effluent limitation must be achieved. [Eff and

comp 11/15/14; §11-54-11; am, ren §11-54-9.4, am and
comp] (Auth: HRS §§342D-4, 342D-5,
342D-53, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, 342D-
6, Ch. 342E)

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DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-54

Hawaii Administrative Rules

MONTH DD 2021

SUMMARY

1. Title amended.
2. §11-54-1 is amended.
3. §11-54-1.1 is amended.
4. §11-54-2 is amended.
5. §11-54-3 is amended.
6. §11-54-4 is amended.
7. §11-54-5.1 is amended.
8. §11-54-5.2 is amended.
9. §11-54-6 is amended.
10. §11-54-7 is amended.
11. §11-54-8 is amended.
12. §11-54-9 is repealed.
13. §11-54-9.1 is repealed.

14. §§11-54-9.1.01 to 11-54-9.1.09 are repealed.
15. §11-54-10 is amended.
16. §11-54-12 is repealed.
17. §11-54-15 is amended.
18. §11-54-9.0.5 is added.
19. §11-54-9.1.5 is added.
20. §11-54-9.2 is added.
21. §11-54-9.3 is added.
22. §11-54-11 is renumbered §11-54-9.4.
23. Reserved §§11-54-11 and 11-54-12.05 are added.
24. Appendix E is added.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 54

WATER QUALITY STANDARDS

§11-54-1	Definitions
§11-54-1.1	General policy of water quality antidegradation
§11-54-2	Classification of state waters
§11-54-3	Classification of water uses
§11-54-4	Basic water quality criteria applicable to all waters
§11-54-5	Uses and specific criteria applicable to inland waters
§11-54-5.1	Inland water areas to be protected
§11-54-5.2	Inland water criteria
§11-54-6	Uses and specific criteria applicable to marine waters
§11-54-7	Uses and specific criteria applicable to marine bottom types
§11-54-8	Recreational criteria for all state waters
§11-54-9.0.5	Site-specific flexibilities
§11-54-9.1.5	Use attainability analysis
§11-54-9.2	Water quality standards variance
§11-54-9.3	Site-specific aquatic life criterion
§11-54-9.4	Schedule of compliance
§11-54-10	Water quality analyses
§11-54-11	(Reserved)
§11-54-12.0.5	(Reserved)
§11-54-13	Revision
§11-54-14	Severability
§11-54-15	Field citations; non-compliance

§11-54-1 Definitions. As used in this chapter:

"Act" means the Clean Water Act (formally referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-483, Public Law 97-117, and Public Law 114-115, 33 U.S.C. section 1251 et seq.

"Ambient conditions" means the water quality conditions that would occur in the receiving waters if these waters were not influenced by the proposed new human activity.

"Amphidromous" means aquatic life that [~~migrate~~] migrates to and from the sea, but not specifically for reproductive purposes. Amphidromous aquatic life in Hawaiian streams [~~are~~] is confined to fresh waters as adults, but their larval stages are partially or entirely spent in the ocean as part of the zooplankton.

"Anchialine pools" means coastal bodies of standing waters that have no surface connections to the ocean but display both tidal fluctuations and salinity ranges characteristic of fresh and brackish waters, indicating the presence of subsurface connections to the watertable and ocean. Anchialine pools are located in porous substrata (recent lava or limestone) and often contain a distinctive assemblage of native aquatic life. Deeper anchialine pools may display salinity stratification, and some shallow pools may contain standing water only on the highest tides.

"Aquatic life", as defined in section 187A-1, HRS, means ["any type or species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or offspring thereof; or freshwater or marine plants, including, seeds, roots, products, and other parts thereof[" (~~section 187A-1, HRS~~)].

"Best degree of treatment or control" means that treatment or control which is required by applicable

statutes and regulations of the State of [~~Hawai'i~~]Hawaii and the [~~Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251, et seq.)~~]Act or which is otherwise specified by the director considering technology or management practices currently available in relation to the public interest.

"Best management practices" or "BMPs" means schedules of activities, prohibitions or designations of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of [~~State~~]state waters. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs include methods, [~~measures~~]measures, or practices selected by the department to meet nonpoint source pollution control needs. BMPs also include but are not limited to structural and nonstructural controls. BMPs can be applied before, during, and after pollution-producing activities [~~to reduce or eliminate the introduction of pollutants into receiving State waters~~].

"Brackish waters" means waters with dissolved inorganic ion concentrations (salinity) greater than 0.5 parts per thousand, but less than thirty-two parts per thousand.

"Coastal waters", as defined in section 342D-1, HRS, means [~~"~~]all waters surrounding the islands of the State from the coast of any island to a point three miles seaward from the coast, and, in the case of streams, rivers, and drainage ditches, to a point three miles seaward from their point of discharge into the sea and includes those brackish waters, fresh [~~waters~~]waters, and salt waters that are subject to the ebb and flow of the tide [~~" (section 342D-1, HRS)~~].

"Coastal wetlands" means natural or man-made ponds and marshes having variable salinity, basin limits, and permanence. These wetlands usually adjoin the coastline and may be subject to tidal, seasonal,

or perennial flooding. Coastal wetlands are generally maintained by surface and subterranean sources of fresh and salt water. Many natural coastal wetlands have been modified significantly by man and are characterized by introduced aquatic life. Coastal wetlands include, but are not limited to, salt marshes, open ponds, mudflats, man-made or natural waterbird refuges, isolated seasonal lakes and mangrove flats.

"Department" means department of health, State of ~~[Hawaii']~~Hawaii.

"Developed estuaries" means volumes of brackish coastal waters in well-defined basins constructed by man or otherwise highly modified from their natural state. Developed estuaries include, but are not limited to, dredged and revetted stream termini.

"Director" means the director of health, State of ~~[Hawaii']~~Hawaii, or the director's duly authorized agent.

"Discharge" means the discharge of a water pollutant.

"Ditches and flumes" means fresh waters flowing continuously in artificial channels. They are used mainly for the purpose of irrigation and usually receive water from stream diversions. Ditches and flumes may be inflowing (carry water to reservoirs or user areas) or outflowing (drain water from reservoirs or user areas).

"Drainage basin" or "watershed" means the region or area drained by a stream or river system.

"Drainage ditch" means that facility used to carry storm runoff only, not sanitary sewage.

"Elevated wetlands" means natural freshwater wetlands located above 100 m (330 ft) elevation. They are generally found in undisturbed areas, mainly in remote uplands and forest reserves with high rainfall. Elevated wetlands include upland bogs, marshes, swamps, and associated ponds and pools.

"Estuaries" means characteristically brackish coastal waters in well-defined basins with a continuous or seasonal surface connection to the ocean

that allows entry of marine fauna. Estuaries may be either natural or developed.

"Existing uses" means those uses actually attained in the water body on or after November 28, 1975 whether or not they are included in the water quality standards.

"Flowing springs and seeps" means perennial, relatively constant fresh water flows not in distinct channels, in which the water emanates from elevated aquifers as wet films or trickles over rock surfaces. They are found typically as natural occurrences along rock faces or banks of deeply incised streams, and artificially along road cuts.

"Flowing waters" means fresh waters flowing unidirectionally down altitudinal gradients. These waters may or may not be confined in distinct channels. Flowing waters include streams, flowing springs and [~~seeps~~seeps], and ditches and flumes.

"Fresh waters" means all waters with a dissolved inorganic ion concentration of less than 0.5 parts per thousand.

"Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded and develops conditions that favor the growth and regeneration of hydrophytic vegetation.

"Hydrophytic vegetation" or "hydrophytes" means plants adapted to growing in seasonally or permanently flooded conditions.

"Intermittent streams" means fresh waters flowing in definite natural channels only during part of the year or season. Intermittent streams include many tributaries of perennial streams.

"Introduced aquatic life" means those species of aquatic organisms that are not native to a given area or water body and whose populations were established (deliberately or accidentally) by human activity. "Introduced" organisms are also referred to as "alien" or "exotic".

"Low wetlands" means freshwater wetlands located below 100 m (330 ft) elevation that may be natural or artificial in origin and are usually found near coasts

or in valley termini. Low wetlands are maintained by either stream, well, or ditch influent water, or by exposure of the natural water table. Low wetlands include, but are not limited to, natural lowland marshes, riparian wetlands, littoral zones of standing waters (including lakes, reservoirs, [~~ponds and fishponds~~]ponds, and fishponds), and agricultural wetlands such as taro lo'i.

"Native aquatic life" means those species or higher taxa of aquatic organisms that occur naturally in a given area or water body and whose populations were not established as a result of human activity.

"Natural estuaries" means volumes of brackish coastal waters in well-defined basins of natural origin, found mainly at the mouths of streams or rivers. Natural estuaries can be either stream-fed (drowned stream mouths fed by perennial stream runoff) or spring-fed (nearshore basins with subterranean fresh water sources). Stream-fed estuaries serve as important migratory pathways for larval and juvenile amphidromous stream fauna.

"Natural freshwater lakes" means standing water that is always fresh, in well-defined natural basins, with a surface area usually greater than 0.1 ha (0.25 acres), and in which rooted emergent hydrophytes, if present, occupy no more than thirty [~~per cent~~]percent of the surface area. Natural freshwater lakes in [~~Hawai'i~~]Hawaii occur at high, intermediate, and low elevations. Lowland freshwater lakes characteristically lack a natural oceanic connection (surface or subsurface) of a magnitude sufficient to cause demonstrable tidal fluctuations.

"Nonpoint source pollution" [~~has the meaning~~], as defined in section 342E-1, HRS, means water pollution that does not originate from a point source.

"Perennial streams" means fresh waters flowing year-round in all or part of natural channels, portions of which may be modified by humans. Flow in perennial streams may vary seasonally. Perennial streams may be subdivided into longitudinal zones, based on elevation and gradient:

- (1) Headwater zone (elevation above 800 m (2600 ft) or gradient above 30 per cent or both);
- (2) Mid-zone (elevation between 50-800 m (165-2600 ft), or gradient between 5 and 30 per cent or both); and
- (3) Terminal zone (elevation below 50 m (165 ft) or gradient below 5 per cent or both).

Perennial streams may be either continuous or interrupted. Continuous perennial streams discharge continuously to the ocean in their natural state, and contain water in the entire length of the stream channel year-round. Interrupted perennial streams usually flow perennially in their upper reaches but only seasonally in parts of their middle or lower reaches, due to either downward seepage of surface flow (naturally interrupted) or to man-made water diversions (artificially interrupted).

"Person" [~~has the same meaning~~], as defined in section 342D-1, HRS, means any individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.

"Point source" [~~has the same meaning~~] or "point source pollution", as defined in section [~~11-55-~~ ~~04~~] 342E-1, HRS, means pollution from any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

"Pollutant" or "water pollutant", as defined in section 342D-1, HRS, means dredged spoil, solid refuse, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, sediment,

cellar dirt and industrial, municipal, and agricultural waste.

"Pollution" [~~means~~] or "water pollution", as defined in section 342D-1, HRS, means:

- (1) Such contamination or other alteration of the physical, chemical, or biological properties of any state waters, including change in temperature, taste, color, turbidity, or odor of the waters, or
- (2) Such discharge of any liquid, gaseous, solid, radioactive, or other substances into any state waters, as will or is likely to create a nuisance or render such waters unreasonably harmful, detrimental, or injurious to public health, safety, or welfare, including harm, detriment, or injury to public water supplies, fish and aquatic life and wildlife, recreational purposes and agricultural and industrial research and scientific uses of such waters or as will or is likely to violate any water quality standards, effluent standards, treatment and pretreatment standards, or standards of performance for new sources adopted by the department.

"Reservoirs" means standing water that is always fresh, in well-defined artificially created impoundments.

~~["Saline or salt waters" means waters with dissolved inorganic ion concentrations greater than thirty-two parts per thousand.]~~

"Saline lakes" means standing waters of salinities ranging from brackish to hypersaline, located in well-defined natural basins, and lacking a natural surface connection to the ocean. Saline lakes may be present as high-island shoreline or near-shoreline features (e.g. Lake Nomilu, Kauai; Salt Lake, Oahu; Lake Kauhako, Molokai) or as low-island closed lagoons (Lake Laysan, Laysan). They are usually, but not always, fed by seawater seepage and

may be diluted by rainwater, overland runoff, or ground water, or concentrated by evaporation.

"Saline or salt waters" means waters with dissolved inorganic ion concentrations greater than thirty-two parts per thousand.

"Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

"Springs and seeps" means small, perennial, relatively constant freshwater flow not in distinct channels, such as wet films or trickles over rock surfaces, in which the water emanates from elevated aquifers. Springs and seeps may be either stream associated, occurring in deeply cut valleys and contributing to stream flow; or coastal, occurring on coastal cliffs and usually flowing into the ocean.

"Standing waters" refers to waters of variable size, depth, and salinity, that have little or no flow and that are usually contained in well-defined basins. Standing water bodies include natural freshwater lakes, reservoirs or impoundments, saline lakes, and anchialine pools.

"State waters", as defined ~~[by]~~in section 342D-1, HRS, means all waters, fresh, brackish, or salt around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, ground waters, and lakes; provided that drainage ditches, ponds, and reservoirs required as part of a water pollution control system are excluded. This chapter applies to all ~~[State]~~ state waters, including wetlands, subject to the following exceptions:

- (1) This chapter does not apply to groundwater, except the director may in the director's discretion take appropriate actions when the director believes that the discharge of pollutants to the ground or groundwater has adversely affected, is adversely affecting,

- or will adversely affect the quality of any State water other than groundwater.
- (2) This chapter does not apply to drainage ditches, flumes, ponds and reservoirs that are required as part of a water pollution control system.
 - (3) This chapter does not apply to drainage ditches, flumes, ponds, and reservoirs that are used solely for irrigation and do not overflow into or otherwise adversely affect the quality of any other ~~[State]~~state waters, unless such ditches, flumes, ponds, and reservoirs are waters of the United States as defined in 40 C.F.R. ~~[section]~~ §122.2. The State of ~~[Hawai'i]~~Hawaii has those boundaries stated in the ~~[Hawai'i]~~Hawaii Constitution, art. XV, §1.

"Streams" means seasonal or continuous water flowing unidirectionally down altitudinal gradients in all or part of natural or modified channels as a result of either surface water runoff or ground water influx, or both. Streams may be either perennial or intermittent and include all natural or modified watercourses.

"Stream channel" means a natural or modified watercourse with a definite bed and banks which periodically or continuously contains flowing water.

"Stream system" means the aggregate of water features comprising or associated with a stream, including the stream itself and its tributaries, headwaters, ponds, wetlands, and estuary. A stream system is geographically delimited by the boundaries of its drainage basin or watershed.

"Surface water" means both contained surface water (that is, water upon the surface of the earth in well-defined basins created naturally or artificially including, but not limited to, streams, other watercourses, lakes, and reservoirs) and diffused surface water (that is, water occurring upon the surface of the ground other than in contained basins). Water from natural springs and seeps is surface water

when it exits from the spring onto the earth's surface.

"U.S. Environmental Protection Agency" or "EPA" means the federal agency whose mission is to protect human and environmental health.

"Water pollution control system" means a system designed and constructed specifically for the purpose of collecting, handling, storing, treating, or disposing of storm water, domestic wastewater, [and/or] industrial wastewater, or any combination of these waters, to prevent water pollution.

"Water quality standards" or "WQS" means provisions of state law which consist of a designated use or designated uses for state waters and water quality criteria for such waters based upon such uses. WQS are to protect the public health or welfare, enhance the quality of state waters, and serve the purposes of the Act.

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

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

Wetlands may be fresh, brackish, or saline and generally include swamps, marshes, bogs, and associated ponds and pools, mud flats, isolated seasonal ponds, littoral zones of standing water bodies, and alluvial floodplains. For the ~~[purpose]~~ purposes of applying for water quality certifications ~~[under Clean Water Act Section 401]~~, as specified in chapter 11-53, and ~~[for]~~ National Pollutant Discharge Elimination System (NPDES) ~~[permit purposes]~~ permits, as specified in chapter 11-55, the identification and delineation of wetland boundaries shall be done

following the procedures described in the U.S. Army Corps of Engineers' Wetlands Delineation Manual (USACE 1987).

"Zones of mixing" means limited areas around outfalls and other facilities to allow for the initial dilution of waste discharges. Zones of mixing for the assimilation of domestic, agricultural, and industrial discharges which have received the best degree of treatment or control are recognized as being necessary. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/02/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp] (Auth: HRS §187A-1, §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E; 40 C.F.R. §§122.2, 130.2, 131.3, 131.12; 22 U.S.C. §1362(14))

§11-54-1.1 General policy of water quality antidegradation. (a) Existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(b) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the director finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the state's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the director shall assure water quality adequate to protect existing uses fully. Further, the director shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective

and reasonable best management practices for nonpoint source control.

(c) Where existing high quality waters constitute an outstanding resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(d) In those areas where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the ~~[Clean Water Act]~~Act. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; am and comp] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E; 40 C.F.R. §131.12) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-2 Classification of ~~[State]~~state waters.

(a) State waters are classified as either inland waters or marine waters.

(b) Inland waters may be fresh, brackish, or saline.

(1) All inland fresh waters are classified as follows, based on their ecological characteristics and other natural criteria:

(A) Flowing waters.

(i) Streams (perennial and intermittent);

(ii) Flowing springs and seeps; and

(iii) Ditches and flumes that discharge into any other state waters [~~of the State~~];

(B) Standing waters.

(i) Natural freshwater lakes; and

(ii) Reservoirs (impoundments);

(C) Wetlands.

- (i) Elevated wetlands (bogs, marshes, swamps, and associated ponds); and
 - (ii) Low wetlands (marshes, swamps, and associated ponds).
- (2) All inland brackish or saline waters are classified as follows, based on their ecological characteristics and other natural criteria:
 - (A) Standing waters.
 - (i) Anchialine pools; and
 - (ii) Saline lakes[-];
 - (B) Wetlands.
 - (i) Coastal wetlands (marshes, swamps, and associated ponds) [-];
 - (C) Estuaries.
 - (i) Natural estuaries (stream-fed estuaries and spring-fed estuaries); and
 - (ii) Developed estuaries.
- (c) Marine waters may be embayments, open coastal, or oceanic waters.
 - ~~[(1) All marine waters are either embayments, open coastal, or oceanic waters;]~~
 - ~~[(2)]~~ (1) All ~~[marine waters which are embayments or]~~ embayments and open coastal waters are ~~[also]~~ classified ~~[according to the following]~~ as follows, based on their bottom subtypes:
 - (A) Sand beaches;
 - (B) Lava rock shorelines and solution benches;
 - (C) Marine pools and protected coves;
 - (D) Artificial basins;
 - (E) Reef flats; ~~[-and]~~
 - (F) Soft bottoms. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp

] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-3 Classification of water uses. (a) The following use categories classify inland and marine waters for purposes of applying the water quality standards set forth in this chapter, and for the selection or definition of appropriate water quality parameters and uses to be protected in these waters. Storm water discharge into [~~State~~]state waters shall be allowed provided it meets the requirements specified in this section and the basic water quality criteria specified in section [~~11-54-4~~]11-54-4(a).

(b) Inland waters.

(1) Class 1.

It is the objective of class 1 waters that these waters remain in their natural state as nearly as possible with an absolute minimum of pollution from any human-caused source. To the extent possible, the wilderness character of these areas shall be protected. Waste discharge into these waters is prohibited, except as provided in section [~~11-54-4(e)~~]11-54-4(f). Any conduct which results in a demonstrable increase in levels of point or nonpoint source contamination in class 1 waters is prohibited.

(A) Class 1.a.

The uses to be protected in class 1.a waters are scientific and educational purposes, protection of native breeding stock, baseline references from which human-caused changes can be measured, compatible recreation, aesthetic enjoyment, and other nondegrading uses which are compatible with the

protection of the ecosystems associated with waters of this class;

(B) Class 1.b.

The uses to be protected in class 1.b waters are domestic water supplies, food processing, protection of native breeding stock, the support and propagation of aquatic life, baseline references from which human-caused changes can be measured, scientific and educational purposes, compatible recreation, and aesthetic enjoyment. Public access to these waters may be restricted to protect drinking water supplies;

(2) Class 2

The objective of class 2 waters is to protect their use for recreational purposes, the support and propagation of aquatic life, agricultural and industrial water supplies, shipping, and navigation. The uses to be protected in this class of waters are all uses compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation in and on these waters. These waters shall not act as receiving waters for any discharge which has not received the best degree of treatment or control compatible with the criteria established for this class. No new treated sewage discharges shall be permitted within estuaries. No new industrial discharges shall be permitted within estuaries, with the exception of:

(A) Acceptable non-contact thermal and drydock or marine railway discharges within Pearl Harbor, Oahu;

(B) Storm water discharges associated with industrial activities (defined in 40 C.F.R. [~~sections~~] §§122.26(b)(14) and (b)(15), except (b)(15)(i)(A) and

(b) (15) (i) (B)) which meet, at the minimum, the basic water quality criteria applicable to all waters as specified in section 11-54-4(a), and all applicable requirements specified in chapter 11-55 [~~7~~, titled "~~Water Pollution Control~~"]; and

(C) Discharges covered by a National Pollutant Discharge Elimination System (NPDES) general permit, approved by the [~~U.S. Environmental Protection Agency~~] EPA and issued by the Department in accordance with 40 C.F.R. [~~section~~] §122.28 and all applicable requirements specified in chapter 11-55 [~~7~~, titled "~~Water Pollution Control~~"].

(c) Marine waters.

(1) Class AA.

It is the objective of class AA waters that these waters remain in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-caused source or actions. To the extent practicable, the wilderness character of these areas shall be protected.

(A) No new permit shall be issued for point source discharges of industrial wastewater, industrial storm water, and those facilities designated by the department as pollutant sources, except for construction-related discharges. All permitted discharges in effect on or before July 1, 2020; all future modifications of such discharges; and all future renewals of such discharges may be allowed and permitted with conditions specified in discharge permits to meet applicable and appropriate protection levels for class AA waters.

- (B) No zones of mixing shall be permitted in this class:
- ~~[(A)]~~ (i) Within a defined reef area, in waters of a depth less than ~~[18]~~eighteen meters (ten fathoms); or
- ~~[(B)]~~ (ii) If there is no defined reef area, [18]in waters up to a distance of ~~[300]~~three hundred meters (one thousand feet) ~~[off shore]~~offshore ~~[if there is no defined reef area]~~ and if the depth is greater than ~~[18]~~eighteen meters (ten fathoms).

The uses to be protected in this class of waters are oceanographic research, the support and propagation of shellfish and other marine life, conservation of coral reefs and wilderness areas, compatible recreation, and aesthetic enjoyment. The classification of any water area as Class AA shall not preclude other uses of the waters compatible with these objectives and in conformance with the criteria applicable to them;

(2) Class A.

It is the objective of class A waters that their use for recreational purposes and aesthetic enjoyment be protected. Any other use shall be permitted as long as it is compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation in and on these waters. These waters shall not act as receiving waters for any discharge which has not received the best degree of treatment or control compatible with the criteria established for this class. No new sewage discharges will be permitted within embayments. No new industrial discharges

shall be permitted within embayments, with the exception of:

- (A) Acceptable non-contact thermal and drydock or marine railway discharges, in the following water bodies:
 - (i) Honolulu Harbor, Oahu;
 - (ii) Barbers Point Harbor, Oahu;
 - (iii) Keehi Lagoon Marina Area, Oahu;
 - (iv) Ala Wai Boat Harbor, Oahu; and
 - (v) Kahului Harbor, Maui.
- (B) Storm water discharges associated with industrial activities (defined in 40 C.F.R. [~~sections~~]§§122.26(b)(14) and (b)(15), except (b)(15)(i)(A) and (b)(15)(i)(B)) which meet, at the minimum, the basic water quality criteria applicable to all waters as specified in section [~~11-54-4~~]11-54-4(a), and all applicable requirements specified in the chapter 11-55 [~~, titled "Water Pollution Control"~~]; and
- (C) Discharges covered by a NPDES general permit, approved by the [~~U.S. Environmental Protection Agency~~]EPA and issued by the Department in accordance with 40 C.F.R. [~~section~~]§122.28 and all applicable requirements specified in chapter 11-55 [~~, titled "Water Pollution Control"~~].
- (d) Marine bottom ecosystems.
 - (1) Class I.

It is the objective of class I marine bottom ecosystems that they remain as nearly as possible in their natural pristine state with an absolute minimum of pollution from any human-induced source. Uses of marine bottom ecosystems in this class are passive human uses without intervention or alteration, allowing the perpetuation and preservation of the marine bottom in a most natural state, such as for nonconsumptive

scientific research (demonstration, observation or monitoring only), nonconsumptive education, aesthetic enjoyment, passive activities, and preservation;

(2) Class II.

It is the objective of class II marine bottom ecosystems that their use for protection including propagation of fish, shellfish, and wildlife, and for recreational purposes not be limited in any way. The uses to be protected in this class of marine bottom ecosystems are all uses compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation. Any action which may permanently or completely modify, alter, consume, or degrade marine bottoms, such as structural flood control channelization(dams); landfill and reclamation; navigational structures (harbors, ramps); structural shore protection (seawalls, revetments); and wastewater effluent outfall structures may be allowed upon securing approval in writing from the director, considering the environmental impact and the public interest pursuant to sections 342D-4, 342D-5, 342D-6, and 342D-50, [~~HRS~~]HRS, in accordance with the applicable provisions of chapter 91, HRS.

[Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; am and comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp]

(Auth: HRS §174C, §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-4 Basic water quality criteria applicable to all waters. (a) All waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants, including:

- (1) Materials that will settle to form objectionable sludge or bottom deposits;
- (2) Floating debris, oil, grease, scum, or other floating materials;
- (3) Substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts sufficient to produce objectionable color, [~~turbidity~~]turbidity, or other conditions in the receiving waters;
- (4) High or low temperatures, biocides, pathogenic organisms, toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water;
- (5) Substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life; and
- (6) Soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways; subdivisions; recreational, commercial, or industrial developments; or the cultivation and management of agricultural lands.

(b) The director is authorized to impose by order the penalties and fines and corrective measures as specified in chapters 342D and 342E, HRS, against any person who discharges or otherwise causes or allows water pollutants to enter [~~State~~]state waters and cause violation of this chapter, unless that person acted in compliance with a permit or variance issued by the director pursuant to [~~chapters~~]chapter

342D, HRS, for that person's discharges. Each day that the person has caused each water quality standard not to be met shall constitute a separate offense.

(c) To ensure compliance with ~~[paragraph (a)(4)]~~ section 11-54-4(a)(4), all ~~[State]~~ state waters are subject to monitoring and to the following standards for acute and chronic toxicity and the protection of human health.

(1) As used in this section:

"Acute Toxicity" means the degree to which a pollutant, discharge, or water sample causes a rapid adverse impact to aquatic organisms. The acute toxicity of a discharge or receiving water is measured using the methods in section 11-54-10, unless other methods are specified by the director.

"Chronic Toxicity" means the degree to which a pollutant, discharge, or water sample causes a long-term adverse impact to aquatic organisms, such as a reduction in growth or reproduction. The chronic toxicity of a discharge or receiving water is measured using the methods in section 11-54-10, unless other methods are specified by the director.

"Dilution" means, for discharges through submerged outfalls, the average and minimum values calculated using the models in the EPA publication, Initial Mixing Characteristics of Municipal Ocean Discharges (EPA/600/3-85/073, November, 1985), or in the EPA publication, Expert System for Hydrodynamic Mixing Zone Analysis of Conventional and Toxic Submerged Single Port Discharges (Cormix 1) (EPA/600/3-90/012), February, 1990.

"In-Stream Waste Concentration" (IWC) means the concentration of a toxicant in the receiving water, or for a discharge, the concentration of the effluent after minimum

dilution authorized by the department. A discharge of one hundred divided by the minimum dilution is the IWC when the dilution is authorized by the director. A discharge of one hundred ~~[per cent]~~percent effluent is the IWC when dilution is not authorized by the director.

"No Observed Effect Concentration" (NOEC), means the highest ~~[per cent]~~percent concentration of a discharge or water sample, in dilution water, which causes no observable adverse effect in a chronic toxicity test. For example, ~~[an]~~a NOEC of ~~[100 per cent]~~one hundred percent indicates that an undiluted discharge or water sample causes no observable adverse effect to the organisms in a chronic toxicity test.

"Test of Significant Toxicity" (TST) means the alternative statistical method for analyzing and interpreting valid whole effluent toxicity test data as described in the EPA publications, National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document, EPA 833-R-10-003 (June 2010), and National Pollutant Discharge Elimination System Test of Significant Toxicity Technical Document, EPA 833-R-10-004 (June 2010).

(2) Narrative toxicity and human health standards.

(A) Acute Toxicity Standards: All ~~[State]~~state waters shall be free from pollutants in concentrations which exceed the acute standards listed in ~~[paragraph (3)]~~Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter. All ~~[State]~~state waters shall also be free from acute toxicity as

measured using the toxicity tests listed in section 11-54-10, or other methods specified by the director.

- (B) Chronic Toxicity Standards: All ~~[State]~~state waters shall be free from pollutants in concentrations which on average during any ~~[twenty-four]~~twenty-four-hour period exceed the chronic standards listed in ~~[paragraph (3)]~~Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter. All ~~[State]~~state waters shall also be free from chronic toxicity as measured using the toxicity tests listed in section 11-54-10, or other methods specified by the director.
- (C) Human Health Standards: All ~~[State]~~state waters shall be free from pollutants in concentrations which, on average during any ~~[thirty]~~thirty-day period, exceed the "fish consumption" standards for non-carcinogens in ~~[paragraph (3)]~~Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter. All ~~[State]~~state waters shall also be free from pollutants in concentrations, which on average during any ~~[12]~~twelve-month period, exceed the "fish consumption" standards for pollutants identified as carcinogens in ~~[paragraph (3)]~~Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter.

~~[(3) Numeric standards for toxic pollutants applicable to all waters. The freshwater~~

~~standards apply where the dissolved inorganic ion concentration is less than 0.5 parts per thousand; saltwater standards apply above 0.5 parts per thousand. Values for metals refer to the dissolved fraction. All values are expressed in micrograms per liter.~~

Pollutant	Freshwater		Saltwater		Fish
	Acute	Chronic	Acute	Chronic	Consumption
Acenaphthene	570	ns	320	ns	ns
Aerolein	23	ns	18	ns	250
Acrylonitrile*	2,500	ns	ns	ns	0.21
Aldrin*	3.0	ns	1.3	ns	0.000026
Aluminum	750	260	ns	ns	ns
Antimony	3,000	ns	ns	ns	15,000
Arsenic	360	190	69	36	ns
Benzene*	1,800	ns	1,700	ns	13
Benzidine*	800	ns	ns	ns	0.00017
Beryllium*	43	ns	ns	ns	0.038

Pollutant	Freshwater		Saltwater		Fish
	Acute	Chronic	Acute	Chronic	Consumption
Cadmium	3+	3+	43	9.3	ns
Carbon tetra- chloride*	12,000	ns	16,000	ns	2.3
Chlordane*	2.4	0.0043	0.09	0.004	0.00016
Chlorine	19	11	13	7.5	ns
Chloroethers-					
ethyl(bis-2)*	ns	ns	ns	ns	0.44
isopropyl	ns	ns	ns	ns	1,400
methyl(bis)*	ns	ns	ns	ns	0.00060
Chloroform*	9,600	ns	ns	ns	5.1
Chlorophenol(2)	1,400	ns	ns	ns	ns
Chlorpyrifos	0.083	0.041	0.011	0.0056	ns
Chromium (VI)	16	11	1,100	50	ns
Copper	6+	6+	2.9	2.9	ns
Cyanide	22	5.2	1	1	ns
DDT*	1.1	0.001	0.013	0.001	0.000008
metabolite TDE*	0.03	ns	1.2	ns	ns
Demeton	ns	0.1	ns	0.1	ns
Dichloro-					
benzenes*	370	ns	660	ns	850
benzidine*	ns	ns	ns	ns	0,007
ethane(1,2)*	39,000	ns	38,000	ns	79
phenol(2,4)	670	ns	ns	ns	ns
propanes	7,700	ns	3,400	ns	ns
propene(1,3)	2,000	ns	260	ns	4.6

Pollutant	Freshwater		Saltwater		Fish Consumption
	Acute	Chronic	Acute	Chronic	
Dieldrin*	2.5	0.0019	0.71	0.0019	0.000025
Dinitro					
o cresol (4,6)	ns	ns	ns	ns	250
toluenes*	110	ns	200	ns	3.0
Dioxin*	0.003	ns	ns	ns	5.0x10 ⁻⁹
Diphenyl-					
hydrazine (1,2)	ns	ns	ns	ns	0.018
Endosulfan	0.22	0.056	0.034	0.0087	52
Endrin	0.18	0.0023	0.037	0.0023	ns
Ethylbenzene	11,000	ns	140	ns	1,070
Fluoranthene	1,300	ns	13	ns	18
Guthion	ns	0.01	ns	0.01	ns
Heptachlor*	0.52	0.0038	0.053	0.0036	0.00009
Hexachloro-					
benzene*	ns	ns	ns	ns	0.00024
butadiene*	30	ns	11	ns	16
cyclohexane-					
alpha*	ns	ns	ns	ns	0.010
beta*	ns	ns	ns	ns	0.018
technical*	ns	ns	ns	ns	0.014
cyclopentadiene	2	ns	2	ns	ns
ethane*	330	ns	310	ns	2.9
Isophorone	39,000	ns	4,300	ns	170,000
Lead	29+	29+	140	5.6	ns
Lindane*	2.0	0.08	0.16	ns	0.020

Pollutant	Freshwater		Saltwater		Fish
	Acute	Chronic	Acute	Chronic	Consumption
Malathion	ns	0.1	ns	0.1	ns
Mercury	2.4	0.55	2.1	0.025	0.047
Methoxychlor	ns	0.03	ns	0.03	ns
Mirex	ns	0.001	ns	0.001	ns
Naphthalene	770	ns	780	ns	ns
Nickel	51	51	75	8.3	33
Nitrobenzene	9,000	ns	2,200	ns	ns
Nitrophenols*	77	ns	1,600	ns	ns
Nitrosamines*	1,950	ns	ns	ns	0.41
Nitroso					
— dibutylamine-N*	ns	ns	ns	ns	0.19
— diethylamine-N*	ns	ns	ns	ns	0.41
— dimethylamine-N*	ns	ns	ns	ns	5.3
— diphenylamine-N*	ns	ns	ns	ns	5.3
— pyrrolidine-N*	ns	ns	ns	ns	30
Parathion	0.065	0.013	ns	ns	ns
Pentachloro-					
— ethanes	2,400	ns	130	ns	ns
— benzene	ns	ns	ns	ns	28
— phenol	20	13	13	ns	ns
Phenol	3,400	ns	170	ns	ns
— 2,4-dimethyl	700	ns	ns	ns	ns
Phthalate esters					
— dibutyl	ns	ns	ns	ns	50,000
— diethyl	ns	ns	ns	ns	590,000

Pollutant	Freshwater		Saltwater		Fish Consumption
	Acute	Chronic	Acute	Chronic	
di 2 ethylhexyl	ns	ns	ns	ns	16,000
dimethyl	ns	ns	ns	ns	950,000
Polychlorinated biphenyls*	2.0	0.014	10	0.03	0.000079
Polynuclear aromatic hydrocarbons*	ns	ns	ns	ns	0.01
Selenium	20	5	300	71	ns
Silver	1+	1+	2.3	ns	ns
Tetrachloroethanes	3,100	ns	ns	ns	ns
benzene (1,2,4,5)	ns	ns	ns	ns	16
ethane (1,1,2,2)*	ns	ns	3,000	ns	3.5
ethylene*	1,800	ns	3,400	145	2.9
phenol (2,3,5,6)	ns	ns	ns	440	ns
Thallium	470	ns	710	ns	16
Toluene	5,800	ns	2,100	ns	140,000
Toxaphene*	0.73	0.0002	0.21	0.0002	0.00024
Tributyltin	ns	0.026	ns	0.01	ns
Trichloroethane (1,1,1)	6,000	ns	10,400	ns	340,000
ethane (1,1,2)*	6,000	ns	ns	ns	14
ethylene*	15,000	ns	700	ns	26
phenol (2,4,6)*	ns	ns	ns	ns	1.2
Vinyl chloride*	ns	ns	ns	ns	170
Zinc	22+	22+	95	86	ns

ns - No standard has been developed.

* ~~Carcinogen.~~

+ ~~The value listed is the minimum standard. Depending upon the receiving water CaCO₃ hardness, higher standards may be calculated using the respective formula in the U.S. Environmental Protection Agency publication Quality Criteria for Water (EPA 440/5-86-001, Revised May 1, 1987).~~

Note ~~Compounds listed in the plural in the "Pollutant" column represent complex mixtures of isomers. Numbers listed to the right of these compounds refer to the total allowable concentration of any combination of isomers of the compound, not only to concentrations of individual isomers.]~~

- [~~(4)~~] (3) The following are basic requirements applicable to discharges to [~~State~~]state waters. These standards shall be enforced through effluent limitations or other conditions in discharge permits. The director may apply more stringent discharge requirements to any discharge if necessary to ensure compliance with all standards in [~~paragraph (2)~~] Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter.
- (A) Continuous discharges through submerged outfalls.
- (i) The No Observed Effect Concentration (NOEC), expressed as [~~per cent~~]percent effluent, of continuous discharges through submerged outfalls shall not be less than [~~100~~]one hundred divided by the minimum dilution; or,
- (ii) The Test of Significant Toxicity (TST), as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010), shall be used to demonstrate no unacceptable level of chronic toxicity at the In-stream Waste Concentration (IWC). The chronic toxicity criterion is expressed using a

- regulatory management decision (b value) of 0.75 for chronic toxicity where, a 0.25 effect level (or more) at the IWC demonstrates an unacceptable level of chronic toxicity.
- (B) Continuous discharges through submerged outfalls shall not contain:
- (i) Pollutants in [~~twenty-four~~] twenty-four-hour average concentrations greater than the values obtained by multiplying the minimum dilution by the standards [in paragraph (3) for the prevention of chronic toxicity] for the prevention of chronic toxicity in Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter.
 - (ii) Non-carcinogenic pollutants in [~~thirty~~] thirty-day average concentrations greater than the values obtained by multiplying the minimum dilution by the standards [in paragraph (3) for fish consumption] for fish consumption in Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter.
 - (iii) Carcinogenic pollutants in [~~twelve~~] twelve-month average concentrations greater than the values obtained by multiplying the average dilution by the standards [in paragraph (3) for fish consumption] for fish consumption in Appendix E dated Month DD,

2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter.

- (C) Discharges without submerged outfalls.
- (i) The survival of test organisms in an undiluted acute toxicity test of any discharge shall not be less than eighty [~~per cent~~]percent;
 - (ii) Compliance with the acute toxicity NPDES effluent limit is demonstrated by using the Test of Significant Toxicity (TST) as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010). The acute toxicity criterion is expressed using a regulatory management decision (b value) of 0.80 for acute toxicity test methods listed in 11-54-10, where, in an undiluted acute toxicity test, a 0.20 effect level (or more) at the IWC demonstrates an unacceptable level of acute toxicity; or,
 - (iii) The Test of Significant Toxicity (TST), as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010), shall be used to demonstrate no unacceptable level of chronic toxicity at the IWC. The chronic toxicity criterion is expressed using a regulatory management decision (b value) of 0.75 for chronic toxicity where, a 0.25 effect level (or more) at the IWC demonstrates an unacceptable level of chronic toxicity. Toxicity is considered significant if the mean response in the IWC is greater

than 0.75 multiplied by the mean response of the control.

No discharge shall contain pollutants in concentrations greater than the standards ~~[in paragraph (3) for the prevention of acute toxicity to aquatic life]~~for the prevention of acute toxicity to aquatic life in Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter. The director may make a limited allowance for dilution for a discharge in this category if it meets the following criteria: the discharge velocity is greater than ~~[3]~~three meters per second; the discharge enters the receiving water horizontally, and; the receiving water depth at the discharge point is greater than zero.

(d) The requirements of ~~[paragraph (a) (6)]~~section 11-54-4(a) (6) shall be deemed met upon a showing that:

- (1) ~~[the]~~The land on which the erosion occurred or is occurring is being managed in accordance with soil conservation practices acceptable to the applicable soil and water conservation district and the director, and ~~[that]~~ a comprehensive conservation program is being actively pursued~~[r]~~; or~~[-that]~~
- (2) ~~[the]~~The discharge has received the best degree of treatment or control, and ~~[that]~~ the severity of impact of the residual soil reaching the receiving body of water is deemed to be acceptable.

(e) In order to reduce a risk to public health or safety arising out of any violation or probable violation of this chapter, the director may post or order posted any ~~[State]~~state waters. Posting is the placement, erection, or use of a sign or signs warning people to stay out of, avoid drinking, avoid contact with, or avoid using the water. This posting authority shall not limit the director's authority to

post or order posting in any other appropriate case or to take any enforcement action.

(f) Pesticide Application.

(1) As used in this section:

"Declared pest emergency situation" means an event defined by a public declaration by the President of the United States, state governor or, with the concurrence of the director, county mayor of a pest problem determined to require control through application of a pesticide beginning less than ten days after identification of the need for pest control.

"Pest" means ~~any~~

(A) Any insect, rodent, nematode, fungus, weed~~[τ]~~; or

~~[(A)]~~ (B) Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator of the EPA declares to be a pest under 7 U.S.C. [~~§136w(e)(1)]~~ section 136w(c)(1).

"Pesticide" means

(A) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest;

(B) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

(C) Any nitrogen stabilizer~~[τ]~~.

~~[except]~~ Except that the term "pesticide" shall not include any article that is a "new animal drug" within the meaning of 21 U.S.C. [~~321(w)]~~ section 321(v), that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal

feed within the meaning of 21 U.S.C. ~~[321(*)]~~ section 321(w) bearing or containing a new animal drug.

The term "pesticide" does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical device or a semi-critical device, as defined in ~~[section 201 of]~~ 21 U.S.C. ~~§321~~ section 321. For purposes of the preceding sentence, the term "critical device" includes any device which is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term "semi-critical device" includes any device which contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body. The term "pesticide" applies to insecticides, herbicides, fungicides, rodenticides, and various other substances used to control pests. The definition encompasses all uses of pesticides authorized under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) including uses authorized under 7 U.S.C. sections ~~3~~136a (~~[registration]~~ Registration of pesticides), ~~5~~136c (~~[experimental]~~ Experimental use permits), ~~18~~136p (~~[emergency exemptions]~~ Exemption of Federal and State agencies), ~~24(e)~~136v(c) (~~[special local needs registrations]~~ Additional uses), and ~~25(b)~~136w(b) (~~[exemptions from FIFRA]~~ Exemption of pesticides).

Note: drugs used to control diseases of humans or animals (such as livestock, fishstock and pets) are not considered pesticides; such drugs are regulated by the Food and Drug Administration. Fertilizers,

nutrients, and other substances used to promote plant survival and health are not considered plant growth regulators and thus are not pesticides. Biological control agents, except for certain microorganisms, are exempted from regulation under FIFRA. (Biological control agents include beneficial predators such as birds or ladybugs that eat insect pests, parasitic wasps, fish, etc.).

- (2) Pesticide applications may be made to ~~[State]~~state waters if the pesticide applications are:
- (A) Registered by the ~~[U.S. Environmental Protection Agency]~~EPA and licensed by the state department of agriculture or other state agency regulating pesticides;
 - (B) Used for the purpose of controlling mosquito and other flying insect pests; controlling weed and algae pests; controlling animal pests; controlling forest canopy pests; or protecting public health or the environment in a declared pest emergency situation or as determined by the director;
 - (C) Applied in a manner consistent with the labeling of the pesticide under FIFRA;
 - (D) Applied under permits required by the director and issued pursuant to [HRS] chapter 342D, ~~[if the director requires such permits under chapter 342D,]~~ HRS; and
 - (E) Applied in a manner so applicable narrative and numeric state water quality criteria as required in chapter 11-54 are met. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; am and comp 06/15/09; am

- (iii) All flowing waters in state or federal fish and wildlife refuges.
- (iv) All flowing waters which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.
- (v) All flowing waters in Waimanu National Estuarine Research Reserve (~~[Hawaii']~~Hawaii).

As listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.

- (B) Class 1.b.: All flowing waters in protective subzones designated under chapter 13-5 by the state department of land and natural resources as listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.
- (C) Class 2.: All flowing waters in areas not otherwise classified.

All flowing waters in classes 1 and 2 in which water quality exceeds the standards specified in this chapter shall not be lowered in quality unless it has been affirmatively demonstrated to the director that the change is justifiable as a result of important economic or social development and will not interfere with or become injurious to any assigned uses made of, or presently in, those waters. This statement of antidegradation policy does not limit the applicability of the policy in section 11-54-1.1 to the whole chapter.

- (2) Standing waters [~~+~~include natural freshwater lakes and reservoirs~~+~~].
 - (A) Class 1.a.:
 - (i) All standing waters within the natural reserves, preserves,

sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.

- (ii) All standing waters in national and state parks.
 - (iii) All standing waters in state or federal fish and wildlife refuges.
 - (iv) All standing waters which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.
 - (v) All standing waters in Waimanu National Estuarine Research Reserve (~~[Hawaii-i]~~Hawaii).
- As listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.
- (B) Class 1.b.: All standing waters in protective subzones designated under chapter 13-5 by the state department of land and natural resources as listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.
 - (C) Class 2.: All standing waters in areas not otherwise classified.
- (3) Elevated wetlands and low wetlands[÷].
- (A) Class 1.a.:
 - (i) All elevated and low wetlands within the natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the

protection of aquatic life established under chapter 195, HRS.

- (ii) All elevated and low wetlands in national and state parks.
- (iii) All elevated and low wetlands in state or federal fish and wildlife refuges.
- (iv) All elevated and low wetlands which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.
- (v) All elevated and low wetlands in Waimanu National Estuarine Research Reserve (~~[Hawai'i]~~ Hawaii).

As listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.

- (B) Class 1.b.: All elevated and low wetlands in protective subzones designated under chapter 13-5 by the state department of land and natural resources as listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.
- (C) Class 2.: All elevated and low wetlands not otherwise classified.

(b) Brackish or saline waters [~~+~~]include anchialine pools, saline lakes, coastal wetlands, and estuaries[~~+~~].

(1) Class 1.a.:

- (A) All inland brackish or saline waters within natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or

similar reserves for the protection of aquatic life established under chapter 195, HRS.

- (B) All inland brackish or saline waters in national and state parks.
- (C) All inland brackish or saline waters in state or federal fish and wildlife refuges.
- (D) All inland brackish or saline waters which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.
- (E) All inland brackish and saline waters in Waimanu National Estuarine Research Reserve (~~[Hawai'i]~~Hawaii).
- (F) The following natural estuaries:
Lumaha'i and Kilauea estuaries
(~~[Kaua'i]~~Kauai).

As listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.

- (2) Class 1.b.: All inland brackish or saline waters in protective subzones designated under chapter 13-5 by the state department of land and natural resources as listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.
- (3) Class 2.: All inland brackish and saline waters not otherwise classified. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp _____] (Auth: HRS §342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D- 4, 342D-5, Ch. 342E)

§11-54-5.2 Inland water criteria. (a)

~~[Criteria for springs]~~ Springs and seeps, ditches and flumes, natural freshwater lakes, reservoirs, low wetlands, coastal wetlands, saline lakes, and anchialine pools.

- (1) Only the ~~[basic criteria]~~ basic water quality criteria set forth in section ~~[11-54-4]~~ 11-54-4(a) apply to springs and seeps, ditches and flumes, natural freshwater lakes, reservoirs, low wetlands, coastal wetlands, saline lakes, and anchialine pools.
 - (2) Natural freshwater lakes, saline lakes, and anchialine pools ~~[will]~~ shall be maintained in the natural state through ~~[Hawaii's]~~ Hawaii's "no discharge" policy for these waters.
 - (3) Waste discharge into these waters is prohibited, except as provided in section ~~[11-54-4(e)]~~ 11-54-4(f) (see section 11-54-3(b)(1)).
- (b) ~~[Specific criteria for streams]~~ Streams.
- (1) ~~[Water column]~~ Specific criteria for streams shall be as provided in the following table:

<u>[Parameter]</u>	<u>Geometric mean not to exceed the given value</u>	<u>Not to exceed the given value more than ten per cent of the time</u>	<u>Not to exceed the given value more than two per cent of the time]</u>

<u>Parameter</u>	<u>Geometric mean not to exceed the given value</u>	<u>Not to exceed the given value more than ten percent of the time</u>	<u>Not to exceed the given value more than two percent of the time</u>
Total Nitrogen (ug N/L)	250.0* 180.0**	520.0* 380.0**	800.0* 600.0**
Nitrate + Nitrite Nitrogen (ug [NO ₃ + NO ₂]-N/L)	70.0* 30.0**	180.0* 90.0**	300.0* 170.0**
Total Phosphorus (ug P/L)	50.0* 30.0**	100.0* 60.0**	150.0* 80.0**
Total Suspended Solids (mg/L)	20.0* 10.0**	50.0* 30.0**	80.0* 55.0**
Turbidity (N.T.U.)	5.0* 2.0**	15.0* 5.5**	25.0* 10.0**

* Wet season - November 1 through April 30.

** Dry season - May 1 through October 31.

L = liter

N.T.U. [=] Nephelometric Turbidity Units ~~[=] A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity]~~ are used to measure changes in the intensity of light scattered by a water sample. The higher the intensity of scattered light means there is higher turbidity.

ug = microgram or 0.000001 ~~[grams]~~g

pH Units - ~~[shall]~~ Shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 5.5 nor higher than ~~[8.0]~~ 8.0.

Dissolved Oxygen - ~~[Not]~~ Shall not be less than eighty ~~[per cent]~~ percent saturation, determined as a function of ambient water temperature.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Specific Conductance - ~~[Not]~~ Shall not be more than three hundred micromhos/centimeter.

[~~(1)~~] (2) Bottom criteria for streams shall be applied as:

- (A) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding an equivalent thickness of five millimeters (0.20 inches) over hard bottoms twenty-four hours after a heavy rainstorm.
- (B) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding an equivalent thickness of ten millimeters (0.40 inches) over soft bottoms twenty-four hours after a heavy rainstorm.
- (C) In soft bottom material in pool sections of streams, oxidation-reduction potential (EH) in the top ten centimeters (four inches) shall not be less than +100 millivolts.
- (D) In soft bottom material in pool sections of streams, no more than fifty ~~[per cent]~~percent of the grain size distribution of sediment shall be smaller than 0.125 millimeters (0.005 inches) in diameter.
- (E) The director shall prescribe the appropriate parameters, measures, and criteria for monitoring stream bottom biological communities including their habitat, which may be affected by proposed actions. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality criteria for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms

which may be applicable to the specific site.

(c) ~~[Specific criteria]~~ Elevated wetlands.
Specific criteria to be applied for elevated wetlands: pH units shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 4.5 nor higher than 7.0.

(d) ~~[Specific criteria for estuaries]~~ Estuaries.

(1) ~~[The following table is applicable to all]~~
Specific criteria for all estuaries except Pearl Harbor shall be as provided in the following table:

<u>Parameter</u>	<u>Geometric mean not to exceed the given value</u>	<u>Not to exceed the given value more than ten per cent of the time</u>	<u>Not to exceed the given value more than two per cent of the time</u>
<u>Parameter</u>	<u>Geometric mean not to exceed the given value</u>	<u>Not to exceed the given value more than ten percent of the time</u>	<u>Not to exceed the given value more than two percent of the time</u>
Total Nitrogen (ug N/L)	200.00	350.00	500.00
[Ammonia Nitrogen (ug NH₄-N/L)]	6.00	10.00	20.00
Nitrate + Nitrite Nitrogen (ug [NO ₃ + NO ₂]-N/L)	8.00	25.00	35.00
<u>Ammonia Nitrogen (ug NH₄-N/L)</u>	<u>6.00</u>	<u>10.00</u>	<u>20.00</u>
Total Phosphorus (ug P/L)	25.00	50.00	75.00

<u>Parameter</u>	<u>Geometric mean not to exceed the given value</u>	<u>Not to exceed the given value more than ten per cent of the time</u>	<u>Not to exceed the given value more than two per cent of the time</u>

Chlorophyll a (ug/L)	2.00	5.00	10.00
Turbidity (N.T.U.)	1.5	3.00	5.00

L = liter

N.T.U. [=] Nephelometric Turbidity Units [~~—A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity~~] are used to measure changes in the intensity of light scattered by a water sample. The higher the intensity of scattered light means there is higher turbidity.

ug = microgram or 0.000001 [~~grams~~]g

pH Units - [~~shall~~] Shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 7.0 nor higher than 8.6.

Dissolved Oxygen - [~~Not~~] Shall not be less than seventy-five [~~per cent~~] percent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten [~~per cent~~] percent from ambient conditions.

Oxidation [~~—~~] -reduction potential (EH) - Shall not be less than -100 millivolts in the uppermost ten centimeters (four inches) of sediment.

(2) [~~The following table is applicable only to~~] Specific criteria for Pearl Harbor Estuary shall be as provided in the following table [~~—~~]:

<u>[Parameter</u>	<u>Geometric</u>	<u>Not to exceed</u>	<u>Not to</u>
	<u>mean not to</u>	<u>the given value</u>	<u>exceed the</u>
	<u>exceed the</u>	<u>more than</u>	<u>given value</u>
	<u>given value</u>	<u>ten per cent</u>	<u>more than</u>
		<u>of the time</u>	<u>two per</u>
			<u>cent of</u>
			<u>the time]</u>

<u>Parameter</u>	<u>Geometric mean not to exceed the given value</u>	<u>Not to exceed the given value more than ten percent of the time</u>	<u>Not to exceed the given value more than two percent of the time</u>
Total Nitrogen (ug N/L)	300.00	550.00	750.00
[Ammonia Nitrogen (ug NH₄-N/L)]	10.00	20.00	30.00
Nitrate + Nitrite Nitrogen (ug [NO ₃ + NO ₂]-N/L)	15.00	40.00	70.00
<u>Ammonia Nitrogen (ug NH₄-N/L)</u>	10.00	20.00	30.00
Total Phosphorus (ug P/L)	60.00	130.00	200.00
Chlorophyll a (ug/L)	3.50	10.00	20.00
Turbidity (N.T.U.)	4.00	8.00	15.00

L = liter

N.T.U. [=] Nephelometric Turbidity Units [~~—A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity~~] are used to measure changes in the intensity of light scattered by a water sample. The higher the intensity of scattered light means there is higher turbidity.

ug = microgram or 0.000001 [~~grams.]~~g

pH Units - [~~shall]~~Shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 6.8 nor higher than 8.8.

Dissolved Oxygen - [~~Not]~~Shall not be less than sixty [~~per cent]~~percent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten [~~per cent~~]
percent from ambient conditions.

Oxidation[~~---~~]-Reduction potential (EH) - Shall not be less than -100 millivolts in the uppermost ten centimeters (four inches) of sediment. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; am and comp 10/21/12; am and comp 12/6/13; comp 11/15/14; am and comp] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-6 Uses and specific criteria applicable to marine waters. (a) Embayments.

(1) As used in this subsection:

"Embayments" means land-confined and physically-protected marine waters with restricted openings to open coastal waters, defined by the ratio of total bay volume to the cross-sectional entrance area of seven hundred to one or greater.

"Total bay volume" is measured in cubic meters and "cross-sectional entrance area" is measured in square meters, and both are determined at mean lower low water.

(2) Water areas to be protected[~~-~~]:

(A) Class AA.

(i) Waters are listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter.

(ii) All embayments in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS,

as listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter, or similar reserves for the protection of marine life established under chapter 190, ~~[HRS]~~HRS, as listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter.

- (iii) All waters in state or federal fish and wildlife refuges and marine sanctuaries as listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter.
- (iv) All waters which have been officially identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service as listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter.

(B) Class A.
Waters are listed in Appendix C dated July 1, 2014, entitled "Class A, Marine Waters and Embayments", located at the end of this chapter.

(3) The following criteria are specific for all embayments excluding those described in ~~[subsection (d)]~~section 11-54-6(d). (Note that criteria for embayments differ based on fresh water inflow.)

<u>Parameter</u>	Geometric mean not to exceed the	Not to exceed the given value more than	Not to exceed the given value
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Parameter	given value	ten per cent of the time	more than two per cent of the time]
	<u>Geometric mean not to exceed the given value</u>	<u>Not to exceed the given value more than ten percent of the time</u>	<u>Not to exceed the given value more than two percent of the time</u>
Total Nitrogen (ug N/L)	200.00* 150.00**	350.00* 250.00**	500.00* 350.00**
Ammonia Nitrogen (ug NH₄-N/L)	6.00* 3.50**	13.00* 8.50**	20.00* 15.00**]
Nitrate + Nitrite Nitrogen (ug [NO ₃ + NO ₂]-N/L)	8.00* 5.00**	20.00* 14.00**	35.00* 25.00**
<u>Ammonia Nitrogen (ug NH₄-N/L)</u>	<u>6.00* 3.50**</u>	<u>13.00* 8.50**</u>	<u>20.00* 15.00**</u>
Total Phosphorus (ug P/L)	25.00* 20.00**	50.00* 40.00**	75.00* 60.00**
Chlorophyll a (ug/L)	1.50* 0.50**	4.50* 1.50**	8.50* 3.00**
Turbidity (N.T.U.)	1.5* 0.40**	3.00* 1.00**	5.00* 1.50**

* "Wet" criteria apply when the average fresh water inflow from the land equals or exceeds one [~~per cent~~ percent] of the embayment volume per day.

** "Dry" criteria apply when the average fresh water inflow from the land is less than one [~~per cent~~ percent] of the embayment volume per day.

Applicable to both "wet" and "dry" conditions:

L = liter

N.T.U. - Nephelometric Turbidity Units are used to measure changes in the intensity of light scattered by a water sample. The higher the intensity of scattered light means there is higher turbidity.

ug = microgram or 0.000001 g

pH Units - [~~shall~~ Shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or

groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - ~~[Not]~~ Shall not be less than seventy-five [per cent] percent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten ~~[per cent]~~ percent from natural or seasonal changes considering hydrologic input and oceanographic factors.

~~[L = liter~~

~~N.T.U. - Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.~~

~~ug = microgram or 0.000001 grams]~~

(b) Open coastal waters.

(1) As used in this subsection ~~[7]~~ :

"Open coastal waters" means marine waters bounded by the 183 ~~[meter]~~ m or 600 ~~[foot]~~ ft (~~[100]~~ one hundred fathom) depth contour and the shoreline, excluding bays named in ~~[subsection (a)]~~ section 11-54-6(a).

(2) Water areas to be protected:

(A) Class AA as listed in Appendix D dated July 1, 2014, entitled "Class AA, Open Coastal Waters", located at the end of this chapter.

All open waters in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter ~~[195]~~ 195, HRS, or chapter 190, ~~[HRS]~~ HRS, as listed in Appendix D dated July 1, 2014, entitled "Class AA, Open Coastal Waters", located at the end of this chapter ~~[7]~~ ; or similar reserves for the protection of marine life established under

chapter 190, HRS, as amended, as listed in Appendix D dated July 1, 2014, entitled "Class AA, Open Coastal Waters", located at the end of this chapter; or in the refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service as listed in Appendix D dated July 1, 2014, entitled "Class AA, Open Coastal Waters", located at the end of this chapter.

- (B) Class A - All other open coastal waters not otherwise specified.
- (3) The following criteria are specific for all open coastal waters, excluding those described in [~~subsection (d)~~] section 11-54-6(d). (Note that criteria for open coastal waters differ, based on fresh water discharge.)

<u>[Parameter</u>	<u>Geometric</u>	<u>Not to exceed</u>	<u>Not to</u>
<u>mean not to</u>	<u>exceed the</u>	<u>the given value</u>	<u>exceed the</u>
<u>given value</u>	<u>given value</u>	<u>more than</u>	<u>given value</u>
		<u>ten per cent</u>	<u>more than</u>
		<u>of the time</u>	<u>two per</u>
			<u>cent of</u>
			<u>the time]</u>

<u>Parameter</u>	<u>Geometric mean not to exceed the given value</u>	<u>Not to exceed the given value more than ten percent of the time</u>	<u>Not to exceed the given value more than two percent of the time</u>
Total Nitrogen (ug N/L)	150.00* 110.00**	250.00* 180.00**	350.00* 250.00**
Ammonia Nitrogen (ug NH₄-N/L)	3.50* 2.00**	8.50* 5.00**	15.00* 9.00**
Nitrate + Nitrite Nitrogen (ug [NO ₃ + NO ₂]-N/L)	5.00* 3.50**	14.00* 10.00**	25.00* 20.00**
Ammonia Nitrogen (ug NH ₄ -N/L)	3.50* 2.00**	8.50* 5.00**	15.00* 9.00**
Total Phosphorus (ug P/L)	20.00* 16.00**	40.00* 30.00**	60.00* 45.00**
Light Extinction Coefficient (k units)	0.20* 0.10**	0.50* 0.30**	0.85* 0.55**
Chlorophyll a (ug/L)	0.30* 0.15**	0.90* 0.50**	1.75* 1.00**
Turbidity (N.T.U.)	0.50* 0.20**	1.25* 0.50**	2.00* 1.00**
Light Extinction Coefficient (k units)	0.20* 0.10**	0.50* 0.30**	0.85* 0.55**

* "Wet" criteria apply when the open coastal waters receive more than three million gallons per day of fresh water discharge per shoreline mile.

** "Dry" criteria apply when the open coastal waters receive less than three million gallons per day of fresh water discharge per shoreline mile.

Applicable to both "wet" and "dry" conditions:

L = liter

N.T.U. - Nephelometric Turbidity Units are used to measure changes in the intensity of light scattered by a water sample. The higher the intensity of scattered light means there is higher turbidity.

ug = microgram or 0.000001 g

pH Units - ~~[shall]~~ Shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - ~~[Not]~~ Shall not be less than seventy-five ~~[per cent]~~ percent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten ~~[per cent]~~ percent from natural or seasonal changes considering hydrologic input and oceanographic factors.

k units = the ratio of light measured at the water's surface to light measured at a particular depth.

~~[L = liter]~~

Light Extinction Coefficient is only required for dischargers who have obtained a waiver pursuant to section 301(h) of the ~~[Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251), as amended]~~ Act, and are required by EPA to monitor it.

~~[N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity. ug = microgram or 0.000001 grams]~~

(c) Oceanic waters.

(1) As used in this subsection:

"Oceanic waters" means all other marine waters outside of the 183 ~~[meter]~~ m (600 ~~[feet]~~ ft or ~~[100]~~ one hundred fathom) depth contour.

(2) Water areas to be protected: Class A - All oceanic waters.

(3) The following criteria are specific for oceanic waters:

<u>Parameter</u>	<u>Geometric</u>	<u>Not to exceed</u>	<u>Not to</u>
	<u>mean not to</u>	<u>the given value</u>	<u>exceed the</u>

<u>Parameter</u>	<u>Geometric mean not to exceed the given value</u>	<u>Not to exceed the given value more than ten percent of the time</u>	<u>Not to exceed the given value more than two percent of the time</u>
Total Nitrogen (ug N/L)	50.00	80.00	100.00
[Ammonia Nitrogen (ug NH₄-N/L)]	1.00	1.75	2.50
Nitrate + Nitrite Nitrogen (ug [NO ₃ + NO ₂]-N/L)	1.50	2.50	3.50
<u>Ammonia Nitrogen (ug NH₄-N/L)</u>	1.00	1.75	2.50
Total Phosphorus (ug P/L)	10.00	18.00	25.00
Chlorophyll a (ug/L)	0.06	0.12	0.20
Turbidity (N.T.U.)	0.03	0.10	0.20

L = liter

N.T.U. [=] Nephelometric Turbidity Units [~~—~~ A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity] are used to measure changes in the intensity of light scattered by a water sample. The higher the intensity of scattered light means there is higher turbidity.

ug = microgram or 0.000001 [~~grams]~~ g

pH Units - [~~shall~~] Shall not deviate more than 0.5 units from a value of 8.1.

Dissolved Oxygen - [~~Not~~] Shall not be less than seventy-five [~~per cent~~] percent saturation, determined

as a function of ambient water temperature and salinity.

Temperature - ~~[shall]~~ Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten ~~[per cent]~~ percent from natural or seasonal changes considering hydrologic input and oceanographic factors.

(d) Area-specific criteria for the Kona (west) coast of the island of Hawaii.

- (1) ~~[For all marine waters of the island of Hawaii from Loa Point, South Kona District, clockwise to Malae Point, North Kona District, excluding Kawaihae Harbor and Honokohau Harbor, and for all areas from the shoreline at mean lower low water to a distance 1000 m seaward:]~~ As used in this subsection:

"Kona coast of the island of Hawaii" means the area from Loa Point, South Kona District, clockwise to Malae Point, North Kona District.

- (2) Water areas to be protected: All marine waters and all areas from the shoreline at mean lower low water to a distance 1000 m seaward, excluding Honokohau Harbor and Kawaihae Harbor.
- (3) The following criteria are specific to the Kona coast of the island of Hawaii, except for Honokohau Harbor and Kawaihae Harbor (see section 11-54-6(a) (3) for Class A embayments):
- (A) In areas where nearshore marine water salinity is greater than 32.00 parts per thousand the following specific criteria apply:

[Parameter

Geometric mean
not to exceed the
given single value]

<u>Parameter</u>	<u>Geometric mean not to exceed the given value</u>
Total Dissolved Nitrogen (ug N/L)	100.00
Nitrate + Nitrite Nitrogen (ug [NO ₃ + NO ₂]-N/L)	4.50
<u>Ammonia Nitrogen</u> (ug NH ₄ -N/L)	<u>2.50</u>
Total Dissolved Phosphorus (ug P/L)	12.50
Phosphate (ug PO ₄ -P/L)	5.00
[Ammonia Nitrogen (ug NH₄-N/L)]	2.50
Chlorophyll a (ug/L)	0.30
Turbidity (N.T.U.)	0.10

~~[* Specific criteria for Class A embayments apply to Honokohau Harbor and Kawaihae Harbor, see section 11-54-6(a)(3).]~~

- (B) If nearshore marine water salinity is less than or equal to 32.00 parts per thousand the following parameters shall be related to salinity on the basis of a linear least squares regression equation:

$$Y = MX + B$$

where:

Y = parameter concentration (in ug/L)

X = salinity (in ppt)

M = regression coefficient (or "slope")

B = constant (or "Y intercept").

The absolute value of the upper 95 [~~per cent~~]percent confidence limit for the calculated sample regression coefficient (M) shall not exceed the absolute value of the following values:

<u>Parameter</u>	<u>M</u>
<u>Total Dissolved Nitrogen (ug N/L)</u>	<u>-40.35</u>
Nitrate + Nitrite Nitrogen (ug [NO ₃ + NO ₂]-N/L)	-31.92
[Total Dissolved Nitrogen (ug N/L)]	-40.35
[Phosphate (ug PO₄-P/L)]	-3.22
Total Dissolved Phosphorus (ug P/L)	-2.86
<u>Phosphate (ug PO₄-P/L)</u>	<u>-3.22</u>

The specific criteria for ammonia nitrogen, chlorophyll a, and turbidity given in [~~clause (i)~~]section 11-54-6(d)(3)(A) also apply.

- (C) Parameter concentrations shall be determined along a horizontal transect extending seaward from a shoreline sample location using the following method: water samples shall be obtained at distances of 1, 10, 50, 100, and 500 meters from the shoreline sampling location. Samples shall be collected within one meter of the water surface and below the air-water interface. Dissolved nutrient samples shall be filtered through media with particle size retention of 0.7 um. This sampling protocol shall be replicated

not less than three times on different days over a period not to exceed fourteen days during dry weather conditions. The geometric means of sample measurements for corresponding offshore distances shall be used for regression calculations.

L = liter

N.T.U. - Nephelometric Turbidity Units are used to measure changes in the intensity of light scattered by a water sample. The higher the intensity of scattered light means there is higher turbidity.

ug = microgram or 0.000001 g

pH Units - [~~shall~~] Shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - [~~Not~~] Shall not be less than seventy-five [~~per cent~~] percent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten [~~per cent~~] percent from natural or seasonal changes considering hydrologic input and oceanographic factors.

[~~L - liter~~

~~N.T.U. - Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.~~

~~ug - microgram or 0.000001 grams.] [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)~~

§11-54-7 Uses and specific criteria applicable to marine bottom types. (a) Sand beaches.

- (1) As used in this subsection:

"Sand beaches" means shoreline composed of the weathered calcareous remains of marine algae and animals (white sand), the weathered remains of volcanic tuff (olivine), or the weathered remains of lava (black sand). Associated animals are largely burrowers and are related to particle grain size, slope, and color of the beach.

- (2) Water areas to be protected:

- (A) Class I - All beaches on the Northwestern Hawaiian Islands. These islands comprise that portion of the Hawaiian archipelago which lies northwest of the island of Kauai and is part of the State of Hawaii; including Nihoa Island, Necker Island, French Frigate Shoals, Brooks Banks, Gardiner Pinnacles, Dowsett and Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Atoll, Gambia Shoal, and Kure Atoll.
- (B) Class II - All beaches not in Class I.

- (3) The following criteria are specific to sand beaches:

- (A) Episodic deposits of flood-borne sediment shall not occur in quantities exceeding an equivalent thickness of ten millimeters (0.40 inches) twenty-four hours after a heavy rainstorm.
- (B) Oxidation[~~---~~]-reduction potential (EH) in the uppermost ten centimeters (four [~~inches~~]inches) of sediment shall not be less than +100 [~~millivolts~~] millivolts.

- (C) No more than fifty [~~per cent~~] percent of the grain size distribution of sediment shall be smaller than 0.125 millimeters in diameter.
- (b) Lava rock shoreline and solution benches.
- (1) As used in this subsection:
- "Lava rock shorelines" means sea cliffs and other vertical rock faces, horizontal basalts, volcanic tuff beaches, and boulder beaches formed by rocks falling from above or deposited by storm waves. Associated plants and animals are adapted to the harsh physical environment and are distinctly zoned to the degree of wave exposure.
- "Solution benches" means sea level platforms developed on upraised reef or solidified beach rock by the erosive action of waves and rains. Solution benches are distinguished by a thick algal turf and conspicuous zonation of plants and animals.
- (2) Water areas to be protected:
- (A) Class I - All lava rock shorelines and solution benches in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life established under chapter 190, HRS, as amended; or in refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service.
- (B) Class II
- (i) All other lava rock shorelines not in Class I.
- (ii) The following solution benches:
- | | |
|---------------|--------------------------|
| <u>Maui</u> | [Oahu |
| Kihei | Diamond Head |
| Papaula Point | Manana Island |

<u>Kauai</u>	Makapuu
Near Hanapepe	Laie
Salt Ponds	Kahuku
Milolii	Mokuleia
Nualolo	Makua
Makaha	Makaha
Mahaulepu	Maile
Kuhio Beach Park	Lualialei
(Kukuiula)	Barbers Point]

Oahu
Diamond Head
Manana Island
Makapuu
Laie
Kahuku
Mokuleia
Makua
Makaha
Maile
Lualialei
Barbers Point

- (3) The following criteria are specific to lava rock shorelines and solution benches:
- (A) Episodic deposits of flood-borne sediment shall not occur in quantities exceeding an equivalent thickness of five millimeters (0.20 inches) for longer than twenty-four hours after a heavy rainstorm.
- (B) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. The location and boundaries of each bottom-type class will be clarified when situations require their identification[. ~~For example,~~] such as when a discharge permit is applied for

or a waiver pursuant to section 301(h) of the [~~Federal Water Pollution Control Act (33 U.S. C. Section 1311)~~]Act is required. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.

(c) Marine pools and protected coves.

(1) As used in this subsection:

"Marine pools" means waters which collect in depressions on sea level lava rock outcrops and solution benches and also behind large boulders fronting the sea. Pools farthest from the ocean have harsher environments and less frequent renewal of water and support fewer animals. Those closest to the ocean are frequently renewed with water, are essentially marine, and support more diverse fauna.

"Protected coves" means small inlets which are removed from heavy wave action or surge.

(2) Water areas to be protected.

(A) Class I.

(i) All marine pools and protected coves in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life established under chapter

190, HRS, as amended; or in
 refuges or sanctuaries
 established by the U.S. Fish
 and Wildlife Service or the
 National Fisheries Service.

(ii) Hawaii
 Honaunau
 Kiholo

(B) Class II.

<u>Hawaii</u>	[Maui
Kalapana	Hana
Pohakuloa	Keanae
Kapalaoa	Napili
Kapoho	Puu Olai to
[King's Landing	Cape
(Papai)]	Hanamanioa
<u>King's Landing (Papai)</u>	Kipahulu
Hilo	
Leileiwi Point	<u>Molokai</u>
Wailua Bay	Cape Halawa
	Kalaupapa
<u>Maui</u>	South Coast]
<u>Hana</u>	
<u>Keanae</u>	
<u>Napili</u>	
<u>Puu Olai to Cape Hanamanioa</u>	
<u>Kipahulu</u>	
<u>Molokai</u>	
<u>Cape Halawa</u>	
<u>Kalaupapa</u>	
<u>South Coast</u>	
<u>Oahu</u>	
Diamond Head	
Halona Blowhole to Makapuu	
Mokuleia	
Kaena Point	
Makua	
Punaluu	

Kauai
Kealia
Mahaulepu
Hanamaulu
Poipu
Puolo Point

- (3) The following criteria are specific to marine pools and protected coves:
- (A) In marine pools and coves with sand bottoms, oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sediment shall not be less than +100 millivolts.
 - (B) In marine pools and coves with sand bottoms, no more than fifty [~~per cent~~] percent of the grain size distribution of the sediment shall be smaller than 0.125 millimeters in diameter.
 - (C) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding equivalent thicknesses for longer than twenty-four hours following a heavy rainstorm according to the following:
 - (i) No thicker than an equivalent of five millimeters (0.20 inches) on hard bottoms (other than living corals).
 - (ii) No thicker than an equivalent of ten millimeters (0.40 inches) on soft bottoms.
 - (D) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to

be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.

(d) Artificial basins.

(1) As used in this subsection:

"Artificial basins" means dredged or quarried channels or harbors, and harbor-associated submerged structures. Many organisms can attach to the vertical structures, but the soft, shifting sediment bottoms of harbors may only be colonized by a few hardy or transient species.

(2) Class II water areas to be protected are as follows:

(A) Shallow draft harbors:

Hawaii

~~[Wailoa River Boat Harbor]~~

Wailoa River Boat Harbor

Mahukona Harbor

Keauhou Harbor

Kailua-Kona Harbor

Honokohau Boat Harbor

Kawaihae Boat Harbor

Maui

Maalaea Boat Harbor

Lahaina Boat Harbor

Hana Harbor

Lanai

Manele Boat Harbor

Kaumalapau Harbor

Molokai

Kalaupapa Anchorage

~~[Maui~~

~~Maalaea Boat Harbor~~

~~Lahaina Boat Harbor~~

~~Hana Harbor~~

Lanai

~~Manele Boat Harbor~~

~~Kaumalapau Harbor]~~

Kaunakakai Small Boat Harbor
 Hale o Lono Harbor

Oahu

Heeia Kea Boat Harbor
 Kaneohe Marine Corps Air Station
 Kaneohe Yacht Club
 Hawaii Kai Marina (Kuapa Pond)
 Pokai Bay
 Waianae Boat Harbor
 Keehi Marine Center
 La Mariana Sailing Club
 Haleiwa Harbor
 Makani Kai Marina
 Keehi Boat Harbor
 Ala Wai Boat Harbor:
 Ala Wai Fuel Dock
 Hawaii Yacht Club
 Waikiki Yacht Club
 Ko Olina

Kauai

Nawiliwili Small Boat Harbor
 Kukuiula Boat Harbor
 Kikiaola Boat Harbor
 Port Allen Boat Harbor

(B) Deep draft commercial harbors:

Hawaii

Kuhio Bay (Hilo Harbor)
 Kawaihae Deep Draft Harbor

Maui

Kahului Harbor

Molokai

Kaunakakai Barge Harbor

Oahu

Honolulu Harbor

Barbers Point Harbor
Kewalo Basin

Kauai
Nawiliwili Harbor
Port Allen Harbor

- (3) Specific criterion to be applied - Oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sediment shall not be less than -100 millivolts.
- (e) Reef flats and reef communities.
- (1) As used in this subsection:
- "Nearshore reef flats" means shallow platforms of reef rock, rubble, and sand extending from the shoreline. Smaller, younger flats projected out as semi-circular aprons while older, larger flats form wide continuous platforms. Associated animals are mollusks, echinoderms, worms, crustaceans (many living beneath the surface), and reef-building corals.
- "Offshore reef flats" means shallow, submerged platforms of reef rock and sand between depths of zero to three meters (zero to ten feet) which are separated from the shoreline of high volcanic islands by lagoons or ocean expanses. Dominant organisms are bottom-dwelling algae. Biological composition is extremely variable. There are three types: patch, barrier, and atoll reef flats; quite different from one another structurally. The presence of heavier wave action, water more oceanic in character, and the relative absence of terrigenous influences distinguish offshore reef flats.
- "Protected reef communities" means hard bottom aggregations, including scattered sand channels and patches, dominated by

living coral thickets, mounds, or platforms. They are found at depths of ten to thirty meters (thirty-two to ninety-six feet) along protected leeward coasts or in shallow water (up to sea level) in sheltered lagoons behind atoll or barrier reefs and in the calm reaches of bays or coves.

"Wave-exposed reef communities" means aggregations, including scattered sand channels and patches, dominated by corals. They may be found at depths up to forty meters (approximately one hundred thirty feet) along coasts subject to continuous or heavy wave action and surge. Wave-exposed reef communities are dominated biologically by benthic algae, reef-building corals, and echinoderms.

(2) Water areas to be protected:

(A) Class I.

- (i) All reef flats and reef communities in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life under chapter 190, HRS, as amended; or in refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service;

(ii) Nearshore reef flats:

<u>Hawaii</u>	[Maui
Puako	Honolua
[Lanai	Oahu
Northwest Lanai Reef	Hanauma Bay
<u>Molokai</u>	<u>Kauai</u>
Western Kalaupapa	Nualolokai
Southeast Molokai Reef	Hanalei

~~Honomuni Harbor (Anini to
Kulaalamihī Fishpond] Haena)]~~

Lanai
Northwest Lanai Reef

Molokai
Western Kalaupapa
Southeast Molokai Reef
Honomuni Harbor
Kulaalamihī Fishpond

Maui
Honolua

Oahu
Hanauma Bay

Kauai
Nualolokai
Hanalei (Anini to Haena)

(iii) Offshore reef flats:

Moku o Loe (Coconut Island,
Kaneohe Bay, Oahu)
Kure Atoll
Pearl and Hermes Atoll
Lisianski Island
Laysan Island
Maro Reef
French Frigate Shoals

(iv) Wave exposed reef communities:

Hawaii
1823 Lava Flow (Punaluu)
1840 Lava Flow (North Puna)
1868 Lava Flow (South Point)
1887 Lava Flow (South Point)
1955 Lava Flow (South Puna)

1960 Lava Flow (Kapoho)
 1969 Lava Flow (Apuna Point)
 1970 Lava Flow (Apuna Point)
 1971 Lava Flow (Apuna Point)
 1972 Lava Flow (Apuna Point)
 1973 Lava Flow (Apuna Point)

Maui

Hana Bay
 Makuleia Bay (Honolua)

Molokini Island

All wave exposed reef communities

Molokai

Moanui Kahinapohaku Waikolu -
 Kalawao
 Halawa Bay

Oahu

Sharks Cove (Pupukea)
 Moku Manu (Islands)
 Outer Hanauma Bay
 Waimea Bay
 Kawela Bay
 Kahana Bay

Kauai

Ke'e Beach
 Poipu Beach
 Kipu Beach

Niihau

All wave exposed communities

Lehua (off Niihau)

All wave exposed communities

(v) Protected reef communities:

Hawaii

Puako
 Honaunau
 Kealakekua
 Kiholo
 Anaehoomalu
 Hapuna
 Kahaluu Bay
 Keaweula (North Kohala)
 Milolii Bay to Keawaiki
 Kailua-Kaiwi (Kona)
 Onomea Bay
 1801 Lava Flow (Keahole or Kiholo)
 1850 Lava Flow (South Kona)
 1859 Lava Flow (Kiholo)
 1919 Lava Flow (Milolii)
 1926 Lava Flow (Milolii)

Maui

Honolua
 Ahihi-La Perouse (including 1790
 Lava Flow at Cape Kinau)

Molokini Island

All protected reef communities

Lanai

Manele
 Hulopoe

Molokai

Southeast Molokai [Oahu
~~Hanauma Bay~~
 Kalaupapa ~~Moku o Loe~~
 Honomuni Harbor ~~(Coconut Island,~~
~~Kaneohe Bay)]~~

Oahu

Hanauma Bay
Moku o Loe (Coconut Island,
Kaneohe Bay)

Kauai

Hoai Bay (Poipu)

Northwestern Hawaiian Islands

Kure Atoll Lagoon

Pearl and Hermes Lagoon

Lisianski Lagoon

Maro Reef Lagoon

French Frigate Shoals Lagoon

(B) Class II.

- (i) Existing or planned harbors may be located within nearshore reef flats showing degraded habitats and only where feasible alternatives are lacking and upon written approval by the director, considering environmental impact and the public interest pursuant to section 342D-6, HRS.

HawaiiBlonde Reef (Hilo Harbor) ~~Lahaina~~Kawaihae Small Boat Harbor ~~Harbor~~~~Kahului~~Maui~~Harbor]~~Lahaina HarborKahului HarborLanai

Manele

Molokai

Kaunakakai Harbor

Hale o Lono Harbor

Palaau (2.4 kilometers/1.5 mile,
east of Pakanaka Fishpond)Oahu

Keehi Boat Harbor

Ala Moana Reef

Honolulu Harbor

Heeia Harbor

Kaneohe Yacht Club

Ala Wai Harbor
 Haleiwa Boat Harbor
 Maunalua Bay
 Pearl Harbor
 Kaneohe Bay
 Kahe

All other nearshore reef flats not
 in Class I;

(ii) Offshore reef flats:

Oahu
 Kapapa Barrier Reef
 Kaneohe Patch Reefs (Kaneohe Bay)

(iii) All other wave exposed or
 protected reef communities not in
 Class I.

- (3) Specific criteria to be applied to all reef flats and reef communities: No action shall be undertaken which would substantially risk damage, impairment, or alteration of the biological characteristics of the areas named herein. When a determination of substantial risk is made by the director, the action shall be declared to be contrary to the public interest and no other permits shall be issued pursuant to chapter 342D, HRS.
- (A) Oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sand patches shall not be less than +100 millivolts;
- (B) No more than fifty [~~per cent~~] percent of the grain size distribution of sand patches shall be smaller than 0.125 millimeters in diameter;
- (C) Episodic deposits of flood-borne soil sediment shall not occur in quantities

exceeding equivalent thicknesses for longer than twenty-four hours after a heavy rainstorm as follows:

- (i) No thicker than an equivalent of two millimeters (0.08 inches) on living coral surfaces;
 - (ii) No thicker than an equivalent of five millimeters (0.2 inches) on other hard bottoms;
 - (iii) No thicker than an equivalent of ten millimeters (0.4 inches) on soft bottoms;
- (D) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. The location and boundaries of each bottom-type class shall be clarified when situations require their identification. For example, the location and boundaries shall be clarified when a discharge permit is applied for or a waiver pursuant to ~~[Section]~~section 301(h) of the ~~[Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251 et seq.)]~~Act is required. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.
- (f) Soft bottom communities.
 - (1) As used in this subsection:
 - "Soft bottom communities" means poorly described and "patchy" communities, mostly

of burrowing organisms, living in deposits at depths between two to forty meters (approximately six to one hundred thirty feet). The particle size of sediment, depth below sea level, and degree of water movement and associated sediment turnover dictate the composition of animals which rework the bottom with burrows, trails, tracks, ripples, hummocks, and depressions.

- (2) Water areas to be protected:
Class II - All soft bottom communities.
- (3) Specific criteria to be applied - Oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sediment should not be less than -100 millivolts. The location and boundaries of each bottom-type class shall be clarified when situations require their identification. For example, the location and boundaries shall be clarified when a discharge permit is applied for or a waiver pursuant to ~~[Section]~~section 301(h) of the Act is required. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; am and comp] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-8 Recreational criteria for all [State] state waters. (a) These criteria are designed to protect the public from exposure to harmful levels of pathogens while participating in water-contact activities. The specific criteria for [~~enterococcus~~] enterococci shall be expressed in colony forming units (CFU) per one hundred milliliters or as a most

probable number (MPN) per one hundred milliliters, as specified by the analytical method used.

(b) [~~Enterococcus~~]Enterococci content shall not exceed a geometric mean of 35 [~~colony forming units~~] CFU per one hundred milliliters over any [~~thirty day~~]thirty-day interval.

(c) A Statistical Threshold Value (STV) of [~~130~~] 130 CFU per one hundred milliliters shall be used for [~~enterococcus~~]enterococci. The STV shall not be exceeded by more than ten [~~per cent~~]percent of samples taken within the same [~~thirty day~~]thirty-day interval in which the geometric mean is calculated.

(d) State waters in which [~~enterococcus~~]enterococci content does not exceed the standard shall not be lowered in quality.

(e) Raw or inadequately treated sewage, sewage for which the degree of treatment is unknown, or other pollutants of public health significance, as determined by the director [~~of health~~], shall not be present in natural public swimming, [~~bathing~~]bathing, or wading areas. Warning signs shall be posted at locations where human sewage has been identified as temporarily contributing to the [~~enterococcus~~]enterococci count. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; am and comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §342D-4, 342D-5, Ch. 342E)

~~[\$11-54-9 Zones of mixing. (a) As used in this section, "zones of mixing" means limited areas around outfalls and other facilities to allow for the initial dilution of waste discharges.~~

~~(b) Zones of mixing for the assimilation of domestic, agricultural, and industrial discharges which have received the best degree of treatment or control are recognized as being necessary. It is the~~

~~objective of these limited zones to provide for a current realistic means of control over the placement and manner of discharges or emissions so as to achieve the highest attainable level of water quality or otherwise to achieve the minimum environmental impact considering initial dilution, dispersion, and reactions from substances which may be considered to be pollutants.~~

- ~~(c) Establishment, renewal, and termination.~~
- ~~(1) Application for establishment of a zone of mixing shall be made concurrently with any discharge permits whenever applicable and the conditions of a zone of mixing shall be incorporated as conditions of the discharge permits. Every application for a zone of mixing shall be made on forms furnished by the director and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and other information as the director may prescribe.~~
- ~~(2) Each application for a zone of mixing shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information as may be submitted upon the request of the director, and in light of the effect or probable effect upon water quality standards established pursuant to this chapter.~~
- ~~(3) Whenever an application is approved, the director shall establish the zone of mixing, taking into account the environmental impact, including but not limited to factors such as the protected uses of the body of water, existing natural conditions of the receiving water, character of the effluent, and the adequacy of the design of the outfall and diffuser system to achieve maximum dispersion and assimilation of the treated or controlled waste with a minimum~~

~~of undesirable or noticeable effect on the receiving water.~~

- ~~(4) Approval of a zone of mixing shall be made either after a public hearing is held by the director in the county where the source is situated, in accordance with chapters 91 and 92, HRS and the rules of practice and procedures of the department, or after the public notification and comment process duly established for a discharge permit in the case when the zone of mixing is being considered concurrently with the discharge permit.~~
- ~~(5) No zone of mixing shall be established by the director unless the application and the supporting information clearly show that:
 - ~~(A) The continuation of the function or operation involved in the discharge by the granting of the zone of mixing is in the public interest;~~
 - ~~(B) The discharge occurring or proposed to occur does not substantially endanger human health or safety;~~
 - ~~(C) Compliance with the existing water quality standards from which a zone of mixing is sought would produce serious hardships without equal or greater benefits to the public; and~~
 - ~~(D) The discharge occurring or proposed to occur does not violate the basic standards applicable to all waters, will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control.~~~~
- ~~(6) Any zone of mixing or renewal thereof shall be established within the requirements of this section and for time periods and under conditions consistent with the reasons~~

~~therefore and within the following limitations:~~

- ~~(A) If the zone of mixing is established on the grounds that there is no reasonable means known or available for the adequate prevention, control, or abatement of the discharge involved, it shall be allowed only until the necessary means for prevention, control or abatement become practicable, and subject to the taking of any substitute or alternative measures that the director may prescribe. No renewal of a zone of mixing established under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the discharge involved;~~
- ~~(B) The director may issue a zone of mixing for a period not exceeding five years;~~
- ~~(C) Every zone of mixing established under this section shall include, but not be limited to, conditions requiring the applicant to perform appropriate effluent and receiving water sampling including monitoring of bottom biological communities and report the results of each sampling to the director. A program of research to develop reasonable alternatives to the methods of treatment or control in use by the applicant may be required if research is deemed prudent by the director; and~~
- ~~(D) In order to prevent high temperature discharges from violating section 11-54-04(a)(4), no new or increased domestic, industrial, or other controllable source shall discharge at a maximum temperature which will cause temperatures to exceed three degrees~~

~~Celsius above ambient, or thirty degrees Celsius, whichever is less, within one meter of the bottom within a zone of mixing. For discharges with or without submerged outfalls, the director may make a limited allowance for higher discharge temperatures if there is satisfactory demonstration that the elevated temperature will not cause damage to the local aquatic community.~~

- ~~(7) Any zone of mixing established pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial establishment of a zone of mixing, provided that the applicant for renewal had met all of the conditions specified in the immediately preceding mixing, and provided further that the renewal and the zone of mixing established in pursuance thereof shall provide for the discharge not greater in quantity of mass emissions than that attained pursuant to the terms of the immediately preceding zone of mixing at its expiration. Any new zones of mixing or requests for zone of mixing renewals for wastewater treatment plants (WWTP) performing primary treatment shall comply with section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251). No renewal shall be allowed except upon application. Any renewal application shall be made at least one hundred and eighty days prior to the expiration of the zone of mixing.~~
- ~~(8) No zone of mixing established pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.~~

- ~~(9) The establishment of any zone of mixing shall be subject to the concurrence of the U.S. Environmental Protection Agency.~~
- ~~(10) Each mixing zone may be subject to revocation, suspension, or modification if, after notice and opportunity for a hearing pursuant to chapter 91, HRS and the rules of practice and procedures of the department, the director determines that the terms specified in section 342D-6, HRS have been violated. In taking any action, the director may consider operating records, compliance investigations, or other information regarding discharge quality or impact on receiving waters. The action shall be effected by giving written notice to the permittee, which shall contain the reasons for the action.~~
- ~~(11) The director shall be notified within thirty days of the permanent discontinuance of a discharge. The zone of mixing shall terminate thirty days after such notification has been received.~~
- ~~(12) Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee.] [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; R] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)~~

§11-54-9.0.5 Site-Specific Flexibilities. As used in sections 11-54-9.1.5, 11-54-9.2, 11-54-9.3, and 11-54-9.4:

"40 C.F.R. §25" means the Code of Federal Regulations, Title 40, Protection of the Environment, Part 25, Public Participation in Programs under the Resource Conservation And Recovery Act, the Safe Drinking Water Act, and the Clean Water Act, revised as of 16 February 1979 unless otherwise noted.

"40 C.F.R. §131" means the Code of Federal Regulations, Title 40, Protection of the Environment, Part 131, Water Quality Standards, revised as of 21 August 2015 unless otherwise noted. [Eff and comp] (Auth: HRS §§342D-4, 342D-5, 342D-7) (Imp: §§342D-4, 342D-5, 342D-6, 342D-7; 40 C.F.R. §§25.5, 131.10, 131.11)

~~["§11-54-9.1 Water quality certification. As used in sections 11-54-9.1.01 to 11-54-9.1.10:~~

~~"33 CFR" means the Code of Federal Regulations, Title 33, Corps of Engineers, Department of the Army, Department of Defense, revised as of July 1, 2011, unless otherwise specified.~~

~~"40 CFR" means the Code of Federal Regulations, Title 40, Protection of the Environment, revised as of July 1, 2011, unless otherwise specified.~~

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

~~"Agent" means a duly authorized representative of the owner as defined in section 11-55-7(b).~~

~~"Discharge" means the same thing as defined in Section 502(16) of the Act.~~

~~"Discharge of a pollutant" and "discharge of pollutants" means the same thing as defined in section 502(12) of the Act.~~

~~"Duly authorized representative" means a person or position as defined in 40 CFR section 122.22(b).~~

~~"License or permit" means any permit,~~

~~certificate, approval, registration, charter, membership, statutory exemption or other form of permission granted by an agency of the federal government to conduct any activity which may result in any discharge into navigable waters.~~

~~"Licensing or permitting agency" means any agency of the federal government to which a federal application is made for a "license or permit."~~

~~"Navigable waters" means the waters of the United States, including the territorial seas.~~

~~"Owner" means the person who owns any "facility" or "activity" which results in any discharge into navigable waters.~~

~~"Pollutant" means the same thing as defined in section 502(6) of the Act.~~

~~"Territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.~~

~~"Water quality certification" or "certification" means a statement which asserts that a proposed discharge resulting from an activity will not violate applicable water quality standards and the applicable provisions of sections 301, 302, 303, 306 and 307 of the Act. A water quality certification is required by section 401 of the Act from any applicant for a federal license or permit to conduct any activity, including the construction or operation of facilities which may result in any discharge into navigable waters.~~

~~"Water quality certification application" means any forms provided by the director for use in obtaining the water quality certification.~~

~~"Water quality standards" means standards established pursuant to section 10(c) of the Act, and state adopted water quality standards for navigable waters which are not interstate waters.~~

~~"Waters of the United States" or "waters of the U.S." means:~~

- ~~(1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;~~
- ~~(2) All interstate waters, including interstate "wetlands";~~
- ~~(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

 - ~~(A) Which are or could be used by interstate or foreign travelers for recreational or other purposes;~~
 - ~~(B) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or~~
 - ~~(C) Which are used or could be used for industrial purposes by industries in interstate commerce;~~~~
- ~~(4) All impoundments of waters otherwise defined as waters of the United States under this definition;~~
- ~~(5) Tributaries of waters identified in paragraphs (1) through (4) of this definition;~~
- ~~(6) The territorial sea; and~~
- ~~(7) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6) of this definition.] [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17 /00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; R]~~
 (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

~~[\$11-54-9.1.01 Water quality certification; contents of certification. (a) A certification made by the department shall include:~~

- ~~(1) The legal name(s), street address, contact person's name and position title, and telephone and fax numbers of the owner and, if applicable, its duly authorized representative;~~
 - ~~(2) A statement that the director has either:
 - ~~(A) Examined the application made by the owner or its duly authorized representative to the licensing or permitting agency (specifically identifying the number or code affixed to the application) and bases its certification upon an evaluation of the information contained in the application which is relevant to water quality considerations; or~~
 - ~~(B) Examined other information provided by the owner or its duly authorized representative sufficient to permit the director to make the statement described in paragraph (a) (3);~~~~
 - ~~(3) A statement that there is reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;~~
 - ~~(4) A statement of any conditions which the director considers necessary or desirable with respect to the discharge resulting from an activity; and~~
 - ~~(5) Other information the director determines to be appropriate.~~
- ~~(b) The director shall issue the certification after evaluating the complete water quality certification application, comments received during the public comment period, any record of a public~~

~~hearing held pursuant to section 11-54-09.1.03, other information and data the director considers relevant, and after the director determines that there is reasonable assurance that applicable water quality standards will not be violated and the best practicable methods of control will be applied to a discharge resulting from an activity including the construction and operation of a facility~~

~~(c) The department shall process applications for permits and water quality certifications for the reconstruction, restoration, repair, or reuse of any Hawaiian fishpond that meets the requirements of chapter 183B, HRS, before all other permits and certifications. The director shall render a decision on the completeness of any application for the permit or water quality certification within thirty days of receipt. Applications for fishpond reconstruction, restoration, or repair that are incomplete shall be denied without prejudice. The director shall render a decision on any complete application for a permit or water quality certification for any fishpond within one hundred fifty days.~~

~~(d) The director, at the director's discretion or after consideration of information presented by the owner or its duly authorized representative, the licensing or permitting agency, other government agencies, or interested parties, may modify or revoke an issued certification or waiver.] [Eff and comp 4/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; R] (Auth: HRS §§342D-4, 342D-5, 342D6.5, 342D-53) (Imp: HRS §§342D-342D-6, 342D6.5, 342D-5)~~

~~[§11-54-9.1.02 Water quality certification; contents of water quality certification application.~~

~~(a) The owner or its duly authorized representative shall submit a complete water quality certification~~

~~application for the discharge resulting from an activity. The water quality certification application shall include at a minimum:~~

- ~~(1) The legal name(s), street address, contact person's name and position title, and telephone and fax numbers of the owner and, if applicable, its duly authorized representative;~~
- ~~(2) The company or organization name, contact person's name and position title, and telephone and fax numbers of the emergency contact(s);~~
- ~~(3) The name, street address, contact person's name and position title, telephone and fax numbers, island, and tax map key number(s) for the project;~~
- ~~(4) Associated existing or pending federal and environmental permits and corresponding file numbers;~~
- ~~(5) The name(s) of the navigable water where the discharge occurs, the latitude and longitude of the discharge point(s), the classification of the navigable water, and the associated existing recreational uses;~~
- ~~(6) The scope of work or a description of the overall project including: the construction or operation of facilities which may result in discharges into navigable waters; the proposed discharge resulting from an activity; and specific biological, chemical, physical, thermal, and other pertinent characteristics of the discharge resulting from an activity;~~
- ~~(7) If applicable, a description of the function and operation of equipment or facilities to control discharges, including specification of the methods of control to be used;~~
- ~~(8) The estimated dates on which the activity will begin and end and the date or dates on which the discharge(s) will take place;~~

- ~~(9) If applicable, a description of the methods and means being used or proposed to monitor the quality and characteristics of the discharge and the operation of equipment or facilities employed in the control of the proposed discharges and a map showing the location(s) of the monitoring point(s);~~
- ~~(10) The statement of assurance, statement of choice for publication, and if applicable, an authorization statement, with the owner's original signature. Any signatures required for the water quality certification application shall be provided as described in 40 CFR Section 122.22(a);~~
- ~~(11) Supporting documentation (e.g. maps, plans, specifications, copies of associated federal permits or licenses, federal applications, Environmental Assessments or Environmental Impact Statements, as applicable, etc.);~~
- ~~(12) Additional information regarding any irregularities or unique features of the project; and~~
- ~~(13) Additional information as required by the director.~~

~~(b) The director shall notify the owner or its duly authorized representative in writing if a water quality certification application is incomplete or otherwise deficient. A description of the additional information necessary to complete the water quality certification application or to correct the deficiency shall be included in the written notice. If a water quality certification application is incomplete or otherwise deficient, processing of the water quality certification application shall not be completed until the time the owner or its duly authorized representative has supplied the information or otherwise corrected the deficiency. Failure to provide additional information or to correct a deficiency shall be sufficient grounds for denial of the certification or termination of the processing of the water quality certification application.~~

~~(c) The director shall notify the owner or its duly authorized representative in writing when a water quality certification application is considered complete. The director shall act on a request for certification within a period which shall not exceed one year from the date when the water quality certification application was considered complete.~~

~~(d) The owner or its duly authorized representative shall notify the department in writing of changes which may affect the water quality certification application and certification process.~~

~~(e) Each owner who submits a water quality certification application shall pay a filing fee of \$1,000. This filing fee shall be submitted with the water quality certification application and shall not be refunded nor applied to any subsequent water quality certification application following final action of denial or termination of the processing of the water quality certification application.~~

~~(1) Fees shall be made payable to the "State of Hawaii" in the form of a cashier's check or money order;~~

~~(2) Water quality certification application(s) submitted by the U.S. Army Corps of Engineers, Honolulu Engineer District, for the purpose of adopting regional or nationwide general permit(s), in accordance with 33 CFR Parts 325 and 330, respectively, shall be exempt from the payment of filing fees.~~

~~(f) If a project or activity requiring a federal permit or license involves or may involve the discharge of a pollutant or pollutants and is initiated or completed without a water quality certification, the director may process an after-the-fact water quality certification application as follows: after-the-fact water quality certification application.~~

~~may be accepted and processed only for the limited purpose of deeming projects or activities requiring federal permits or licenses to be properly permitted~~

~~or licensed forward of the date of the water quality certification or waiver. No water quality certification or waiver shall be issued which allows the retroactive permitting or licensing of projects or activities before the date the water quality certification or waiver was issued. A water quality certification or waiver may be issued if the following criteria are met:~~

- ~~(1) The project or activity is not the subject of an ongoing enforcement action by the federal, state or county government;~~
- ~~(2) Any adverse impacts upon water quality resulting from the project or activity have been mitigated to the maximum extent feasible; and~~
- ~~(3) The project or activity will not cause or contribute to any lack of attainment of water quality standards set forth in this chapter.~~

~~(g) Written notification by the department under subsection (b) is complete upon mailing or sending a facsimile transmission of the document or actual receipt of the document by the owner or its duly authorized representative.] [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; R] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)~~

~~[§11-54-9.1.03 Water quality certification; notice and hearing. The director may provide the opportunity for public comment or hearing(s) or both to consider the issuance of a water quality certification. A notice shall be published in accordance with chapters 91 and 92, HRS. The director shall inform the owner or its duly authorized representative in writing that the action has been taken. All publication and mailing costs associated~~

~~with the public notification of the director's tentative determinations with respect to the water quality certification application shall be paid by the owner to the appropriate newspaper agency or agencies determined by the director. Failure to provide and pay for public notification, as considered appropriate by the director, may result in a delay in the certification process.] [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; R] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)~~

~~[§11-54-9.1.04 Water quality certification; waiver. (a) If the director fails or refuses to act on a request for certification within one year after receipt of a complete water quality certification application, then the certification requirements of section 11-54-9.1 shall be waived with respect to the federal application.~~

~~(b) If the discharge resulting from an activity receives a determination to be covered under a nationwide permit authorization, thereby fulfilling specific conditions of that permit pursuant to 33 CFR sections 330.4, 330.5, and 330.6, then the director will determine, on a case-by-case basis, which projects are considered minor and non-controversial. Certification requirements of section 11-54-9.1 shall be waived for minor and non-controversial activities within one year of receipt of a complete water quality certification application.] [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; R] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)~~

~~§11-54-9.1.05 Water quality certification; adoption of new water quality standards. (a) The licensee or permittee shall comply with any new water quality standards as adopted by the department.~~

~~(b) In any case where:~~

- ~~(1) A certification or waiver was issued without applicable water quality standards;~~
- ~~(2) Water quality standards applicable to the waters into which the activity may discharge are subsequently established before the activity is completed; or~~
- ~~(3) The director determines that the activity is violating new water quality standards;~~

~~The director shall then notify the licensee or permittee and the licensing or permitting agency of the violation.~~

~~(c) If the licensee or permittee fails within one hundred eighty days of the date of the notice to cease the violation, the director shall notify the licensing or permitting agency that the licensee or permittee has failed to comply with the standards. The director, at the director's discretion, shall also revoke the certification or waiver or recommend suspension of the applicable license or permit pursuant to section 401 of the Act.~~

~~(d) The director shall notify the licensing or permitting agency that, in the director's opinion, there is reasonable assurance that applicable water quality standards will not be violated because the licensee or permittee took appropriate action to comply with the applicable water quality standards after their license or permit was suspended pursuant to subsection (c).~~

~~(e) This section shall not preclude the department from taking other enforcement action authorized by law.] [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06 / 15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14;~~

R] (Auth: HRS §§342D-4, 342D-5, 342D-53s) (Imp: HRS §§342D-4, 342D-5, 342D-6)

~~§11-54-9.1.06 Water quality certification; inspection of facility or activity before operation. Where any facility or activity has received certification or waiver pursuant to sections 11-54-9.1.01 to 11-54-9.1.09 in connection with the issuance of a license or permit for construction, and where the facility or activity is not required to obtain an operating license or permit, the director, prior to the initial operation of the facility or activity, shall be afforded the opportunity to inspect the facility or activity for the purpose of determining if the manner in which the facility or activity will be operated or conducted will violate applicable water quality standards.~~ [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; R] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

~~§11-54-9.1.07 Water quality certification; notification to licensing or permitting agency. If the director, after an inspection pursuant to section 11-54-9.1.06 determines that operation of the proposed facility or activity will violate applicable water quality standards, the director shall so notify the owner or, if applicable, its duly authorized representative and the licensing or permitting agency.~~ [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; R] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

~~§11-54-9.1.08 Water quality certification; termination or suspension. Where a licensing or permitting agency, following a public hearing, suspends a license or permit after receiving the director's notice and recommendation pursuant to section 11-54-9.1.07 the owner or its duly authorized representative may submit evidence to the director, that the facility or activity has been modified so as not to violate applicable water quality standards. If the director determines that the applicable water quality standards have not been and will not be violated, the director shall so notify the licensing or permitting agency.] [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; R] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)~~

~~§11-54-9.1.09 Water quality certification; review and advice. The director may, and upon request shall, provide licensing and permitting agencies with determinations, definitions, and interpretations to the meaning and content of state water quality standards. The director may, and upon request shall, also advise licensing and permitting agencies of the status of compliance by the owner(s) of a water quality certification with the conditions and requirements of applicable water quality standards.] [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; R] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)~~

§11-54-9.1.5 Use Attainability Analysis. (a)

As used in this section:

"Highest attainable use" or "HAU" means the modified use that is both closest to the uses specified in section 303(c)(2)(A) of the Act and attainable based on a UAA or other scientifically defensible analyses that were used to evaluate attainability.

"Use attainability analysis" or "UAA" means a structured scientific assessment of the factors affecting the attainment of the use, which may include factors as described in 40 C.F.R. §131.10(g).

(b) A UAA or other scientifically defensible analyses may be conducted to demonstrate the non-attainment of a use, as described in this chapter.

(c) A UAA shall not be inconsistent with federal regulations on protecting and designating uses as described in 40 C.F.R. §131.10.

(d) A HAU shall be adopted whenever a use, as described in this chapter, is demonstrated to be non-attainable based on a UAA or other scientifically defensible analyses.

(e) The decision to adopt the results of a UAA or other scientifically defensible analyses, demonstrating the non-attainment of a use, shall be subject to public participation requirements. The department shall hold one or more public hearings when adopting the results of a UAA or other scientifically defensible analyses in accordance with applicable provisions of chapter 91, HRS, and 40 C.F.R. §25. The results of a UAA or other scientifically defensible analyses, and supporting information shall be made available to the public prior to the hearing.

(f) The results of a UAA or other scientifically defensible analyses, demonstrating the non-attainment of a use, shall not be effective until they are adopted by the department and approved by the EPA.

[Eff and comp] (Auth: HRS §§342D-4,

342D-5) (Imp: §§342D-4, 342D-5; 40 C.F.R. §§25.5, 131.10; 33 U.S.C. §1313(303))

§11-54-9.2 Water Quality Standards Variance.

(a) As used in this section:

"Permit" means an authorization, license, or equivalent control document issued by the department to implement the requirements specified in chapter 11-55. Permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit.

"Pollutant Minimization Program" or "PMP" means a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loadings.

"WQS variance" or "variance" means a time-limited criterion, for a specific pollutant or a water quality parameter, which reflects the highest attainable condition (HAC) during the term of the variance.

(b) A time-limited change to a criterion, as described in this chapter, shall be consistent with the provisions of section 342D-7, HRS. The following requirements shall apply when considering the application for a variance:

- (1) A variance may be considered if a criterion can be demonstrated as not feasibly attainable throughout the term of the variance. Complete assessments, detailed descriptions, supporting analyses, water quality data, and any additional information requested by the department shall be submitted to demonstrate that the attainment of a criterion is not feasible throughout the term based on any of the factors listed in 40 C.F.R. §131.10(g);
- (2) A variance may be considered if a criterion cannot be attained while restoration or other significant

reconfiguration activities are being implemented; and

- (3) A variance shall not be considered if a criterion addressed by the variance can be achieved by implementing technology-based effluent limits required under chapter 11-55.

(c) A variance shall identify a discharger or dischargers subject to the variance. A variance shall also identify the criterion and the water body to which the variance applies. All other criteria not specifically addressed by a variance shall remain applicable.

(d) A highest attainable condition (HAC) shall be quantifiably specified as either the highest attainable interim condition or the interim effluent condition that reflects the greatest pollutant reduction achievable throughout the term of a variance. The following requirements shall apply when specifying a HAC:

- (1) A HAC shall not result in any lowering of the currently attained ambient water quality unless restoration activities are necessary, as described in section 11-54-9.2(b)(2);
- (2) A HAC shall take into consideration the installation of pollutant control technologies and, if applicable, the adoption and implementation of a PMP; and
- (3) If the length of time required to achieve a HAC exceeds five years, the HAC of each succeeding permit, in a series of permits, shall be at least as stringent as the HAC of the preceding permit.

(e) The term of a variance shall be only as long as necessary to achieve the HAC; provided no permit shall have a term exceeding five years. The following requirements shall apply when specifying the term of a variance:

- (1) A term may start from the date EPA approves the variance or from a date specified by the department; and
- (2) If the length of time required to achieve a HAC exceeds five years, the department may consider issuing a series of permits; provided no permit, in a series of permits, shall have a term exceeding five years.

(f) The decision to approve the application for a variance shall be subject to public participation requirements. The department shall hold one or more public hearings when approving the application for a variance in accordance with applicable provisions of chapter 91, HRS, and 40 C.F.R. §25. The application for a variance and supporting information shall be made available to the public prior to the hearing.

(g) A variance shall not be effective until it is adopted by the department and approved by the EPA.

(h) Re-evaluation of a variance or a permit in a series of permits shall be conducted no less frequently than every five years, and at least one hundred eighty days prior to the end of such a variance or such a permit to review the HAC using all existing and readily available information. The following requirements shall apply when conducting a re-evaluation:

- (1) A re-evaluation shall determine the water quality progress achieved. Available documents, supporting analyses, water quality data, and any additional information requested by the department shall be submitted to determine the water quality progress achieved;
- (2) The results of a re-evaluation may modify the HAC of a variance or the HAC(s) of succeeding permits in a series of permits;

- (3) The department shall obtain, in accordance with chapter 91, HRS, public comment on a re-evaluation;
- (4) The department shall submit, in accordance with 40 C.F.R. §131.14(b)(1)(v), the results of a re-evaluation to the EPA; and
- (5) If the department does not conduct a re-evaluation as specified or does not submit the results of a re-evaluation as required, then a variance shall no longer be applicable.

(i) All specified conditions of an expiring variance must have been met in order for a discharger to request a renewal. The following requirements shall apply when requesting a renewal of a variance:

- (1) A renewal shall provide for a HAC at least as stringent as the expiring HAC; and
- (2) A renewal shall take into consideration the installation of pollutant control technologies and, if applicable, the adoption and implementation of a PMP.
[Eff and comp _____] (Auth: HRS §§342D-4, 342D-5, 342D-7, Ch. 342E)
(Imp: §§342D-4, 342D-5, 342D-6, 342D-7, Ch. 342E; 40 §§131.10, 131.14)

§11-54-9.3 Site-Specific Aquatic Life Criterion.

(a) As used in this section:

"Criterion" means an element of WQS, as described in this chapter, that is expressed as a constituent concentration, a numeric level, or a narrative statement, and that represents a quality of water supporting a particular use. When criteria are met, water quality shall generally protect the designated use.

"EPA PB85-227049" means "Guidelines for Deriving Numerical National Water Quality Criteria for the

Protection of Aquatic Organisms and their Uses,"
December 2010 unless otherwise noted.

"EPA 823-B-17-001" means "Water Quality Standards Handbook," Chapter 3, Water Quality Criteria, Section 3.5.2, Site-Specific Aquatic Life Water Quality Criteria, November 2017 unless otherwise noted.

(b) A site-specific aquatic life criterion shall be consistent with federal regulations on adopting criteria that protect designated uses as described in 40 C.F.R. §131.11.

(c) A site-specific aquatic life criterion may be derived to address species sensitivity, toxicity variation, natural background, or any combination of these situations.

(d) A site-specific aquatic life criterion may be based on scientific guidelines described in EPA PB85-227049.

(e) A site-specific aquatic life criterion may be derived with scientific processes described in EPA 823-B-17-001 or other scientifically defensible methods.

(f) The decision to adopt a site-specific aquatic life criterion shall be based on a scientific demonstration that the derived criterion protects the designated use, as described in this chapter.

(g) The decision to adopt a site-specific aquatic life criterion shall be subject to public participation requirements. The department shall hold one or more public hearings when adopting a site-specific aquatic life criterion in accordance with applicable provisions of chapter 91, HRS, and 40 C.F.R. §25. The site-specific aquatic life criterion and supporting information shall be made available to the public prior to the hearing.

(h) A site-specific aquatic life criterion shall not be effective until it is adopted by the department and approved by the EPA. [Eff and comp] (Auth: HRS §187A-1, §§342D-4, 342D-5) (Imp: §§342D-4, 342D-5; 40 C.F.R. §§25.5, 131.11)

§11-54-~~11~~9.4 Schedule of compliance. (a) A schedule of compliance is an NPDES implementation tool that applies to the implementation of water quality standards through NPDES permits only.

(b) The director may issue a schedule of compliance in an individual NPDES permit for the implementation of effluent limits derived from the water quality criteria in this chapter if the director makes a finding that the discharger cannot immediately comply with the water quality based effluent limitations upon the effective grant of the permit.

(c) A schedule of compliance may be included in an individual NPDES permit issued by the director pursuant to chapter 342D, HRS.

(d) A schedule of compliance in an NPDES permit is allowed only for water quality-based effluent limits based upon a new, revised, or newly interpreted water quality standard and must:

- (1) Comply with the provisions in 40 [~~CFR~~ section] C.F.R. §122.47, revised as of July 1, 2014 [~~, and~~];
- (2) Include an enforceable final effluent limitation that is within the timeframe allowed as specified in sections 11-55-08(a)(2)(B), 11-55-15(d), 11-55-21, 11-55-22, 11-55-23 (10), and 11-55-34.07(3)(B) [~~;~~]; and
- (3) Require compliance as soon as possible.

(e) A schedule of compliance that exceeds one year in duration must set forth interim requirements, specific dates to meet interim requirements, and a date by which the required water quality-based effluent limitation must be achieved. [Eff and comp 11/15/14; §11-54-11; am, ren §11-54-9.4, am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, 342D-6, Ch. 342E)

§11-54-10 Water quality analyses. (a)

Laboratory analysis shall be performed by a laboratory approved by the department.

(b) Where applicable, analysis to determine compliance with these rules shall be by:

<u>Parameter</u>	<u>Reference</u>
Sample Collection (Phytoplankton and other Bioassays)	Standard Methods for the Examination of Water and Waste Water, twenty first edition, APHA
Sample Preservation and Holding Time, Bacteriological and Chemical Methodology	"Guidelines Establishing Test Procedures for the Analysis of Pollutants," Federal Register, July 1, 2011 (40 [CFR]C.F.R. §136)
	"A Manual of Chemical and Biological Methods for Seawater Analysis" T.R. Parsons, Y. Maita, and C.M. Lalli, 1984, Pergamon Press, New York.
	"Methods of Seawater Analysis", 2nd, Revised and Extended Edition, ed. by K. Grashof, M. Erhardt, K. Kremling, 1983. Verlag Chemie, Weinheim, Germany.
Toxicity Test	EPA 821-R-02-[031]013, Short-Term Methods For Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, 4th edition, October 2002.

or:

EPA 821-R-02-012, Methods For Measuring the Acute Toxicity of Effluents and Receiving waters to Freshwater and Marine Organisms, 5th edition, October 2002.

or:

EPA 821-R-02-014, Short-Term Methods For Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, 3rd edition, October 2002.

or:

EPA 833-R-10-003, National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document, June 2010.

or:

EPA 833-R-10-004, National Pollutant Discharge Elimination System Test of Significant Toxicity Technical Document, June 2010.

or:

EPA/600/R-12/022, Tropical Collector Urchin,

Tripneustes gratilla,
Fertilization Test Method,
April 2012.

Quality Control
(Bacteriological and
Biology) and Chemistry

EPA/600/4-79-019, Handbook
for Analytical Quality
Control in Water and
Wastewater Laboratories,
March 1979.

Kona Coast Area Specific
Standards

Rationale for the
Development of Area-
Specific Water Quality
Criteria for the West Coast
of The Island of Hawaii and
Procedures for Their Use.
Hawaii State Department of
Health. March 1997.

or as otherwise previously specified or approved by
the director. [Eff 11/12/82; am and comp 10/6/84; am
and comp 04/14/88; am and comp 01/18/90; am and comp
10/29/92; am and comp 04/17/00; am and comp 10/2/04;
comp 06/15/09; comp 10/21/12; am and comp 12/6/13;
comp 11/15/14; am and comp] (Auth:
HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS
§§342D-4, 342D-5, Ch. 342E)

§11-54-11 (Reserved). [Eff and
comp]

~~§11-54-12 Intake credits. (a) An intake
credit is an NPDES implementation tool that applies to
the implementation of water quality standards through
NPDES permits only.~~

~~(b) As used in this section:~~

~~"Background pollutant concentration means the water body concentration immediately upstream/upcurrent of a permitted discharge, regardless of whether those pollutants are natural or result from anthropogenic upstream activity.~~

~~"Intake pollutant" means the background pollutant concentration that is present in the intake water body, which must be the same water body as the receiving water for the discharge at the time it is withdrawn from such waters.~~

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

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

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

~~(c) The director may, upon request of the discharger, adjust water quality-based effluent limitations or standards to reflect credit for intake pollutants in the discharger's intake water only:~~

- ~~(1) To the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the intake pollutant value; and~~

~~(2) If there is no net increase in the concentration of the intake pollutant for which the credit is given. A discharger may add to the mass of the background pollutant concentration if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water.~~

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

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

~~(1) One hundred per cent of the intake water containing the intake pollutant is withdrawn from the same body of water into which the discharge is made;~~

~~(2) The facility does not chemically or physically alter the intake pollutant in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutant was left in stream;~~

~~(3) The timing and location of the discharge would not cause adverse water quality impacts to occur that would not occur if the intake pollutant were left in stream; and,~~

~~(4) The director finds that the discharge of intake pollutants into the same body of water will not adversely impact narrative or numeric water quality criteria specified in this chapter.~~

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

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

- ~~(1) Documentation showing a complete and detailed description of present conditions and how present conditions do not conform to standards; and~~
- ~~(2) Documentation showing that the intake and discharge waterbodies are the "same body of water;" and~~
- ~~(3) Documentation showing that pollutant(s) for which credits are being request actually come(s) from the intake water.~~
- ~~(h) Credit for intake pollutants shall be specified in the discharger's NPDES permit and shall become effective with the department's issuance of the permit for the specified permittee.~~
- ~~(1) All permits that include intake credits issued by the department shall include monitoring of all influent, effluent, and ambient water to demonstrate that the conditions in this section are maintained during the permit term.~~
- ~~(2) All credit for intake pollutants developed under this section shall be re-evaluated upon permit renewal.~~
- ~~(i) Credit for intake pollutants established under this section apply in the vicinity of the discharge for purposes of establishing permit limits for a specified pollutant for the specified permittee.~~
- ~~(j) All other water quality criteria established under this chapter continue to apply.] [Eff and comp 11/15/14; R] (Auth: HRS §§342D-4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, 342D-6, Ch. 342E)~~

§11-54-12.0.5 (Reserved). [Eff and
comp]

§11-54-13 Revision. These water quality criteria are based upon the best currently available data. Studies made in connection with the implementation program may suggest improvements to this chapter. For this reason, the chapter will be subject to periodic review and, where necessary, to change. Any change will be made only after public hearing, held in compliance with chapter 91, HRS and the rules of practice and procedures of the department. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; ren §11-54-11 and comp 11/15/14; comp] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-14 Severability. If any provisions of this chapter, or the application thereof to any person or circumstances, is held invalid, the invalidity does not affect other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; ren §11-54-12 and comp 11/15/14; comp] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-15 Field citations; non-compliance.

(a) This section authorizes field citations to effectively and quickly settle easily verifiable violations of chapter 342D, HRS, and this chapter.

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

- (b) Offer to settle.
 - (1) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director may, in the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to:
 - (A) Any person who discharges or otherwise causes or allows water pollutants to enter State waters and cause violation of this chapter, unless that person acted in compliance with a permit or variance issued by the director pursuant to chapter ~~[342D]~~342D, HRS, for that person's discharges;
 - (B) Any person who fails to correctly install, implement, maintain, or repair site best management practices as called for in this chapter;
 - (C) Any person who violates monitoring requirements as required by the director;
 - (D) Any person who violates record keeping requirements as required by the director.
 - (2) A field citation shall indicate the following amounts for violations:
 - (A) \$500 for any person who violates ~~[paragraph (a) (1) (A), (B), or (C)]~~sections 11-54-15(b) (1) (A), 11-54-15(b) (1) (B), or 11-54-15(b) (1) (C) for first violation, and \$2,000 for a subsequent violation; and
 - (B) \$100 for any person who violates ~~[paragraph (a) (1) (D)]~~section 11-54-

- 15(b) (1) (D) for first violation, and
\$200 for a subsequent violation.
- (c) Resolution of field citation.
 - (1) A person issued a field citation may accept the citation by:
 - (A) Signing the field citation;
 - (B) Paying the full amount indicated on the field citation. Payment shall be made to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director;
 - (C) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty days after the person receives the field citation; and
 - (D) Correction within seven [~~+7~~] days, or unless otherwise specified on the field citation, of the violation of this chapter.
 - (2) By signing the field citation, the person to whom it was issued agrees to:
 - (A) Give up the right to a contested case hearing under chapter 91 or 342D, HRS, or otherwise challenge the field citation;
 - (B) Pay the full amount indicated; and
 - (C) Correct the violation.
 - (3) If the field citation is not accepted in compliance with [~~paragraph (1)~~] section 11-54-15(c) (1), the director may seek for that cited violation any remedies available under this chapter; chapter 342D, HRS; or any other law. For all other violations the director retains authority to seek any available remedies.

(d) Form of citation. The department shall prescribe a field citation form.^[u] [Eff and comp 11/15/14; am and comp] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

Amendments and compilation of chapter 54, title 11, Hawaii Administrative Rules, on the Summary Page dated **MONTH DD, 2021** were adopted on **MONTH DD, 2021** following a public hearing held on **MONTH XX, 2021**, after public notice was given in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Isle on **MONTH YY, 2021**.

The adoption of chapter 11-54 shall take effect ten days after filing with the Office of the Lieutenant Governor

BRUCE ANDERSON, PH.D.
Director of Health

DAVID IGE
Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Dale K. Sakata

DALE K. SAKATA
Deputy Attorney General

Appendix A**July 1, 2014**

Class 1, Inland Waters

Hawaii

Akaka Falls State Park
Hakalau Forest National Wildlife Refuge
Hakalau Forest National Wildlife Refuge (South Kona
Section)
Hamakua Forest Reserve (Hoea Kaa Section)
Hamakua Forest Reserve (Kainehe Section)
Hamakua Forest Reserve (Kalopa Section)
Hamakua Forest Reserve (Paauilo Section)
Hapuna Beach State Recreation Area
Hawaii Volcanoes National Park
Hilo Forest Reserve (Humuula Section)
Hilo Forest Reserve (Laupahoehoe Section)
Kahaualea Natural Area Reserve
Kalopa State Rec. Area
Keaoi Islet Sea Bird Sanctuary
Kekaha Kai State Park
Kipahoehoe Natural Area Reserve
Kohala Forest Reserve (Pololu Section)
Kohala Historical Sites State Monument
Kona Hema Preserve (Nature Conservancy)
Lapakahi State Historical Park
Laupahoehoe Natural Area Reserve
Lava Tree State Monument
Mackenzie State Recreation Area
Manowaialee Forest Reserve
Manuka Natural Area Reserve
Manuka State Wayside
Mauna Kea Ice Age Natural Area Reserve
Mauna Kea State Recreation Area/Mauna Kea Fr
Mokupuku Islet Sea Bird Sanctuary
Ookala Cooperative Game Management Area
Paokalani Islet Sea Bird Sanctuary
Puu Honau O Honaunau National Historical Park
Puu Waawaa Forest Bird Sanctuary

Puu Waawaa Forest Reserve
Puukohola Heiau National Historic Site
Wailoa River State Recreation Area
Wailuku River State Park

Kauai

Ahukini State Recreation Pier
Haena State Park
Hanalei National Wildlife Refuge
Kilauea Point National Wildlife Refuge
Kuia Natural Area Reserve
Mokuaeeae Rock Islet Sea Bird Sanctuary
Na Pali Coast State Wilderness Park
Polihale State Park
Russian Fort Elizabeth State Historical Park
Wailua River State Park
Waimea Canyon State Park
Waimea State Recreation Pier

Lanai

Moku Naio Sea Bird Sanctuary
Nanahoa Islets Sea Bird Sanctuary
Poopoo Islet Sea Bird Sanctuary
Puupehe Islet Sea Bird Sanctuary

Maui

Ahihi-Kinohao Natural Area Reserve
Alau Island Sea Bird Sanctuary
Haleakala National Park
Halekii-Pihana Heiaus State Monument
Hanawi Natural Area Reserve
Iao Valley State Monument
Kanaha Pond Wildlife Sanctuary
Kanaio Natural Area Reserve
Kaumahina State Wayside
Kealia Pond National Wildlife Refuge
Keopuka Islet Sea Bird Sanctuary
Makena State Park
Mokeehia Islet Sea Bird Sanctuary
Moku Hala Sea Bird Sanctuary
Moku Mana Islet Sea Bird Sanctuary

Molokini Sea Bird Sanctuary
Papanui O Kane Islet Sea Bird Sanctuary
Pauwahu Point Wildlife Sanctuary
Polipoli Spring State Recreation Area
Puaa Kaa State Wayside
Puuku Island Sea Bird Sanctuary
Waianapanapa State Park
Wailua Valley State Wayside
West Maui Natural Area Reserve (Honokowai Section)
West Maui Natural Area Reserve (Lihau Section)
West Maui Natural Area Reserve (Panaewa Section)

Molokai

Huelo Islet Sea Bird Sanctuary
Kakahaia National Wildlife Refuge
Kalaupapa National Historical Park
Kamiloloa Plant Sanctuary
Kanaha Rock Sea Bird Sanctuary
Mokapu Islet Sea Bird Sanctuary
Mokumanu Islet Sea Bird Sanctuary
Molokai Forest Reserve
Okala Islet Sea Bird Sanctuary

Niihau

Kaula Island Sea Bird Sanctuary
Lehua Island Sea Bird Sanctuary

Oahu

Aiea Bay State Recreation Area
Diamond Head State Monument
Hamakua Marsh Wildlife Sanctuary
James Campbell National Wildlife Refuge (Kii)
Kaohikaipu Island Sea Bird Sanctuary
Kawainui Marsh Wildlife Sanctuary (Proposed)
Keaiwa Heiau State Recreation Area
Kekepa Island Sea Bird Sanctuary
Kukaniloko Birthstones State Monument
Kukuihoolua Island Sea Bird Sanctuary
Makiki Valley State Recreation Area
Malaekahana State Recreation Area
Mokualai Island Sea Bird Sanctuary

Mokuauia Island Sea Bird Sanctuary
Mokulua Island Sea Bird Sanctuary
Mokumanu Islet Sea Bird Sanctuary
Oahu Forest National Wildlife Refuge
Pahole Natural Area Reserve
Paiko Lagoon Wildlife Sanctuary
Pearl Harbor National Wildlife Refuge (Mid Loch)
Pearl Harbor National Wildlife Refuge (W Loch)
Pearl Harbor Nat'l Wildlife Refuge (Kalaeloa)
Popoia Island Sea Bird Sanctuary
Pouhala Marsh Wildlife Sanctuary
Pulemoku Rock Sea Bird Sanctuary
Puu Ualakaa State Park
Royal Mausoleum State Monument
Sacred Falls State Park
Sand Island State Recreation Area
Ulu Po Heiau State Monument
Waiahole Forest Reserve (Waiahole Section)
Waianae Kai Forest Reserve

Appendix B**July 1, 2014**

Class AA, Marine Waters and Embayments

Hawaii

Puako Bay

Waiulua Bay

Anaehoomalu Bay

Kiholo Bay

Kailua Harbor

Kealakekua Bay

Honaunau Bay

Oahu

Waialua Bay

Kahana Bay

Kaneohe Bay

Hanaurna Bay

Kauai

Hanalei Bay

Appendix C**July 1, 2014**

Class A, Marine Waters and Embayments

Hawaii

Hilo Bay (inside breakwater)
Kawaihae Boat Harbor
Honokohau Boat Harbor
Keauhou Bay

Maui

Kahului Bay
Lahaina Boat Harbor
Maalaea Boat Harbor

Lanai

Manele Boat Harbor
Kaumalapau Harbor

Molokai

Hale o Lono Harbor
Kaunakakai Harbor
Kaunakakai Boat Harbor

Oahu

Kaiaka Bay
Paiko Peninsula to Koko Head
Ala Wai Boat Harbor
Kewalo Basin
Honolulu Harbor
Keehi Lagoon
Barbers Point Harbor
Pokai Bay
Heeia Kea Boat Harbor
Waianae Boat Harbor
Haleiwa Boat Harbor
Ko Olina

Kauai

Hanamaulu Bay

Nawiliwili Bay

Kukuiula Bay

Wahiawa Bay

Hanapepe Bay (inside breakwater)

Kikiaola Boat Harbor

Port Allen Boat Harbor

Appendix D

July 1, 2014

Class AA, Open Coastal Waters

Measured in a clockwise direction from the first-named to the second-named location, where applicable):

Hawaii

The open coastal waters from Leleiwi Point to Waiulaula Point.

Maui

The open coastal waters between Nakalele Point and Waihee Point and between Huelo Point and Puu Olai.

Kahoolawe

All open coastal water surrounding the island.

Lanai

All open coastal waters surrounding the island.

Molokai

The open coastal waters between the westerly boundary of Hale o Lono Harbor to Lamaloa Head. Also, the open coastal waters from Cape Halawa to the easterly boundary of Kaunakakai Harbor.

Oahu

Waimanalo Bay from the southerly boundary of Kaiona Beach Park, and including the waters surrounding Manana and Kaohikaipu Islands, to Makapuu Point. Also, Waialua Bay from Kaiaka Point to Puaena Point, and the open coastal waters along Kaena Point between a distance of 5.6 kilometers (3.5 miles) from Kaena Point towards Makua and 5.6 kilometers (3.5 miles) from Kaena Point toward Mokuleia.

Kauai

The open coastal waters between Hikimoe Valley and Makahoa Point. Also, the open coastal waters between Makahuena Point and the westerly boundary of Hoai Bay

Niihau

All open coastal waters surrounding the island.

All other islands of the state

All open coastal waters surrounding the islands not classified in Appendix D or 11-54-6(b)(2)(A).

Appendix E

Month DD, 2021

Numeric Standards for Toxic Pollutants Applicable to All Waters

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

Date: 6/19/2020

Department or Agency: Hawaii Department of Health, Clean Water Branch

Administrative Rule Title and Chapter: HAR 11-55

Chapter Name: Water Pollution Control

Contact Person/Title: Darryl Lum

E-mail: darryl.lum@doh.hawaii.gov Phone: (808) 586-4309

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

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

Yes No

If "Yes," provide details: _____

I. Rule Description:

New Repeal Amendment Compilation

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

Yes No

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

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

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

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

Yes No

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

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

Yes No

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

* * *

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

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

See attachment.

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 attachment.

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 attachment.

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.

See attachment.

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

See attachment.

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.

See attachment.

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

See attachment.

- 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.

See attachment.

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.

See attachment.

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

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

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

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

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

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

* * *

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

This Statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

Small Business Regulatory Review Board Small Business Impact Statement

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

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

Public Hearing Approval Request

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

- Summary of changes
 - Why is this section of Hawaii Administrative Rules being amended? What problem is the rule change meant to solve? List all changes that are being made.

DOH proposes to revise certain sections of HAR Chapter 11-55 to: (1) add federal municipal separate storm sewer systems (MS4) waiver provisions; (2) enlarge the deadline to submit renewal permit applications; (3) clarify that public notice and public hearing notice procedures need only comply with HRS 1-28.5; (4) limit public hearing comments to written comments; (5) authorize DOH to deny new and/or renewal permits to dischargers who violate permit conditions; (6) clarify that automatic notice of general permit coverage does not extend to the MS4 general permit; (7) provide for automatic termination of administrative extensions for projects/activities covered under general permits; and (8) incorporating zone of mixing and intake credit provisions from HAR Chapter 11-54 that properly belong in HAR Chapter 11-55.

Certain revisions reflect EPA practices or explicitly authorize certain powers DOH believes the Director should have with respect to NPDES permits. Requiring public comments to be in writing is desirable in order to facilitate an accurate and comprehensive administrative record that DOH can act on in making a permit determination, and is not unduly burdensome to public commenters. The provisions incorporated from HAR Chapter 11-54 are NPDES

permit related requirements that are more appropriately included in HAR Chapter 11-55.

The federal Clean Water Act (CWA) provides for most water pollution permits under the National Pollutant Discharge Elimination System (NPDES). The NPDES is a permit system required by Section 402 of the CWA that authorizes discharges to surface waters such as streams, lakes, or oceans from certain types of point sources as well as storm water. The US Environmental Protection Agency (EPA) has authorized the Hawaii Department of Health (DOH) since 1974 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 Hawaii Administrative Rules (HAR), Chapters 11-54, Water Quality Standards, and 11-55, Water Pollution Control. HAR Chapter 11-55 describes the policies and requirements for the NPDES program. The NPDES allows for General Permits, which authorize a category of discharges, a group of similar types of activities or facilities (e.g., storm water discharges from construction activities), and contain requirements to minimize pollutants from being discharged to State waters. General Permits are issued as rules in HAR and not specifically to any individual owner or operator, and are incorporated into HAR Chapter 11-55 as appendices. An owner or operator may request to be covered under an applicable General Permit, if eligible, by submitting a Notice of Intent (NOI) to DOH. By submitting an NOI, an owner or operator thereby agrees to comply with all requirements of the applicable General Permit.

Attached are the proposed rule revisions in Ramseyer format and accompanying fact sheet. A summary of the proposed revisions, the reason for the revision, and the problem the rule change was meant to solve, follows:

- **Proposed revision: Adding Federal Municipal Separate Storm Sewer System (MS4) [i.e., 40 CFR §122.32(d) and (e)] waiver provisions.**

Reason for amendment: An MS4 is a municipality in an urbanized area with a drainage system that discharges to State surface waters. Certain MS4s consist of enclosed buildings with drainage systems that are not considered by DOH to be a significant source of pollutants (e.g. Schools under the Department of Education, the Department of Agriculture's main office building, and the Department of Accounting and General Services main office

building). Under current DOH rules, these MS4s are required to obtain NPDES permits for their discharges and comply with stringent permit requirements. Federal regulations allow NPDES permitting agencies (such as DOH) to waive MS4 NPDES permit requirements under certain circumstances. DOH wants the flexibility to waive the NPDES requirements for MS4s that meet applicable conditions.

Problem meant to be solved: DOH does not believe that all MS4s are a significant source of pollution and do not need to be regulated under an NPDES permit.

How rule change addresses the problem: DOH would have the authority to waive NPDES requirements for such MS4s if they meet applicable conditions.

Stakeholders: The stakeholders are federal, State, and county government agencies subject to MS4 requirements and the public.

Potential problems with the rule change: None.

Fiscal impact: Positive. Eliminating NPDES permit requirements for government MS4s will allow them to redirect their finite staff and monetary resources towards their core programs, which will in turn benefit the public.

Economic impact to the State: None anticipated.

Consequences if the rule change does not get adopted: Government MS4s which DOH does not believe are significant sources of pollutants will have to continue complying with their NPDES permits, directing resources away from their core programs.

- **Proposed Revision: Revising the deadline to submit individual NPDES renewal permit applications from 180 days to 360 days before permit expiration.**

Reason for amendment: DOH wants renewal permit applications submitted 360 days before the existing permit expires so there will be enough time to process and draft a renewal permit before the existing permit expires. Currently, if the existing permit is anticipated to expire before a new permit can be written, the existing permit is administratively extended – which is preferable to having no permit limitations in place. However, existing permit limitations could not, for example, contain more protective effluent limitations for pollutant parameters that have a reasonable potential

to cause or contribute to an excursion of a water quality criteria based on the facility's latest reported data. DOH annually processes more than 1,200 permit applications, in addition to the other duties assigned to permit writers. Existing rules and 40 CFR 122.21(d) and 40 CFR 123.25 require renewal permit applications to be submitted as late as 180 days before the existing permit expires. However, 40 CFR 123.25(a) allows states to impose more stringent requirements.

DOH has approximately 80 individual NPDES permits for facilities with continuous discharges. These individual NPDES permits are more complicated than permits for short-term discharges and must be renewed according to a schedule driven by CWA Section 106 grant commitments. Certain actions beyond the DOH's control make it difficult to meet this schedule. Renewing the individual NPDES permit includes obtaining the renewal application and all required data/information from the applicant by the deadline; obtaining missing data/information from the applicant if the renewal application was incomplete; incorporating inspection findings; assessing compliance; assessing the effluent and receiving water data from the previous permit term; calculating effluent limitations; drafting a legally defensible and enforceable permit and fact sheet; working out draft permit issues with the discharger and EPA; arranging the public notice; addressing public notice comments; arranging a public hearing if needed; and coordinating with other agencies on CWA 316(b) requirements. On average, such permit applications have taken approximately 360 days to process and are distributed among 6 permit writers.

Problem meant to be solved: DOH often needs more than 180 days to process complex permit applications. Of the approximately 80 permits for facilities with continuous discharges, DOH estimates 40 will take more than 180 days to process.

How rule change addresses the problem: Requiring applicants to submit their renewal permit applications earlier allows sufficient time for DOH and the applicant to ensure the application is complete and for DOH to process the application. This is of greater significance for facilities with continuous discharges, which applications are inherently more complex.

Stakeholders:

- Continuous dischargers with individual NPDES permits will have more time to work with the DOH permit writer on the draft pre-public notice permit.
- EPA’s CWA Section 106 grant commitment deadlines can be more readily met.
- The public will benefit because DOH will have more processing time to apply the latest applicable federal and State requirements and address water pollution issues from the last permit term.

Potential problems with the rule change: None. Although Permittees will have to submit their renewal applications sooner, the amount of work and cost needed to put together their renewal application is the same. Applicants will not be prejudiced by the earlier submission deadline because DOH has the authority to issue administrative extensions as long as the renewal application is submitted before permit expiration.

Fiscal impact: Positive. The amount of work and cost for an applicant to prepare a renewal application is the same regardless of the deadline. For the State, meeting CWA Section 106 permit deadline commitments will ensure that DOH continues to receive EPA funding that is used solely to keep Hawaii’s waters clean.

Economic impact to the State: Positive. DOH will have more processing time to apply the latest applicable federal and state requirements and address water pollution issues from the last permit term, which will more effectively protect water quality. Clean and healthy water environments is economically beneficial to the State as it helps tourism and protects the health of residents.

Consequences if the rule change does not get adopted: If DOH receives complex renewal permit applications in numbers consistent with past experience, DOH will be unable to write new permits for a substantial number of facilities before the existing permit term expires.

- **Proposed Revision: Clarifying that public notice and public hearing procedures must follow HRS 1-28.5.**

Reason for amendment: Based on DOH’s experience, the public notice requirements set forth in HRS §1-28.5 have met the public’s expectations. Tying the administrative rule to statutory requirements ensures consistency with any amendments to the statute.

Problem meant to be solved: DOH's administrative rule will always be consistent with statute without requiring future rule-amendments.

How rule change addresses the problem: The proposed amendment references the relevant statute.

Stakeholders: NPDES permittees and the public interested in providing comments on a proposed NPDES permit during the public notice comment period and/or public hearing.

Potential problems with the rule change: None. DOH has rarely utilized the other prescribed methods of public notice and does not believe the public has been prejudiced or prevented from being adequately informed.

Fiscal impact: Neutral. DOH already utilizes newspaper publication as prescribed by statute.

Economic impact to the State: None anticipated.

Consequences if the rule change does not get adopted: There is not likely to be any meaningful consequences unless and until there are substantive change to statute that are not already reflected in the administrative rule.

- **Proposed Revision: Requiring written statements only for public hearing comments.**

Reason for amendment: In order to accurately and comprehensively memorialize public comments that DOH is required to consider when, for example, determining whether to grant or deny an NPDES permit application, written comments are the most reliable method of determining the substance of a comment. Oral comments are more prone to be overlooked in a recording and not transcribed, and when reduced to writing by a third party are inherently less accurate than the commenter's own written statement. In practice, DOH has stated in hearing notices and at public hearings that written statements will be required for public hearing comments. This amendment codifies what DOH already requires.

It should be noted that this rule change should not be construed as prohibiting oral statements on written commentary.

Problem meant to be solved: An inaccurate administrative record may result in certain public comments failing to be properly considered or addressed.

How rule change addresses the problem: The revision removes the mandate that DOH must also address all oral comments in its decision-making, which, because of the inherent difficulties in accurately memorializing oral testimony, increases the likelihood of error or omission on the part of DOH.

Stakeholders: The public. Requiring written statements only for public hearing comments will benefit the public by ensuring that DOH will not miss a verbal comment and will address public concerns.

Potential problems with the rule change: Requiring written comments forces members of the public to make additional efforts to testify. However, DOH believes requiring a written statement is not unduly burdensome in light of the important role public comment has in DOH's decision-making process and the value of ensuring an accurate and comprehensive administrative record.

Fiscal impact: None.

Economic impact to the State: None anticipated.

Consequences if the rule change does not get adopted: DOH does not believe there are substantive consequences if the rule change is not adopted.

- **Proposed Revision: Including requirements to deny applications for permits or terminate permits from persons who are respondents in open enforcement actions associated with water pollution, who fail to make payments as required for permit fees or penalties, who have a history of violating water pollution control laws, or who fail to comply with enforcement orders.**

Reason for amendment: There are Permittees that violate NPDES permit conditions and fail to resolve their violations and/or pay their monetary penalties. While the Director has authority to deny applications and terminate permits for Permittees who violate permit conditions, these amendments would explicitly codify this authority and prevent the same Permittees from obtaining new permits without first resolving ongoing violations. The amendments also clarify that DOH can deny new permits for Permittees who fail to pay fees or penalties as required by law, and codify that failure to comply with enforcement orders issued for permit violations is grounds for permit termination or denial of renewal.

Problem meant to solve: Some Permittees are slow to resolve outstanding violations and/or penalties when it does not adversely affect their ability to obtain necessary permits.

How rule change addresses the problem: By tying permit compliance with the continued effectiveness of existing permits, the amendments create a strong incentive for Permittees to resolve existing compliance issues.

Stakeholders:

- Permittees. For Permittees that make the effort to comply with their permits, the proposed amendments should reinforce their impression of fair treatment by creating defined consequences for other Permittees that continually violate or who don't resolve their violations.
- Public. The proposed amendment allows DOH to fulfill its public trust duties of regulating point source pollutant discharges and protecting public health and the environment by promoting permit compliance.

Potential problems with the rule change: None.

Fiscal impact: None.

Economic impact to the State: Positive. DOH believes that protecting public health and the environment benefits the State's economy.

Consequences if the rule change does not get adopted: It will not be clear that DOH has the authority to prevent the same Permittees from obtaining new permits without resolving their ongoing violations, that DOH can halt new permit issuance for Permittees who fail to pay fees or penalties as required by law, and that failure to comply with enforcement orders issued for permit violations is grounds for permit termination or denial of renewal.

- **Proposed Revision: Clarifying that automatic coverage does not apply to the Small MS4 General Permit.**

Reason for amendment: The proposed amendment clarifies that the existing automatic coverage provision in HAR 11-55-34.09 does not apply to Small MS4s. As summarized below, allowing automatic coverage to Small MS4s conflicts with the Two-Step General Permit Approach because that approach requires public notice.

There are two generally accepted approaches for municipalities that require a small MS4 NPDES general permit – coverage under

a Notice of General Permit Coverage (NGPC), or the so-called Two-Step General Permit Approach. An NGPC can be obtained after the applicant submits a Notice of Intent (NOI) to DOH. If DOH does not respond within thirty days of receiving the NOI, the applicant is automatically deemed to be covered under the general permit.

The Two-Step General Permit approach is favored by DOH and the affected municipalities because it allows more flexibility in developing required pollution control measures and allows municipalities to tailor pollution control measure to their unique facilities. DOH is in the process of developing a new Small MS4 general permit for municipalities that follow the Two-Step General Permit Approach. This is an option in the federal regulations (Federal Register Vol. 81, No. 237, page 89330, Section V.B). The Two-Step approach will require public notice.

Problem meant to be solved: DOH held stakeholder meetings with municipalities that require small MS4 NPDES permit coverage and determined that all the municipalities want the Two-Step General Permit Approach. The automatic coverage approach conflicts with the Two-Step approach.

How rule change addresses the problem: The proposed amendment corrects the conflict between the two approaches.

Stakeholders:

- Small MS4 Permittees will benefit from removing the conflicting automatic coverage provision in existing rules.
- The public will benefit because Small MS4s will be regulated using tailored pollution mitigative measures.

Potential problems with the rule change: None.

Fiscal impact: Positive.

Economic impact to the State: Positive. Tailoring pollution control measures is expected to be more protective of public health and water quality.

Consequences if the rule change does not get adopted: Existing rules will conflict with implementation of the Two-Step General Permit Approach.

- **Proposed Revision: Including provisions for automatic administrative extensions for projects/activities covered under**

General Permits without the need for a Permittee to submit a renewal NOI.

Reason for amendment: The amendment will provide for an automatic administrative extension to a Permittee covered under a NPDES General Permit that is about to expire. Existing rules require a Permittee to submit a renewal NOI before they can be granted an administrative extension to a General Permit. The renewal NOI requires the Permittee to certify that they will comply with a new General Permit, the contents of which cannot be known to the Permittee in the case of an expiring General Permit.

In addition to and in conjunction with the automatic administrative extension, DOH anticipates that the reissued or replacement General Permit would require a post-facto NOI with the attendant certification. The revised rules would allow for this process.

Problem meant to be solved: A Permittee should not be required to certify to compliance with unknown General Permit conditions in order to obtain an administrative extension that DOH believes is more protective of public health than a lack of any permit conditions.

How rule change addresses the problem: The amended rule will allow DOH to write the new General Permit to allow the Permittee to submit the required NOI and certification after the permit conditions have been published.

Stakeholders: Current and future Permittees of NPDES General Permits.

Potential problems with the rule change: None.

Fiscal impact: None.

Economic impact to the State: None.

Consequences if the rule change does not get adopted: Permittees will have to continue submitting renewal NOIs to obtain an administrative extension and may have to certify that they will comply with requirements of a new General Permit that they may not have a chance to examine.

- **Proposed Revision: Including provisions for automatic termination of administrative extensions for projects/activities covered under General Permits once the Permittee is granted coverage under the reissued General Permit; when the Permittee submits a Notice of Cessation indicating that the**

discharge has ceased; when DOH issues an Individual Permit; or if the DOH decides not to reissue the General Permit.

Reason for amendment: The proposed amendment codifies certain circumstances when an administrative extension for coverage under a General Permit terminates. Terminating an administrative extension, which is only intended to be an interim measure between an expired permit and a decision to issue or not issue a new permit, is rational in these circumstances.

Problem meant to be solved: The current rules do not indicate when administrative extensions terminate.

How rule change addresses the problem: The proposed amendment creates certainty.

Stakeholders: Current and future Permittees of NPDES General Permits.

Potential problems with the rule change: None.

Fiscal impact: None.

Economic impact to the State: None.

Consequences if the rule change does not get adopted: Permittees may continue to question if their administrative extensions are still effective.

▪ **Proposed Revision: Including zone of mixing and intake credit requirements from HAR 11-54.**

Reason for amendment: Zone of mixing and intake credits are NPDES permit tools. These requirements are currently in HAR, Chapter 11-54, but belong in the NPDES rules in HAR, Chapter 11-55. This amendment moves these tools to Chapter 11-55. All of the requirements were copied a currently written in Chapter 11-54 with certain exceptions indicated in the attached fact sheet.

Problem meant to be solved: NPDES tools should be consolidated in the NPDES rules where interested persons can easily identify and use them.

How rule change addresses the problem: The proposed rule change moves the NPDES tools to the NPDES rules.

Stakeholders: Current and future dischargers with individual NPDES permits.

Potential problems with the rule change: None.

Fiscal impact: None.

Economic impact to the State: None.

Consequences if the rule change does not get adopted: Permittees and DOH staff may have to refer to both Chapters 11-54 and 11-55 for applicable NPDES tools.

HRS §201M Determination of Small Business Impact

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

The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules are those businesses within the State of Hawaii that require coverage under an NPDES permit and are subject to HAR Chapter 11 55 and any revisions. This may include large, medium, and small businesses.

The Federal CWA established the important principle that the discharge of water pollutants to state waters is not a right. The Federal CWA and HRS Chapter 342D prohibits the discharge of water pollutants to State waters, unless the discharger receives a NPDES permit or variance from the permitting agency (i.e. DOH for the State of Hawaii).

Attached are the proposed rule revisions in Ramseyer format and the accompanying fact sheet. A summary of the substantive revisions to existing rules, the reason for the revision, and the problem the rule change was meant to solve is set forth in the Public Hearing Approval Request above. **DOH does not expect any of the proposed revisions to the rules to adversely affect small business.**

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

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

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

There is no direct cost increase for small businesses (no increase in fees or fines). There is no indirect cost increase expected for small businesses.

- (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.

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

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

Revising HAR Chapter 11-55, is not expected to have an adverse impact on small business; therefore, methods to reduce the impact on small business were not explored.

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

DOH does not believe there are less restrictive alternatives to the proposed amendments, with the exception described below.

One proposed amendments revised the deadline to submit renewal individual NPDES permit applications from 180 days to 360 days before expiration. The DOH believes renewal permit applications should be submitted farther in advance of the permit expiration date so there is enough time to process and draft the renewal permit. 40 CFR 123.25(a) allows states to impose requirements more stringent than the 180-day filing deadline in federal regulations.

DOH has more than 1,200 NPDES permit applications for short-term discharges, as well as approximately 80 individual NPDES permits for facilities with continuous discharges, which are more complex than permits for short-term discharges. The permits for continuous discharges must be renewed according to a schedule to comply with Clean Water Act (CWA) Section 106 grant commitments. Certain actions beyond DOH's control, makes it difficult to meet this schedule. Moving the start of the renewal application process to an earlier date will provide DOH more time and more flexibility to coordinate, plan, and process the renewal individual permit for these continuous discharging facilities and meet CWA 106 grant commitments. Of the approximately 80 permits for facilities with continuous discharges, DOH estimates 40 will take more than 180 days to process.

DOH does not believe there are less restrictive alternatives to moving the existing 180-day renewal deadline that are equally protective of water quality.

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

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

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

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

DOH considered impacts of these proposed revisions and did not believe they would adversely impact small business. Therefore, consultation during the review process was not pursued.

- (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.

As described above, amending the deadline to submit a renewal individual NPDES permit application from 180 days to 360 days before expiration is more stringent than federal regulations. As processing time for complex projects is frequently expected to exceed 180 days, DOH believes it is necessary to require renewal permit applications to be submitted sooner so there is enough time to process and draft the renewal permit before the existing permit expires.

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.

NPDES permits impose conditions and restrictions on dischargers in order to protect State water quality. State water quality is better protected when the permit reflects the most stringent achievable restrictions and reasonable conditions. Reasonable conditions may be influenced by technology- or methodology-based improvements over previously imposed conditions. Achievable restrictions may be influenced when monitoring reported over the life of the current permit demonstrates that better water quality (compared to permit limitations) has been regularly achieved by the discharger. The proposed rule change will increase the likelihood that DOH can draft and issue a permit that incorporates more current and reliable information before the current permit expires. It will also allow DOH to process permit applications for

continuous discharges in accordance with CWA 106 grant commitments, which is an important benchmark justifying receipt of EPA funds to protect water quality.

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

40 CFR 122.21(d) and 40 CFR 123.25 require renewal permit applications to be submitted 180 days before the existing permit expires.

HAR 11-55-04(a)(1), which sets forth the deadline for submitting an NPDES permit application currently provides in relevant part: “. . . for renewals, at least one hundred eighty days before the expiration date of the existing permit.”

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

The proposed revision to HAR 11-55-04(a)(1) enlarges the deadline for submitting a renewal permit application from 180 days to 360 days. This revision does not substantively change the purpose and application of the existing rule. This revision is expected to improve DOH’s administration of the rule.

- 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.

The amount of work and cost for a Permittee to put together a renewal application is substantially the same even if the deadline is moved forward. Requiring renewal applications sooner will assist DOH in meeting CWA 106 permit deadline processing commitments, which, in turn, will ensure that DOH continues to receive EPA funding that is used solely to keep Hawaii’s waters clean.

- 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.

The proposed revision is not expected to adversely impact small businesses.

Rationale, Hawaii Administrative Rules Chapter 11-55 Water Pollution Control

Hawaii Administrative Rules (HAR), Chapter 11-55 Water Pollution Control regulates the National Pollutant Discharge Elimination System (NPDES) in Hawaii. The NPDES is a permit system required by Section 402 of the federal Clean Water Act that authorizes certain types of point source discharges, as well as some storm water discharges, to surface waters such as streams, lakes, or oceans. The U.S. Environmental Protection Agency (EPA) authorized the State of Hawaii, Department of Health (DOH) to administer the NPDES permit system in Hawaii.

In addition to providing policies and requirements for the NPDES program, HAR Chapter 11-55 also contains the NPDES General Permits in its appendices. The General Permits authorize a category of discharges and has one set of requirements for a group of similar types of activities or facilities such as once-through cooling water for air-conditioning systems or storm water discharges from construction activities. A General Permit is an already written permit that requires an eligible owner or operator to notify the DOH that it wishes to be covered under the General Permit and that it will comply with all requirements of the permit. Coverage under a General Permit tends to be more expeditious than under the formal Individual Permit process.

The current revisions for this chapter include:

- Adding Federal MS4 [i.e., 40 CFR §122.32(d) and (e)] waiver provisions.
- Enlarging the deadline to submit individual NPDES renewal permit applications from 180 days to 360 days before permit expiration.
- Clarifying that public notice and public hearing procedures must follow Hawaii Revised Statutes (HRS) §1-28.5.
- Limiting public hearing comments to written comments.
- Authorizing DOH to deny permits to dischargers that bounce checks or who are currently in violation of other permits issued to them.
- Clarifying that automatic coverage does not apply to Appendix K.
- Including provisions for automatically terminating administrative extensions for projects/activities covered under general permits.
- Including zone of mixing and intake credit requirements from HAR Chapter 11-54.

Rationale, Hawaii Administrative Rules Chapter 11-55 Water Pollution Control

Section	Current	Proposed	Rationale
Title Page	Stamped adoption date.	Placeholder.	Left a placeholder for the adoption date to be stamped after rule making.
Table of Contents	None	Added 11-55-41 (zones of mixing) and 11-55-42 (intake credits)	Provisions were previously in HAR Chapter 11-54. Moved those provisions to 11-55-41 and 11-55-42 since these are NPDES requirements that belong in the NPDES rules.
Table of Contents	Appendix B NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities	Deletion	This general permit will be issued outside of HAR 11-55 appendices.
Table of Contents	Appendix K NPDES General Permit Authorizing Discharges of Storm Water from Small Municipal Separate Storm Sewer Systems	Deletion	This general permit will be issued outside of HAR 11-55 appendices.
11-55-04(a)	Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, or substantially altering the quality of any discharges, or substantially increasing the quantity of any discharges, a person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), submit a complete notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M) or, for certain storm water discharges, meet all requirements for a conditional "no exposure" exclusion.	Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, or substantially altering the quality of any discharges, or substantially increasing the quantity of any discharges, <u>or for regulated small municipal separate storm sewer system, unless the director waives NPDES permit coverage in accordance with 40 CFR §122.32(d) or (e)</u> , a person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), submit a complete notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M) or, for certain storm water discharges, meet all requirements for a conditional "no exposure" exclusion.	To be consistent with Federal requirements and be able to waive MS4 requirements.

Rationale, Hawaii Administrative Rules Chapter 11-55 Water Pollution Control

Section	Current	Proposed	Rationale
11-55-04(a)(1)	At least one hundred eighty days before the discharge or construction begins or, for renewals, at least one hundred eighty days before the expiration date of the existing permit. The director may waive this one hundred eighty day requirement by issuing the permit with an effective date before the one hundred eighty days	At least one hundred eighty days before the discharge or construction begins or, for renewals, at least <u>three hundred sixty</u> days before the expiration date of the existing permit. The director may waive this <u>three hundred sixty</u> day requirement by issuing the permit with an effective date before the <u>three hundred sixty</u> days	40 CFR 122.21(d) and 40 CFR 123.25 require renewal permit applications to be submitted one hundred and eighty days before the existing permit expires. The DOH has decided to require renewal permit applications to be submitted sooner (three hundred sixty days before the existing permit expires) so there is enough time to process and draft the renewal permit before the existing permit expires. 40 CFR 123.25(a) allows States to impose more stringent requirements.
11-55-09(a)(1) and (2)	Public notice procedures shall include at least the following: (1) Notice shall be circulated within the geographical areas of the proposed discharge; circulation includes any or all of the following: (A) Posting in the post office and public places of the municipality nearest the premises of the owner or operator in which the effluent source is located; (B) Posting near the entrance to the owner's or operator's premises and in nearby places; or (C) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation. (2) Notice shall be mailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v); and....	Public notice procedures shall include at least the following: (1) <u>Notice shall comply with section 1-28.5, HRS.</u> (2) Notice shall be mailed <u>or emailed</u> to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v); and....	DOH regularly publishes notices in newspapers in accordance with section 1-28.5, HRS. DOH has found this method to be sufficient and rarely, if ever, posts notice in the local post office, other local public place, or near the effluent source or owner's or operator's premises. DOH believes it is more appropriate to reference the statute in 11-55-09(a)(1) as the statute has a more comprehensive treatment of newspaper publication. Email notice was added to 11-55-09(a)(2) as DOH has determined from experience that many applicants and interested groups prefer receiving notices by email.

Rationale, Hawaii Administrative Rules Chapter 11-55 Water Pollution Control

Section	Current	Proposed	Rationale
11-55-13(d)	Any person may submit oral or written statements and data concerning the draft permit. The public comment period under section 11 55 09 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.	Any person may submit [oral or]written statements and data concerning the draft permit. The public comment period under section 11 55 09 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing. The phrase “oral or” is deleted.	The DOH believes it is appropriate to limit comment at a public hearing to written statements and data to ensure that concerns are accurately and adequately memorialized for consideration with respect to the draft permit at issue. DOH does not believe requiring a written statement is unduly burdensome when it is mandated to address comments in making a permit determination. Instead, it will require DOH to address such comments in a more direct and discernable way. This rule change should not be construed as prohibiting oral statements on written commentary.
11-55-14(a)	Public notice of any hearing held under section 11 55 13 shall be circulated as widely as the notice of the draft permit. Public notice for hearings held under section 11 55 13 shall be: (1) Published at least once in a newspaper of general circulation within the geographical area of the discharge; (2) Sent to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES permit application; (3) Mailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v), (ix), and (x); and (4) Effected under paragraphs (1) and (3) at least thirty days in advance of the hearing.	Public notice of any hearing held under section 11 55 13 shall be circulated as widely as the notice of the draft permit. Public notice for hearings held under section 11 55 13 shall be: (1) <u>Published in accordance with section 1-28.5, HRS;</u> (2) Sent to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES permit application; (3) Mailed <u>or emailed</u> to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v), (ix), and (x); and (4) Effected under paragraphs (1) and (3) at least thirty days in advance of the hearing.	As discussed in connection with revisions to 11-55-09(a), DOH believes it is more appropriate to reference section 1-28.5, HRS, in HAR 11-55-14(a)(1). Email notice was added to 11-55-14(a)(3) as DOH has determined from experience that many applicants and interested groups prefer receiving notices by email.

Rationale, Hawaii Administrative Rules Chapter 11-55 Water Pollution Control

Section	Current	Proposed	Rationale
11-55-15(i)	None	The director may deny applications for permits from persons who are respondents in open enforcement actions associated with water pollution, who fail to make payments as required for permit fees or penalties, or who have a history of violating water pollution control laws.	The director should have explicit authority to deny renewals of permits for permittees who are violating permit conditions. The addition of this section prevents the same permittees from obtaining new permits without resolving their ongoing violations. Further, this allows the director to halt a new permit issuance for permittee's who failed to pay fees or penalties as required by law, court judgment, or a final administrative hearing decision.
11-55-17(c)(5)	None	The permittee's failure to comply with enforcement orders associated with the applicable NPDES permit.	The director has authority to terminate or deny renewal for permittee's in violation of permit conditions. The added paragraph codifies that failure to comply with enforcement orders issued for permit violations is grounds for permit termination or denial of renewal.
11-55-17(c)(6)	None	The permittee's failure to pay penalties or fees, as required by law.	The added paragraph codifies that permittee's failure to pay fees or penalties as required by law, court judgment, or a final administrative hearing decision is grounds for permit termination or denial of renewal.
11-55-34.02(b)(2) through (9), (11), and (2)	None	Added effective dates of the general permits.	Effective dates were added for clarity.
11-55-34.09(d)	The director may, automatically or by notification, administratively extend a notice of general permit coverage upon receipt of a complete notice of intent for renewal of a notice of general permit coverage before the expiration of the general permit or when the notice of general permit coverage specifies, whichever occurs first. A notice of general permit coverage shall be considered to have been	The director may, automatically or by notification, administratively extend a notice of general permit coverage[upon receipt of a complete notice of intent for renewal of a notice of general permit coverage before the expiration of the general permit or when the notice of general permit coverage specifies, whichever occurs first]. A notice of general permit coverage shall be considered to have been automatically extended unless the department informs the	The intent of the proposed revisions are to: 1) allow administrative extensions for general permit coverages to be automatic without the need for a permittee to submit a renewal NOI, which would require the permittee to certify that they will comply with a general permit that is not effective yet. The deadline to submit the renewal

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Section	Current	Proposed	Rationale
	<p>automatically extended unless the department informs the Permittee otherwise. An administrative extension of an NGPC granted, automatically or by notification, for a project which later is found to be in non-compliance will be automatically terminated and may be required to apply for individual NPDES permit coverage. If administratively extended, the terms and conditions of the expired permit will continue to be effective for projects that submitted NOIs prior to the expiration date. The department intends that projects that projects that do not submit NOIs prior to the expiration date will not be administratively extended. The permittee who submits a notice of intent for renewal of the notice of general permit coverage shall be treated as an owner or operator applying for permit renewal under section 342D-6(h), HRS.</p>	<p>Permittee otherwise. <u>The department will inform the Permittee of any deadlines to submit a complete NOI to request authorization to discharge under the new general permit. Any Permittee granted coverage under the general permit that receives an administrative extension for coverage, will remain covered by the general permit until the earlier of:</u></p> <ul style="list-style-type: none"> • <u>Authorization for coverage under reissuance or replacement of the general permit;</u> • <u>The Permittee's submittal of a Notice of Cessation;</u> • <u>The issuance of an individual NPDES permit;</u> • <u>A formal permit decision by the Director not to reissue this general permit, at which time the Permittee must seek coverage under an alternative general or individual permit; or</u> • <u>A formal permit decision by the Director to terminate the administrative extension due to the Permittee failing to submit by the deadline specified by the Director, a complete NOI to request authorization to discharge under the new general permit.</u> <p><u>The DOH will notify the permittee in writing that its administrative extension is being terminated and the reason(s) why.</u> An administrative extension of an NGPC granted, automatically or by notification, for a project which later is found to be in non-compliance [will]may be [automatically] terminated and may be required to apply for individual NPDES permit coverage. [If administratively extended, the terms and conditions of the expired permit will continue to be effective for projects that submitted NOIs prior to the expiration date.</p>	<p>NOI needs to be in the effective general permit. The reason is so that the discharger will know what the permit conditions are, and it will allow them to certify that they will comply with these conditions.</p> <p>2) clarify that coverage under an administrative extension is terminated once the permittee is granted coverage under the reissued general permit.</p> <p>3) clarify that coverage under an administrative extension is terminated upon the permittee's submittal of the Notice of Cessation</p> <p>4) clarify that coverage under an administrative extension is terminated upon the issuance of an Individual NPDES Permit; and</p> <p>5) provide rules for terminating administrative extensions if the Director decides not to reissue a general permit.</p>

Rationale, Hawaii Administrative Rules Chapter 11-55 Water Pollution Control

Section	Current	Proposed	Rationale
		<p>The department intends that projects that projects that do not submit NOIs prior to the expiration date will not be administratively extended.]</p> <p>The permittee who submits a notice of intent for renewal of the notice of general permit coverage shall be treated as an owner or operator applying for permit renewal under section 342D-6(h), HRS.</p>	
11-55-34.09(e)(2)	<p>Authorization to discharge under the general permit is effective upon the earlier of: The thirtieth day after receipt at the clean water branch of the department of a complete notice of intent for a new notice of general permit coverage and the applicable filing fee, unless before the thirtieth day the director notifies the owner or its duly authorized representative that the notice of intent is incomplete. This paragraph does not apply to a notice of intent for renewal of a notice of general permit coverage.</p>	<p>Authorization to discharge under the general permit is effective upon the earlier of: The thirtieth day after receipt at the clean water branch of the department of a complete notice of intent for a new notice of general permit coverage and the applicable filing fee, unless before the thirtieth day the director notifies the owner or its duly authorized representative that the notice of intent is incomplete. This paragraph does not apply to a notice of intent for renewal of a notice of general permit coverage. <u>This paragraph does not apply to a notice of intent for small municipal separate storm sewer systems.</u></p>	<p>The additional sentence clarifies that general permit automatic coverage provisions do not apply to small municipal separate storm sewer systems. It should not apply because the general permit for these types of facilities will follow the Two-Step General Permit Approach in FR Vol. 81, No. 237 pg. 89330, Section V.B., which requires a public notice.</p>
11-55-41	None	<p>Zones of mixing. (a) Zones of mixing are defined and authorized for use in discharge permits in section 11-54-1. Zones of mixing allow for dilution of wastes before compliance with the applicable water quality criteria must be met. Zones of initial dilution are a subset of zones of mixing that are applied to toxic pollutants.</p> <p>(b) Establishment, renewal, and termination.</p> <p>(1) Application for establishment of a zone of mixing shall be made concurrently with any discharge permits whenever applicable and the conditions of a zone of mixing shall be incorporated as conditions of the discharge permits. Every application</p>	<p>This provision is being incorporated in HAR Chapter 11-55 from HAR section 11-54-9(c) because these are NPDES requirements that belong in the NPDES rules. HAR 11-54-9(c) was copied as currently written, except for the following:</p> <ol style="list-style-type: none"> 1) Proposed 11-55-41(a) was included to introduce zones of mixing and to define zones of initial dilution. 2) Proposed 11-55-41(b) is from 11-54-9(c).

Rationale, Hawaii Administrative Rules Chapter 11-55 Water Pollution Control

Section	Current	Proposed	Rationale
		<p>for a zone of mixing shall be made on forms furnished by the director and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and other information as the director may prescribe.</p> <p>(2) Each application for a zone of mixing shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information as may be submitted upon the request of the director, and in light of the effect or probable effect upon water quality standards established pursuant to chapter 11-54.</p> <p>(3) Whenever an application is approved, the director shall establish the zone of mixing, taking into account the environmental impact, including but not limited to factors such as the protected uses of the body of water, existing natural conditions of the receiving water, character of the effluent, and the adequacy of the design of the outfall and diffuser system to achieve maximum dispersion and assimilation of the treated or controlled waste with a minimum of undesirable or noticeable effect on the receiving water.</p> <p>(4) Approval of a zone of mixing shall be made either after a public hearing is held by the director in the county where the source is situated, in accordance with chapters 91 and 92, HRS and the rules of practice and procedures of the department, or after the public notification and comment process duly established for a discharge permit in the case when the zone of mixing is being considered concurrently with the discharge permit.</p>	

Rationale, Hawaii Administrative Rules Chapter 11-55 Water Pollution Control

Section	Current	Proposed	Rationale
		<p>(5) No zone of mixing shall be established by the director unless the application and the supporting information clearly show that:</p> <p>(A) The continuation of the function or operation involved in the discharge by the granting of the zone of mixing is in the public interest;</p> <p>(B) The discharge occurring or proposed to occur does not substantially endanger human health or safety;</p> <p>(C) Compliance with the existing water quality standards from which a zone of mixing is sought would produce serious hardships without equal or greater benefits to the public; and</p> <p>(D) The discharge occurring or proposed to occur does not violate the basic standards applicable to all waters, will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control.</p> <p>(E) The capacity of the receiving water to dilute a pollutant or assimilative capacity is available in the receiving water for the pollutant in which a zone of mixing is being requested.</p> <p>(6) Any zone of mixing or renewal thereof shall be established within the requirements of this section and for time periods and under conditions consistent with the reasons within the following limitations:</p> <p>(A) If the zone of mixing is established on the grounds that there is no reasonable means known or available for the adequate prevention, control, or abatement of the discharge involved, it shall be allowed only</p>	<p>3) Proposed 11-55-41(b)(5)(E) was included to clarify that DOH will not grant a zone of mixing for a pollutant if assimilative capacity is not available in the receiving water.</p>

Rationale, Hawaii Administrative Rules Chapter 11-55 Water Pollution Control

Section	Current	Proposed	Rationale
		<p>until the necessary means for prevention, control or abatement become practicable, and subject to the taking of any substitute or alternative measures that the director may prescribe. No renewal of a zone of mixing established under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the discharge involved;</p> <p>(B) The director may issue a zone of mixing for a period not exceeding five years;</p> <p>(C) The director may establish conditions requiring the applicant to perform appropriate effluent and receiving water sampling including monitoring of bottom biological communities and report the results of each sampling to the director. A program of research to develop reasonable alternatives to the methods of treatment or control in use by the applicant may be required if research is deemed prudent by the director; and</p> <p>(D) In order to prevent high temperature discharges from violating section 11-54-04(a)(4), no new or increased domestic, industrial, or other controllable source shall discharge at a maximum temperature which will cause temperatures to exceed three degrees Celsius above ambient, or thirty degrees Celsius, whichever is less, within one meter of the bottom within a zone of mixing. For discharges with or without submerged outfalls, the director may make a limited allowance for higher discharge temperatures if there is satisfactory demonstration that the elevated temperature will not cause damage to the local aquatic community.</p>	<p>4) Proposed 11-55-41(b)(6)(C) revises the language from 11-54-9(c)(6)(C) to clarify that DOH establishes effluent and receiving water sampling when it is appropriate.</p>

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Section	Current	Proposed	Rationale
		<p>(7) Any zone of mixing established pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial establishment of a zone of mixing, provided that the applicant for renewal meets the requirements in section 11-55-41. Any new zones of mixing or requests for zone of mixing renewals for wastewater treatment plants (WWTP) performing primary treatment shall comply with section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251). No renewal shall be allowed except upon application. Any renewal application shall be made at least three hundred and sixty days days prior to the expiration of the zone of mixing.</p> <p>(8) No zone of mixing established pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.</p> <p>(9) Each mixing zone may be subject to revocation, suspension, or modification if, after notice and opportunity for a hearing pursuant to chapter 91, HRS and the rules of practice and procedures of the department, the director determines that the terms specified in section 342D-6, HRS have been violated. In taking any action, the director may consider operating records, compliance investigations, or other information regarding discharge quality or impact on receiving waters. The action shall be effected by giving written notice to the permittee, which shall contain the reasons for the action.</p> <p>(10) The director shall be notified within thirty days of the permanent discontinuance</p>	<p>5) Proposed 11-55-41(b)(7) revised the language from 11-54-9(c)(7) to clarify that a zone of mixing can be renewed provided that requirements from 11-55-41 are complied with.</p> <p>6) Proposed 11-55-41(b)(7) requires the renewal application for a zone of mixing to be submitted at least 360 days prior to expiration. This is to match the proposal in HAR 11-55-04(a)(1) because the zone of mixing renewal application is required to be submitted with the NPDES renewal application.</p> <p>7) The language in HAR 11-54-9(c)(9) was not included in the proposed HAR 11-55-41 as establishment of a zone of mixing does not require EPA concurrence.</p>

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Section	Current	Proposed	Rationale
		<p>of a discharge. The zone of mixing shall terminate thirty days after such notification has been received.</p> <p>(11) Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee. [Eff] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)</p>	
11-55-42	None	<p>Intake credits. (a) An intake credit is an NPDES implementation tool that applies to the implementation of water quality standards through NPDES permits only.</p> <p>(b) As used in this section:</p> <p>“Background pollutant concentration” means the water body concentration, regardless of whether those pollutants are natural or result from anthropogenic upstream activity.</p> <p>“Intake pollutant” means the background pollutant concentration that is present in the intake water body.</p> <p>“Same body of water” means an intake pollutant is considered to be from the “same body of water” as the discharge if the department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period of time had it not been removed by the permittee. This finding may be deemed established if:</p> <p>(1) The background pollutant concentration in the receiving water (excluding any amount of the pollutant in the facility’s discharge) is similar to that in the intake water; and</p> <p>(2) There is a direct hydrologic connection between the intake and discharge points; and</p>	<p>This provision is being incorporated in HAR Chapter 11055 from HAR section 11-54-12 because these are NPDES requirements that belong in the NPDES rules. HAR 11-54-12 were copied as currently written except for the following:</p> <p>1) Proposed 11-55-42(b) revises the 11-54-12(b) definitions of “background pollutant concentration” and “intake pollutant” for clarity.</p>

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Section	Current	Proposed	Rationale
		<p>(3) Water quality characteristics (e.g. temperature, pH, hardness) are similar in the intake and receiving waters.</p> <p>The department may consider other site-specific factors relevant to the transport and fate of the pollutant in deciding whether a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.</p> <p>(c) The director may, upon request of the discharger, adjust water quality-based effluent limitations or standards to reflect credit for intake pollutants in the discharger's intake water only:</p> <p>(1) To the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the intake pollutant value; and</p> <p>(2) If there is no net increase in the mass of the intake pollutant for which the credit is given. A discharger may increase the concentration of the background pollutant if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water, and the higher concentration discharge is demonstrated to not cause acute toxicity or detrimental effects.</p> <p>(d) Intake credit is not applicable to any pollutant for which a Total Maximum Daily Load (TMDL) and waste load allocation (WLA) have been developed and have been approved by the U.S. Environmental Protection Agency unless the TMDL and WLA provide for such an intake credit.</p>	<p>2) Proposed 11-55-42(c)(2) revises the 11-54-12(c)(2) restriction for intake credit usage for clarity.</p>

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Section	Current	Proposed	Rationale
		<p>(e) The director shall grant credit for water quality-based effluent limits only if:</p> <p>(1) The intake water containing the intake pollutant is withdrawn from the same body of water into which the discharge is made, or the director may waive this requirement if the director finds that no environmental degradation will result;</p> <p>(2) The facility does not chemically or physically alter the intake pollutant in a manner that would cause adverse water quality impacts to occur;</p> <p>(3) The timing and location of the discharge of the intake pollutant would not cause adverse water quality impacts to occur; and,</p> <p>(4) The director finds that the discharge of intake pollutants into the receiving water will not adversely impact narrative or numeric water quality criteria specified in this chapter.</p> <p>(f) Effluent limitations must be established so that they comply with all other applicable state and federal laws and regulations including water quality-based requirements and anti-degradation policies.</p> <p>(g) All requests for the establishment of credit for intake pollutants shall be made on forms furnished by the department and shall be accompanied by:</p> <p>(1) Documentation showing a complete and detailed description of present conditions and how present conditions do not conform to standards; and</p> <p>(2) Documentation showing that the intake and discharge waterbodies are the “same body of water” or request a</p>	<p>3) Proposed 11-55-42(e) revises the 11-54-12(e) requirement for clarity and to include 40 CFR 122.45(g)(4) requirements that allow the permitting agency to waive the requirement for the intake water containing the intake pollutant to be withdrawn from the same body of water into which the discharge is made if the permitting agency finds that no environmental degradation will result.</p> <p>4) Proposed 11-55-42(g)(2) revises the 11-54-12(g)(2) requirement to</p>

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Section	Current	Proposed	Rationale
		<p>waiver and demonstrate that no additional environmental degradation will occur in the receiving water; and</p> <p>(3) Documentation showing that pollutant(s) for which credits are being requested actually come(s) from the intake water.</p> <p>(h) Credit for intake pollutants shall be specified in the discharger's NPDES permit and shall become effective with the department's issuance of the permit for the specified permittee.</p> <p>(1) All permits that include intake credits issued by the department shall include monitoring of all influent, effluent, and ambient water to demonstrate that the conditions in this section are maintained during the permit term.</p> <p>(2) All credit for intake pollutants developed under this section shall be re-evaluated upon permit renewal.</p> <p>(i) Credit for intake pollutants established under this section apply in the vicinity of the discharge for purposes of establishing permit limits for a specified pollutant for the specified permittee.</p> <p>(j) All other water quality criteria established under this chapter continue to apply. [Eff] Auth: HRS §§342D-4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, 342D-6, Ch. 342E)</p>	<p>include the 40 CFR 122.45(g)(4) requirement described above.</p>
Adoption text	Stamped adoption date and previous public hearing and hearing notice.	Placeholder	Left placeholders to be filled in after adoption.

Department of Health
Rules Amending Title 11
Hawaii Administrative Rules

(insert adoption date)

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

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 55

WATER POLLUTION CONTROL

§11-55-01	Definitions
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Historical Note: Chapter 55 of Title 11 is based substantially on Public Health Regulations, Chapter 37, Water Pollution Control, Department of Health, State of Hawaii. [Eff 5/25/74, am 1/20/75, 8/19/75, 1/31/81; R 11/27/81]

§11-55-01 Definitions

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

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

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

"Action threshold" means the point at which pest populations or environmental conditions necessitate that pest control action be taken based on economic,

human health, aesthetic, or other effects. An action threshold may be based on current and/or past environmental factors that are or have been demonstrated to be conducive to pest emergence and/or growth, as well as past and/or current pest presence. Action thresholds are those conditions that indicate both the need for control actions and the proper timing of such actions.

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

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

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

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

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

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fish that are listless or nonresponsive to disturbance; stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants; other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.). The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin rashes) or domesticated animals that occur either from direct contact with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or animals containing pesticides) to State waters that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

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

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

"Annual treatment area threshold" means the additive area (in acres) or linear distance (in miles) in a calendar year to which a decision-maker is authorizing and/or performing pesticide applications in that area for activities covered under Appendix M. For calculating annual treatment areas for mosquitoes and other flying insect pest control and forest canopy pest for comparing with any threshold in table 1 of Appendix M, count each pesticide application activity to a treatment area (i.e., that area where a pesticide application is intended to provide pesticidal benefits within the pest management area) as a separate area treated. For example, applying pesticides three times a year to the same three thousand acre site should be counted as nine thousand acres of treatment area for purposes of determining if such an application exceeds an annual treatment area threshold. Similarly, for calculating annual treatment areas for weed and algae

control and animal pest control for comparing with any threshold in table 1 of Appendix M, calculations should include either the linear extent of or the surface area of waters for each application made to State waters or at water's edge adjacent to State waters. For calculating the annual treatment area, count each treatment area as a separate area treated. Also, for linear features (e.g., a canal or ditch), count the length of the linear feature each time an application is made to that feature during the calendar year, including counting separately applications made to each bank of the water feature if pesticides are applied to both banks. For example, applications four times a year to both banks of a three-mile long reach of stream will count as a total of twenty four linear miles (three miles* two banks* four applications per year= twenty four miles to which pesticides are applied in a calendar year).

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

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

- (1) Approved or permitted to remain in effect by the Administrator under Section 303(a) or Section 303(c) of the Act, 33 U.S.C. §1313(a) or §1313(c); or
- (2) Promulgated by the Administrator under Section 303(b) of the Act, 33 U.S.C. §1313(b).

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

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

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

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

- (1) is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi;
- (2) is a procaryotic microorganism, including, but not limited to, eubacteria and archaeobacteria; or
- (3) is a parasitically replicating microscopic element, including but not limited to, viruses. (See 40 CFR 158.2100(b)).

"Biochemical pesticide" means a pesticide that is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticide, is equivalent to a naturally-occurring substance that has such a history; and has a non-toxic mode of action to the target pest(s). (See 40 CFR 158.2000(a)(1)).

"Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a

pesticidal substance. It also includes any inert ingredient contained in the plant, or produce thereof. (See 40 CFR 174.3).

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

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

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

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

'Cooling water' means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage of a facility's intake flow that is used for cooling purposes in 40 CFR §125.B1(c).

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

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

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

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

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

"Department" means the state department of health.

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

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

"Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to State waters from any point source, or any addition of any pollutant or combination of pollutants to the water of the contiguous zone or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation. This includes additions of pollutants into State waters from: surface runoff that is collected or channeled by man; or discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. (Excerpted from 40 CFR 122.2).

"Draft permit" means a document prepared under 40 CFR §124.6 indicating the director's tentative decision to issue or modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit as discussed in 40 CFR §124.5(d) and defined in 40 CFR §124.2, and a notice of intent to

deny a permit as defined in 40 CFR §124.2 are types of "draft permit." A denial of a request for modification, revocation and reissuance, or termination, as discussed in 40 CFR §124.5(b), is not a "draft permit."

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

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

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

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

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

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

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

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

"HRS" means the Hawaii Revised Statutes.

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

"Impaired water" (or "water quality impaired water" or "water quality limited segment") means waters that have been identified by the state pursuant to Section 303(d) of the Clean Water Act as not meeting applicable state water quality standards (these waters

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are called "water quality limited segments" under 40 CFR 130.2(j)). Impaired waters include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.

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

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

'Industrial user' means a source of indirect discharge.

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

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

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

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

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

"Medical waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes and potentially contaminated laboratory

wastes, dialysis wastes, and additional medical items as the Administrator shall prescribe by regulation.

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

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

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

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

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318, and 405 of the Act.

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

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

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

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

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

'Non-target Organisms' includes the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

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

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

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

"NPDES form" means any form provided by the Administrator or director for use in obtaining or

complying with the individual permit, notice of general permit coverage, or conditional ''no exposure'' exclusion. These forms include the NPDES permit applications, notice of intent forms, ''no exposure'' certification form, NPDES discharge monitoring report form, notice of cessation form, and other forms as specified by the director.

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

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

''Once-through cooling water system'' means a system designed to withdraw water from a natural or other water source, use it at the facility to support contact or noncontact or both cooling uses, and then discharge it to a waterbody without recirculation. Once-through cooling systems sometimes employ canals, channels, ponds, or nonrecirculating cooling towers to dissipate waste heat from the water before it is discharged.

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

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

''Owner¹ or 'operator'' means the person who owns or operates any ''facility'' or ''activity'' subject to regulation under the NPDES program.

''Person'' means the same thing as defined in section 3420-1, HRS.

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

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

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

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

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

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

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

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

agriculture or agricultural storm water runoff, except return flows from agriculture irrigated with reclaimed water. (See 40 CFR §122.2).

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

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

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

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

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

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

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

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

'small entity' means any:

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

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

- (1) Owned or operated by the United States, a state, city, town, borough, county, parish,

district, association, or other public body (created by or under state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Act that discharges to State waters;

- (2) Not defined as "large" or "medium" municipal separate storm sewer systems under 40 CFR §122.2(b) (4) and (b) (7), or designated under section 11-55-04(a) (4) or 11-55-34.0S(k) (2) or 40 CFR §122.26(a) (1) (v); and
- (3) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

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

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

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

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

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

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

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

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

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

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

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

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

"Water quality impaired" see "Impaired Water".

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

The definitions of the following terms contained in Section 502 of the Act, 33 U.S.C. §1362, shall be applicable to the terms as used in this part unless the context otherwise requires: "biological monitoring," "contiguous zone," "discharge," "discharge of a pollutant," "effluent limitations," "municipality," "navigable waters," "ocean," "pollutant," "schedule of compliance," "territorial seas," and "toxic pollutant." [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp 2/9/19; and comp

(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 183B-1, 342D-1, 342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subpart A and D; Part 125; §122.2)

§11-55-02 General policy of water pollution control.

- (a) It is the public policy of this State:
- (1) To conserve State waters;
 - (2) To protect, maintain, and improve the quality of State waters:
 - (A) For drinking water supply, and food processing;
 - (B) For the growth, support, and propagation of shellfish, fish, and other desirable species of marine and aquatic life;
 - (C) For oceanographic research;
 - (D) For the conservation of coral reefs and wilderness areas; and
 - (E) For domestic, agricultural, industrial, and other legitimate uses;
 - (3) To provide that no waste be discharged into any State waters without first being given the degree of treatment necessary to protect the legitimate beneficial uses of the waters;
 - (4) To provide for the prevention, abatement, and control of new and existing water pollution; and
 - (5) To cooperate with the federal government in carrying out the objectives listed in paragraphs (1) through (4).
- (b) Any industrial, public, or private project or development which could be considered a new source of pollution or an increased source of pollution shall, in its initial project design and subsequent construction, provide the highest and best degree of waste treatment practicable under existing technology.
- (c) Permits issued under this chapter, and the related applications, processing, issuance, and post-issuance procedures and requirements, shall be at least as stringent as those required by 40 CFR §123.25(a).

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[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp 2/9/19; and comp) (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1251, 1288, 1311, 1312, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.25(a))

§11-55-03 General prohibition. No person shall violate any provision of section 342D-50, HRS, or any NPDES permit issued under this chapter. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp) (Auth: HRS §§342D-4, 342D-5, 603-23; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50, 603-23; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-04 Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion. (a) Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, or substantially altering the quality of any discharges, or substantially increasing the quantity of any discharges, or for regulated small municipal separate storm sewer systems, unless the director waives NPDES permit coverage in accordance with 40 CFR §122.32(d) or (e), a person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in

40 CFR §122.21(j)(5)), submit a complete notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M) or, for certain storm water discharges, meet all requirements for a conditional "no exposure" exclusion. Submittal of a notice of intent for coverage under a general permit shall comply with and be regulated by sections 11-55-34.08 through 11-55-34.10. Conditional "no exposure " exclusions shall comply with and be regulated by subsection (e) An NPDES permit application shall be submitted:

- (1) At least one hundred eighty days before the discharge or construction begins or, for renewals, at least [one hundred eighty) three hundred sixty days before the expiration date of the existing permit. The director may waive this [one hundred eighty) three hundred sixty day requirement by issuing the permit with an effective date before the [one hundred eighty) three hundred sixty days expire;
- (2) In sufficient time prior to the beginning of the discharge of pollutants to ensure compliance with the requirements of new source performance standards under Section 306 of the Act, 33 U.S.C. §1316, or with any applicable zoning or site requirements established under Section 208(b)(2)(C) of the Act, 33 U.S.C. §1288(b)(2)(C), and any other applicable water quality standards and applicable effluent standards and limitations;
- (3) For any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill;
- (4) For any discharge from an existing regulated small municipal separate storm sewer system

which is not qualified to obtain coverage under the general permit. The permit application shall be made under 40 CFR §122.33 if the small municipal separate storm sewer system is designated under 40 CFR §122.32(a)(1). A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas shall submit an NPDES permit application if the department determines that the system's storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The department shall evaluate the small municipal separate storm sewer system with the following elements, at a minimum: discharge to sensitive waters, high growth or growth potential, high population density, contiguity to an urbanized area, significant contributor of pollutants to State waters, and ineffective protection of water quality by other programs. The NPDES permit application shall be submitted within one hundred eighty days of notice from the department;

- (5) For any discharge from a regulated concentrated animal feeding operation. The

permit application shall be made under 40 CFR §122.21;

- (6) (Reserved); or
- (7) At least one hundred eighty days before the construction activity as identified in 40 CFR §122.26 (b)(14)(x) or small construction activity as defined in 40 CFR §122.26(b)(15)(i) begins and is not qualified to obtain coverage under the general permit.

(b) Application for an individual permit shall be made by the owner or operator on an NPDES permit application provided by the director. The NPDES permit application shall be submitted with complete data, site information, plan description, specifications, drawings, and other detailed information. The information submitted shall comply with 40 CFR §§122.21(f) through (1) and (r) to determine in what manner the new or existing treatment works or wastes outlet, including a facility described in 40 CFR §§122.23, 122.24, 122.25, 122.26, or 122.27, will be constructed or modified, operated, and controlled. When a facility or activity is owned by one person, but is operated by another person, it is the operator's duty to obtain a permit on behalf of the owner. The operator shall provide written evidence that the owner authorizes the operator to apply on behalf of the owner and that the owner agrees to comply with all permit conditions. Only one permit is required for a single facility or activity.

(c) The director may require the submission of additional information after an NPDES permit application has been submitted, and shall ensure that, if an NPDES permit application is incomplete or otherwise deficient, processing of the application shall not be completed until the owner or its duly authorized representative has supplied the missing information or otherwise corrected the deficiency.

(d) Every owner or operator applying for an individual permit or renewal of an individual permit shall pay a filing fee of \$1,000. This filing fee shall be submitted with the NPDES permit application

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and shall not be refunded nor applied to any subsequent NPDES permit application following final action of denial of the NPDES permit application.

- (1) When an NPDES permit application is submitted for an individual permit for a substantial alteration or addition to a treatment works or waste outlet and where an individual permit had previously been granted for the treatment works or waste outlet, the owner or operator shall pay a \$1,000 filing fee which shall be submitted with the NPDES permit application;
- (2) A new owner of a discharge facility covered by an individual permit shall submit a new NPDES permit application for a new individual permit unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The owner or operator shall pay a \$500 filing fee which shall be submitted with the NPDES permit application or notice of automatic transfer that meets 40 CFR §122.61(b);
- (3) An NPDES individual permittee shall submit a new NPDES permit application for the transfer of discharge from one permanent location to another permanent location. The owner or operator shall pay the \$1,000 filing fee which shall be submitted with the NPDES permit application;
- (4) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.
- (e) Discharges composed entirely of storm water are not storm water discharges associated with industrial activity, and do not require an individual permit or general permit coverage, if there is "no exposure" of industrial materials and activities to rain, snow, snowmelt or runoff or any combination of the above, and the owner or operator of the discharge:

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

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

(f) (Reserved)

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

(h) (Reserved) [Eff 11/27/81; am and comp 10/29/92; am 09/23/96; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; am and comp 6/25/09; am and comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp 2/9/19; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 3420-2, 3420-4, 342D-5, 3420-6, 3420-13; 33 U.S.C. §§1251, 1288(b) (2) (C), 1316, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21, 122.23, 122.24, 122.25, 122.26, 122.27, 122.61, 123.25(a), 124.3)

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

- (1) Prompt transmittal to the director from the regional administrator of copies of any NPOES permit applications, or other relevant information collected by the regional administrator prior to the state or interstate agency's participation in the NPOES; and
- (2) A procedure to ensure that the director will not issue an individual permit on the basis of any NPOES permit application received from the regional administrator which the regional administrator has identified as incomplete or otherwise deficient until the director has received information sufficient to correct the deficiency to the satisfaction of the regional administrator. [Eff 11/27/81; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/25/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp) (Auth: HRS §§3420-4, 3420-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§3420-2, 3420-4, 3420-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and 0; 125; §123.42)

§11-55-06 Transmission of information to regional administrator. The director shall transmit to the regional administrator copies of NPOES forms received by the State in a manner as the director and regional

administrator shall agree. Any agreement between the State and the regional administrator shall provide for at least the following:

- (1) Prompt transmittal to the regional administrator of a complete copy of any NPDES form received by the State;
- (2) Procedures for the transmittal to the national data bank of a complete copy, or relevant portions thereof, of any appropriate NPDES forms received by the State;
- (3) Procedures for acting on the regional administrator's written waiver, if any, of the regional administrator's rights to receive copies of NPDES forms with respect to classes, types, and sizes within any category of point sources and with respect to minor discharges or discharges to particular State waters or parts thereof subject to the limits in 40 CFR §123.24(d);
- (4) An opportunity for the regional administrator to object in writing to deficiencies in any NPDES permit application or reporting form received by the regional administrator and to have the deficiency corrected. If the regional administrator's objection relates to an NPDES permit application, the director shall send -the regional administrator any information necessary to correct the deficiency and shall, if the regional administrator so requests, not issue the individual permit until the department receives notice from the regional administrator that the deficiency has been corrected;
- (5) Procedures for the transmittal, if requested by the regional administrator, of copies of any notice received by the director from publicly owned treatment works under section 11-55-23(7) and 11-55-23(8); and
- (6) Variance applications shall be processed in accordance with the procedures set forth in

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section 3420-7, HRS, and 40 CFR §§122.21(m) through (o), 124.62, and 403.13. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6, 3420-14; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§3420-2, 3420-4, 342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21(m), 122.21(n), 122.21(o) , 123.25(a), 123.43, 123.44, 124.62, 403.13)

§11-55-07 Identity of signatories to NPDES forms.

(a) Any NPDES form and its certification, as stated in 40 CFR §122.22(d), submitted to the director shall be signed as follows:

- (1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - (A) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or
 - (B) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures

to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

- (2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or
- (3) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:
 - (A) The chief executive officer of the agency, or
 - (B) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrators of EPA);
- (4) For a trust. By a trustee; or
- (5) For a limited liability company (LLC). By a manager or a member authorized to make management decisions for the LLC and who is in charge of a principal business function, or who performs similar policy- or decision-making functions for the LLC.

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

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

(c) If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp]
(Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.22, 123.25(a))

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

individual permit. Tentative determinations shall include at least the following:

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

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

(c) The director shall prepare draft permits when required by 40 CFR §124.5(c) or (d). [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp]

(Auth: HRS §§3420-4, 3420-5, 3420-6; 33 O.S.C. §§1251, 1342, 1370) (Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-6; 33 O.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts

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122; 123; 124, Subparts A and D; 125; §§122.44(m),
123.25(a), 124.5, 124.6)

§11-55-09 Public notice of applications. (a)
The director shall notify the public of every complete applica tion for an individual permit in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue an individual permit for the proposed discharge. Public notification of an application for a variance from an individual permit, under Section 316(a) of the Act, 33 U.S.C. §1326(a), and section 3420-7, HRS, shall also comply with the requirements contained in 40 CFR §124.57(a). Public notice procedures shall include at least the following:

- (1) [Notice shall be circulated within the geographical areas of the proposed discharge; circulation includes any or all of the following:
 - (A) Posting in the post office and public places of the municipality nearest the premises of the owner or operator in which the effluent source is located;
 - (B) Posting near the entrance to the owner's or operator's premises and in nearby places; or
 - (C) Publishing in local newspapers and periodicals , or, if appropriate , in a daily newspaper of general circulation.]Notice shall comply with section 1-28.5, HRS.
- (2) Notice shall be mailed or emailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v); and
- (3) The director shall add the name of any person, including those specified in 40 CFR §§124.10(c)(1)(ix) and (x), or group upon request to a mailing list to receive copies of notices for all NPDES permit

applications within the State or within a certain geographical area.

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

40 CFR §§124.17(a) and (c). The comment period may be extended at the discretion of the director.

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

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

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- (A) Obtain further information;
 - (B) Request a copy of the draft permit prepared under section 11-55-08(b);
 - (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
 - (D) Inspect and copy NPDES forms and related documents; and
- (8) Requirements applicable to cooling water intake structures under section 316(b) of the Act, in accordance with Part 125, Subparts I and J.

(d) All publication and mailing costs associated with the public notification of the director's tentative determinations with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1326(a), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.13, 124.17, 124.57)

§11-55-10 Fact sheet. (a) The director shall prepare a fact sheet for every draft permit for a major facility or activity, for every class I sludge management facility, for every draft permit that incorporates a variance or requires an explanation under 40 CFR §124.56(b), and for every draft permit

which the director finds is the subject of widespread public interest or raises major issues. The director shall send the fact sheet to the owner or operator, its authorized representative, and, upon request, to any other person.

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

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

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- (5) A more detailed description of the procedures for the formulation of final determinations than that given in the public notice including:
 - (A) The thirty-day comment period required by section 11-55-09(b);
 - (B) Procedures for requesting a public hearing and the nature thereof; and
 - (C) Any other procedures by which the public may participate in the formulation of the final determinations;
- (6) The name and telephone number of a person to contact for additional information; and
- (7) The information required by 40 CFR §§124.8(b)(5), 124.56(a), 124.56(b), 124.56(c), 124.56(e), and Part 125, subpart M.

(c) The director shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 **U.S.C.** §§125, 11311, 1312, 1316, 1317, 1342, 1370, 1252-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 501; §§123.25(a), 124.8, 124.56, 501.15(d)(4))

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

(a) The director shall notify other appropriate government agencies of each complete NPDES permit application for an individual permit and shall provide the agencies an opportunity to submit their written views and recommendations.

(b) When notifying the public under section 11-55-09, a fact sheet shall be transmitted to the appropriate District Engineer of the Army Corps of

Engineers of NPDES permit applications for discharges into State waters.

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

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

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

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

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

(f) The director shall notify and coordinate with appropriate public health agencies for the purpose of assisting the owner or its duly authorized representative in coordinating the applicable requirements of the Act with any applicable requirements of the public health agencies. [Eff

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11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§3420-4, 3420-5, 3420-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-6; 33 U.S.C. §§1251, 1288(b), 1313(e), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and O; 125; §§123.25(a), 124.10)

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

(b) The director shall protect any information (other than effluent data) as confidential upon a request and showing by any person at the time of submission that the information, if made public, would divulge methods or processes entitled to protection as trade secrets of a person. Any information obtained from a state and subject to a claim of confidentiality shall be treated in accordance with the regulations in 40 CFR Part 2 and section 92F-13, HRS. Claims of confidentiality shall be denied regarding the following: name and address of any owner or operator or permittee applying for an individual permit, notice of general permit coverage, or "no exposure" certification; NPOES permits; and effluent data. Information required by NPOES permit application forms may not be claimed confidential. This includes information supplied in attachments to the NPOES permit application forms. If, however, the information being

considered for confidential treatment is contained in an NPOES form , the director shall forward the information to the regional administrator for the regional administrator's concurrence in any determination of confidentiality. If the regional administrator advises the director that the regional administrator does not concur in the withholding of the information, the director shall then make available to the public, upon request, that information determined by the regional administrator not to constitute trade secrets.

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

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

- (1) Ensure that a machine or device for the copying of papers and documents is available for a reasonable fee; or
- (2) Otherwise provide for or coordinate with copying facilities or services so that requests for copies of nonconfidential documents may be honored promptly. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§3420-4, 3420-5, 3420-14; 33 **U. S. C.** §§1251, 1342, 1370) (Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-6, 3420-14, 3420 -55; 33 **U. S. C.** §§1251, 1342 , 1370, 1251-1387; 40 CFR Parts 2; 122; 123; 124, Subparts A and O; 125; §§122.7, 123.25(a), 123.41)

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

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

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

(d) Any person may submit [oral or]written statements and data concerning the draft permit. The public comment period under section 11-55-09 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-57; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.11, 124.12)

§11-55-14 Public notice of public hearings. (a)

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

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

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

- (1) Name and address of the agency holding the public hearing;
- (2) Name and address of each owner or operator or both whose NPDES permit application will be considered at the hearing and the name and address of the facility or activity;
- (3) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;
- (4) A brief reference to the public notice for proposed action issued for each NPDES permit application, including identification number and date of issuance, if applicable;
- (5) Information regarding the date, time, and location of the hearing;
- (6) The purpose of the hearing, including a concise statement of the issues raised by the

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persons requesting the hearing, as applicable:

- (7) A brief description of the nature of the hearing, including the rules and procedures to be followed; and
- (8) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:
 - (A) Obtain further information;
 - (B) Request a copy of each draft permit prepared under section 11-55-08(b);
 - (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
 - (D) Inspect and copy NPOES forms and related documents.

(c) All publication and mailing costs associated with the public notification of the director's determinations to hold public hearing with respect to the NPOES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and am and comp] (Auth: HRS §§3420-4, 3420-5, 3420-6, 3420-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and O; 125; §§123.25(a), 124.10)

§11-55-15 Issuance of NPDES permits. (a) The director may issue an NPOES permit for any period not

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

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

- (1) The existing treatment works or waste outlet is designed, built, and equipped in accordance with:
 - (A) The best practicable control technology currently available or the best available technology economically achievable or the best conventional pollutant control technology for point sources other than publicly owned treatment works; and
 - (B) For publicly owned treatment works, secondary treatment or the best practicable waste treatment technology, so as to reduce wastes to a minimum;
- (2) New treatment works or waste outlets are designed and built in compliance with the applicable standards of performance;
- (3) The new or existing treatment works or waste outlet is designed and will be constructed or modified to operate without causing a violation of applicable rules of the department;
- (4) The new or existing treatment works or waste outlet will not endanger the maintenance or attainment of applicable water quality standards;
- (5) The facility shall comply with effluent standards and limitations, water quality standards and other requirements, as

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- applicable in sections 11-55-19, 11-55-20, and 11-55-22; and
- (6) The facility shall comply with sections 11-55-27 through 11-55-32.
- (c) NPDES permits at a minimum shall include conditions and requirements at least as stringent as:
- (1) Those conditions contained in sections 11-55-16, 11-55-17, 11-55-23, and 40 CFR §122.41;
 - (2) The requirement that the owner or operator provide the facilities as necessary for monitoring of the authorized waste discharge into State waters and the effects of the wastes on the receiving State waters. The monitoring program shall comply with sections 11-55-28 through 11-55-32;
 - (3) The requirement of compliance with any applicable effluent standards and limitations, water quality standards, and other requirements imposed by the director under sections 11-55-19, 11-55-20, and 11-55-22; and
 - (4) Conditions requested by the Corps of Engineers and other government agencies as described in 40 CFR §124.59.
- (d) In permits where more stringent effluent limitations are included, compliance schedules may be provided in the permits if the requirements of 11-55-21 and 40 CFR 122.2 and 122.47 are met.
- (e) In acting upon an NPDES permit application for an individual permit the director shall deny the application unless the information submitted shows that the new or existing treatment works or waste outlet described in the NPDES permit application can, conditionally or otherwise, meet the conditions of subsection (b) or (c).
- (f) Notwithstanding the provisions of subsections (a) through (e), the director shall not issue a permit or grant a modification or variance for any of the following:

- (1) Discharge of any radiological or biological warfare agent, or high-level radioactive waste into State waters;
- (2) Discharge which the Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage and navigation;
- (3) Discharge to which the regional administrator has objected in writing under any right to object provided the Administrator in Section 402(d) of the Act, 33 U.S.C. §1342(d);
- (4) Discharge from a point source which is in conflict with a plan or amendment thereto approved under Section 208(b) of the Act, 33 U.S.C. §1288(b); or
- (5) When prohibited by 40 CFR §122.4.

(g) The issuance of a permit does not convey any property rights of any sort or any exclusive privilege. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

(h) Within 30 days from the date of issuance of the NPDES final permit, any interested party who submitted comments during the public notice period described by 40 CFR §25.5(b) or submitted testimony in the public hearing may appeal the NPDES final permit decision issued under this chapter by filing a request for a contested case hearing, in accordance with HRS Chapter 91. "Interestedn means any person with "standingn as defined by the Hawaii Constitution, statutes, rules, and Court decisions. The appeal shall be limited to specific issues raised during the public comment period or public hearing for the NPDES permit being appealed.

- (1) All publication and mailing costs associated with any public notification of any permit modification during the appeal shall be paid by the appellant to the appropriate publishing agency or agencies determined by the director. The appellant shall submit the

original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to deny an appeal.

- (2) Any revisions made to the permit during the appeals process shall comply with HAR 11-55-16. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.4, 122.5, 122.41, 122.43, 122.44, 122.45, 122.46, 123.25(a), 124.5, 124.59)

(i) The director may deny applications for a permit from persons who are respondents in open enforcement actions associated with water pollution, who fail to make payments as required for permit fees or penalties, or who have a history of violating water pollution laws.

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

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

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

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

(e) All applications made under section 3420-7, HRS, for a variance from the terms and conditions of an NPOES permit shall also be deemed as applications for a modification under this section. Any variances, if granted, shall be for a period not to exceed five years.

(f) Changes from paper to electronic reporting requirements including those specified in 40 CFR Part 3 (Cross-Media Electronic Reporting Regulation) and 40 CFR Part 127 (Electronic Reporting Requirements for the NPOES Program) may be incorporated by minor modification as defined in 40 CFR 122.63.

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; am and comp 2/9/19; and comp) (Auth: HRS §§3420-4, 3420-5, 3420-6, 3420-7; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-6, 3420-7, 3420-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and O; 125; §§122.5, 122.62, 122.63, 123.25(a), 124.5)

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

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

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

- (1) Noncompliance by the permittee with any condition of the permit;
- (2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the

permittee's misrepresentation of any relevant facts at any time;

- (3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
- (4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a publicly owned treatment works).

(5) The permittee's failure to comply with enforcement orders associated with the applicable NPDES permit .

(6) The permittee's failure to pay penalties or fees, as required by law.

(d) The director shall follow the applicable state procedures in terminating any NPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a publicly owned treatment works (but not by land application or disposal into a well), the director may terminate the permit by notice to the permittee. Termination by notice shall be effective thirty days after notice is sent ("expedited termination"), unless the permittee objects in writing during that time. If the permittee objects during that period, the director shall follow applicable state procedures for termination. Expedited termination is not available to permittees who are subject to pending state or federal or both enforcement actions including citizen suits brought under state or federal law. If requesting expedited termination, a permittee shall certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under

40 CFR §124.6. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp) (Auth: HRS §§3420-4, 3420-5, 3420-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-6, 3420-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and O; 125; §§122.5, 122.64, 122.64(b), 123.25(a), 124.5, 124.5(d), 124.15(a))

§11-55-18 Reporting discontinuance or dismantlement.

An NPOES permittee shall report within thirty days after the permanent discontinuance or dismantlement of that treatment works or waste outlet for which the NPOES permit had been issued by submitting a notice of cessation. [Eff 11/27/81; comp 10/29/92; comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp) (Auth: HRS §§3420-4, 3420-5, 3420-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-6, 3420-50; 33 U.S.C. §§12 52, 1342, 1370, 1251-1387; 40 CFR 40 CFR Parts 122; 123; 124, Subparts A and O; 125; §122.64, 124.5)

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

- (1) Effluent limitations under Sections 301 and 302 of the Act, 33 U.S.C. §§1311 and 1312;
- (2) Standards of performance for new sources;
- (3) Effluent standards , effluent prohibitions, and pretreatment standards under Section 307 of the Act, 33 U.S.C. §1317;
- (4) More stringent limitation, including those:

- (A) Necessary to meet water quality standards, treatment standards, or schedules of compliance, established under any state law or rules (under authority preserved by Section 510 of the Act, 33 U.S.C. §1370); or
- (B) Necessary to meet any other federal law or regulations including, but not limited to:
 - (i) Toxic pollutant effluent standards in 40 CFR Part 129;
 - (ii) Secondary treatment regulation in 40 CFR Part 133;
 - (iii) Effluent guidelines and standards in 40 CFR Chapter I, subchapter N, Parts 400 to 471;
 - (iv) Criteria and standards in 40 CFR Part 125, Subparts A, B, **C, D, H, I, J, K, and M**;
 - (v) Standards for sludge handling in 40 CFR §122.44(b)(2), 40 CFR Part 503 and state rules; and
 - (vi) Nutrient management requirements and technical standards for concentrated animal feeding operations in 40 CFR §123.36, 40 CFR §122.42, and 40 CFR Part 412; or
- (C) Required to implement any applicable water quality standards; the limitations to include any legally applicable requirements necessary to implement total maximum daily loads established under Section 303(d) of the Act, 33 U.S.C. §1313(d), or incorporated in the continuing planning process approved under Section 303(e) of the Act, 33 U.S.C. §1313(e), and any regulations and guidelines issued pursuant thereto;
- (5) More stringent legally applicable requirements necessary to comply with a plan

approved under Section 208(b) of the Act, 33 U.S.C. §1288(b);

- (6) Prior to promulgation by the Administrator of applicable effluent standards and limitations under Sections 301, 302, 306, and 307 of the Act, 33 U.S.C. §§1311, 1312, 1316, and 1317, the conditions, as the director determines are necessary to carry out the provisions of the Act; and
- (7) If the NPDES permit is for the discharge of pollutants into the State waters from a vessel or other floating craft, any applicable regulations promulgated by the secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.
- (8) Other requirements developed under the continuing planning process under Section 303(e) of the Act and any regulations and guidelines issued under it.
- (9) Intake credits in accordance with 40 CFR §122.45(g) and HAR section 11-54-12.
- (10) Recreational criteria for all State waters in HAR section 11-54-8. To comply with HAR sections 11-54-8(b) and (c) requirements, at least one sample shall be collected on every fifth day of the thirty day sampling period. Each sample shall be collected and analyzed pursuant to 40 CFR Part 136. The director may require samples to be collected more frequently within the thirty day period.

(b) In any case where an issued NPDES permit applies the effluent standards and limitations described in subsection (a)(1), (2), and (3), the director shall state that the discharge authorized by the permit shall not violate applicable water quality standards and shall have prepared some explicit verification of that statement. In any case where an issued NPDES permit applies any more stringent effluent

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limitation based upon applicable water quality standards, a waste load allocation shall be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§3420-4, 3420-5, 3420-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-6, 3420-50; 33 U.S.C. §§1251, 1288(b), 1311, 1312, 1313, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and 0; 125, Subparts A, B, C, O, H, I, J, K, L, M; 129; 133; 136; 401; 403; 405-432; 434-436; 439-440; 443; 446-447; 454-455; 457-460; 503; 400-471, Subparts N; §§122.42, 122.43, 122.44, 122.45(g), 123.25(a))

§11-55-20 Effluent limitations in issued NPOES permits. In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements under section 11-55-19, each issued NPOES permit shall specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The director, at the director's discretion, in addition to the specification of daily quantitative limitations by weight, may specify other limitations, such as average or maximum concentration limits. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§3420-4, 3420-5, 3420-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-6, 3420-50; 33 U.S.C.

§§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.45(f), 123.25(a))

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

- (1) In accordance with any legally applicable schedule of compliance contained in:
 - (A) Applicable effluent standards and limitations;
 - (B) If more stringent, effluent standards and limitations needed to meet water quality standards; or
 - (C) If more stringent, effluent standards and limitations needed to meet legally applicable requirements listed in section 11-55-19; or
- (2) In the absence of any legally applicable schedule of compliance, in the shortest, reasonable period of time, which shall be consistent with the guidelines and requirements of the Act.

(b) When a schedule specifies compliance longer than one year after permit issuance, the schedule of compliance shall specify interim requirements and the dates for their achievement and in no event shall more than one year elapse between interim dates. If the time necessary for completion of the interim requirement (such as the construction of a treatment facility) exceeds one year and is not readily divided into stages for completion, the schedule shall specify interim dates for the submission of reports of progress towards completion of the interim requirements. For each NPDES permit schedule of compliance, interim dates, reporting dates, and the final date for

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compliance shall, to the extent practicable, fall on the last day of the month of March, June, September, and December. [Eff 11/27/81 am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§3420-4, 3420-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-6, 3420-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a))

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

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

- (1) Name, address, and permit number of each noncomplying permittee;
- (2) A short description of each instance of noncompliance for which 40 CFR §123.45(a)(2) requires reporting (e.g., failure to submit preliminary plans; two weeks delay in beginning construction of treatment facility; failure to notify director of compliance with

interim requirement to complete construction by June 30th, etc.);

- (3) The date(s) and a short description of any actions or proposed actions by the permittee or the director to comply or enforce compliance with the interim or final requirement; and
- (4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objection from state fish and wildlife agency, etc.).

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

(d) If a permittee fails or refuses to comply with an interim or final requirement in an NPOES permit, noncompliance shall constitute a violation of the permit for which the director may modify, revoke and reissue, or terminate the permit under sections 11-55-16 and 11-55-17 or may take direct enforcement action. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and am and comp) (Auth: HRS §§3420-4, 3420-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a), 123.45)

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

- (1) All discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the NPDES permit;
- (2) The permittee shall report at least as required by 40 CFR §122.41(1), and where applicable, 40 CFR §122.42(a), (b), (c), (d), and (e);
- (3) Facility expansions, production increase, or process modifications which result in new or increased discharges of pollutants shall be reported by submission of a new NPDES permit application, or, if the discharge does not violate effluent limitations specified in the NPDES permit, by submission to the director of notice of the new or increased discharges of pollutants under 40 CFR §122.42(a);
- (4) The discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the NPDES permit shall constitute a violation of the terms and conditions of the NPDES permit;
- (5) The permittee shall allow the director or an authorized agent, including a contractor of the Administrator, upon the presentation of credentials to:
 - (A) Enter the permittee's premises in which an effluent source is located or in which any records are kept under terms and conditions of the NPDES permit;
 - (B) Have access to and copy any records kept under terms and conditions of the NPDES permit;
 - (C) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the NPDES permit; or

- (D) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location;
- (6) Any treatment facility treating domestic sewage and also receiving industrial waste from one or more indirect dischargers may be required to develop for the director's approval a pretreatment program in accordance with applicable requirements in 40 CFR Part 403. The pretreatment program approved by the director may then be incorporated into the NPDES permit as a permit condition;
- (7) If the NPDES permit is for a discharge from a publicly or privately owned treatment works, the permittee shall notify the director in writing of the following:
 - (A) Any new introduction of pollutants into a publicly or privately owned treatment works from an indirect discharger which would be subject to Sections 301 and 306 of the Act, 33 U.S.C. §1311 and §1316, if the indirect discharger were directly discharging those pollutants;
 - (B) Any substantial change in volume or character of pollutants being introduced into the treatment works by a source introducing pollutants into the treatment works at the time of issuance of the permit;
 - (C) The quality and quantity of effluent to be introduced into a treatment works; and
 - (D) Any anticipated impact caused by a change in the quality or quantity of effluent to be discharged from a publicly or privately owned treatment works;
- (8) If the NPDES permit is for a discharge from a publicly owned treatment works with an

approved pretreatment program under section 11-55-24, the director shall incorporate the approved pretreatment program into the NPDES permit as a permit condition. The permittee shall require any industrial user of the treatment works to comply with the requirements contained in the approved pretreatment program and the requirements of Sections 204(b), 307, and 308 of the Act, 33 U.S.C. §§1284, 1317, and 1318. The permittee shall also require each industrial user subject to the requirements of Section 307 of the Act, 33 U.S.C. §1317, to forward copies of periodic reports (over intervals not to exceed nine months) of progress towards full compliance with Section 307 of the Act, 33 U.S.C. §1317 requirements, to the permittee and the director;

- (9) The permittee at all times shall maintain in good working order and operate as efficiently as possible any facility or system of control installed by the permittee to achieve compliance with the terms and conditions of the NPDES permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit; and
- (10) If a toxic effluent standard or prohibition (including any schedule of compliance specified in the effluent standards or prohibition) is promulgated under Section 307(a) of the Act, 33 U.S.C. §1317(a), for a toxic pollutant which is present in the permittee's discharge and the standard or prohibition is more stringent than any limitation upon the pollutant in the NPDES

permit, the director shall revise or modify the permit in accordance with the toxic effluent standard or prohibition and notify the permittee; and

- (11) A copy of the NPOES permit application, notice of intent, "no exposure" certification, individual permit, notice of general permit coverage, and conditional "no exposure" exclusion, as applicable, shall be retained on-site or at a nearby office or field office. [Eff 11/27/81 ; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§3420-4, 3420-5, 3420-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-6, 3420-8, 3420-50, 3420-55; 33 U.S.C. §§1251, 1284, 1311, 1316, 1317, 1318, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and O; 125; 403; §§122.41, 122.42, 122.44, 123.25(a))

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

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

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

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- (1) Enter the premises of a person subject to pretreatment requirements in which an effluent source is located or in which any records are kept under terms and conditions of a pretreatment requirement;
 - (2) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations required by a pretreatment requirement; and
 - (3) Sample any discharge of pollutants or effluent.
- (d) No person shall introduce into any publicly owned treatment works any pollutant or effluent in violation of 40 CFR §403.5.
- (e) The director may require any person discharging any pollutant or effluent into a publicly owned treatment works to:
- (1) Establish and maintain records;
 - (2) Make reports;
 - (3) Install, use, and maintain monitoring equipment or methods;
 - (4) Sample effluent and State waters;
 - (5) Provide access to and copying of any records which are maintained; and
 - (6) Provide other information as the department may require. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§3420-4, 3420-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-6, 3420-8, 3420-50, 3420-55; 33 U.S.C. §§125 1 , 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and O; 125; 403, §§122.41(i))

§11-55-25 Transmission to regional administrator of proposed NPOES permits. The director shall transmit to the regional administrator copies of NPOES permits

proposed to be issued by the agency in a manner as the director and regional administrator shall agree upon or as stated in 40 CFR §123.44(j). Any agreement between the State and regional administrator shall provide for at least the following:

- (1) Except as waived under paragraph (4), the transmission by the director of any and all terms, conditions, requirements, or documents which are a part of the proposed NPOES permit or which affect the authorization by the proposed NPOES permit of the discharge of pollutants;
- (2) A period of time (up to ninety days) in which the regional administrator, under any right to object provided in Section 402(d) of the Act, 33 U.S.C. §1342(d), may comment upon, object to, or make recommendations with respect to the proposed NPOES permit;
- (3) Procedures for state acceptance or rejection of a written objection by the regional administrator; and
- (4) Any written waiver by the regional administrator of the regional administrator's rights to receive, review, object to, or comment upon proposed NPOES permits for classes, types, or sizes within any category of point sources. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§3420-4, 3420-5, 3420-6; 33 U.S.C. §§1251 , 1342 , 1370) (Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-6; 33 U.S.C. §§1251 , 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and O; 125; §123.24(d), 123.43, 123.44)

§11-55-26 Transmission to regional administrator of issued NPOES permits. The director shall transmit

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to the regional administrator a copy of every issued NPOES permit, immediately following issuance, along with any and all terms, conditions, requirements, or documents which are a part of the NPOES permit or which affect the authorization by the NPOES permit of the discharge of pollutants. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§3420-4, 3420-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§3420-2, 3420-4, 342D-5, 342D-6; 33 U.S.C. . §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and O; 125; 123.43(a)(3))

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

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

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

limitations, water quality standards, and other legally applicable requirements, including any additions to, revisions, or modifications of the effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

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

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

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

(e) Application for renewal of an NPDES permit shall comply with section 11-55-04. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05 ; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp)
(Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21(d), 122.29, 122.41(b), 122.41(1), 122.44, 123.25(a))

§11-55-28 Monitoring. (a) Any discharge authorized by an NPDES permit may be subject to monitoring requirements as may be reasonably required by the director, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods).

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

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

(c) Monitored items:

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

(d) Each effluent flow or pollutant required to be monitored under subsection (c) shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels shall be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§3420-4, 3420-5; 33 O.S.C. §§1251, 1342, 1370) (Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-6, 3420-55; 33 O.S.C. §§1251, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and O; 125; §§122.41, 122.43, 122.48, 123.25(a))

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

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

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monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or regional administrator. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§3420-4, 3420-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-6, 3420-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and O; 125; 122.41(j))

§11-55-30 Reporting of monitoring results. The director shall require periodic reporting (at a frequency of not less than once per year) on the proper NPOES discharge monitoring report form, or other form as specified by the director, of monitoring results obtained by a permittee under monitoring requirements in an NPOES permit. In addition to the NPOES discharge monitoring report form, or other form as specified by the director, the director may require submission of any other information regarding monitoring results as determined to be necessary. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§3420-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§3420-2, 3420-4, 342D-5, 3420-6, 3420-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and O; 125; 122.41(1)(4), 122.44(i))

§11-55-31 Sampling and testing methods. (a) All sampling and testing shall be done in accordance with test procedures approved under 40 CFR Part 136 unless other test procedures have been specified in the permit or approved by the director and, when applicable, with guidelines establishing test procedures for the analysis of pollutants published by the Administrator in accordance with Section 304(h) of the Act, 33 U.S.C. §1314(h). All tests shall be made under the direction of persons knowledgeable in the field of water pollution control.

(b) The director may conduct tests of waste discharges from any source. Upon request of the director, the person responsible for the source to be tested shall provide necessary sampling stations and other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the waste discharge. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp) (Auth: HRS §§3420-4, 3420-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-55; 33 U.S.C. §§1251, 1314, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and O; 125; §§122.41(j) (4), 136)

§11-55-32 Malfunction, maintenance, and repair of equipment. (a) There shall be no shut-down of water pollution treatment facilities for purposes of maintenance unless a schedule or plan for the maintenance has been submitted to and approved by the director prior to the shut-down.

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

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prior to the planned shut-down. The prior notice shall include, but is not limited to, the following:

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

(c) In the event that any water pollution control equipment or related facility breaks down in a manner causing the discharge of water pollutants in violation of applicable rules, the person responsible for the equipment shall immediately notify the director of the failure or breakdown and provide a statement giving all pertinent facts, including the estimated duration of the breakdown. The director shall be notified when the condition causing the failure or breakdown has been corrected and the equipment is again in operation.

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

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

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

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

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

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

(f) For the purposes of this section, income is not received "directly or indirectly from permittees or persons applying for an NPDES permit" where it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary sources of income. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251,

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

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

"Category of sources" means either:

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

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

- (1) Designated planning areas under Sections 208 and 303 of the Act;
- (2) Sewer districts or sewer authorities;
- (3) City, county, or state political boundaries;
- (4) State highway systems;
- (5) Standard metropolitan statistical areas as defined by the Office of Management and Budget;
- (6) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 Federal Register 15202 (May 1, 1974); or
- (7) Any other appropriate division or combination of boundaries. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp

10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp) (Auth: HRS §§3420-4, 3420-5; 33 **U. S. C.** §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-50; 33 **U.S.C.** §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.2, 122.28, 123.25(a)(11))

§11-55-34.01 General permit policy. It is the policy of the State that general permits shall comply, at a minimum, with federal requirements for general permits, especially 40 CFR §122.28. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp) (Auth: HRS §§3420-4, 3420-5; 33 **U. S. C.** §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-50; 33 **U.S.C.** §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

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

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

- (1) Appendix B, titled "NPOES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities" for discharges composed entirely of storm water associated with certain industrial activities as identified in 40 CFR §§122.26(b)(14)(i) through 122.26(b)(14) **(ix)** and §122.26(b)(14) **(xi)**, dated December 6, 2013;
- (2) Appendix C, titled "NPOES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity" for

storm water discharges from construction activities which result in the disturbance of five acres or more of total land area or small construction activities which result in the disturbance of one to less than five acres of total land area or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, dated February 9, 2019;

- (3) Appendix D, titled "NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities" for the discharge of treated effluent from the leaking underground storage tank remedial activities, dated July 13, 2018;
- (4) Appendix E, titled "NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day" for the discharge of once-through, non-contact cooling water for one million gallons per day or less, dated July 13, 2018;
- (5) Appendix F, titled "NPDES General Permit Authorizing Discharges of Hydrotesting Waters" for the discharge of non-polluted hydrotesting water, dated July 13, 2018;
- (6) Appendix G, titled "NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering" for the discharge of dewatering effluent from a construction activity, dated July 13, 2018;
- (7) Appendix H, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals" for the discharge of treated process wastewater effluent from

- petroleum bulk stations and terminals, dated July 13, 2018;
- (8) Appendix I, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities" for the discharge of treated process wastewater effluent associated with well drilling activities, dated July 13, 2018;
 - (9) Appendix J, titled "NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems" for the discharge of treated process wastewater effluent from recycled water distribution systems, dated February 9, 2019;
 - (10) Appendix K, titled "NPDES General Permit Authorizing Discharges of Storm Water and Certain Non-Storm Water Discharges from Small Municipal Separate Storm Sewer Systems" for the discharge of storm water and certain non-storm water discharges from a small municipal separate storm sewer system as defined in 40 CFR §122.26(b)(16), dated December 6, 2013;
 - (11) Appendix L, titled "NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks" for the discharge of circulation water from decorative ponds or tanks, dated February 9, 2019; and
 - (12) Appendix M, titled "NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides, dated July 13, 2018." [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; am and comp 12/6/13; comp 11/15/14; am and comp 2/9/19; and am and comp

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(Auth: HRS §§3420-4, 3420-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28)
(Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122;; 124; 125; §§122.26, 122.28, 123.25(a)(11))

§11-55-34.03 General permit terms. General permits shall be for terms of not more than five years. [Eff and comp 10/29/92; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp
(Auth: HRS

§§3420-4, 3420-5; 33 **U.S.C.** §§1342, 1370, 1251-1387;
40 CFR §122.28) (Imp: HRS §§342D-2, 3420-4, 3420-5,
3420-50; 33 **U.S.C.** §§1B1, 1342, 1370, 1251-1387;
40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28,
122.46, 123.25(a) (11))

§11-55-34.04 General permit conditions.

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

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

(c) Special conditions apply as specified in each general permit, e.g., appendices B through M, respectively. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; am and comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§3420-4, 3420-5; 33 **U.S.C.** §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-50; 33 **U.S.C.** §§1311, 1318, 1319, 1321, 1323, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.41, 122.42, 123.25(a) (11))

§11-55-34.05 Requiring an individual permit.

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

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- (1) The discharger or "treatment works treating domestic sewage" is not in compliance with the conditions of the general permit;
 - (2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;
 - (3) Effluent limitation guidelines are promulgated for point sources covered by the general permit;
 - (4) A water quality management plan containing requirements applicable to the point sources is approved;
 - (5) Circumstances have changed since the time of the request to be covered so that the permittee is no longer appropriately controlled under the general permit or either a temporary or permanent reduction or elimination of the authorized discharge is **necessary**;
 - (6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general permit; or
 - (7) The discharge(s) is a significant contributor of pollutants to State waters. In making this determination, the director may consider the following factors:
 - (A) The location of the discharge with respect to State waters;
 - (B) The size of the discharge;
 - (C) The quantity and nature of the pollutants discharged to the State waters; and
 - (D) Other relevant factors.
- (b) The director may require any owner or operator authorized by a general permit to apply for an individual NPDES permit as provided in section 11-55-34.05(a), only if the owner or operator has been notified in writing that a permit application is

required. This notice shall include a brief statement of the reasons for this decision, application information, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual NPOES the general permit as it applies to the individual permittee shall automatically terminate, unless coverage under a general permit had already been terminated by the director in accordance with 11-55-34.11. The director may grant additional time upon request of the applicant.

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

(d) When an individual permit is issued to an owner or operator otherwise covered by a general permit, the coverage of the general permit to the individual permittee is automatically terminated on the effective date of the individual permit.

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

(f) The director may require any activity and/or discharge that has commenced prior to obtaining the required coverage under a general permit to apply for an individual NPOES permit. For construction activities which have commenced prior to obtaining general permit coverage, restoration of the site to preconstruction conditions may re-qualify it for coverage under the general permit. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§3420-4, 3420-5; 33 U.S.C. §§1342, 1370, 1251-

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1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28(b)(3), 123.25(a)(11))

§11-55-34.06 (Reserved)

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

- (1) Effluent limitations established by the EPA under Sections 301, 302, 306, 307, 318, and 405 of the Act;
- (2) Criteria and standards for best management practices established by the EPA under Section 304(e) of the Act;
- (3) Notwithstanding paragraphs (1) and (2), more stringent effluent limitations may be required as deemed necessary by the director:
 - (A) To meet any existing federal laws or regulations; or
 - (B) To ensure compliance with any applicable state water quality standards, effluent limitations, treatment standards, or schedule of compliance; and
- (4) Calculations and specifications of effluent limits and standards shall be made in accordance with the provisions of federal regulations, 40 CFR §122.45. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C.

§§1311, 1312, 1314, 1316, 1317, 1318, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

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

(b) A notice of intent shall:

- (1) Be submitted on forms provided by the director;
- (2) Comply with the notice of intent requirements of the respective general permit; and
- (3) Be accompanied by all pertinent information which the director may require in order to establish effluent limitations or best management practices, including, but not limited to, complete engineering reports, schedule of progress, plans, specifications, maps, measurements, quantitative and qualitative determinations, records, and all related materials.

(c) The director may require that all reports, plans, specifications, and other material submitted to the director be prepared by a licensed professional engineer.

(d) Material submitted shall be complete and accurate.

(e) Any notice of intent form submitted to the director shall be signed in accordance with section 11-55-07(a).

(f) All other reports or responses to requests for information required by the director shall be signed in accordance with section 11-55-07(b).

(g) Any change in the written authorization submitted to the director under subsection (f) which occurs after the issuance of a permit shall be reported to the director by submitting a copy of a new written

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authorization which meets the requirements of subsections (e) and (f).

(h) Any person signing a document under subsections (e) and (f) shall make a certification in accordance with 40 CFR §122.22(d).

(i) Each owner or operator who submits a notice of intent to be covered under the general permit provisions or for renewal of general permit coverage shall pay a filing fee of \$500. This filing fee shall be submitted with the notice of intent and shall not be refunded nor applied to any subsequent NPDES individual permit application following final action denying coverage under the general permit provisions.

(1) When a notice of intent is submitted to the director for a substantial alteration or addition to the treatment works or waste outlet and where a general permit authorization has previously been granted for the treatment works or waste outlet, the owner or operator shall be assessed the fee of \$500;

(2) A new owner or operator or both of a discharge facility covered by the general permit provisions shall submit a new notice of intent unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The new owner or operator shall be assessed the fee of \$500;

(3) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.

(j) A notice of intent shall be submitted to the director at least thirty days before the earlier of:

(1) The beginning of any discharge, which is not covered under Appendix C or except for coverage under Appendix M for a declared pest emergency situation where the notice of intent shall be submitted no later than thirty days after beginning the pesticide discharge;

- (2) The beginning of any construction activity which is covered under Appendix C, unless coverage is required for an emergency-related construction activity where an NOI shall be submitted no later than 30 calendar days after the start of construction activities;
- (3) The expiration date of the existing general permit; or
- (4) The expiration date of the existing notice of general permit coverage.
- (k) (Reserved).
- (l) (Reserved).
- (m) A notice of intent shall be submitted to the director for:
 - (1) Any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill; or
 - (2) Any discharge from an existing regulated small municipal separate storm sewer system which is qualified to obtain coverage under the general permit. A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas are designated to submit a notice of intent if the department determines that the storm water discharge results in or has the potential to result in exceedances of

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water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The notice of intent shall be submitted within thirty days of notice from the department.

(n) (Reserved).

(o) The submittal date is the date the department receives the notice of intent. The thirty day period includes weekends and holidays. If the director notifies the owner or operator or its duly authorized representative that the notice of intent is incomplete, the thirty day period shall start over upon receipt of the revised notice of intent. The director may waive this thirty day requirement by notifying the owner or operator in writing of a notice of general permit coverage before the thirty days expire. [Eff and comp 10/29/92; am 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; am and comp 6/15/09; am and comp 10/21/12; am and comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.22, 122.26, 122.28(b)(2)(ii) and (iii), 123.25(a)(11))

§11-55-34.09 Notice of intent review, notice of general permit coverage, additional conditions , terms, renewals, effective dates, and automatic coverage. (a) After receipt of a notice of intent, the director may notify the owner or operator or its duly authorized representative in writing that the notice of intent is complete or incomplete, whether the proposed activity or discharge(s) is covered under a general permit, or whether an individual permit application is required. The director may deny without prejudice the notice of intent to be covered by a general permit if the owner or operator or its duly authorized representative does

not respond or failed to respond in writing within thirty days of the date of the director's written notification that the notice of intent is incomplete.

(b) After receipt of the complete notice of intent, the director may notify the owner or operator in writing of a notice of general permit coverage. This includes issuing a notice of general permit coverage after automatic coverage applies under subsection (e)(2) even if the owner or operator has not waived automatic coverage. The director may impose conditions in a notice of general permit coverage or add conditions to an issued notice of general permit coverage to ensure that the activity or discharge(s) complies with the terms and conditions of the general permit and to ensure that state water quality standards will not be violated.

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

(d) The director may, automatically or by notification, administratively extend a notice of general permit coverage[upon receipt of a complete notice of intent for renewal of a notice of general permit coverage before the expiration of the general permit or when the notice of general permit coverage specifies, whichever occurs first]. A notice of general permit coverage shall be considered to have been automatically extended unless the department informs the Permittee otherwise. The department will inform the Permittee of any deadlines to submit a complete NOI to request authorization to discharge under the new general permit. Any Permittee granted coverage under the general permit that receives an administrative extension for coverage, will remain covered by the general permit until the earlier of:

- Authorization for coverage under reissuance or replacement of the general permit;
- The Permittee's submittal of a Notice of Cessation;
- The issuance of an individual NPDES permit;

- A formal permit decision by the Director not to reissue this general permit, at which time the Permittee must seek coverage under an alternative general or individual permit; or
- A formal permit decision by the Director to terminate the administrative extension due to the Permittee failing to submit by the deadline specified by the Director, a complete NOI to request authorization to discharge under the new general permit.

The DOH will notify the permittee in writing that it's administrative extension is being terminated and the reason(s) why. An administrative extension of an NGPC granted, automatically or by notification, for a project which later is found to be in non-compliance [will]may be [automatically) terminated and may be required to apply for individual NPDES permit coverage. [If administratively extended, the terms and conditions of the expired permit will continue to be effective for projects that submitted NOIs prior to the expiration date. The department intends that projects that do not submit NOIs prior to the expiration date will not be administratively extended.)

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

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

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

paragraph does not apply to a notice of intent for small municipal separate storm sewer systems.

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

- (1) The notice of intent may later be found to be incomplete by the director or by a court;
- (2) The person may not be covered under the terms of the general permit, even if the notice of intent is complete;
- (3) The person may be acting in noncompliance with the general permit or this chapter, even if the person is complying with its notice of intent; and
- (4) The director may modify, revoke and reissue, or terminate a notice of general permit coverage under section 11-55-34.11. The director may revoke automatic coverage and issue a notice of general permit coverage or terminate an automatic coverage under section 11-55-34.11.

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

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

(h) Written notification by the department under this section is complete upon mailing or sending a facsimile transmission or electronic mailing of the

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document or actual receipt of the document by the owner or its duly authorized representative.

(i) All submittals in compliance with a condition of the notice of general permit coverage shall be signed in accordance with section 11-55-34.08(e), (f), or (g) and include a certification in accordance with 40 CFR §122.22(d). [Eff and comp 10/29/92; am 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; comp 2/9/19; and am and comp) (Auth: HRS §§3420-4, 3420-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.10 Review of coverage issues and notice of intent and notice of general permit coverage decisions. Any interested person may petition the director under section 91-8, HRS, for a declaratory ruling on whether an individual permit is required for, or a general permit covers, a discharge. The director's decision requiring a person to apply for an individual permit or excluding a person from general permit coverage shall remain effective pending the outcome of the petition. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; §11-55-34.1; am, ren, and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp) (Auth: HRS §§3420-4, 3420-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§3420-2, 3420-4, 3420-5, 3420-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.11 Notice of general permit coverage revocation and/or termination. A notice of general

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permit coverage and automatic coverage under section 11-55-34.09(e)(2) may be revoked and/or terminated in accordance with section 11-55-34.05 or as determined by the director. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.12 General permit compliance. Any person who discharges under a general permit shall comply with section 11-55-34.04, all general permit standard conditions, all applicable special conditions, and all applicable additional notice of general permit coverage conditions. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-35 Penalties and remedies. Any person who violates any provision of this chapter or the terms or conditions of any permit issued under this chapter shall be subject to the penalties and remedies provided in chapter 342D, HRS. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§342D-4, 342D-5, 342D-30, 342D-31, 342D-32, 342D-33, 342D-34, 342D-35; 33 U.S.C. §§1251, 1342, 1370) (Imp:

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HRS §§3420-2, 3420-4, 3420-5, 3420-9, 3420-11, 3420-17, 3420-30, 3420-31, 3420-32, 3420-33, 3420-34, 3420-35; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and O; 125)

§11-55-36 Hearing and appeals. Hearings before the director on any violations of these rules and appeals from any of the director's decisions shall comply with chapters 91 and 3420, HRS. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§3420-4, 3420-5, 3420-12, 3420-56, 3420-57; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS Ch. 91 and §§3420-2, 3420-4, 3420-5, 3420-6, 3420-9, 3420-11, 3420-12, 3420-31; 33 u.s.c. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and O; 125)

§11-55-37 Severability clause. If any provision of this chapter, or its application to any person or circumstance, is held invalid, the application of the provision to other persons or circumstances, and the remainder of this chapter, shall not be affected. [Eff 11/27/81; comp 10/29/92; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp] (Auth: HRS §§3420-4, 3420-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§3420-2, 3420-4, 3420-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and O; 125)

§11-55-38 Repealed. [Eff and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; R 6/15/09] (Auth: HRS ch. 6E, §§6E-1, 6E-42(a)) (Imp: HRS ch. 6E, §§6E-1, 6E-42(a))

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

- (1) The environmental impact of the proposed action beside the water quality effects already covered in the application and supporting materials;
- (2) Any adverse environmental effects which cannot be avoided should the action be implemented;
- (3) The alternatives to the proposed action;
- (4) The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity;
- (5) Any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented; and
- (6) The optimum balance between economic development and environmental quality.

§11-55-41

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

(c) The department may consider other information relevant to the public interest, including information in an environmental assessment; environmental impact statement; other document prepared for another permit, license, or approval; or elsewhere. If the department considers information unknown to the applicant, the department shall notify the applicant and allow the applicant to respond in a timely manner. [Eff and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp J (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-55-40 Field citations; non-compliance with NPDES requirements. This section authorizes citations to effectively and quickly settle easily verifiable violations of chapter 342D, HRS, and this chapter. Settlements under this section are an additional remedy and do not supplant the director's authority to issue orders under section 342D-9, HRS.

(1) Offer to settle.

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

- (i) Any person who discharges or causes or allows a discharge of pollutants into State waters or municipal separate storm sewer systems without coverage under an NPDES permit, or in excess of limitations established by an NPDES permit;
- (ii) Any person who begins an activity prior to obtaining the required individual NPDES permit, coverage under a general permit, and/or authorization from the director;
- (iii) Any person who fails to correctly install, implement, maintain, or repair site best management practices as called for in their storm water pollution control plan or best management practices plan or other plan;
- (iv) Any person who fails to monitor as required by the applicable NPDES permit, in whole or in part;
- (v) Any person who fails to retain on-site or at a nearby office or field office:
 - a) a copy of the NPDES permit application or notice of **intent** or "no **exposure**" certification,
 - b)** storm water pollution control plan, best management practices plan or all other plans required in the NPDES permit and NGPC and all subsequent **revisions**,
 - c) individual NPDES permit, notice of general permit

- coverage, or conditional
'no exposure' exclusion, or
 - d) discharge monitoring reports;
 - (vi) Any person who fails to submit documents, reports, and/or submittals as required by the applicable NPDES permit, in whole or in part, including but not limited to discharge monitoring reports, monthly compliance information, pollution prevention plans, notification to the director, and/or notices of cessation.
- (B) A field citation shall indicate the following amounts:
- (i) \$500 for any person who violates paragraphs (1) (A) (i), (ii), (iii), or (iv) for the first violation, and \$2,000 for a subsequent violation;
 - (ii) \$100 for any person who violates paragraph (1) (A) (v) for the first violation, and \$200 for a subsequent violation;
 - (iii) \$500 for any person who violates paragraph (1) (A) (vi) for the first violation, and \$1,000 for a subsequent violation.
- (2) Resolution of field citation.
- (A) A person issued a field citation may accept the citation by:
- (i) Signing the field citation;
 - (ii) Paying the full amount indicated on the field citation. Payment shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as

- otherwise specified by the director;
- (iii) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty days after the person receives the field citation; and
 - (iv) Correction within seven days, or unless otherwise specified on the field citation, of any violation of section 11-55-03;
- (B) By signing the field citation, the person to whom it was issued agrees to:
- (i) Give up the right to a contested case hearing under chapter 91 or 3420, HRS, or otherwise challenge the field citation;
 - (ii) Pay the amount indicated; and
 - (iii) Correct the violation;
- (C) If the field citation is not accepted in compliance with paragraph (2) (A), the director may seek for that cited violation any remedies available under this chapter; chapter 3420, HRS; or any other law. For all other violations the director retains authority to seek any available remedies.
- (3) Form of citation. The department shall prescribe a field citation form." [Eff and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp 2/9/19; and comp] (Auth: HRS §§321-11, 3420-1, 3420-4, 3420-5) (Imp: HRS §§321-11, 342D-2, 342D-4, 342D-5, 342D-9, 342D-18, 342D-30, 342D-31, 3420-50, 603-23)

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

(b) Establishment, renewal, and termination .

- (1) Application for establishment of a zone of mixing shall be made concurrently with any discharge permits whenever applicable and the conditions of a zone of mixing shall be incorporated as conditions of the discharge permits. Every application for a zone of mixing shall be made on forms furnished by the director and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and other information as the director may prescribe.
- (2) Each application for a zone of mixing shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information as may be submitted upon the request of the director, and in light of the effect or probable effect upon water quality standards established pursuant to chapter 11-54.
- (3) Whenever an application is approved, the director shall establish the zone of mixing, taking into account the environmental impact, including but not limited to factors such as the protected uses of the body of water, existing natural conditions of the receiving water, character of the effluent, and the adequacy of the design of the outfall and diffuser system to achieve maximum dispersion and assimilation of the treated or controlled waste with a minimum of undesirable or noticeable effect on the receiving water.
- (4) Approval of a zone of mixing shall be made either after a public hearing is held by the director in the county where the source is

situated, in accordance with chapters 91 and 92, HRS and the rules of practice and procedures of the department, or after the public notification and comment process duly established for a discharge permit in the case when the zone of mixing is being considered concurrently with the discharge permit.

- (5) No zone of mixing shall be established by the director unless the application and the supporting information clearly show that:
- (A) The continuation of the function or operation involved in the discharge by the granting of the zone of mixing is in the public interest;
 - (B) The discharge occurring or proposed to occur does not substantially endanger human health or safety;
 - (C) Compliance with the existing water quality standards from which a zone of mixing is sought would produce serious hardships without equal or greater benefits to the public; and
 - (D) The discharge occurring or proposed to occur does not violate the basic standards applicable to all waters, will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control.
 - (E) The capacity of the receiving water to dilute a pollutant or assimilative capacity is available in the receiving water for the pollutant in which a zone of mixing is being requested.
- (6) Any zone of mixing or renewal thereof shall be established within the requirements of this section and for time periods and under conditions consistent with the reasons within the following limitations:
- (A) If the zone of mixing is established on the grounds that there is no reasonable

means known or available for the adequate prevention, control, or abatement of the discharge involved, it shall be allowed only until the necessary means for prevention, control or abatement become practicable, and subject to the taking of any substitute or alternative measures that the director may prescribe. No renewal of a zone of mixing established under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the discharge involved;

- (B) The director may issue a zone of mixing for a period not exceeding five years;
- (C) The director may establish conditions requiring the applicant to perform appropriate effluent and receiving water sampling including monitoring of bottom biological communities and report the results of each sampling to the director. A program of research to develop reasonable alternatives to the methods of treatment or control in use by the applicant may be required if research is deemed prudent by the director; and
- (D) In order to prevent high temperature discharges from violating section 11-54-04(a)(4), no new or increased domestic, industrial, or other controllable source shall discharge at a maximum temperature which will cause temperatures to exceed three degrees Celsius above ambient, or thirty degrees Celsius, whichever is less, within one meter of the bottom within a zone of mixing. For discharges with or without submerged outfalls, the director may make a limited allowance for higher discharge temperatures if there is satisfactory demonstration that the elevated temperature will not cause damage to the local aquatic community.

- (7) Any zone of mixing established pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial establishment of a zone of mixing, provided that the applicant for renewal meets the requirements in section 11-55-41. Any new zones of mixing or requests for zone of mixing renewals for wastewater treatment plants (WWTP) performing primary treatment shall comply with section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251). No renewal shall be allowed except upon application. Any renewal application shall be made at least three hundred and sixty days prior to the expiration of the zone of mixing.
- (8) No zone of mixing established pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.
- (9) Each mixing zone may be subject to revocation, suspension, or modification if, after notice and opportunity for a hearing pursuant to chapter 91, HRS and the rules of practice and procedures of the department, the director determines that the terms specified in section 3420-6, HRS have been violated. In taking any action, the director may consider operating records, compliance investigations, or other information regarding discharge quality or impact on receiving waters. The action shall be effected by giving written notice to the permittee, which shall contain the reasons for the action.
- (10) The director shall be notified within thirty days of the permanent discontinuance of a discharge. The zone of mixing shall terminate thirty days after such notification has been received.
- (11) Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall

become vested in the designee. [Eff
] (Auth: HRS §§342D-1, 342D-4, 342D-5)
(Imp: HRS §§342D-4, 342D-5)

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

(b) As used in this section:

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

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

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

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

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

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

- (1) To the extent necessary to meet the

applicable limitation or standard, up to a maximum value equal to the intake pollutant value; and

- (2) If there is no net increase in the mass of the intake pollutant for which the credit is given. A discharger may increase the concentration of the intake pollutant if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water, and the higher concentration discharge is demonstrated to not cause acute toxicity or detrimental effects.

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

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

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

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

(g) All requests for the establishment of credit

for intake pollutants shall be made on forms furnished by the department and shall be accompanied by:

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

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

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

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

(j) All other water quality criteria established under this chapter continue to apply.

[Eff] Auth: HRS §§3420-4, 3420-5, 3420-53, Ch. 342E) (Imp: HRS §§3420-4, 3420-5, 3420-6, Ch. 342E)

Chapter 11-55, Hawaii Administrative Rules, entitled "Water Pollution Controln dated _____, was adopted following a public hearing held [September 18, 2018) _____, after public notice was given in the Honolulu Star-Advertiser, West Hawaii Today, Hawaii Tribune Herald, Maui News and The Garden Isle on [August 16, 2018) _____

The adoption of chapter 11-55 shall take effect ten days after filing with the office of the Lieutenant Governor.

BRUCE S. ANDERSON, Ph.D.
Director
Department of Health

Approved:

APPROVED AS TO FORM:

Dale K. Sakata

Dale K. Sakata
Deputy Attorney General

DAVID Y. IGE
Governor
State of Hawaii

Dated: _____

Filed

55-104

**Pre-Public Hearing Small Business Impact Statement
To The
Small Business Regulatory Review Board**
(Hawaii Revised Statutes §201M-2)

Date: June 29, 2020

Department or Agency: Department of Health/Clean Water Branch

Administrative Rule Title and Chapter: Title 11, Chapter 56

Chapter Name: Nonpoint Source Pollution Control

Contact person/Title: Matthew Kurano/ Environmental Health Specialist, Clean Water Branch

E-mail: cleanwaterbranch@doh.hawaii.gov

Phone: 586-4309

- 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 rule or a general description of the subjects involved.**

The State has a statutory mandate (HRS ch. 342E) as well as a constitutional (public trust) obligation to prevent and abate water pollution. Currently the State, through the Department of Health, only addresses “point sources” of water pollution (from a pipe or other discrete conveyance). The DOH does not have administrative rules or a comprehensive program for the control of and enforcement for Nonpoint Source (NPS) water pollution (that which enters the waters other than from a pipe or discrete conveyance, e.g., runoff from land). Therefore, DOH is proposing administrative rules as authorized under HRS §342E-3(a)(2) to help ensure that Hawaii’s waters are adequately protected from all sources of water pollution, including NPS pollution.

The proposed Chapter 11-56 (Nonpoint Source Pollution Control) provides the framework for the prevention, abatement, and control of new and existing nonpoint sources of pollution. Specifically, the rules target NPS pollution from activities conducted by State agencies. The proposed chapter 11-56 identifies known nonpoint sources of water pollution and requires registration, development of a Water Pollution Prevention Plan, and implementation of management measures to be used to prevent or abate NPS pollution.

These changes are expected to have a minimal direct impact on small businesses as the requirements target major landowners and government agencies.

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

Yes No

- I. Rule Description:**

New Repeal Amendment Compilation

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

Yes No

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

IV. Is the proposed rule being adopted pursuant to emergency rulemaking?

Yes No

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

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

The businesses that will be required to comply with the proposed rules are generally not small—those businesses with more than 1,000 acres that discharge pollutants into State waters without permits issued under the Hawaii Revised Statutes (HRS) section 342D-6. Such businesses may be affected by increased costs to analyze their discharges for the pollutants and potentially may incur increased costs required to minimize pollution discharged from their business activity. If the business can prevent polluted discharges, the requirements will not apply to the business and no adverse impacts are expected.

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.

There is a direct cost of \$500 as a fee for registration if the business is required to register with the DOH as a nonpoint source of pollution. There may be increased indirect costs such as development of a Water Pollution Prevention Plan and laboratory analytical fees or costs associated with implementing pollution prevention measures if required.

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.

There were no fees or fines as this is a new requirement.

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

NA.

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

The DOH will maintain a database of those subject to the new rules as well as provide oversight. The fee, to be deposited in the State General Fund, supports the maintenance of the registry and staffing of the program subject to legislative allocation.

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

Direct comparison with the fee associated to apply for an NPDES General Permit with the DOH. NPDES permits are for “point sources” of pollution. The NPS registration will be for the “nonpoint sources” of pollution. The proposed fee is equal to that of the NPDES General Permit.

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.

There is a significant monetary cost (approximately \$500,000/year) for the Department of Health, as the DOH will be required to operate a new program to implement the proposed rules and NPS pollution control program. Other agencies directly affected will be required to pay a \$500 registration fee, plus indirect costs associated with development and implementation of a Water Pollution Prevention Plan. The DOH expects to collect minimal fees (\$500 registration fee per applicant) from less than 100 agencies as a result of this rule change, for a total amount under \$50,000. Benefits to the State include litigation issues.

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.

To limit direct impact on small businesses, the DOH only identified government agencies or those who operate parcels 1,000 acres or greater as automatically subject to the new rules. The DOH did not move forward on a permitting program and instead has proposed a registry system to simplify application and to reduce the regulatory burden for those subject to the new rules. The DOH also aligned the pollution prevention requirements with existing guidance in order to reduce the amount of potential regulatory overlaps and facilitate compliance. Lastly, the DOH evaluated programs in other States and did not choose a model that might be burdensome, such as the permitting program implemented in the State of California.

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

None.

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

The proposed rules allow for agencies/businesses to choose the best method to comply and provides for business to not be subject to the rules in entirety if the agency/business can prevent water pollution from its activity. The flexibility for innovation was intentionally crafted such that all agencies/business can reduce or eliminate both direct and indirect compliance costs if they eliminate or reduce pollution from their activity. There are no prescriptive implementation requirements required for ever business subject to the proposed rule.

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

The DOH has not involved small business in the development of the proposed rules as the DOH does not believe there will be many small businesses directly impacted by the proposed rules. The DOH consulted other State agencies that will be impacted by the proposed rules (Department of Agriculture and Department of Land and Natural Resources).

- 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.**

NA

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

The proposed rules are not more stringent than other comparable federal, state or county standard. The federal Clean Water Act expressly designates control of nonpoint sources of pollution to States. Other States have different methods to control NPS pollution, including permitting systems, such as in California, or prescriptive administrative rules, as in Vermont. As these proposed rules were the first NPS rules in Hawaii, the DOH choose to not implement standards that are more stringent than in other locales. Instead, the DOH has proposed rules that allow for flexibility. Should greater stringency be required in the future, the DOH would propose new rules at that time.

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**

NA

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

The full text of the proposed rule and rationale for the change is attached.

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

NA

- 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.**

NA

- 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.**

NA

Public Hearing Approval

A. Summary of Changes

i. Why is this section of Hawaii Administrative Rules being amended?

Hawaii Revised Statutes (HRS), Chapter 342E (Nonpoint Source Pollution Management and Control) directly mandates NPS pollution management and control, by the Department of Health (DOH) . It sets forth “a nonpoint source pollution management and control program to administer, enforce, and carry out all laws, rules, and programs relating to nonpoint source pollution in the State.” Further, HRS §342E-3 provides DOH with the authority to:

- “Adopt rules under chapter 91 necessary for the purposes of this chapter, which may include water quality standards for specific areas, types of nonpoint source pollution discharges, or management measures in the control of water pollution, allowing for varying local conditions” [HRS §342E-3(a)(2)];
- Develop plans, recommendations, and policies, and provide other support to further the State’s capacity to carry out the requirements of any federal law, rule, or regulation pertinent to the management or mitigation of nonpoint source pollution” [HRS §342E-3(a)(3)]; and,
- “Propose legislation, alternate funding mechanisms, and new programs to improve the State’s capacity to mitigate nonpoint source pollution” [HRS §342E-3(a)(11)].

To date, the State does not have administrative rules or a comprehensive program for the control of and enforcement against NPS pollution. Therefore, DOH is proposing administrative rules as authorized under HRS §342E-3(a)(2) to help ensure that Hawaii’s waters are adequately protected from NPS pollution. DOH is in the process of developing a NPS program in parallel with the rules.

The proposed Chapter 11-56 (Nonpoint Source Pollution Control) provides the regulatory framework for the prevention, abatement, and control of new and existing nonpoint sources of pollution. Chapter 11-56 identifies some major nonpoint sources and requires the development and implementation of a Water Pollution Prevention Plan that identifies the specific management measures to be used for effectively controlling those sources of NPS pollution. These management measures are largely based on Hawaii’s Coastal Nonpoint Pollution Control Program (CNPCP) management measures, which were developed as economically achievable management practices designed to reduce and prevent NPS pollution.

In addition to regulating NPS pollution, Chapter 11-56 provides “support to further the State’s capacity to carry out the requirements of any federal law, rules,

or regulation pertinent to the management or mitigation of NPS pollution” (HRS 342E-3(a)(3)) by serving as a mechanism to implement, track, and demonstrate the effectiveness Hawaii’s CNPCP management measures, which are activities required by the federal Coastal Zone Amendment and Reauthorization Act (CZARA).

ii. What problem is the rule change meant to solve?

Nonpoint source (NPS) pollution adversely impacts aquatic habitats and marine life, poses public health risks, and negatively impacts Hawaii’s economy and way of life, which rely heavily on good water quality. NPS pollution results from a variety of human activities (e.g., timber harvesting, recreational boating, farming) but can be controlled and reduced through implementation of practical methods.

Nonpoint source pollution is not currently managed in Hawaii. Unlike regulation of point source pollution, management of NPS pollution is not federally controlled. The 1972 federal Clean Water Act (CWA) established the basic structure for measuring water quality and regulating point source pollution in U.S. waters, but it expressly omitted regulation and control of NPS pollution from federal purview and instead obligated protection of surface waters from NPS pollution to States.

The majority of water pollution in Hawaii is believed to be NPS in nature. This is evident by DOH issued “Brown Water Advisories” and impairments to our nearshore waters. It is intended that the proposed rules begin to improve water quality in our streams and beaches throughout the State.

iii. List all changes that are being made

The proposed rules are entirely new. As such, a list of changes is impracticable. However, major changes include:

- New requirement for government agencies who own or operate large agricultural parcels (>1000 acres), marinas, or forested areas, to register with the DOH, and develop and implement Water Pollution Prevention Plans to reduce NPS pollution.
- New requirement for anyone who is found to be a significant source of water pollution to register with the DOH unless they are already have a permit for the discharges.
- A new registration fee of \$500, good for 5 years, for those required to register (see above).

For additional details, please see the attached rationale document.

B. Impact of changes

i. How does the rule change address this problem?

The proposed rule sets forth a framework that holistically addresses NPS pollution under DOH oversight. It begins with identification of the major sources, lays out a registration program, requires development and implementation of a pollution control plan, and requires annual reporting.

ii. Who are the stakeholders? Positive and negative.

Positive stakeholders include all members of the population that recreate in and on Hawaii's inland and marine waters; people who fish and consume fish and shellfish in Hawaii's waters; and businesses that rely on Hawaii's streams and beaches for economic purposes. Those who are "negatively" impacted are those who currently cause or contribute to surface water pollution via nonpoint source discharges. Those who currently cause negative impacts to water quality through a lack of mitigation, will now have to expend resources to prevent or mitigate the discharges, or be subject to enforcement by the DOH.

iii. What are the potential problems with the rule change?

No potential problems are anticipated by this rule change.

iv. What is the fiscal impact?

The DOH will need to request additional funding from the legislature to fully support this program annually. Other agencies or persons subject to the rule will be required to conduct planning and implement mitigation measures that may not be currently in place. The level of fiscal impact will be directly proportionate to the amount of pollution currently caused by the sources. If the level of NPS pollution is low, little additional resources will be required. If the level of NPS pollution is high, the agency or responsible person may have significant fiscal impacts in order to change their practices to reduce NPS pollution.

v. What is the economic impact to the State?

The State is expected to be positively impacted by the rule. Compliance with the proposed rule by State agencies should avoid litigation risk. Businesses that rely on good water quality, including those in the tourism industry, are expected to benefit as fewer water quality advisories will be required. Businesses in the agricultural sector are anticipated to benefit over the long term as the proposed rules aim to prevent soil loss. The environmental industry is also expected to benefit as the proposed rule provides flexibility that incentivizes innovation and participation by environmental professionals.

C. Consequences if changes are not made

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

If the rule is not adopted, the DOH and other state agencies may be subject to litigation risk for failing to address NPS pollution. For businesses that rely on good water quality, there will be a lack of mechanism to protect that water quality from the leading causes of impairment. For agricultural businesses who voluntarily implement sustainable practices, there is an unfair playing field versus those who fail to prevent NPS pollution.

FINAL DRAFT

RATIONALE

FOR

**HAWAII ADMINISTRATIVE RULES
TITLE 11
DEPARTMENT OF HEALTH
CHAPTER 11-56
NONPOINT SOURCE POLLUTION CONTROL**

**DEPARTMENT OF HEALTH
ENVIRONMENTAL MANAGEMENT DIVISION
CLEAN WATER BRANCH
HONOLULU, HAWAII**

March 2020

Nonpoint source (NPS) pollution adversely impacts aquatic habitats and marine life, poses public health risks, and negatively impacts Hawaii's economy and way of life, which rely heavily on good water quality. NPS pollution results from a variety of human activities (e.g., timber harvesting, recreational boating, farming) but can be controlled and reduced through implementation of practical methods.

Nonpoint source pollution is not currently regulated in Hawaii. Unlike regulation of point source pollution, regulation of NPS pollution is not federally mandated. The 1972 federal Clean Water Act (CWA) established the basic structure for measuring water quality and regulating point source pollution in U.S. waters, but it expressly omitted regulation and control of NPS pollution from federal purview and instead left protection of surface waters from NPS pollution to states.

Hawaii Revised Statutes (HRS), Chapter 342E (Nonpoint Source Pollution Management and Control) directly addresses NPS pollution management and control, establishing within the Department of Health (DOH) "a nonpoint source pollution management and control program to administer, enforce, and carry out all laws, rules, and programs relating to nonpoint source pollution in the State." Further, HRS §342E-3 provides DOH with the authority to:

- "Adopt rules under chapter 91 necessary for the purposes of this chapter, which may include water quality standards for specific areas, types of nonpoint source pollution discharges, or management measures in the control of water pollution, allowing for varying local conditions" [HRS §342E-3(a)(2)];
- Develop plans, recommendations, and policies, and provide other support to further the State's capacity to carry out the requirements of any federal law, rule, or regulation pertinent to the management or mitigation of nonpoint source pollution" [HRS §342E-3(a)(3)]; and
- "Propose legislation, alternate funding mechanisms, and new programs to improve the State's capacity to mitigate nonpoint source pollution" [HRS §342E-3(a)(11)].

To date, the State does not have administrative rules or a comprehensive program for the control of and enforcement against NPS pollution. Therefore, DOH is proposing administrative rules as authorized under HRS §342E-3(a)(2) to help ensure that Hawaii's waters are adequately protected from NPS pollution. DOH has the authority to enforce Chapter 11-56 under HRS §342E-3(b).

The proposed Chapter 11-56 (Nonpoint Source Pollution Control) provides the regulatory framework for the prevention, abatement, and control of new and existing nonpoint sources of pollution. Chapter 11-56 identifies some major nonpoint sources and requires the development and implementation of a Water Pollution Prevention Plan that identifies the specific management measures to be used for effectively controlling those sources of NPS pollution. These management measures are largely based on Hawaii's Coastal Nonpoint Pollution Control Program (CNPCP) management measures, which are economically achievable management practices designed to reduce and prevent NPS pollution.

In addition to regulating NPS pollution, Chapter 11-56 provides "support to further the State's capacity to carry out the requirements of any federal law, rules, or regulation pertinent to the management or mitigation of NPS pollution" (HRS 342E-3(a)(3)) by serving as a mechanism to implement, track, and demonstrate the effectiveness Hawaii's CNPCP management measures, which are activities required by the federal Coastal Zone Act Reauthorization Amendments

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(CZARA). Chapter 11-56 will facilitate approval of Hawaii's CNPCP by the U.S. National Oceanic and Atmospheric Administration and U.S. Environmental Protection Agency and retain approximately \$2.1m annually in federal funds for the State's Coastal Zone Management Program (located within the Department of Business, Economic Development and Tourism) and Polluted Runoff Control Program (located within DOH). Loss of these federal funds due to an insufficient and federally unapproved CNPCP would significantly reduce the State's capacity to manage and mitigate NPS pollution.

Regulation of NPS pollution proposed in Chapter 11-56 also helps the State fulfill its public trust duties. Article XI, Section 7, of the Hawaii State Constitution mandates that, "The State has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people." Article XI, Section 9, states that, "Each person has the right to a clean and healthful environment, as defined by the laws related to environmental quality, including control of pollution and conservation, protection, and enhancement of natural resources."

This document explains the rationale behind the proposed NPS pollution regulatory requirements contained in the new Chapter 11-56, HAR.

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Section	Current	Proposed	Rationale
11-56-01	None	Definitions	<p>Definitions are provided to clarify and ensure consistency in understanding the proposed regulations and apply to this chapter and its appendices.</p> <p>The definition of “animal feeding operation” is consistent with the federal definition of that term under National Pollutant Discharge Elimination System (NPDES) regulations at Title 40 of the <i>Code of Federal Regulations</i> [40 CFR], section 122.23(b)(1) and incorporates the federal definition of “production area” at 40 CFR 122.23(b)(8) to ensure consistency in regulation of animal feeding operations under point source and nonpoint source regulatory programs.</p> <p>The definition of “wastewater” is based on the definition in HAR §11-62-03; the phrase “including waste-contaminated stormwater runoff” was added to clarify that the definition encompasses various sources of NPS pollution. A definition of wastewater that applies specifically to Appendix A (Agriculture) to identify the various sources of wastewater at an animal feeding operation, for consistency with regulation of point source discharges from similar types of operations.</p>
11-56-02	None	General policy for nonpoint source pollution control	<p>Reiterates and augments the State’s legislatively mandated policy for protecting, maintaining, and restoring the quality of State waters through the control of new and existing nonpoint sources of pollution. Adds language clarifying that compliance with the chapter is to be considered compliance with the policy.</p>
11-56-03(a)(1)	None	<p>(1) Publicly-owned entities owning land or conducting the activities below, as identified in Appendices A through C of this chapter:</p> <p>(A) Agriculture (Appendix A);</p> <p>(B) Forestry (Silviculture) (Appendix B); and</p> <p>(C) Marinas and recreational boating (Appendix C);</p>	<p>Identifies government agencies as being subject to the NPS pollution control program subject to limitations based on activities and size.</p> <p>The applicability of the Chapter is designed to ensure that publicly-owned entities conducting activities associated with the nonpoint source discharge are subject to the requirements of the Chapter.</p>

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Section	Current	Proposed	Rationale
			Where the publicly-owned entity owns the land, but is not engaged in the activities associated with the nonpoint source discharge, the Chapter requirements still apply (i.e., the publicly-owned entity is responsible for ensuring compliance with Chapter requirements for those other entities responsible for the activities associated with the nonpoint source pollution discharges from publicly-owned land).
11-56-03(a)(2)	None	(2) Privately-owned entities that cause or contribute to nonpoint source pollution due to operation or management of lands used for the activities identified in section 11-56-03(a) are subject to this chapter and applicable requirements set forth in Appendices A through C of this chapter upon written notification by the director.	Defines situations when non-public entities may be required to participate in the NPS pollution control program. This section was designed to capture privately-owned entities that are found to cause or contribute to nonpoint source pollution. More specifically, privately-owned lands or activities may be subject to the requirements of the Chapter at the discretion of the director, based on an assessment of the risk of harm to human or environmental health, as determined by the director.
11-56-03(b)	None	(b) At the discretion of the director, specific provisions of this chapter, additional management measures, or other remedies, may be applied to any persons who are found to be causing or contributing to nonpoint source pollution. In these cases, the director shall issue a nonpoint source order (hereafter "NPS Order") to affected persons that includes: (1) A notice of findings specifying the source(s) of nonpoint source pollution involved and the conduct that is causing or caused it; (2) A requirement to register under section 11-56-05; (3) A requirement to develop and implement a Water Pollution Prevention Plan under section 11-56-06(a)(1); (4) A time schedule for compliance with provisions of this chapter; and (5) Any other specific requirements for controlling the nonpoint source pollution deemed necessary by the director.	This section authorizes the director to order prescriptive pollution control measures in response to a formal finding of persons causing or contributing to NPS pollution. DOH understands that complex sources of NPS pollution exist and may impact regional or localized water quality. This provision allows DOH to require NPS pollution controls for sources as necessary to ensure water quality standards are attained throughout the State.

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Section	Current	Proposed	Rationale
11-56-04	None	Exemptions. If any discharge of a pollutant to State waters subject to this chapter is otherwise subject to regulation as a point source under an NPDES permit, the requirements in this chapter shall not apply to that discharge.	Regulation of discharges already authorized and regulated under the DOH point source pollution control program (i.e. NPDES permit program), including general and individual NPDES permits, is unnecessary, and thereby exempt from Chapter 11-56 requirements. It is not DOH's intent to establish duplicative regulatory requirements for a single discharge.
11-56-05	None	Registry requirements	<p>Persons to whom Chapter 11-56 applies must register with DOH. Registrations expire 5 years from the date of submission to DOH.</p> <p>Fee of \$500 good for 5 years and transferable.</p> <p>Registration includes providing basic contact information to the DOH as well as a disclosure of the activities which are potential sources of NPS pollution.</p> <p>To minimize renewal burden on persons, where the information on previous registrations and other Chapter requirements remains unchanged, a simplified renewal has been provided.</p> <p>In those instances where registration information has changed, then the registration renewal must indicate those changes to allow DOH to ensure that appropriate controls are in place to control the nonpoint sources of pollution.</p>
11-56-06	None	Water Pollution Prevention Plans	<p>The requirement to develop, submit, and implement a Water Pollution Prevention Plan will ensure equitable, consistent, and appropriate requirements for the control of nonpoint source pollution from applicable activities.</p> <p>Water Pollution Prevention Plans must include a description of the activities conducted which are potential sources of NPS pollution, the location of the activities, the management measures to be implemented to mitigate the NPS pollution, and practices used to self-monitor compliance with NPS rules.</p>
11-56-06(a)(1)(H) and (I)	None	(H) Description of the authorized management measure(s) identified in chapter	One of the primary nonpoint source control components contained in the required Water Pollution Prevention Plans

Section	Current	Proposed	Rationale
		<p>11-56, Appendices A through C, that will be implemented to control nonpoint source pollution at the location;</p> <p>(l) Description of the authorized management practice(s) identified in chapter 11-56, Appendices A through C, that will be implemented to meet each management measure’s requirements. For each management practice to be implemented, the following information shall be provided:</p> <p>(i) Name of the practice;</p> <p>(ii) Issuing entity of the practice;</p> <p>(iii) Location (internet address or other) where the practice can be retrieved;</p> <p>(iv) Code number or standard number of the practice, if applicable;</p> <p>(v) Description of the practice;</p> <p>(vi) Location(s) the practice will be implemented; and</p> <p>(vii) Description of how the practice meets the requirements of the management measure.</p>	<p>is the use of authorized management measures. Section 6217(g)(5) of the federal Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) defines management measures as “economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.”</p> <p>Hawaii’s Coastal Nonpoint Source Pollution Control Program (CNPCP), which was developed pursuant to CZARA, establishes recommended management measures that are contained in the October 2010 <i>Hawaii’s Management Measures for the Coastal Nonpoint Pollution Control Program</i>. The specific management measures that are identified in Appendices A through C of the Chapter are based on those contained in the October 2010 document.</p> <p>Within each management measure (e.g., Erosion and Sediment Control), various management practices (e.g., conservation crop rotation) are specified for consideration and inclusion as part of the Water Pollution Prevention Plan. The management practices are based on the following sources:</p> <ul style="list-style-type: none"> • NRCS’s <i>Hawaii Field Office Technical Guide</i> (eFOTG). • <i>EPA National Management Measures to Control Nonpoint Source Pollution from Agriculture</i> (EPA, EPA-841-B-03-004, July 2003). • <i>EPA National Management Measures to Control Nonpoint Source Pollution from Forestry</i> (EPA, EPA-841-B-05-001, April 2005). • <i>EPA National Management Measures Guidance to Control Nonpoint Source Pollution from Marinas and Recreational Boating</i> (EPA, EPA-841-B-01-005, November 2001).

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11-56-06(a)(1)(J)	None	(J) Implementation schedule of the applicable management measures and management practice(s);	This section provides time for newly regulated facilities to come into compliance with the NPS control program regulations. Each regulated entity must provide an implementation schedule as part of their Water Pollution Prevention Plan. The implementation schedule provides a commitment on the part of the regulated entity to design, install and implement management measures in a timely manner to ensure protection of waters of the State from nonpoint source pollution.
11-56-06(a)(1)(K)	None	(K) Long-term operation and maintenance schedule that provides for inspection of management practices, including the repair, replacement, or other routine maintenance of the management practices to ensure proper function and operation;	To ensure continued effectiveness of implemented management measures, DOH is requiring each regulated entity to propose an operation and maintenance schedule for the proposed management measures contained in their Water Pollution Prevention Plan. Routine inspections and maintenance of management measures are necessary to protect State waters, as well as assist regulated entities in avoiding noncompliance related to failure to properly implement their Water Pollution Prevention Plan.
11-56-06(a)(1)(M)	None	(M) Description of any other plan required by federal, State, or local regulatory agencies that is being implemented to control nonpoint source pollution;	DOH will consider other plans being implemented in its assessment of the effectiveness of proposed Water Pollution Prevention Plans. DOH recognizes that other plans may overlap with Water Pollution Prevention Plans in their scope and requirements and as such, requires information on those other plans to reconcile conflicting regulatory requirements.
11-56-06(a)(1)(L) 11-56-06(a)(2) and (3)	None	(L) A monitoring strategy consistent with section 11-56-06(a)(2); (2) A monitoring strategy shall be included as a component of the Water Pollution Prevention Plan to assess the Water Pollution Prevention Plan's effectiveness in reducing and controlling nonpoint source pollution at the location(s) specified in the Water Pollution Prevention Plan. A monitoring strategy shall include the following, as applicable: (A) Routine/periodic visual monitoring and inspection of management measures;	Each regulated entity will be required to develop and implement a self-monitoring strategy to ensure that the Water Pollution Prevention Plan is effective in reducing and controlling nonpoint source pollution. Due to the potential variety of locations and activities for which management measures will be implemented as part of Water Pollution Prevention Plans, DOH has provided flexibility regarding the specific components to be included in monitoring strategies. DOH expects that monitoring strategies, at a minimum, will include routine inspection of management measures and visual evaluation of discharges to waters of the State. Water quality monitoring of discharges and receiving waters should be included in management

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		<p>(B) Routine/periodic visual monitoring and inspection of State waters affected by the nonpoint source pollution from the facility;</p> <p>(C) Water quality monitoring of nonpoint source discharges from the facility;</p> <p>(D) Water quality monitoring of State waters affected by the nonpoint source pollution from the facility; and/or</p> <p>(E) Other methods, as deemed necessary, to determine whether the required management measures are being properly implemented and maintained, and whether the management measures are effective.</p> <p>(3) If the monitoring strategy is found to be inadequate for properly evaluating the effectiveness of a Water Pollution Prevention Plan, the director may specify monitoring requirements that shall be implemented. Ineffective monitoring strategies cannot be used as a defense in any enforcement action specified in section 11-56-12 for violations of this chapter.</p>	<p>strategies as necessary to demonstrate effectiveness of the Water Pollution Prevention Plan.</p> <p>If the proposed monitoring strategies are considered inadequate for determining the effectiveness of a Water Pollution Prevention Plan in reducing and controlling nonpoint source pollution, then the director may require amended and/or additional monitoring methods to be implemented by the regulated entity.</p>
11-56-06(a)(5)	None	<p>(5) As necessary, the director may require persons to revise a Water Pollution Prevention Plan to include additional management measures and/or controls to ensure protection of State waters from nonpoint source pollution, including consistency with:</p> <p>(A) Department-approved watershed plans;</p> <p>(B) Approved TMDLs and associated load allocations;</p> <p>(C) Watershed restoration and protection projects funded under Clean Water Act Section 319(h);</p> <p>(D) Approved water quality trades;</p> <p>(E) Supplemental environmental projects;</p> <p>(F) Approved Spill Prevention, Control, and Countermeasure Plans under 40 CFR Part 112; or</p>	<p>DOH is mandated to address NPS pollution statewide. As described in the DOH-developed <i>Hawai'i's Nonpoint Source Management Plan, 2015 to 2020</i>, a number of federal, state, and local water quality management programs and partner efforts are being used to prevent and reduce NPS pollution across the State. To the extent any of these programs, initiatives and/or efforts require modified or additional management measures or controls for nonpoint source pollution to protect, maintain and restore the quality of State waters, the director may require regulated entities to modify their Water Pollution Prevention Plans accordingly.</p>

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		(G) Other requirements needed to protect or restore State waters.	
11-56-06(a)(6)	None	<p>(6) Persons may submit an existing management plan to the department in lieu of a Water Pollution Prevention Plan, subject to the following provisions:</p> <p>(A) A plan submitted in lieu of a Water Pollution Prevention Plan shall be considered equivalent to a Water Pollution Prevention Plan, provided the submitted and implemented plan meets the objective of a Water Pollution Prevention Plan detailed in this chapter.</p> <p>(B) A plan submitted in lieu of a Water Pollution Prevention Plan is not considered equivalent to a Water Pollution Prevention Plan unless reviewed and accepted by the director in accordance with section 11-56-06.</p>	DOH acknowledges that regulated entities, as part of other regulatory or control programs, may be implementing management plans that address the nonpoint sources that have the potential to cause or contribute to water pollution. Where such other management plans exist, DOH will consider those other management plans equivalent to a Water Pollution Prevention Plan provided they effectively control nonpoint source pollution from the subject property(ies) or activity(ies) as determined by DOH. This regulation is to reduce duplicative efforts by the regulated entity.
11-56-06(a)(9)	None	(9) Water Pollution Prevention Plans shall be amended when there is a substantial change in activity, facility design, construction, operation, or maintenance that materially affects the regulated facility's potential for causing or contributing to nonpoint source pollution. An amendment made under this subsection must be prepared and submitted to the department within 30 days after the change that compels the amendment. The amended Water Pollution Prevention Plan shall be implemented as soon as possible, but not later than 30 days following the submission of the amendment to the department.	Changes to property(ies) or activity(ies) that cause or contribute to nonpoint source pollution require amendments to the Water Pollution Prevention Plan to ensure that the regulated entity continues to control nonpoint source pollution effectively. Necessary amendments shall be made and implemented in a timely manner to ensure adequate protection of State waters.
11-56-06(b)		(b) The director shall make available to the public for inspection copies of Water Pollution Prevention Plans, NPS Orders, and associated documents submitted in accordance with the requirements of this chapter. Release of information to the public under this subsection shall be done in accordance with the provisions in section 11-56-10.	Consistent with the Hawaii Uniform Information Practices Act (Modified), chapter 92F, HRS, DOH will make documents related to Chapter 11-56 nonpoint source pollution control requirements available for public review and inspection unless access is restricted as specified in 11-56-10.

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Section	Current	Proposed	Rationale
11-56-07(a)	None	<p>(a) Persons required to develop and implement a Water Pollution Prevention Plan under section 11-56-06 shall submit an annual report to the director documenting on-going compliance with their Water Pollution Prevention Plans. At a minimum, annual reports shall include the following, as applicable:</p> <p>(1) Summary of monitoring and inspection activities undertaken to evaluate the effectiveness of the Water Pollution Prevention Plan in reducing and controlling nonpoint source pollution, including:</p> <p>(A) Date(s) on which inspections were conducted;</p> <p>(B) Inspection findings; and</p> <p>(C) Corrective actions taken, if any.</p> <p>(2) Summary of water quality sampling activities undertaken to evaluate the effectiveness of the Water Pollution Prevention Plan in reducing and controlling nonpoint source pollution, including:</p> <p>(A) Date(s) on which sampling was conducted;</p> <p>(B) Parameters sampled for;</p> <p>(C) Sample results; and</p> <p>(D) Corrective actions taken, if any.</p> <p>(3) Assessment of the overall effectiveness of the Water Pollution Prevention Plan, and of the effectiveness of each management measure implemented, in reducing and controlling nonpoint source pollution;</p> <p>(4) A summary of Water Pollution Prevention Plan amendments made during the previous year; and</p> <p>(5) The following certification signed in accordance with section 11-56-18: "I certify that this annual report and all attachments were prepared under my direction or supervision. I am familiar with the content of</p>	<p>Periodic reporting is required to facilitate DOH review and assessment of the effectiveness of Water Pollution Prevention Plans to control and abate nonpoint source pollution.</p> <p>To minimize the reporting burden on regulated entities, reports are required once per year.</p> <p>To evaluate the effectiveness of Water Pollution Prevention Plans, DOH requires as part of the annual report: a summary of inspection and monitoring activities and results; if applicable, a summary of water quality monitoring activities and results; if applicable, a summary of amendments made to the Water Pollution Prevention Plan; and an assessment of the overall effectiveness of the Water Pollution Prevention Plan and associated management measures to control nonpoint source pollution.</p> <p>Annual reports include basic information about the results from self-monitoring activities and provide for streamlined adaptive management strategies.</p>

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		this annual report and agree to implement it as developed and submitted to the department. I will maintain a copy of this annual report on-site or at a nearby office. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment for violations.”	
11-56-07(b)	None	As necessary, and at the discretion of the director, more frequent Water Pollution Prevention Plan reports may be required.	<p>More frequent reports related to Water Pollution Prevention Plan implementation may be required by DOH. Circumstances that may trigger more frequent reporting include, for example:</p> <ul style="list-style-type: none"> • Regulated entities with a history of noncompliance. • Nonpoint source discharges to State waters not achieving applicable water quality standards. • Nonpoint source discharges to high-quality or sensitive water bodies or waters requiring more oversight by DOH.
11-56-07(c)	None	The director shall make available to the public for inspection copies of Water Pollution Prevention Plan annual reports and associated documents submitted in accordance of this chapter. Release of information to the public under this subsection shall be done in accordance the provisions in section 11-56-10.	Consistent with the Hawaii Uniform Information Practices Act (Modified), chapter 92F, HRS, DOH will make documents related to Chapter 11-56 nonpoint source pollution control requirements available for public review and inspection unless access is restricted as specified in 11-56-10.
11-56-08(a)	None	<p>(a) Persons for which a Water Pollution Prevention Plan is required under this chapter must:</p> <ol style="list-style-type: none"> (1) Maintain a complete copy of the Water Pollution Prevention Plan, including any amendments to the Water Pollution Prevention Plan, on-site or at a nearby office; (2) Have the Water Pollution Prevention Plan available to the director for on-site review during normal business hours; and (3) Provide, at the request of the director, the Water Pollution Prevention Plan and any associated documentation deemed necessary to determine compliance with this chapter. 	<p>In accordance with HRS §§342E-3(b)(1) and (2), DOH will periodically inspect the property(ies) and activity(ies) of regulated entities to ensure compliance with the requirements contained in Chapter 11-56. To effectively inspect regulated entities, DOH representatives will need access to all the records associated with development and implementation of the Water Pollution Prevention Plan and the associated management measures, either on-site or at a location within a reasonable distance from the property(ies) and activity(ies) regulated under Chapter 11-56.</p> <p>Further, for a Water Pollution Prevention Plan to be effective, the plan needs to be readily accessible to those</p>

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			implementing it. As such, availability of a Water Pollution Prevention Plan onsite or nearby is required.
11-56-09	None	<p>(a) Compliance with this chapter shall be based on development and implementation of Water Pollution Prevention Plans that minimize negative impacts on water quality to the maximum extent practicable. In determining whether a person subject to this chapter is minimizing negative impacts to water quality to the maximum extent practicable, the department shall consider:</p> <ol style="list-style-type: none"> (1) The classification and allowable uses of the State water (waterbody) to be protected; (2) The impact on the State water by the discharge; (3) Background water quality, including during high intensity weather events; (4) Consistency with the State’s policy of water quality antidegradation; (5) The financial impact of minimizing negative impacts to water quality on the discharger; and (6) The public interest. <p>(b) Persons who demonstrate no significant measurable impact on the receiving water shall be considered in compliance with management measure implementation requirements within this chapter.</p> <p>(c) Monitoring strategies required by this chapter shall be designed to assess compliance with the requirements in this section.</p>	<p>DOH is responsible for assessing compliance with Chapter 11-56 regulations. Regulated entities require a legally defensible standard for compliance. This section states that DOH must determine compliance based on a practicably defined standard because, in many cases, compliance based solely on impact to water quality may be technically and/or financially infeasible. In considering practicability, the DOH shall consider the data and information 1) collected and submitted by the regulated entity, and/or 2) generated by DOH from inspection and sampling efforts.</p> <p>When no significant measurable impact is determined, or when the Water Pollution Prevention Plans are effectively implemented such that they minimize the impact to water quality to the maximum extent practicable, the regulated entity will be considered in compliance with the management measure requirements of Chapter 11-56.</p>

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Section	Current	Proposed	Rationale
11-56-10	None	<p>(a) In accordance with chapter 92F, HRS, the director shall ensure that any Water Pollution Prevention Plan developed under section 11-56-06 or information required, kept, or submitted under this chapter shall be available to the public for inspection and copying during established office hours. The director, at the director's discretion, may also make available to the public any other records, reports, plans, or information obtained by the department.</p> <p>(b) The director shall protect any information (other than environmental data) as confidential upon a request and showing by any person at the time of submission that the information, if made public, would divulge methods or processes entitled to protection as trade secrets of a person. Any information obtained by the director and subject to a claim of confidentiality shall be treated in accordance with the regulations in chapter 92F, HRS.</p> <p>(c) The director shall provide facilities for the inspection of information submitted in accordance with this chapter and shall ensure that state employees honor requests for inspection with due regard for the dispatch of other public duties. The director shall either:</p> <p>(1) Ensure that a machine or device for the copying of papers and documents is available for a reasonable fee; or</p> <p>(2) Otherwise provide for or coordinate with copying facilities or services so that requests for copies of nonconfidential documents may be honored promptly.</p>	<p>DOH will make documents related to Chapter 11-56 nonpoint source pollution control requirements available for public review and inspection consistent with the requirements and restrictions of the Hawaii Uniform Information Practices Act (Modified), chapter 92F, HRS.</p>

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Section	Current	Proposed	Rationale
11-56-11(a)	None	<p>(a) A person regulated under this chapter shall allow the director to:</p> <p>(1) Enter and inspect any area to investigate an actual or suspected source of water pollution, to ascertain compliance or noncompliance with this chapter or any NPS Order issued pursuant to this chapter;</p> <p>(2) Inspect any records kept in accordance with the terms and conditions of this chapter; and</p> <p>(3) Test any waters and aquatic and other life forms that may have been subjected to any form of nonpoint source pollution and assess the environmental effects of the pollution, including the pollution's effects on the quality of the receiving waters and aquatic and other life forms. If the director determines that the effects of the pollution would make it hazardous to consume the water and aquatic or other life forms, the director shall immediately notify the public of the hazard through the news media and by posting warning signs in those areas where the waters and shoreline contain water and aquatic or other life forms that would be hazardous if consumed.</p>	<p>In accordance with HRS §§342E-3(b)(1) and (2), DOH has the authority to periodically inspect the property(ies) and activity(ies) of regulated entities to ensure compliance with the requirements contained in Chapter 11-56.</p>
11-56-11(b)	None	<p>(b) Any person who denies, obstructs, or hampers the entrance to and inspection by any duly authorized officer or employee of the department of any building, place, or vehicle shall be fined not more than \$5,000 for each day of such a denial, obstruction, or hampering. Any action taken to impose or collect the penalty provided for in this section shall be considered a civil action.</p>	<p>In accordance with HRS §342E-4(b), DOH has the authority to fine any regulated entity that denies, obstructs, or hampers the entrance to and inspection by any duly authorized officer or employee of the department.</p>

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Section	Current	Proposed	Rationale
11-56-12	None	Enforcement and penalties	<p>HRS 342E-3(a)(1) mandates that the Director reduce, control and mitigate nonpoint source pollution in the State. To effectively do so, the Director requires procedures for enforcement to address situations when persons fail to comply with the law. Enforcement procedures must include protocols for the Director to order corrective action and assess penalties for mitigation and equability, respectively.</p> <p>The proposed rules set forth procedures providing due process for persons accused of violating nonpoint source pollution control rules. The proposed rules acknowledge that HRS 342E-4 authorizes civil penalties of up to \$10,000 per day per violation and a mandate that all enforcement actions taken for nonpoint source violations are to be considered civil, non-criminal, enforcement actions.</p> <p>In issuing enforcement actions, particularly those including monetary penalties, the proposed rules provide procedures for Administrative enforcement actions. The administrative actions do not include criminal provisions. Final decisions made by the director may be appealed to State courts.</p> <p>The specific provisions for enforcement and penalties are consistent with non-criminal enforcement procedures used for water pollution violations from point sources and provide for expeditious and appropriate enforcement to reduce, control and mitigate nonpoint source pollution in the State.</p>

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Section	Current	Proposed	Rationale
11-56-13	None	<p>(a) Hearings before the director on any violations of this chapter and appeals from any of the director's decisions at the hearings shall comply with chapter 91, HRS, the department's rules of practice and procedure, and this chapter.</p> <p>(b) If any party is aggrieved by the decision of the director, the party may appeal in the manner provided in chapter 91, HRS, to the circuit environmental court of the circuit in which the party resides, in which the party's principal place of business is located, or in which the action in question occurred. The operation of an NPS Order will not be stayed on appeal unless specifically ordered by the director or an environmental court of competent jurisdiction.</p>	<p>Provisions have been included to facilitate requests from regulated entities for a hearing related to violations of Chapter 11-56 requirements and for appeals of decisions from the hearings. These provisions are designed to be consistent with those contained in HRS § §342D-12.</p>
11-56-16	None	Field Citations	<p>Field citations provide DOH and the regulated entity an opportunity to quickly and informally settle an administrative case for specific violations of the chapter and HRS §342E. The specific chapter language containing the conditions under which field citations can be issued, and the associated penalties and resolution are consistent with those in HAR §11-55-40.</p>

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11-56-17	None	<p>(a) The owner or operator, any interested agency, person, or group of persons may request or petition for a public hearing with respect to the determinations of persons subject to this chapter. Any request or petition for public hearing shall be submitted within thirty days of registration pursuant to §11-56-05.</p> <p>(b) The director shall hold a hearing if the director determines that there is a significant public interest in holding the hearing. Instances of doubt should be resolved in favor of holding the hearing. Any hearing brought under this paragraph shall be held in the geographical area of the proposed facility or other appropriate area, at the director's discretion.</p> <p>(c) Any person may submit oral or written statements and data concerning the issue being heard.</p> <p>(d) Public notice for hearings shall be published at least once in a newspaper of general circulation within the geographical area of the facility.</p> <p>(e) The public notice for hearings shall include: the name and address of the agency holding the public hearing; name and address of the facility being considered; a brief description of the facility and activities conducted; information regarding the date, time, and location of the hearing; the purpose of the hearing; a brief description of the nature of the hearing, including the rules and procedures to be followed; name, address, and telephone number of the person at the State from whom interested persons may obtain further information.</p> <p>(f) All publication and mailing costs associated with the public notice of the hearing shall be paid by the owner or operator of the facility being considered. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the</p>	<p>Consistent with the provisions of the federal Clean Water Act, and State law, DOH seeks to provide for public awareness and open processes for any decision-making related to water pollution control regulatory efforts in Hawaii. To that end, the chapter contains provisions for the request or petition for a public hearing that are consistent with those contained in HAR §11-55-13.</p>
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Section	Current	Proposed	Rationale
		<p>publication date. Failure to provide and pay for the public notification, as deemed appropriate by the director, is basis to delay authorization of discharges or may be considered a violation of this chapter.</p>	
11-56-18	None	<p>(a) Any certifications associated with submissions to the director under this chapter shall be signed as follows:</p> <p>(1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:</p> <p>(A) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or</p> <p>(B) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;</p> <p>(2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or</p> <p>(3) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For</p>	<p>To ensure that the data and information required by Chapter 11-56, including registrations (11-56-05), Water Pollution Prevention Plans (11-56-06), and annual reports (11-56-07) are prepared and submitted by a responsible official, the chapter specifies who must certify the validity of the data and information for the regulated entity. The signatory requirements of the chapter are consistent with those contained in HAR §11-55-07.</p>

Section	Current	Proposed	Rationale
		<p>purposes of this section, a principal executive officer of a federal agency includes:</p> <p>(A) The chief executive officer of the agency, or</p> <p>(B) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA);</p> <p>(4) For a trust. By a trustee; or</p> <p>(5) For a limited liability company (LLC). By a manager or a member authorized to make management decisions for the LLC and who is in charge of a principal business function, or who performs similar policy- or decision-making functions for the LLC.</p> <p>(b) All other reports or information required under this chapter shall be signed by a person designated in subsection (a) or by a duly authorized representative of that person. A person is a duly authorized representative only if:</p> <p>(1) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position);</p> <p>(2) The authorization is made in writing by a person designated under subsection (a); and</p> <p>(3) The written authorization is submitted to the director.</p> <p>(c) If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall</p>	

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		operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or registrations to be signed by an authorized representative.	

Appendix A: Nonpoint Source Pollution Control Requirements for Agriculture

Section	Current	Proposed	Rationale
Appendix A, 1(a)	None	<p>(a) Requirements defined in this chapter shall be implemented by persons identified in section 11-56-03, as follows:</p> <p>(1) The requirements of this Appendix apply to all publicly-owned agricultural lands comprising 1,000 or more contiguous acres under common ownership and with operations identified in the specific applicability paragraphs in section 3.</p> <p>(2) Other agricultural lands or activities may be subject to the requirements of this Appendix at the discretion of the director based on risk of harm to human or environmental health, as determined by the director. Other agricultural lands or activities determined by the director to be subject to the requirements of this Appendix will be provided written notice by the director.</p>	<p>Clarifies applicability of Appendix A to publicly-owned agricultural lands (i.e., contiguous parcels of 1,000 or more acres) and other agricultural lands, including publicly-owned lands comprising fewer than 1,000 contiguous acres and non-public lands (subject to the director’s discretion based on risk of harm to human or environmental health). Consistent with the general applicability requirements in section 11-56-03, where a publicly-owned entity owns lands subject to the requirements of this appendix, but is not engaged in the activities associated with the nonpoint source discharge, the publicly-owned entity is responsible for ensuring compliance with chapter requirements for those entities responsible for the activities associated with the nonpoint source pollution discharges from publicly-owned land.</p> <p>The 1,000-acre threshold was selected to control nonpoint source pollution from approximately 80% of publicly-owned agricultural lands while limiting applicability to approximately 100 of the largest parcels. Using parcel size as a proxy for risk for polluted storm water runoff is consistent with other approaches for water pollution prevention. To categorically require smaller parcels to be registered may have diminishing returns; reducing the threshold to 500 acres only adds approximately 5.5% of the publicly-owned agricultural lands (see Attachment A to this Fact Sheet).</p> <p>In addition, subjecting smaller parcels to the requirements of Appendix A may adversely impact smaller businesses by posing an undue financial burden on them. It is assumed that to own or operate a parcel greater than 1,000 acres, the owner or operator has both the capability and long-range interest to sustainably manage the parcel and minimize its impacts on water quality.</p>

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Section	Current	Proposed	Rationale
			Analysis of Hawaii Statewide GIS Program data (Parcels – Hawaii Statewide (2019), Government Land Ownership (2017), and Agricultural Land Use Baseline (2015)) were used to identify contiguous parcels of publicly-owned lands in agricultural land uses (see the methodology and example maps in Attachment A to this Fact Sheet).
Appendix A, 1(b)	None	(b) For all other agricultural lands not required to implement the best management practices or management measures identified in this Appendix, the director encourages voluntary development of a Water Pollution Prevention Plan to facilitate the implementation of the management measures contained in this Appendix.	Consistent with the department’s policy for nonpoint source pollution control as specified in section 11-56-03, DOH encourages implementation of appropriate management measures to control nonpoint source pollution from all agricultural lands and activities, whether or not those lands and activities are subject to regulation.
Appendix A, 2(a) – (c)	None	<p>(a) The owner or operator of an agricultural activity or facility subject to regulation shall incorporate water pollution reducing management measures into a Water Pollution Prevention Plan. At a minimum, Water Pollution Prevention Plans shall incorporate all appropriate management measures to prevent and control the specific sources of pollution identified in section 3 of this Appendix.</p> <p>(b) The owner or operator of an agricultural activity or facility subject to this Appendix shall identify which management measures in section 3 are required based upon the specific applicability of each management measure and its subparts. Each management measure identified as being applicable shall be implemented as detailed in the Water Pollution Prevention Plan developed pursuant to this chapter.</p> <p>(c) Authorized management practices that satisfy management measure requirements</p>	Affirms that Water Pollution Prevention Plans must be developed for regulated agricultural activities and facilities. The owner or operator of the regulated activity or facility is responsible for identifying the applicable management measures and associated management practices set forth in Appendix A and incorporating those measures and practices into a Water Pollution Prevention Plan that meets the requirements of section 11-56-06.

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Section	Current	Proposed	Rationale
		shall be identified in the Water Pollution Prevention Plan.	
Appendix A, 2(d) and (e)	None	<p>(d) For discharges identified in section 11-56-03 that result from activities identified in this Appendix, where such discharges or activities are subject to an alternative regulatory mechanism that accomplishes the objectives of one or more of the management measures in section 3 of this Appendix, the Water Pollution Prevention Plan may include a reference to the alternative regulatory mechanism in lieu of the specified management measure(s).</p> <p>(e) For an owner or operator of an agricultural activity or facility subject to this Appendix who develops and implements a soil conservation plan approved by the local soil and water conservation district, the soil conservation plan shall be considered an equivalent of a Water Pollution Prevention Plan developed to address sediment control under subsection 3(a) if the soil conservation plan requires implementation of sediment control management measures identified in subsection 3(a), and effectively controls discharges of sediment to State waters. To the extent that such a soil conservation plan approved by the local soil and water conservation district also effectively addresses activities subject to management measures for other potential pollutants identified in subsections 3(b) – 3(e), the soil conservation plan shall be considered an equivalent Water Pollution Prevention Plan for those management measures. Applicable management measures not addressed in the soil conservation plan must be addressed in a Water Pollution Prevention Plan, which shall be submitted to the department following the procedures in section 11-56-06.</p>	DOH recognizes that some agricultural operations may be subject to regulatory programs or voluntarily implementing plans that achieve the objectives of some or all of the applicable management measures in Appendix A. To avoid duplicative compliance requirements, the Appendix allows for existing compliance activities that address the objective of one or more management measure(s) to be referenced in the required Water Pollution Prevention Plan to satisfy that management measure(s). In addition, consistent with paragraph 11-56-06(a)(6), existing soil conservation plans may be submitted in lieu of the required Water Pollution Prevention Plan or a portion of the required plan if it addresses all or some of the applicable management measures in Appendix A and meets the objective of a Water Pollution Prevention Plan as detailed in section 11-56-06.

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Section	Current	Proposed	Rationale
Appendix A, 3	None	Management Measures Required for Specific Sources of Pollution	<p>Each paragraph addresses a specific pollution source; includes subparagraphs describing the specific applicability, purpose, and general requirements of that paragraph; and identifies the authorized management practices to be included in a Water Pollution Prevention Plan to address that pollution source. Section 3 establishes the following management measures for specific pollution sources:</p> <ul style="list-style-type: none"> (a) Erosion and Sediment Control Management Measure (b) Animal Feeding Operations Wastewater and Runoff Management Measure (c) Nutrient Management Measure (d) Grazing Management Measure (e) Irrigation Water Management Measure (f) Pesticide Management Measure <p>In general, the applicability, purpose, general requirements, and authorized management practices for each management measure are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Agriculture</i> (EPA 841-B-03-004, July 2003). The language has been modified to conform to the structure and format of Chapter 11-56 and in some cases to provide specificity for regulated entities or to clarify compliance expectations and ensure enforceability.</p>
Appendix A, 3(a)	None	(a) Erosion and Sediment Control Management Measure	<p>The purpose of this management measure is to preserve soil and reduce the mass of sediment reaching a water body, protecting both agricultural land and water quality. The applicability, purpose, general requirements, and authorized management practices are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> as well as the EPA <i>National Management Measures to Control Nonpoint</i></p>

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			<i>Source Pollution from Agriculture</i> (EPA 841-B-03-004, July 2003).
Appendix A, 3(b)	None	(b) Animal Feeding Operations Wastewater and Runoff Management Measure	The goal of this management measure is to prevent the discharge of wastewater and contaminated runoff to State waters from animal feeding operations. The applicability, purpose, general requirements, and authorized management practices generally are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> as well as the <i>EPA National Management Measures to Control Nonpoint Source Pollution from Agriculture</i> (EPA 841-B-03-004, July 2003), except as noted below.
Appendix A, 3(b)(3)(A)	None	(A) Contain both the wastewater and contaminated runoff from animal feeding operations that is caused by storms up to and including an acute 25-year, 24-hour frequency storm event. Storage structures must be of adequate capacity to allow for proper wastewater utilization and constructed so that they are impervious and prevent seepage to groundwater.	Establishes specific requirements for containment and management of wastewater and contaminated runoff from animal feeding operations to ensure consistency in regulation of animal feeding operations under point source and nonpoint source regulatory programs.
Appendix A, 3(b)(3)(B)	None	(B) Provide for storage, treatment, and/or application methods such that the monthly volume of wastewater and contaminated runoff produced and stored is, at a minimum, 10% less than the monthly rate of wastewater and contaminated runoff use or disposal. The storage volume necessary to meet this requirement shall be determined using a technical evaluation that addresses the following elements: (i) Information to be used in the design of the open manure storage structure including, but not limited to, the following: minimum storage periods for rainy seasons, additional minimum capacity for chronic/prevaling rainfalls, applicable technical standards that prohibit or otherwise limit land application during unsuitable	Clarifies DOH's expectations for compliance with requirements for containment and management of wastewater and contaminated runoff. DOH recognizes that much of Hawaii's agricultural land receives frequent, high-intensity rain events that can result in large volumes of wastewater from animal feeding operations. To ensure facilities provide adequate storage capacity to handle rain events typical of Hawaii's climate, the regulations require the owner or operator of a regulated facility or activity to estimate the required storage volume for wastewater and contaminated runoff using a technical analysis based on local climate data and specified site-specific parameters.

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		<p>soil conditions (e.g., saturated ground), planned emptying and dewatering schedules, additional storage capacity for manure intended to be transferred to another recipient at a later time, and any other factors that would affect the sizing of the open manure storage structure.</p> <p>(ii) Climate data for the past 10 years at the area local to the regulated animal feeding operation, including average monthly precipitation and evaporation rates.</p> <p>(iii) The number and types of animals, anticipated animal sizes or weights, any added water and bedding, any other process wastewater, and the size and condition of outside areas exposed to rainfall and contributing runoff to the manure storage structure.</p>	
Appendix A, 3(c)	None	(c) Nutrient Management Measure	<p>The goal of this management measure is to reduce water pollution caused by nutrients (primarily nitrogen and phosphorous) by minimizing nutrient losses and waste from agricultural lands and activities. Water pollution caused by nutrients is a pervasive water quality problem in Hawaii. According to the “2018 State of Hawaii Water Quality Monitoring Assessment Report,” 66% of assessed marine water bodies fail to meet water quality standards for one or more nutrients, highlighting the need for nutrient management. The applicability, purpose, general requirements, and authorized management practices generally are consistent with existing guidance adopted through Hawaii’s CNPCP in the October 2010 <i>Hawaii’s Management Measures for the Coastal Nonpoint Pollution Control Program</i> as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Agriculture</i> (EPA 841-B-03-004, July 2003), except as noted below.</p>
Appendix A, 3(c)(1)(B)	None	(B) Lands that receive manure, wastewater, or contaminated runoff and are subject to the requirements of an NPDES permit for	<p>NPDES permits for concentrated animal feeding operations require development and implementation of nutrient management plans for land application areas at those facilities. Regulation of discharges already authorized and</p>

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Section	Current	Proposed	Rationale
		concentrated animal feeding operations are excluded from this management measure.	regulated under the DOH point source pollution control program is unnecessary, and thereby exempt from Chapter 11-56 requirements.
Appendix A, 3(c)(3)(A)	None	(A) Prevent the discharge of excess nutrients and contaminated storm water to State waters through: (i) Containment of wastewater and waste products; (ii) Isolation of wastewater, waste products, or materials from contact with storm water; and (iii) Recycling of nutrients through environmentally beneficial methods.	Clarifies DOH's expectations for agricultural operations to actively control nonpoint source nutrient discharges to State waters, including practices that prevent wastewater discharges and the addition of nutrients to storm water runoff.
Appendix A, 3(c)(3)(C)(v)	None	(C) Nutrient management plans must contain the following core components: ... (v) Land application setbacks appropriate to prevent the discharge of nutrients based on identified field limitations and other site specific conditions, including practices such as field diversions or other structures that intercept and direct runoff to State waters.	Consistent with the Pacific Islands Area Natural Resources Conservation Service's Conservation Practice Standard for Nutrient Management (Code 590), Water Pollution Prevention Plans must identify field limitations (e.g., lava tubes, shallow soils over fractured bedrock, soils with high leaching or runoff potential, distance surface water, highly erodible soils, shallow aquifers) and sensitive areas and include appropriate setbacks where nutrients may not be applied.
Appendix A, 3(d)	None	(d) Grazing Management Measure	The purpose of this management measure is to prevent improper livestock grazing and equipment use that may damage streambanks and shores, riparian vegetation, channels, and the water column. Application of this management measure will reduce the physical disturbance to sensitive areas and reduce the discharge of sediment, animal waste, nutrients, and chemicals to surface waters. The applicability, purpose, general requirements, and authorized management practices are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Agriculture</i> (EPA 841-B-03-004, July 2003).
Appendix A, 3(e)	None	(e) Irrigation Water Management Measure	The purpose of this management measure is to reduce nonpoint source pollution of surface waters caused by irrigation. Application of this management measure will

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			reduce the waste of irrigation water, improve the water use efficiency, and reduce the total pollutant discharge from an irrigation system. The applicability, purpose, general requirements, and authorized management practices are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Agriculture</i> (EPA 841-B-03-004, July 2003).
Appendix A, 3(f)	None	(f) Pesticide Management Measure	The purpose of this management measure is to reduce contamination of surface water and groundwater from pesticides and to foster effective and safe use of pesticides without causing degradation to the environment. The applicability, purpose, general requirements, and authorized management practices are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Agriculture</i> (EPA 841-B-03-004, July 2003).

Appendix B: Nonpoint Source Pollution Control Requirements for Forestry

Section	Current	Proposed	Rationale
Appendix B, 1(a)	None	<p>(a) Requirements defined in this chapter shall be implemented by persons identified in section 11-56-03, as follows:</p> <p>(1) The requirements of this Appendix apply to all publicly-owned forest lands comprising more than 5 contiguous acres where silvicultural or commercial forestry operations are planned or conducted or, regardless of acreage, any road system construction or reconstruction conducted as part of silvicultural or forestry activities, any road maintenance conducted as part of silvicultural or forestry activities, any revegetation of areas disturbed by harvesting operations or road construction as part of silvicultural or forestry activities, any streamside management zone within lands where silvicultural operations are planned or conducted, or any area where chemicals (fertilizers and pesticides) are used as part of silvicultural or commercial forestry operations.</p> <p>(2) Other forest lands where silvicultural or commercial forestry operations are planned or conducted may be subject to the requirements of this Appendix at the discretion of the director based on risk of harm to human or environmental health, as determined by the director. Forest lands determined by the director to be subject to the requirements of this Appendix will be provided written notice by the director.</p>	<p>Clarifies applicability of Appendix B to publicly-owned forest lands comprising more than 5 contiguous acres where silvicultural or commercial forestry operations are planned or conducted and requires that specific management measures be implemented on publicly-owned forest lands where silvicultural or commercial forestry operations are planned, regardless of acreage.</p> <p>The 5-acre threshold is based on applicability of the Preharvest Planning, Timber Harvesting, and Site Preparation and Forest Regeneration Management Measures in <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> (October 2010), which guides the State's CNPCP.</p> <p>Analysis of Hawaii Statewide GIS Program data (Parcels – Hawaii Statewide (2019), Government Land Ownership (2017), and Agricultural Land Use Baseline (2015)) were used to identify parcels of publicly-owned lands in commercial forestry land use (see the methodology and example maps in Attachment B to this Fact Sheet). Based on that analysis, DOH estimates there are almost 950 publicly-owned commercial forestry parcels of at least 5 acres. The majority of those parcels are state-owned parcels managed by the Department of Forestry and Wildlife (DOFAW).</p> <p><i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> (October 2010) does not establish an area-based threshold for management measures that address linear features, including streamside management zones and roads, localized disturbed areas within roads or larger management units undergoing revegetation, or areas in which forest chemical management is conducted. Appendix B applicability for</p>

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			<p>regulated activities on publicly-owned forest lands is consistent with that approach. These management measures, therefore, are required regardless of acreage.</p> <p>Consistent with paragraph 11.56.03(a)(2), Appendix B may apply to other forest lands, including non-public lands, subject to the director’s discretion based on risk of harm to human or environmental health.</p> <p>Consistent with the general applicability requirements in section 11-56-03, where a publicly-owned entity owns lands subject the requirements of this appendix, but is not engaged in the activities associated with the nonpoint source discharge, the publicly-owned entity is responsible for ensuring compliance with chapter requirements for those entities responsible for the activities associated with the nonpoint source pollution discharges from publicly-owned land.</p>
Appendix B, 1(b)	None	(b) For forest lands that do not fall under the applicability of this Appendix, the director encourages voluntary development of a Water Pollution Prevention Plan to facilitate the implementation of the management measures contained in this Appendix.	Consistent with the department’s policy for nonpoint source pollution control as specified in section 11-56-03, DOH encourages implementation of appropriate management measures to control nonpoint source pollution from all forest lands and activities, whether or not those lands and activities are subject to regulation.
Appendix B, 2(a) – (c)	None	<p>2. Incorporation of Management Measures into Water Pollution Prevention Plans</p> <p>(a) The owner or operator of a silvicultural or commercial forestry operation subject to regulation shall incorporate water pollution reducing management measures into a Water Pollution Prevention Plan. At a minimum, Water Pollution Prevention Plans shall incorporate all appropriate management measures to prevent and control the specific sources of pollution identified in Section 4 of this Appendix.</p> <p>(b) The owner or operator of a silvicultural or commercial forestry operation subject to this</p>	Affirms that Water Pollution Prevention Plans must be developed for regulated silvicultural or commercial forestry operations. The owner or operator of the regulated activity or facility is responsible for identifying the applicable management measures and associated management practices set forth in Appendix B and incorporating those measures and practices into a Water Pollution Prevention Plan that meets the requirements of section 11-56-06.

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Section	Current	Proposed	Rationale
		<p>Appendix shall identify which management measures in Section 4 are required based upon the specific applicability of each management measure and its subparts. Each management measure identified as being applicable shall be implemented as detailed in the Water Pollution Prevention Plan developed pursuant to this chapter.</p> <p>(c) Authorized management practices that satisfy management measure requirements shall be identified in the Water Pollution Prevention Plan.</p>	
Appendix B, 2(d) and (e)	None	<p>(d) For discharges identified in section 11-56-03 that result from activities identified in this Appendix, where such discharges or activities are subject to an alternative regulatory mechanism that accomplishes the objectives of one or more of the management measures in section 4 of this Appendix, the Water Pollution Prevention Plan may include a reference to the alternative regulatory mechanism in lieu of the specified management measure(s).</p> <p>(e) The following documents may be submitted in lieu of a Water Pollution Prevention Plan provided that they address all applicable management measures in section 4:</p> <p>(1) Any BLNR- or DLNR-approved plan or permit which adopts, incorporates, or requires implementation of relevant BMPs from DOFAW's "Best Management Practices for Maintaining Water Quality in Hawaii" (February 1996); or</p> <p>(2) A forest management plan developed by a certified United States Department of Agriculture Natural Resources and Conservation</p>	<p>DOH recognizes that some silvicultural or forestry operations may be subject to regulatory programs, or voluntarily implementing plans, that achieve the objectives of some or all of the applicable management measures in Appendix B. To avoid duplicative compliance requirements, the Appendix allows for existing compliance activities that address the objective of one or more management measure(s) to be referenced in the Water Pollution Prevention Plan to satisfy that management measure(s). In addition, consistent with paragraph 11-56-06(a)(6), existing and approved forest management plans may be submitted in lieu of the required Water Pollution Prevention Plan or a portion of the required plan if it addresses all or some of the applicable management measures in Appendix B and meets the objective of a Water Pollution Prevention Plan as detailed in section 11-56-06.</p>

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Section	Current	Proposed	Rationale
		Service (NRCS) Technical Service Provider and approved by the NRCS.	
Appendix B, 3	None	3. Water Pollution Prevention Plan Exemptions. Water Pollution Prevention Plans for publicly-owned forest lands managed by DOFAW are not required for as long as DOFAW's policy to implement relevant BMPs from DOFAW's <i>Best Management Practices for Maintaining Water Quality in Hawaii</i> (February 1996) on publicly-owned, DOFAW-managed lands is in effect.	DOH recognizes DOFAW's practice for implementation of management practices that prevent or reduce the movement of sediment, nutrients, pesticides, and other pollutants to surface water as the result of silvicultural activities. DOFAW's <i>Best Management Practices for Maintaining Water Quality in Hawaii</i> (February 1996) identifies practices that are consistent with those in Appendix B and the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> . Therefore, where those practices are implemented on publicly-owned, DOFAW-managed lands consistent with DOFAW's policy to implement relevant BMPs from that guidance, DOH considers those management activities to achieve the objective of a Water Pollution Prevention Plan; requiring the development of a separate Water Pollution Prevention Plan for those lands would be duplicative and unnecessary.
Appendix B, 4	None	4. Management Measures Required for Specific Sources of Pollution	<p>Each paragraph addresses a specific pollution source and includes subparagraphs describing the specific applicability, purpose, and general requirements of that paragraph and identifies the authorized management practices to be included in a Water Pollution Prevention Plan to address that pollution source. Section 4 establishes the following management measures for specific pollution sources:</p> <ul style="list-style-type: none"> (a) Preharvest Planning (b) Streamside Management Zones (c) Road Construction/Reconstruction (d) Road Maintenance (e) Timber Harvesting (f) Site Preparation and Forest Regeneration (g) Fire Management (h) Revegetation of Disturbed Areas (i) Forest Chemical Management <p>In general, the applicability, purpose, general requirements, and authorized management practices for each</p>

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Section	Current	Proposed	Rationale
			<p>management measure are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i>, as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Forestry</i> (EPA 841-B-05-001, April 2005). The language has been modified to conform to the structure and format of Chapter 11-56 and in some cases to provide specificity for regulated entities or to clarify compliance expectations and ensure enforceability.</p> <p>Appendix B does not incorporate the Wetland Forest Management Measure from the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> because it is largely redundant with the management measure requirements in Appendix B. Furthermore, wetlands are protected from commercial forestry operations by the following: Conservation District Use Permits administered by DLNR; Special Management Area permits administered by the Coastal Zone Management Program (DBEDT); and the CWA Section 401 Water Quality Certification program administered by DOH.</p>
Appendix B, 4(a)	None	(a) Preharvest Planning Management Measure	<p>The objective of this management measure is to ensure that silvicultural activities, including timber harvesting, site preparation, and associated road construction, are conducted without significant nonpoint source pollutant delivery to streams and coastal areas. The applicability, purpose, general requirements, and authorized management practices for each management measure are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i>, as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Forestry</i> (EPA 841-B-05-001, April 2005).</p>
Appendix B, 4(b)	None	(b) Streamside Management Zones (SMZs) Management Measure	<p>This management measure is intended to preserve SMZ integrity to protect water quality. The applicability, purpose, general requirements, and authorized management practices for each management measure are consistent</p>

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			with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> , as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Forestry</i> (EPA 841-B-05-001, April 2005).
Appendix B, 4(c)	None	(c) Road Construction/Reconstruction Management Measure	The purpose of this management measure is to minimize delivery of sediment to surface waters during road construction and road reconstruction on forest lands. The applicability, purpose, general requirements, and authorized management practices for each management measure are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> , as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Forestry</i> (EPA 841-B-05-001, April 2005).
Appendix B, 4(d)	None	(d) Road Maintenance Management Measure	The objective of this management measure is to manage existing roads to maintain stability and utility and to minimize sedimentation and pollution from runoff-transported materials. The applicability, purpose, general requirements, and authorized management practices for each management measure are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> , as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Forestry</i> (EPA 841-B-05-001, April 2005).
Appendix B, 4(e)	None	(e) Timber Harvesting Management Measure	The purpose of this management measure is to minimize sedimentation resulting from the siting and operation of timber harvesting, and to manage petroleum products properly. The applicability, purpose, general requirements, and authorized management practices for each management measure are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> , as well as the EPA <i>National Management Measures to Control Nonpoint</i>

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Section	Current	Proposed	Rationale
			<i>Source Pollution from Forestry</i> (EPA 841-B-05-001, April 2005).
Appendix B, 4(f)	None	(f) Site Preparation and Forest Regeneration Management Measure	This management measure is intended to confine on-site potential nonpoint source pollution and erosion resulting from site preparation and the regeneration of forest stands. The applicability, purpose, general requirements, and authorized management practices for each management measure are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> , as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Forestry</i> (EPA 841-B-05-001, April 2005).
Appendix B, 4(g)	None	(g) Fire Management Measure	The purpose of this management measure is to minimize nonpoint source pollution and erosion resulting from prescribed fire for site preparation and from the methods used for wildfire control or suppression on forest lands. The applicability, purpose, general requirements, and authorized management practices for each management measure generally are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> , as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Forestry</i> (EPA 841-B-05-001, April 2005), except as noted below.
Appendix B, 4(g)(1)	None	(1) Specific Applicability. This management measure applies to all prescribed burning conducted as part of normal silvicultural activities on all harvested units larger than five (5) acres for wildfire suppression and rehabilitation on forest lands.	The October 2010 management measures do not address specific applicability for the Fire Management Measure. DOH has applied a 5-acre applicability threshold for fire management, consistent with the applicability for most other non-linear activities addressed by the forestry management measure.
Appendix B, 4(h)	None	(h) Revegetation of Disturbed Areas Management Measure	The purpose of this management measure is to prevent sediment and other pollutants from harvested, burned, or other disturbed areas from entering State waters. Revegetating disturbed areas stabilizes the soil in these areas, reduces erosion, and helps to prevent sediment and pollutants associated with sediment from entering nearby surface waters. The applicability, purpose, general

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Section	Current	Proposed	Rationale
			requirements, and authorized management practices for each management measure are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> , as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Forestry</i> (EPA 841-B-05-001, April 2005).
Appendix B, 4(i)	None	(i) Forest Chemical Management Measure	The purpose of this management measure is to prevent pesticides and fertilizers used in forest management from entering State waters. The applicability, purpose, general requirements, and authorized management practices for each management measure are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> , as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Forestry</i> (EPA 841-B-05-001, April 2005).

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

Section	Current	Proposed	Rationale
Appendix C, 1(a)	None	<p>(a) Requirements defined in this chapter shall be implemented by persons identified in section 11-56-03 who own or operate a publicly-owned marina or recreational boating facility that has any of the following:</p> <p>(1) Ten (10) or more slips;</p> <p>(2) A pier where ten (10) or more boats may tie up;</p> <p>(3) A facility where a boat for hire is docked;</p> <p>(4) A boat maintenance or repair yard that is adjacent to the water; or</p> <p>(5) A mooring field where ten (10) or more boats are moored.</p> <p>(6) Other marinas or recreational boating facilities may be subject to the requirements of this Appendix at the discretion of the director based on risk of harm to human or environmental health, as determined by the director. Marinas and recreational boating facilities determined by the director to be subject to the requirements of this Appendix will be provided written notice by the director.</p>	<p>Clarifies applicability of Appendix C to the following publicly-owned marinas and recreational boating facilities:</p> <ul style="list-style-type: none"> • any facility with 10 or more slips; • a pier where ten (10) or more boats may tie up; • any facility where a boat for hire is docked; • a boat maintenance or repair yard that is adjacent to the water; or • a mooring field where ten (10) or more boats are moored. <p>Consistent with paragraph 11.56.03(a)(2), Appendix C may apply to other marinas or recreational boating facilities, including privately-owned facilities, subject to the director's discretion based on risk of harm to human or environmental health.</p> <p>Consistent with the general applicability requirements in section 11-56-03, where a publicly-owned entity owns facilities subject to the requirements of this appendix, but is not engaged in the activities associated with the nonpoint source discharge, the publicly-owned entity is responsible for ensuring compliance with chapter requirements for those entities responsible for the activities associated with the nonpoint source pollution discharges from publicly-owned facilities.</p>
Appendix C, 1(b)	None	<p>(b) For marinas and recreational boating facilities that do not fall under the applicability of this Appendix, the director encourages voluntary development of a Water Pollution Prevention Plan to facilitate the implementation of the management measures contained in this Appendix.</p>	<p>Consistent with the department's policy for nonpoint source pollution control as specified in section 11-56-03, DOH encourages implementation of appropriate management measures to control nonpoint source pollution from all marina and recreational boating facilities and their associated shore-based activities, whether or not those facilities are subject to regulation.</p>

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Section	Current	Proposed	Rationale
Appendix C, 2(a) – (c)	None	<p>2. Incorporation of Management Measures into Water Pollution Prevention Plans</p> <p>(a) The owner or operator of a marina or recreational boating facility subject to regulation shall incorporate water pollution reducing management measures into a Water Pollution Prevention Plan. At a minimum, Water Pollution Prevention Plans shall incorporate all appropriate management measures to prevent and control the specific sources of pollution identified in section 3 of this Appendix.</p> <p>(b) The owner or operator of a marina or recreational boating facility subject to this Appendix shall identify which management measures in section 3 are required based upon the specific applicability of each management measure and its subparts. Each management measure identified as being applicable shall be implemented as detailed in the Water Pollution Prevention Plan developed pursuant to this chapter.</p> <p>(c) Authorized management practices that satisfy management measure requirements shall be identified in the Water Pollution Prevention Plan.</p>	<p>Affirms that Water Pollution Prevention Plans must be developed for regulated marinas and recreational boating facilities. The owner or operator of the regulated activity or facility is responsible for identifying the applicable management measures and associated management practices set forth in Appendix C and incorporating those measures and practices into a Water Pollution Prevention Plan that meets the requirements of section 11-56-06.</p>
Appendix C, 2(d)	None	<p>(d) For discharges identified in section 11-56-03 that result from activities identified in this Appendix, where such discharges or activities are subject to an alternative regulatory mechanism that accomplishes the objectives of one or more of the management measures in section 3 of this Appendix, the Water Pollution Prevention Plan may include a reference to the alternative regulatory mechanism in lieu of the specified management measure(s).</p>	<p>DOH recognizes that some marinas and recreational boating facilities may be subject to regulatory programs, or voluntarily implementing plans, that achieve the objectives of some or all of the applicable management measures in Appendix C. To avoid duplicative compliance requirements, the Appendix allows for existing compliance activities that address the objective of one or more management measure(s) to be referenced in the required Water Pollution Prevention Plan to satisfy that management measure(s).</p>

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Section	Current	Proposed	Rationale
Appendix C, 2(e)	None	(e) All publicly-owned facilities or operations managed by the Department of Land and Natural Resources, Division of Boating and Ocean Recreation that are subject to and in compliance with section 13-232-43, HAR, are not required to incorporate the management measures in a Water Pollution Prevention Plan that are adequately addressed through compliance with section 13-232-43, HAR.	The Division of Boating and Ocean Recreation (DOBOR) requires compliance with EPA’s “National Management Measures Guidance to Control Nonpoint Source Pollution from Marinas and Recreational Boating” for construction, maintenance, operation, and modification of all improvements made pursuant to section 13-232-43, HAR, including those improvements made prior to the effective date of section 13-232-43. Those improvements are specified as building structures, objects, site improvements, landscape treatments, or other facilities of any nature that are erected, constructed, reconstructed, altered, moved, installed, or demolished at a state boating facility or other property under the jurisdiction of DOBOR. To avoid duplicative regulatory requirements, and consistent with paragraph 11-56-06(a)(6), DOH is not requiring the following management measures to be included in Water Pollution Prevention Plans for facilities managed by DOBOR and subject to HAR 13-232-43: : Marina Flushing (subsection 3(a)), Water Quality Assessment (subsection 3(b)), Habitat Assessment (subsection 3(c)), Shoreline Stabilization (subsection 3(d)), Storm Water Runoff (subsection 3(e)), Fueling Station Design (subsection 3(f)), Sewage Facility (subsection 3(g)), and Maintenance of Sewage Facilities (subsection 3(h)).
Appendix C, 3	None	Management Measures Required for Specific Sources of Pollution	Each paragraph addresses a specific pollution source and includes subparagraphs describing the specific applicability, purpose, and general requirements of that paragraph and identifies the authorized management practices to be included in a Water Pollution Prevention Plan to address that pollution source. Section 3 establishes the following management measures for specific pollution sources: <ul style="list-style-type: none"> (a) Marina Flushing (b) Water Quality Assessment (c) Habitat Assessment (d) Shoreline Stabilization (e) Storm Water Runoff (f) Fueling Station Design (g) Sewage Facility Management

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Section	Current	Proposed	Rationale
			<p>(h) Maintenance of Sewage Facilities (i) Solid Waste Management (j) Fish Waste Management (k) Liquid Material Management (l) Petroleum Control (m) Boat Cleaning (n) Public Education</p> <p>In general, the applicability, purpose, general requirements, and authorized management practices for each management measure are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i>, as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating</i> (EPA 841-B-01-005, November 2001). The language has been modified to conform to the structure and format of Chapter 11-56 and in some cases to provide specificity for regulated entities or to clarify compliance expectations and ensure enforceability.</p> <p>Appendix C does not include the Boat Operation Management Measure from the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i>, as that management measure applies to non-marina (i.e., boating) activities.</p>
Appendix C, 3(a)	None	(a) Marina Flushing Management Measure	<p>The purpose of this management measure is to ensure proper siting and design of marinas and recreational boating facilities such that water quality will be maintained through proper flushing. The applicability, purpose, general requirements, and authorized management practices for each management measure are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i>, as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating</i> (EPA 841-B-01-005, November 2001).</p>

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Section	Current	Proposed	Rationale
Appendix C, 3(b)	None	(b) Water Quality Assessment Management Measure	This management measure is intended to establish criteria for assessments of water quality that may be used to determine whether a proposed marina design will result in poor water quality. The applicability, purpose, general requirements, and authorized management practices for each management measure are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> , as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating</i> (EPA 841-B-01-005, November 2001).
Appendix C, 3(c)	None	(c) Habitat Assessment Management Measure	This management measure is intended to establish biological siting and design provisions for marinas based on the premise that marinas should not destroy important aquatic habitat, should not diminish the harvestability of organisms in adjacent habitats, and should accommodate the same biological uses (e.g., reproduction, migration) for which the source waters have been classified. The applicability, purpose, general requirements, and authorized management practices for each management measure are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> , as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating</i> (EPA 841-B-01-005, November 2001).
Appendix C, 3(d)	None	(d) Shoreline Stabilization Management Measure	This management measure is intended to encourage the use of vegetative methods for shoreline stabilization to prevent or reduce the delivery of pollutants to water resources. The applicability, purpose, general requirements, and authorized management practices for each management measure are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> , as well as the EPA <i>National Management Measures to Control Nonpoint</i>

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Section	Current	Proposed	Rationale
Appendix C, 3(e)	None	(e) Storm Water Runoff Management Measure	<p><i>Source Pollution from Marinas and Recreational Boating</i> (EPA 841-B-01-005, November 2001).</p> <p>The purpose of this management measure is to control pollutants in runoff from vessel maintenance areas. The proper design and operation of these areas can significantly prevent the entry of pollutants from marina property into surface waters. The applicability, purpose, general requirements, and authorized management practices for each management measure generally are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i>, as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating</i> (EPA 841-B-01-005, November 2001), except as noted below.</p>
Appendix C, 3(e)(3)(B)	None	(B) Reduce the average annual loadings of total suspended solids and other water pollutants in runoff from vessel maintenance areas to the maximum extent practicable.	<p>The Storm Water Runoff Management Measure in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> requires an 80% reduction in the average annual loading of TSS from maintenance areas. DOH is requiring that TSS and other pollutant loads be reduced to the maximum extent practicable to improve or protect water quality. Determination of compliance with this requirement will be as described in section 11-56-09, considering water quality standards, the impacts of the discharge, background water quality, the State's antidegradation policy, the financial impact on the discharger, and the public interest.</p>
Appendix C, 3(f)	None	(f) Fueling Station Design Management Measure	<p>The purpose of this management measure is to prevent and control petroleum and other chemicals associated with fuel spillage. The applicability, purpose, general requirements, and authorized management practices for each management measure generally are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i>, as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating</i></p>

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Section	Current	Proposed	Rationale
			(EPA 841-B-01-005, November 2001), except as noted below.
Appendix C, 3(f)(3)(B) and (C)	None	<p>(B) Maintain adequate spill containment and mitigation measures.</p> <p>(C) Eliminate storm water contact with fueling appurtenances.</p>	<p>DOH recognizes Federal spill prevention and countermeasure requirements under 40 Code of Federal Regulations 112.12 applies to many of the fueling stations required to comply with the proposed rule. The proposed rule does not add a burden to facilities that must comply with current federal requirements.</p> <p>The proposed rule is requires common sense actions for maintaining spill containment and mitigation measures, and eliminating storm water contact with fueling appurtenances to reduce potential petroleum releases from smaller fueling activities which may not be required to comply with Federal Spill Prevention Control and Countermeasure requirements.</p>
Appendix C, 3(g)	None	(g) Sewage Facility Management Measure	<p>This management measure is intended to prevent and control pollution by ensuring proper siting and design of sewage facilities associated with marinas and recreational boating activities. The applicability, purpose, general requirements, and authorized management practices for each management measure are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i>, as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating</i> (EPA 841-B-01-005, November 2001).</p>
Appendix C, 3(h)	None	(h) Maintenance of Sewage Facilities Management Measure	<p>The purpose of this measure is to eliminate the release of untreated sewage into marina and surface waters. The applicability, purpose, general requirements, and authorized management practices for each management measure are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i>, as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating</i> (EPA 841-B-01-005, November 2001).</p>

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Section	Current	Proposed	Rationale
Appendix C, 3(i)	None	(i) Solid Waste Management Measure	This management measure is intended to ensure proper disposal of solid waste materials generated at marinas and recreational boating facilities. The applicability, purpose, general requirements, and authorized management practices for each management measure are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> , as well as the <i>EPA National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating</i> (EPA 841-B-01-005, November 2001).
Appendix C, 3(j)	None	(j) Fish Waste Management Measure	The purpose of this management measure is to control fish waste pollution, which can result in water quality problems and odor problems at marinas with large numbers of fish landings or at marinas that have limited fish landings but poor flushing. The applicability, purpose, general requirements, and authorized management practices for each management measure generally are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> , as well as the <i>EPA National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating</i> (EPA 841-B-01-005, November 2001), except as noted below.
Appendix C, 3(j)(3)(B)		(B) Prohibit discarding fish waste into State waters.	<p>Fish waste is a source of excess nutrients and may be a source of degradation to State waters. Particularly in marina areas where break walls reduce the amount of natural water movement and flushing, disposing of waste within State waters changes the visual, chemical (nutrient), and biological (bacteria) quality of the waters.</p> <p>With the increase of harbor users, many of whom conduct commercial fishing activities, adequate waste receptacles for municipal as well as fish waste are needed. The proposed rules prohibit discarding fish waste into State waters.</p>

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Section	Current	Proposed	Rationale
Appendix C, 3(k)	None	(k) Liquid Material Management Measure	This management measure is intended to minimize the discharge of potentially harmful liquid materials into marina and surface waters through proper storage and disposal. The applicability, purpose, general requirements, and authorized management practices for each management measure are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> , as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating</i> (EPA 841-B-01-005, November 2001).
Appendix C, 3(l)	None	(l) Petroleum Control Management Measure	This management measure is intended to control pollution from fuel and oil associated with marina boat operation and maintenance. The applicability, purpose, general requirements, and authorized management practices for each management measure are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> , as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating</i> (EPA 841-B-01-005, November 2001).
Appendix C, 3(m)	None	(m) Boat Cleaning Management Measure	This management measure is intended to minimize the use and release of potentially harmful cleaners and bottom paints to marina and surface waters. The applicability, purpose, general requirements, and authorized management practices for each management measure are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i> , as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating</i> (EPA 841-B-01-005, November 2001).
Appendix C, 3(n)	None	(n) Public Education Management Measure	This management measure is intended to prevent pollution from marinas and boating activities by educating the public and facility operators about the causes and effects of pollution and the methods to prevent pollution. The

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Section	Current	Proposed	Rationale
			<p>applicability, purpose, general requirements, and authorized management practices for each management measure are consistent with existing guidance adopted through Hawaii's CNPCP in the October 2010 <i>Hawaii's Management Measures for the Coastal Nonpoint Pollution Control Program</i>, as well as the EPA <i>National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating</i> (EPA 841-B-01-005, November 2001).</p>

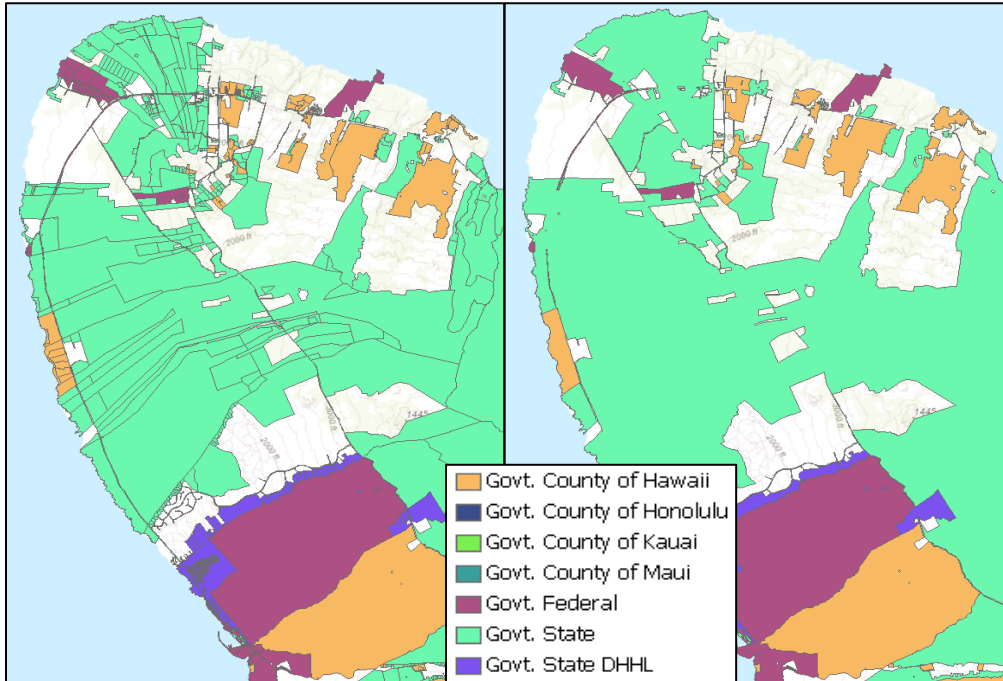
Attachment A: Methodology and Results of GIS Data Analysis for Determining Applicability of Water Pollution Control Requirements for Agricultural Nonpoint Sources Regulated under Chapter 11-56, Appendix A

This attachment provides information on the methods and results of GIS data analysis conducted to determine the applicability of nonpoint source pollution control regulations for agricultural nonpoint sources in Chapter 11-56, Appendix A. The purpose of the GIS analysis was to determine an appropriate land acreage threshold that would control nonpoint source pollution from the majority of publicly-owned agricultural lands while minimizing the number of regulated parcels so as to not pose an undue financial burden on agricultural landowners and operators.

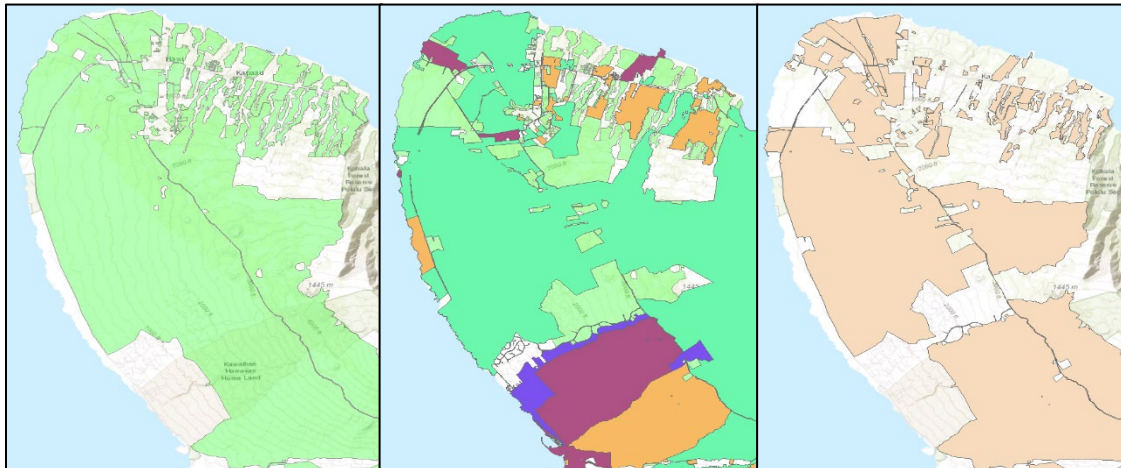
Methodology

- Source Data
 - Hawaii Statewide GIS Program – Geospatial Data Portal: <http://geoportal.hawaii.gov>
 - ‘Parcels - Hawaii Statewide’ (2019): <http://geoportal.hawaii.gov/datasets/parcels-hawaii-statewide>
 - ‘Government Land Ownership’ (2017): <http://geoportal.hawaii.gov/datasets/government-land-ownership>
 - State of Hawaii Office of Planning – Hawaii Statewide GIS : <http://planning.hawaii.gov/gis/download-gis-data-expanded>
 - Agricultural Land Use Baseline (2015)
- Data Analysis
 - Performed spatial join of the data layers ‘Parcels – Hawaii Statewide’ and ‘Government Land Ownership’. This operation merged the two datasets and allowed identification of which parcels were government owned.
 - Filtered data sets for only categories of interest:
 - Removed ‘Aquaculture’ and ‘Commercial Forestry’ categorized parcels in the Agricultural Land Use Baseline (2015) data layer, retained ‘Banana’, ‘Coffee’, ‘Dairy’, ‘Diversified Crop’, ‘Flowers / Foliage / Landscape’, ‘Macadamia Nuts’, ‘Papaya’, ‘Pasture’, ‘Pineapple’, ‘Seed Production’, ‘Sugar’, ‘Taro’, and ‘Tropical Fruits’
 - Filtered and retained only government-owned parcels (‘Govt. County of Hawaii’, ‘Govt. County of Honolulu’, ‘Govt. County of Kauai’, ‘Govt. County of Maui’, ‘Govt. Federal’, ‘Govt. State’, and ‘Govt. State DHHL’) in the new, spatially joined ‘Government Land Ownership’ and ‘Parcels – Hawaii Statewide’ data layer
 - For the filtered government-owned parcels data layer created from the spatially joined ‘Government Land Ownership’ and ‘Parcels – Hawaii Statewide’ layers, dissolved all boundaries of parcels with the same ownership that shared a common edge to create contiguous parcels. For instance, if two distinct parcels owned by the same entity touched, they would be merged into a single polygon.

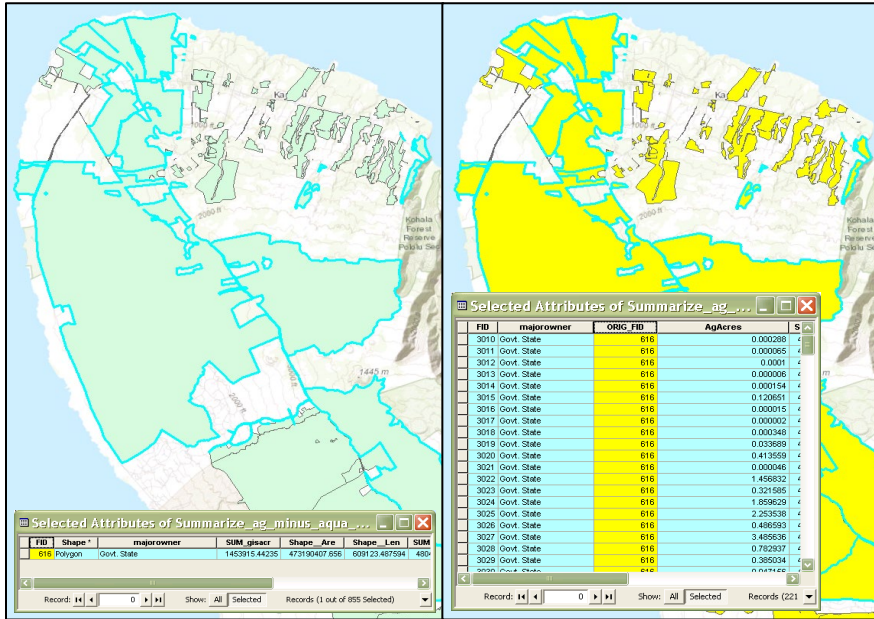
Rationale, Hawaii Administrative Rules Chapter 11-56, Nonpoint Source Pollution Control Final Draft



- The boundaries of the agricultural layer were then similarly dissolved, except without regard to classes and instead into a simple, single class, presence-absence layer.



- That single class agricultural layer was then used to clip out only portions of the government land layer that intersected it, and a new layer created of just the agricultural portions of contiguous dissolved parcels owned by a single government agency.
- This previous operation created a “multipart” GIS data layer, which means that a single entry in the data table can encompass multiple spatially distinct polygons that do not touch. To split out each of those spatially distinct polygons, the “multipart to single-part” tool was used to create distinct table entries for each of those polygons. The ID number used to identify the original multi-part parcel was retained if needed for future reference to group agricultural polygons. After splitting the single parts into multiple, the acreage for each individual part was calculated.



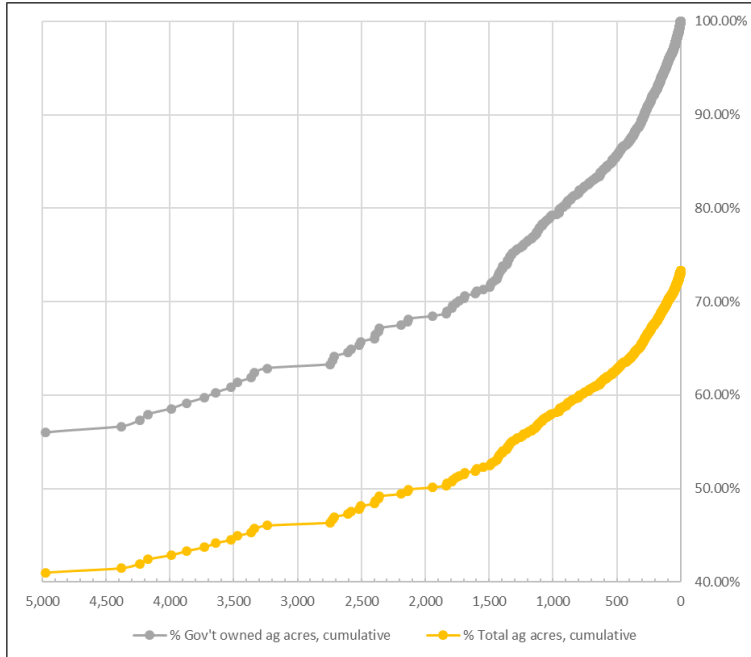
CAVEATS:

1. Considers only lands that were in an agricultural use in 2015.
2. The software joins parcels that touch at any point, even if only at a single point or corner. Therefore, the size of some parcels may be overestimated (i.e., a large parcel in the dataset might actually be multiple smaller parcels that touch at a single point).
3. Parcels may be farmed as a single unit but are under different ownership (e.g., an entity leases adjacent land from both the state and the county and farms the land as a single unit). These parcels are not considered a single farm in the dataset.

Results

Example threshold (acres)	Public Ag Lands Captured (%)
5,000	55.20
2,000	68.14
1,000	79.22
750	82.27
500	85.62
250	91.06
100	95.60
50	97.26
25	98.42
5	99.65

Rationale, Hawaii Administrative Rules Chapter 11-56, Nonpoint Source Pollution Control
Final Draft



Government Entity	Total Number of Parcels (≥ 1000 contiguous acres)
Govt. County of Hawaii	10
Govt. County of Honolulu	2
Govt. County of Kauai	5
Govt. County of Maui	5
Govt. Federal	16
Govt. State	57
Govt. State DHHL	9
Total	104

Attachment B: GIS Data Analysis to Estimate Number of Parcels Subject to Water Pollution Control Requirements for Forestry Nonpoint Sources Regulated under Chapter 11-56, Appendix B

This attachment provides information on the methods and results of GIS data analysis conducted to estimate the number of parcels that would be subject to nonpoint source pollution control regulations for forestry nonpoint sources based on the general applicability specified in Chapter 11-56, Appendix B.

Methodology

- Source Data
 - Hawaii Statewide GIS Program – Geospatial Data Portal: <http://geoportal.hawaii.gov>
 - ‘Parcels - Hawaii Statewide’ (2019): <http://geoportal.hawaii.gov/datasets/parcels-hawaii-statewide>
 - ‘Government Land Ownership’ (2017): <http://geoportal.hawaii.gov/datasets/government-land-ownership>
 - State of Hawaii Office of Planning – Hawaii Statewide GIS : <http://planning.hawaii.gov/gis/download-gis-data-expanded>
 - Agricultural Land Use Baseline (2015)
- Data Analysis
 - Performed spatial join of the data layers ‘Parcels – Hawaii Statewide’ and ‘Government Land Ownership’. This operation merged the two datasets and allowed identification of which parcels were government owned.
 - Filtered data sets for only categories of interest:
 - Retained only parcels categorized as ‘Commercial Forestry’ in the Agricultural Land Use Baseline (2015) data layer. Parcels categorized as ‘Aquaculture’, ‘Banana’, ‘Coffee’, ‘Dairy’, ‘Diversified Crop’, ‘Flowers / Foliage / Landscape’, ‘Macadamia Nuts’, ‘Papaya’, ‘Pasture’, ‘Pineapple’, ‘Seed Production’, ‘Sugar’, ‘Taro’, and ‘Tropical Fruits’ were removed.
 - Filtered and retained only government-owned parcels (‘Govt. County of Hawaii’, ‘Govt. County of Honolulu’, ‘Govt. County of Kauai’, ‘Govt. County of Maui’, ‘Govt. Federal’, ‘Govt. State’, and ‘Govt. State DHHL’) in the new, spatially joined ‘Government Land Ownership’ and ‘Parcels – Hawaii Statewide’ data layer
 - For the filtered government-owned parcels data layer created from the spatially joined ‘Government Land Ownership’ and ‘Parcels – Hawaii Statewide’ layers, dissolved all boundaries of parcels with the same ownership that shared a common edge to create contiguous parcels. For instance, if two distinct parcels owned by the same entity touched, they would be merged into a single polygon.
 - The boundaries of the agricultural layer, now only containing parcels categorized as ‘Commercial Forestry’, were then similarly dissolved.
 - The Commercial Forestry layer was then used to clip out only portions of the government land layer that intersected it, and a new layer was created consisting of contiguous dissolved parcels owned by a single government agency categorized as Commercial Forestry.
 - This previous operation created a “multipart” GIS data layer, which means that a single entry in the data table can encompass multiple spatially distinct polygons that do not touch. To split out each of those spatially distinct polygons, the “multipart to single-part”

tool was used to create distinct table entries for each of those polygons. The ID number used to identify the original multi-part parcel was retained if needed for future reference to group agricultural polygons. After splitting the single parts into multiple, the acreage for each individual part was calculated.

CAVEATS:

1. Considers only lands that were in commercial forestry use in 2015.
2. The software joins parcels that touch at any point, even if only at a single point or corner. Therefore, the size of some parcels may be overestimated (i.e., a large parcel in the dataset might actually be multiple smaller parcels that touch at a single point).
3. Parcels may be managed as a single unit but are under different ownership (e.g., an entity leases adjacent land from both the state and the county and manages the land as a single unit). These parcels are not considered a single parcel in the dataset.

Results

Government Entity	Total Number of Parcels (≥ 5 contiguous acres)
Govt. County of Hawaii	201
Govt. County of Honolulu	1
Govt. County of Kauai	5
Govt. County of Maui	0
Govt. Federal	2
Govt. State	737
Govt. State DHHL	0
Total	946

Department of Health

Proposed Rules under Title 11
Hawaii Administrative Rules

(insert adoption date)

Chapter 56 of Title 11, Hawaii Administrative Rules,
entitled "Nonpoint Source Pollution Control, is
proposed to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 56

NONPOINT SOURCE POLLUTION CONTROL

§11-56-01 Definitions
§11-56-02 General policy for nonpoint source
pollution control
§11-56-03 Applicability
§11-56-04 Exemptions
§11-56-05 Registry requirements
§11-56-06 Water Pollution Prevention Plans
§11-56-07 Reporting requirements
§11-56-08 Recordkeeping requirements
§11-56-09 Compliance with requirements
§11-56-10 Public access to information
§11-56-11 Right to inspect
§11-56-12 Enforcement and penalties
§11-56-13 Hearings and appeals
§11-56-14 No effect on enforcement of other law
§11-56-15 Severability clause
§11-56-16 Field citations; noncompliance with
nonpoint source pollution control
requirements
§11-56-17 Public hearings

§11-56-18 Signatories

Appendix A Nonpoint Source Pollution Control
Requirements for Agriculture
Appendix B Nonpoint Source Pollution Control
Requirements for Forestry
Appendix C Nonpoint Source Pollution Control
Requirements for Marinas and
Recreational Boating

§11-56-01 Definitions. As used in this chapter, unless the context clearly requires otherwise:

u40 CFRn means the Code of Federal Regulations, Title 40, Protection of Environment, revised as of July 1, 2018 unless otherwise specified.

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

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

uAgricultural activityn means an activity primarily involved with agriculture.

uAgricultural landn means land that is used principally for agricultural activities.

uAnimal Feeding Operationn or uAFOn means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

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

Animal feeding operations include the animal confinement area, the manure storage area, the raw

materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Included in the definition is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities. Two or more animal facilities under common ownership are considered, for the purposes of Appendix A, to be a single animal facility for purposes of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

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

uBLNRn means the board of land and natural resources.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Existing animal feeding operationn means a facility that meets the definition of "animal feeding operationn in this chapter and that was in operation as of [insert date of public notice or effective date of regulation]

"Facilityn means any facility (including land or appurtenances thereto) that is subject to regulation under this chapter.

"Fellingn means the process of cutting down standing trees.

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

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

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

"Floodplainn means the area of land flooded at measurable recurrence intervals of 10, 50, 100, or 500 years or the area of land that is periodically inundated (often annually) by the overflow of rivers or streams.

"Forestn or "forest landn means land at least 120 feet (37 meters) wide and at least 1 acre (0.4 hectare) in size that contains at least 10 percent tree crown cover, or that formerly contained such cover and will be naturally or artificially restored. Forest land does not include land that is predominantly used for agricultural activities or predominantly under urban land use; tree-covered areas in agricultural production settings, such as fruit orchards, or tree-covered areas in urban settings, such as city parks, are not considered forest land.

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

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

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

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

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

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

"HAR" means Hawaii Administrative Rules.

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

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

"HRS" means Hawaii Revised Statutes.

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

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

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

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

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

"Intermittent stream" means a stream that carries water most of the time but ceases to flow occasionally because evaporation or seepage into its bed and banks exceed the available streamflow. Intermittent streams may also include ephemeral streams that carry water only after rains and interrupted streams that carry water generally through their length but may have sections with dry streambeds.

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

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

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

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

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

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

enforcing pretreatment requirements under Sections 307, 402, 318, and 405 of the Clean Water Act.

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

"New animal feeding operation" means a facility that meets the definition of "animal feeding operation" in this chapter and that began operation after [insert date of public notice or effective date of regulation]

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

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

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

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

"Pasture" means lands that are primarily used for the production of forage plants for livestock. Pasture

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

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

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

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

"Point source" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or any other floating craft, from which pollutants are or may be discharged. Point source does not include agricultural storm water discharges and return flows from irrigated agriculture.

"Pollution" means water pollution.

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

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

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

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

which is used principally for silvicultural activities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

'Streamsides Management Zone' or SMZ means a designated area that consists of the stream itself and an adjacent area of varying width that mitigates the movement of sediment, nutrients, and other chemicals generated from forestry activities into streams. The

SMZ is not an area of exclusion, but an area of closely managed activity.

"Timber land" means forest land that is capable of producing crops of industrial wood and not withdrawn from timber utilization by statute or administrative regulation.

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

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

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

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

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

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

"Wastewater" means any liquid waste, including waste-contaminated storm water runoff, whether treated or not, and whether animal, mineral, or vegetable, including agricultural, industrial, and thermal wastes. Specific to Appendix A of this chapter (Nonpoint Source Pollution Control Requirements for Agriculture), "wastewater" means water directly or

indirectly used in the operation of the animal feeding operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other associated facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

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

"Water pollution means:

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

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

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

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

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

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

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

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

"Yarding" means a method of transport of felled trees from harvest area to storage landing. [Eff ??/??/19] (Auth: HRS §§342E-1, 342E-3)

§11-56-02 General policy for nonpoint source pollution control. It is the department's policy:

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

- other desirable species of aquatic life;
- (C) For marine, estuarine and fresh water **research**;
 - (D) For the conservation of natural aquatic ecosystems such as coral reefs and streams; and
 - (E) For domestic, agricultural, industrial, and other legitimate uses.
- (3) To provide for the prevention, abatement, and control of new and existing nonpoint sources of pollution;
 - (4) To cooperate with county, state, and federal agencies in carrying out these objectives;
 - (5) To encourage and facilitate implementation of holistic water quality improving management measures and best management practices for the benefit of Hawaii; and
 - (6) To consider compliance with plans or requirements developed or implemented pursuant to this chapter, as compliance with Hawaii water pollution control programs. [Eff ??/??/19] (Auth: HRSS§ 205A-2, 342D-1, 342D-4, 342D-50, 342E-2, 342E-3, 342D-4; 16 U.S.C. §§1455b et seq.; 33 U.S.C. §§1251, 1329, 1370)

§11-56-03 Applicability. (a) This chapter applies to person(s) as identified below:

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

to operation or management of lands used for the activities identified in section 11-56-03(a)(1) are subject to this chapter and applicable requirements set forth in Appendices A through C of this chapter upon written notification by the director.

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

- (1) A notice of findings specifying the source(s) of nonpoint source pollution involved and the conduct that is causing or caused it;
- (2) A requirement to register under section 11-56-05;
- (3) A requirement to develop and implement a Water Pollution Prevention Plan under section 11-56-06(a)(1);
- (4) A time schedule for compliance with provisions of this chapter; and
- (5) Any other specific requirements for controlling the nonpoint source pollution deemed necessary by the director.

It is at the sole discretion of the director to determine whether this chapter shall apply to persons not identified in §11-56-03 subsections (a) and (b) based on risk of harm to human or environmental health.

(c) Affected persons may appeal the decision of the director to require compliance with the provisions of this chapter in accordance with section 11-56-13. [Eff ??/??/19] (Auth: HRSS§§ 205A-2, 342D-5, 342E-3; 16 U.S.C. §§1455b et seq.; 33 U.S.C. §§1251, 1329, 1370)

§11-56-04 Exemptions. If any discharge of a pollutant to State waters subject to this chapter is otherwise subject to regulation as a point source under an NPDES permit, the requirements in this chapter shall not apply to that discharge. [Eff ??/??/19] (Auth: HRS §§342D-4, 342D-5, 342E-3; 33 U.S.C. §§1251, 1329, 1342, 1370)

§11-56-05 Registry requirements. (a) All persons subject to this chapter, as specified in sections 11-56-03(a) through (c), shall register with the department. The purpose of the registration is to notify the department of person(s) subject to this regulation and that a Water Pollution Prevention Plan under section 11-56-06 is required for the activity(ies) responsible for causing or contributing to nonpoint source pollution.

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

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

- (1) Legal name(s), street address, contact person's name and position title, telephone number and email address for the land owner;
- (2) Ownership status as federal, state, private, public or other entity;
- (3) Name, street address, and tax map key number(s) for the location of the property(ies) or activity(ies) subject to this chapter, and the contact person's name and position title, telephone number and email address;
- (4) As applicable, a listing of all entities, other than the land owner, who are responsible for the activity(ies) associated with a nonpoint source discharge;

(5) General description of the activity(ies) associated with a nonpoint source discharge; and

(6) The following certification, signed in accordance with section 11-56-18:

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

(d) A registration is not complete until the necessary information and requirements under section 11-56-05(c) have been satisfied. If a submitted registration is found to be incomplete or otherwise deficient, the director will require additional information. Submission of missing information and/or information to correct identified deficiencies shall be in accordance with the schedule specified by the director. Delays in completing the registration do not relieve entities from enforcement and penalties specified in section 11-56-12 for violations of this chapter.

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

- (1) For existing facilities, within 120 days from date of publication of this chapter.
- (2) For new facilities, within 30 days prior to initiation of operations.

(f) A person submitting a registration shall submit a filing fee of \$500.00. This filing fee shall be submitted with the registration and shall not be refunded. Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.

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

Director of Health
Surface Water Protection Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

(h) Registrations submitted in accordance with this chapter expire 5 years from the date of submission to the department. Prior to registration expiration, all persons subject to this chapter, as specified in sections 11-56-03(a) through (c), shall renew their registration with the department no later than 30 days prior to the expiration of their existing registration. The submittal date is the date the department receives the registration. The 30-day period includes weekends and holidays.

(1) Where the information submitted with the previous registration in accordance with section 11-56-05(c), as well as the associated Water Pollution Prevention Plan developed in accordance with section 11-56-06(a)(1), has not changed, the registration renewal shall include the following:

- (A) Legal name(s), street address, contact person's name and position title, telephone number and email address for the land owner;
- (B) Facility identification number;
- (C) Certification that previous registration information and the associated Water Pollution Prevention Plan have not changed; and
- (D) The following certification, signed in accordance with section 11-56-18:
UR certify that this renewal registration was prepared under my direction or supervision. I am familiar with the content of this registration and am aware that there are significant penalties for knowingly submitting false information, including the

possibility of fine and imprisonment for violations."

- (2) Where the information submitted with the previous registration in accordance with section 11-56-05(c), as well as the associated Water Pollution Prevention Plan developed in accordance with section 11-56-06(a)(1), has changed, the registration renewal shall include the following:
 - (A) Legal name(s), street address, contact person's name and position title, telephone number and email address for the land owner;
 - (B) Facility identification number;
 - (C) As applicable, updated section 11-56-05(c) registration information and an updated copy of the existing Water Pollution Prevention Plan, including any amendments, required under section 11-56-06; and
 - (D) The following certification, signed in accordance with section 11-56-18:
"I certify that this registration was prepared under my direction or supervision. I am familiar with the content of this registration and am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment for violations."
- (3) A person submitting a registration renewal shall submit a filing fee in accordance with section 11-56-05(f).
 - (i) Persons that wish to terminate their registration must notify the director in writing within 30 days following the cessation of activity(ies) associated with the nonpoint source discharge. The notification of termination shall describe the steps taken to ensure that the discharge of pollutants from the activity(ies) associated with the nonpoint source is eliminated and that any further

discharges from the site will not pose an unacceptable threat to human health, the quality of State waters, and the environment. If the director determines that the steps taken are not adequate, the director may take enforcement action, including imposition of penalties.

(j) A registration submitted in accordance with this chapter may be transferred to a new owner. The current owner shall notify the department in writing at least 30 days in advance of the proposed transfer date. The notice of transfer shall include the following:

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

The director shall notify the current owner and the proposed new owner of the intent to deny the transfer. If a transfer is denied, then the new owner of the parcel associated with the nonpoint source discharge shall register with the department in accordance with sections 11-56-05(a) through (g) of this chapter.

(k) The director shall make available to the public for inspection copies of registrations submitted in accordance with this chapter. Release of information to the public under this subsection shall be done in accordance with the provisions in section 11-56-10. [Eff ??/??/19] (Auth: HRS §§342D-5, 342E-3; 33 **U.S.C.** §§1251, 1329, 1370)

§11-56-06 Water Pollution Prevention Plans.

(a) Any person subject to this chapter as defined in sections 11-56-03(a) through (c) must develop, submit, and implement a Water Pollution Prevention Plan, in writing, and in accordance with the requirements contained in this section and in Appendices A through C of this chapter.

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

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

chapter 11-56, Appendices A through c, that will be implemented to control nonpoint source pollution at the location;

- (I) Description of the authorized management practice(s) identified in chapter 11-56, Appendices A through C, that will be implemented to meet each management measure's requirements. For each management practice to be implemented, the following information shall be provided:
 - (i) Name of the practice;
 - (ii) Issuing entity of the practice;
 - (iii) Location (internet address or other) where the practice can be retrieved;
 - (iv) Code number or standard number of the practice, if applicable;
 - (v) Description of the practice;
 - (vi) Location(s) the practice will be implemented; and
 - (vii) Description of how the practice meets the requirements of the management measure.
- (J) Implementation schedule of the applicable management measures and management practice(s);
- (K) Long-term operation and maintenance schedule that provides for inspection of management practices, including the repair, replacement, or other routine maintenance of the management practices to ensure proper function and operation;
- (L) A monitoring strategy consistent with section 11-56-06(a)(2);
- (M) Description of any other plan required by federal, State, or local regulatory agencies that is being implemented to control nonpoint source pollution; and

(N) The following certification signed in accordance with section 11-56-18:
"I certify that this Water Pollution Prevention Plan and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly developed this Water Pollution Prevention Plan in accordance with the requirements of chapter 11-56. I am familiar with the content of this Water Pollution Prevention Plan and agree to implement it as developed and submitted to the department. I will maintain a copy of this Water Pollution Prevention Plan on-site or at a nearby office so as to be available at all times to operations personnel. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment **for violations.**"

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

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

- (B) Approved TMDLs and associated load allocations;
 - (C) Watershed restoration and protection projects funded under Clean Water Act Section 319(h);
 - (D) Approved water quality trades;
 - (E) Supplemental environmental projects;
 - (F) Approved Spill Prevention, Control, and Countermeasure Plans under 40 CFR Part 112; or
 - (G) Other requirements needed to protect or restore State waters.
- (6) Persons may submit an existing management plan to the department in lieu of a Water Pollution Prevention Plan, subject to the following provisions:
- (A) A plan submitted in lieu of a Water Pollution Prevention Plan shall be considered equivalent to a Water Pollution Prevention Plan, provided the submitted and implemented plan meets the objective of a Water Pollution Prevention Plan detailed in this chapter.
 - (B) A plan submitted in lieu of a Water Pollution Prevention Plan is not considered equivalent to a Water Pollution Prevention Plan unless reviewed and accepted by the director in accordance with section 11-56-06.
- (7) Water Pollution Prevention Plans shall be developed, submitted to the department, and implemented within the following timeframes:
- (A) For existing facilities, within 12 months from the date of publication of this chapter.
 - (B) For new facilities, within 30 days prior to initiation of operations or commencing activities.
- (8) The director may authorize an extension of time for the development and implementation of a Water Pollution Prevention Plan beyond

the time permitted for the development and implementation of the Water Pollution Prevention Plan under this section, when persons cannot fully comply with the requirements. Persons seeking an extension of time must submit a written extension request to the director on or before the deadline for developing and implementing a Water Pollution Prevention Plan for the regulated facility. The extension request must include:

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

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

- (9) Water Pollution Prevention Plans shall be amended when there is a substantial change

in activity, facility design, construction, operation, or maintenance that materially affects a regulated facility's potential for causing or contributing to nonpoint source pollution. An amendment made under this subsection must be prepared and submitted to the department within 30 days after the change that compels the amendment. The amended Water Pollution Prevention Plan shall be implemented as soon as possible, but not later than 30 days following the submission of the amendment to the department.

(b) The director shall make available to the public for inspection copies of Water Pollution Prevention Plans, NPS Orders, and associated documents submitted in accordance with the requirements of this chapter. Release of information to the public under this subsection shall be done in accordance with the provisions in section 11-56-10. [Eff ??/??/19]
(Auth: HRS §§3420-5, 342E-3; 33 U.S.C. §§1251, 1329, 1370)

§11-56-07 Reporting requirements. (a) Persons required to develop and implement a Water Pollution Prevention Plan under section 11-56-06 shall submit an annual report to the director documenting on-going compliance with their Water Pollution Prevention Plans. At a minimum, annual reports shall include the following, as applicable:

- (1) Summary of monitoring and inspection activities undertaken in accordance with the monitoring strategy developed pursuant to section 11-56-06, including:
 - (A) Date(s) on which monitoring and inspections were conducted;
 - (B) Monitoring and inspection findings; and
 - (C) Corrective actions taken, if any.
- (2) Summary of water quality monitoring activities undertaken in accordance with the

monitoring strategy developed pursuant to section 11-56-06, including:

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

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

(c) The director shall make available to the public for inspection copies of Water Pollution Prevention Plan annual reports and associated documents submitted in accordance of this chapter. Release of information to the public under this subsection shall be done in accordance the provisions in section 11-56-10. [Eff ??/??/19] (Auth: HRS §§342D-5, 342D-55, 342E-3; 33 U.S.C. §§1251, 1329, 1370)

§11-56-08 Recordkeeping requirements. (a)

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

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

(b) In accordance with section 11-56-06(a)(9), persons shall review and update the Water Pollution Prevention Plan as often as needed to control nonpoint source pollution, or as required by the director. Persons shall document any changes made to the Water Pollution Prevention Plan when the changes arise. Persons shall retain the Water Pollution Prevention Plan and all accompanying records, reports, and changes, for a period of five (5) years.

(c) Records documenting all monitoring activities shall be kept on-site or at a nearby office and made available for review and inspection by the director. [Eff ??/??/19] (Auth: HRS §§342D-5, 342D-55, 342E-3; 33 U.S.C. §§1251, 1329, 1370)

§11-56-09 Compliance with requirements. (a)

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

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

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

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

§11-56-10 Public access to information. (a) In accordance with chapter 92F, HRS, the director shall ensure that any Water Pollution Prevention Plan developed under section 11-56-06 or information required, kept, or submitted under this chapter shall be available to the public for inspection and copying during established office hours. The director, at the director's discretion, may also make available to the public any other records, reports, plans, or information obtained by the department.

(b) The director shall protect any information (other than environmental data) as confidential upon a request and showing by any person at the time of submission that the information, if made public, would divulge methods or processes entitled to protection as trade secrets of a person. Any information obtained by the director and subject to a claim of confidentiality shall be treated in accordance with the regulations in chapter 92F, HRS.

(c) The director shall provide facilities for the inspection of information submitted in accordance with this chapter and shall ensure that state employees honor requests for inspection with due regard for the dispatch of other public duties. The director shall either:

- (1) Ensure that a machine or device for the copying of papers and documents is available for a reasonable fee; or
- (2) Otherwise provide for or coordinate with copying facilities or services so that requests for copies of nonconfidential documents may be honored promptly. [Eff ??/??/19] (Auth: HRS §§92F, 342D-5, 342D-14, 342E-3; 33 U.S.C. §§1251, 1329, 1370)

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

- (1) Enter and inspect any area to investigate an actual or suspected source of water pollution, to ascertain compliance or noncompliance with this chapter or any NPS Order issued pursuant to this chapter;
- (2) Inspect any records kept in accordance with the terms and conditions of this chapter; and
- (3) Test any waters and aquatic and other life forms that may have been subjected to any form of nonpoint source pollution and assess the environmental effects of the pollution, including the pollution's effects on the quality of the receiving waters and aquatic and other life forms. If the department determines that the effects of the pollution would make it hazardous to consume the water and aquatic or other life forms, the director shall immediately notify the public of the hazard through the news media and by posting warning signs in those areas where

the waters and shoreline contain water and aquatic or other life forms that would be hazardous if consumed.

(b) Any person who denies, obstructs, or hampers the entrance to and inspection by any duly authorized officer or employee of the department of any building, place, or vehicle shall be fined not more than \$5,000 for each day of such a denial, obstruction, or hampering. Any action taken to impose or collect the penalty provided for in this section shall be considered a civil action. [Eff ??/??/19] (Auth: HRS §§342D-8, 342E-3(b); 33 U.S.C. §§1251, 1329, 1370)

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

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take any measures that may be necessary to correct the violation and to give periodic progress reports. If all attempts of service of process upon the alleged violator or violators are unsuccessful by personal delivery and by certified, registered, or express mail, notice may be given via a posting on a searchable government website and a sign conspicuously posted on the property, if appropriate;
- (2) May require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of; and

- (3) May impose penalties as provided in section 342E-4(a), HRS, by sending written notice, either by certified mail or by personal service, to the alleged violator or violators, describing the violation.
- (b) If the director determines that any person is continuing to violate this chapter or any NPS Order issued pursuant to this chapter after having been served notice of violation, the director:
 - (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within 30 days specifying the measures to be taken and the time within which such measures shall be taken to bring that person into compliance with this chapter or any NPS Order issued pursuant to this chapter;
 - (2) Shall accept or modify the submitted schedule within 30 days of receipt of the schedule. Any schedule not acted upon after 30 days of receipt by the director shall be deemed accepted by the director;
 - (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter or any NPS Order issued pursuant to this chapter if that person does not submit a written schedule to the director within 30 days. This order shall remain in effect until the director accepts the written schedule; and
 - (4) May impose penalties as provided in section 342E-4(a), HRS, by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators, describing the violation.
 - (c) If the director determines that any person has violated an accepted schedule or an order issued under this section, the director shall impose penalties by sending a notice in writing, either by

certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.

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

(e) Any order issued under this chapter shall become final, unless not later than 20 days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable 30 days after an order becomes final unless the person or persons named therein requested in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Any hearing requested under this section shall be conducted as a contested case under chapter 91, HRS, pursuant to the department's Rules of Practice and Procedure, chapter 11-1, HAR.

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

(g) If the amount of any penalty is not paid to the department within 30 days after it becomes due and payable, the director may institute a civil action in

the name of the State to collect the administrative penalty which shall be a government realization. In any proceeding to collect the administrative penalty imposed, the director need only show that:

- (1) Notice was given;
 - (2) A hearing was held or the time granted for requesting a hearing expired without a request for a hearing;
 - (3) The administrative penalty was imposed; and
 - (4) The penalty remains unpaid.
- (h) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties. [Eff ??/??/19] (Auth: HRS §§91, 342D-9, 342E-4; 33 U.S.C. §§1251, 1329, 1370; HAR §11-1)

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

(b) If any party is aggrieved by the decision of the director, the party may appeal in the manner provided in chapter 91, HRS, to the circuit environmental court of the circuit in which the party resides, in which the party's principal place of business is located, or in which the action in question occurred. The operation of an NPS Order will not be stayed on appeal unless specifically ordered by the director or an environmental court of competent jurisdiction. [Eff ??/??/19] (Auth: HRS Chap. 91 and §§342D-12, 342E-3)

§11-56-14 No effect on enforcement of other law.
(a) This chapter does not limit the director's or department's authority to enforce any other statute,

rule, or other law that the director or department administers.

(b) This chapter does not limit the authority of any federal, other state, or county agency. [Eff ??/??/19] (Auth: HRS §§342D-5, 342E-3; 33 U.S.C. §§1251, 1329, 1370)

§11-56-15 Severability clause. If any provision of this chapter, or its application to any person or circumstance, is held invalid, the application of the provision to other persons or circumstances, and the remainder of this chapter, shall not be affected. [Eff ??/??/19] (Auth: HRS §§342D-5, 342E-3; 33 U.S.C. §§1251, 1329, 1370)

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

(1) Offer to settle; penalties.

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

- (i) Any person who causes or allows a discharge of pollutants into State waters from a nonpoint **source**;
- (ii) Any person required to register under section 11-56-05, who fails to register as required;

- (iii) Any person who fails to correctly install, implement, maintain, or repair management measures as called for in their Water Pollution Prevention Plan, including implementation of the associated monitoring plan; and
 - (iv) Any person who fails to retain a copy of the Water Pollution Prevention Plan and associated monitoring plan on-site or at a nearby office.
- (B) A field citation shall assess the following penalties for violations:
- (i) Any person who violates paragraph (1) (A) (i) shall be fined \$500 for first violation and \$1,000 for a subsequent violation;
 - (ii) Any person who violates paragraph (1) (A) (ii) shall be fined \$500 for first violation and \$1,000 for a subsequent **violation;**
 - (iii) Any person who violates paragraph (1) (A) (iii) shall be fined \$500 for first violation and \$1,000 for a subsequent violation;
 - (iv) Any person who violates paragraph (1) (A) (iv) shall be fined \$100 for first violation and \$200 for a subsequent violation.
- (2) Resolution of field citation.
- (A) A person issued a field citation may accept the citation by:
- (i) Signing the field citation;
 - (ii) Paying the full amount assessed by the field citation. Payment shall be made payable to the "State of Hawaii" in the form of

- a pre-printed check, cashier's check, money order, or as otherwise specified by the director;
- (iii) Mailing or delivering the signed citation and full payment to the department in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within 20 days after the person receives the field citation; and
 - (iv) Correction within 7 days, or as otherwise specified on the field citation, of any violation of this chapter;
- (B) By signing the field citation, the person to whom it was issued agrees to:
- (i) Give up the right to a contested case hearing under chapter 91, HRS, or otherwise challenge the field citation;
 - (ii) Pay the penalty assessed; and
 - (iii) Correct the violation.
- (3) If the field citation is not accepted in compliance with paragraph (2) subparagraph (A), the director may seek for that cited violation any remedies available under this chapter or any other law. For all other violations the director retains authority to seek any available remedies.
- (4) Form of citation. The department shall prescribe a field citation form. [Eff ??/??/19] (Auth: HRS §§321-11, 342D-1, 342D-5, 342E-4)

§11-56-17 Public hearings. (a) The owner or operator, any interested agency, person, or group of

persons may request or petition for a public hearing with respect to the determinations of persons subject to this chapter. Any request or petition for public hearing shall be submitted within thirty days of registration pursuant to §11-56-05.

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

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

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

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

(f) All publication and mailing costs associated with the public notice of the hearing shall be paid by the owner or operator of the facility being considered. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for the public notification, as deemed appropriate by the director, is basis to delay authorization of discharges or may be considered a violation of this chapter.

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§11-56-18 Signatories. (a) Any certifications associated with submissions to the director under this chapter shall be signed as follows:

- (1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - (A) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or
 - (B) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
- (2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or
- (3) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a

principal executive officer of a federal agency includes:

- (A) The chief executive officer of the agency, or
 - (B) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA);
- (4) For a trust. By a trustee; or
 - (5) For a limited liability company (LLC). By a manager or a member authorized to make management decisions for the LLC and who is in charge of a principal business function, or who performs similar policy- or decision-making functions for the LLC.

(b) All other reports or information required under this chapter shall be signed by a person designated in subsection (a) or by a duly authorized representative of that person. A person is a duly authorized representative only if:

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

(c) If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to

the director prior to or together with any reports,
information, or registrations to be signed by an
authorized representative. [Eff ??/??/19] (Auth:
HRS §§342D-5, 342E-3; 33 U.S.C. §§1251, 1329, 1370)

CHAPTER 11-56 APPENDIX A

WATER POLLUTION CONTROL REQUIREMENTS FOR AGRICULTURAL NONPOINT SOURCES

1. General Applicability

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

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

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

2. Incorporation of Management Measures into Water Pollution Prevention Plans

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

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

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

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

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

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

3. Management Measures Required for Specific Sources of Pollution

(a) Erosion and Sediment Control Management Measure

(1) Specific Applicability. This management measure applies to agricultural activities that may cause erosion, including, but not limited to:

- (A) Crop production, including specialty crops and nursery crops;
- (B) Agricultural irrigation;
- (C) Grazing and pasturing;
- (D) Developing and/or maintaining orchards;
- (E) Permanent hayland maintenance; and
- (F) Agroforestry.

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

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

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

(b) Animal Feeding Operations Wastewater and Runoff Management Measure

(1) Specific Applicability

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

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

Animal Type	Head
Swine	100

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

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

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

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

including average monthly precipitation and evaporation rates.

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

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

(4) Authorized Management Practices

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

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

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

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

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

(c) Nutrient Management Measure

(1) Specific Applicability

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

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

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

(3) General Requirements

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

(i) Containment of wastewater and waste products;

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

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

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

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

- (vii) Identification of timing and application methods for nutrients to provide nutrients at rates necessary to achieve realistic crop yields, to reduce nutrient losses to the environment, and to avoid nutrient applications as much as possible during periods of leaching or runoff.
- (viii) Provisions for the proper calibration and operation of nutrient application equipment.
- (ix) Schedule for soil testing and/or plant tissue testing to estimate phosphorous, nitrogen, and potassium concentrations.

(4) Authorized Management Practices

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

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

(d) Grazing Management Measure

- (1) Specific Applicability. The management measure applies to activities on range, irrigated and non-irrigated pasture, and other grazing lands used by domestic livestock. Other grazing lands include woodlands, native pastures, and croplands producing forages.
- (2) Purpose. The purpose of this management measure is to prevent improper livestock grazing and equipment use that may damage streambanks and shores, riparian vegetation, channels, and the water column. Application of this management measure will reduce the physical disturbance to sensitive areas and reduce the discharge of sediment, animal waste, nutrients, and chemicals to surface waters.
- (3) General Requirements
 - (A) Implement one or more of the following, as necessary to protect sensitive areas (such as streambanks, wetlands, estuaries, ponds, lake shores, near coastal waters/shorelines, and riparian zones):

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

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

(4) Authorized Management Practices

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

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

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

(ii) Grazing management practices identified in National Management Measures to Control Nonpoint Source Pollution from Agriculture (EPA, EPA-841-B-03-004, July 2003).

(e) Irrigation Water Management Measure

(1) Specific Applicability. This management measure applies to activities on irrigated agricultural land, including agricultural crop and pasture land (except for isolated fields of less than 10 acres in size that are not contiguous to other irrigated lands), orchard land, specialty cropland, and nursery cropland.

(2) Purpose

(A) The goal of this management measure is to reduce nonpoint source pollution of

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

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

(3) General Requirements

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

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

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

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

- (B) Authorized management practices include but are not limited to:
 - (i) Conservation practice standards pertaining to pest management as described in the eFOTG; and

 - (ii) Pesticide management practices identified in National Management Measures to Control Nonpoint Source Pollution from Agriculture (EPA, EPA-841-B-03-004, July 2003).

CHAPTER 11-56 APPENDIX B

WATER POLLUTION CONTROL REQUIREMENTS FOR FORESTRY

1. General Applicability

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

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

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

2. Incorporation of Management Measures into Water Pollution Prevention Plans

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

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

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

(d) For discharges identified in section 11-56-03 that result from activities identified in this Appendix, where such discharges or activities are subject to an alternative regulatory mechanism that accomplishes the objectives of one or more of the management measures in section 4 of this Appendix, the Water Pollution Prevention Plan may include a

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

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

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

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

4. Management Measures Required for Specific Sources of Pollution

- (a) Preharvest Planning Management Measure
 - (1) Specific Applicability
 - (A) This management measure applies to commercial harvesting on areas greater than five (5) acres and any associated

road system construction or reconstruction conducted as part of normal silvicultural activities.

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

for harvesting and site preparation.

(iv) Reduce the risk of occurrence of landslides and severe erosion by identifying high erosion-hazard areas and avoiding harvesting in such areas to the extent practicable.

(v) Consider additional contributions from harvesting or roads to any known existing water quality impairments or problems in watersheds of concern.

(B) Perform advance planning for forest road systems that includes the following elements, where appropriate:

(i) Locate and design road systems to minimize, to the extent practicable, potential sediment generation and delivery to surface waters. Key components are: locate roads, landings, and skid trails to avoid, to the extent practicable, steep grades and steep hillslope areas, and to decrease the number of stream crossings; avoid, to the extent practicable, locating new roads and landings in Streamside Management Zones; and determine road usage and select the appropriate road standard.

(ii) Locate and design temporary and permanent stream crossings to prevent failure and control impacts from the road system. Key components are: size and site crossing structures to prevent

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

- (iii) Ensure that the design of road prism and the road surface drainage are appropriate to the terrain and that road surface design is consistent with the road drainage structures.
- (iv) Use suitable materials to surface roads planned for all-weather use to support intended vehicle use.
- (v) Design road systems to avoid high erosion or landslide hazard areas. Identify these areas and consult a qualified specialist for design of any roads that must be constructed through these areas.

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

- (A) Best management practices for pre-harvest planning and forest roads identified in *Best Management Practices for Maintaining Water Quality in Hawaii* (DOFAW, February 1996); and
- (B) Best management practices for preharvest planning identified in *National Management Measures to Control Nonpoint Source Pollution from Forestry* (EPA, EPA-841-B-05-001, April 2005).

(b) Streamside Management Zones (SMZs) Management Measure

(1) Specific Applicability

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

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

(3) General Requirements

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

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

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

- (d) Road Maintenance Management Measure
 - (1) Specific Applicability. This management measure applies to active and inactive roads constructed or used for silvicultural activities.

 - (2) Purpose. The objective of this management measure is to manage existing roads to maintain stability and utility and to minimize sedimentation and pollution from runoff-transported materials.

 - (3) General Requirements
 - (A) Avoid using roads, where possible, for timber hauling or heavy traffic during wet periods on roads not designed and constructed for these conditions.

 - (B) Evaluate the future need for a road and close roads that will not be needed. Leave closed roads and drainage channels in a stable condition to withstand storms.

 - (C) Remove drainage crossings and culverts if there is a reasonable risk of plugging or failure from lack of maintenance.

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

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

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

- (iii) Construct landings away from steep slopes and reduce the likelihood of fill slope failures. Protect landing surfaces used during wet periods. Locate landings outside of SMZs. Minimize the size of landing areas.
- (iv) Protect stream channels and significant ephemeral drainages from logging debris and slash material.
- (v) Use appropriate areas for petroleum storage, draining, and dispensing. Establish procedures to contain and treat spills. Recycle or properly dispose of all waste materials in accordance with State law.

(B) For cable yarding:

- (i) Limit yarding corridor gouge or soil plowing by properly locating cable yarding landings.
- (ii) Locate corridors for SMZs in accordance with subsection O(b) of this Appendix.
- (iii) Cable yarding shall not be done across perennial or intermittent streams, except at improved stream crossings.

(C) For groundskidding:

- (i) Within SMZs, operate groundskidding equipment only at stream crossings, to the extent practicable. In SMZs, fell and

endline trees to avoid sedimentation.

(ii) Use improved stream crossings for skid trails which cross flowing drainages. Construct skid trails with adequate drainage structures to disperse runoff.

(iii) On steep slopes, use cable systems rather than groundskidding where groundskidding may cause excessive sedimentation.

(iv) Groundskidding shall not be done across perennial or intermittent streams, except at improved stream crossings.

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

(A) Best management practices for timber harvesting and forest roads (temporary access roads and landings) identified in *Best Management Practices for Maintaining Water Quality in Hawaii* (DOFAW, February 1996); and

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

(f) Site Preparation and Forest Regeneration Management Measure

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

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

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

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

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

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

(h) Revegetation of Disturbed Areas Management Measure

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

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

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

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

CHAPTER 11-56 APPENDIX C

WATER POLLUTION CONTROL REQUIREMENTS FOR MARINAS AND RECREATIONAL BOATING

1. General Applicability

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

- (1) Ten (10) or more slips;
- (2) A pier where ten (10) or more boats may tie up;
- (3) A facility where a boat for hire is docked;
- (4) A boat maintenance or repair yard that is adjacent to the water; or
- (5) A mooring field where ten (10) or more boats are moored.
- (6) Other marinas or recreational boating facilities may be subject to the requirements of this Appendix at the discretion of the director based on risk of harm to human or environmental health, as determined by the director. Marinas and recreational boating facilities determined by the director to be subject to the requirements of this Appendix will be provided written notice by the director.

(b) For marinas and recreational boating facilities that do not fall under the applicability of this Appendix, the director encourages voluntary

development of a Water Pollution Prevention Plan to facilitate the implementation of the management measures contained in this Appendix.

2. Incorporation of Management Measures into Water Pollution Prevention Plans

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

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

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

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

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

3. Management Measures Required for Specific Sources of Pollution

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

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

(b) Water Quality Assessment Management Measure

- (1) Specific Applicability. This management measure applies to new and expanding **marinas**.
- (2) Purpose. This management measure is intended to establish criteria for assessments of water quality that may be used to determine whether a proposed marina design will result in poor water quality.
- (3) General Requirements. Assess water quality as part of marina siting and design.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to water quality assessment BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).

(c) Habitat Assessment Management Measure

- (1) Specific Applicability. This management measure applies to new and expanding marinas where site changes may have an impact on important marine species, coral reefs, wetlands, or other important habitats. The habitats of non-indigenous nuisance species are not considered important habitats.
- (2) Purpose. This management measure is intended to establish biological siting and design provisions for marinas based on the premise that marinas should not destroy important aquatic habitat, should not

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

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

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

(3) General Requirements

(A) Implement effective runoff control strategies which include the use of pollution prevention activities and the proper design of vessel maintenance areas to minimize storm water contact with water pollutants.

(B) Reduce the average annual loadings of total suspended solids and other water pollutants in runoff from vessel maintenance areas to the maximum extent practicable.

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

(f) Fueling Station Design Management Measure

(1) Specific Applicability. This management measure applies to all marinas where fueling stations are to be added or moved.

(2) Purpose. The purpose of this management measure is to prevent and control petroleum and other chemicals associated with fuel spillage.

(3) General Requirements

(A) Design fueling stations to allow for ease in cleanup of spills.

(B) Maintain adequate spill containment and mitigation measures.

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

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

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

- (h) Maintenance of Sewage Facilities Management Measure
 - (1) Specific Applicability. This management measure applies to marinas where marine sewage disposal facilities exist.
 - (2) Purpose. The purpose of this measure is to eliminate the release of untreated sewage into marina and surface waters.
 - (3) General Requirements. Ensure that sewage pumpout facilities are maintained in operational condition and encourage their **use**.
 - (4) Authorized Management Practices. Authorized management practices include but are not limited to maintenance of sewage facilities BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).

- (i) Solid Waste Management Measure

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

restrictions and proper disposal of fish waste.

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

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

(1) Petroleum Control Management Measure

- (1) Specific Applicability. This management measure applies to boats that have inboard fuel tanks and marinas that harbor such boats.
- (2) Purpose. This management measure is intended to control pollution from fuel and oil associated with marina boat operation and maintenance.
- (3) General Requirements. Reduce the amount of fuel and oil from boat bilges and fuel tank air vents entering marina and surface waters.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to petroleum control BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).

(m) Boat Cleaning Management Measure

- (1) Specific Applicability. This management measure applies to marinas where boat topsides are cleaned and marinas where hull scrubbing in the water may result in water or sediment quality problems.
- (2) Purpose. This management measure is intended to minimize the use and release of potentially harmful cleaners and bottom paints to marina and surface waters.

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

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

Chapter 11-56, Hawaii Administrative Rules, entitled "Nonpoint Source Pollution Control" dated , was adopted following a public hearing held [DATE] , after public notice was given in the Honolulu Star-Advertiser, West Hawaii Today, Hawaii Tribune Herald, Maui News and The Garden Isle on [DATE]_____

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

BRUCE S. ANDERSON, Ph.D.
Director
Department of Health

Approved:

DAVID Y. IGE
Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Edward G. Bohlen

Edward G. Bohlen
Deputy Attorney General

Filed

V. Administrative Matters

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

- 1. "Discussion Leader Assignments" for
Administrative Rule Review**

- 2. Board's Outreach Opportunities:**
 - a. Draft Letter to Business Organizations**
 - b. PowerPoint Presentation**

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(SBRRB / SBRRB / Members / DiscussionLeaderAssignments 2020)

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Honolulu, HI 96810 Email: HI.BudgetandFinance@hawaii.gov

Discussion Leader: Mark Ritchie
Back-up Discussion Leader: Garth Yamanaka

7. Public Utilities Commission <http://puc.hawaii.gov>

Address: Leo R. Asuncion, Jr., Chair Phone: (808) 586-2020
Kekuanaoa Building Fax: (808) 586-2066
465 South King Street, Room 103 Email: puc@hawaii.gov
Honolulu, HI 96813

Discussion Leader: Mark Ritchie
Back-up Discussion Leader: Jonathan Shick

8. Department of Business, Eco Dev. & Tourism <http://dbedt.hawaii.gov>

Address: Michael McCartney, Director Phone: (808) 586-2355
P.O. Box 2359 Fax: (808) 586-2377
Honolulu, HI 96804 Email: dbedt.director@hawaii.gov

Discussion Leader: Robert Cundiff
Back-up Discussion Leader: Will Lydgate

9. Department of Commerce & Consumer Affairs <http://cca.hawaii.gov>

Address: Catherine P. Awakuni Colón, Director Phone: (808) 586-2850
335 Merchant Street Fax: (808) 586-2856
Honolulu, HI 96813 Email: dcca@dcca.hawaii.gov

Discussion Leader: Nancy Atmospera-Walch
Back-up Discussion Leader: Mary Albitz

10. Department of Defense <http://dod.hawaii.gov>

Address: Brigadier General Kenneth Hara, Phone: (808) 733-4246
Office of the Adjutant General Fax: (808) 733-4499
3949 Diamond Head Road
Honolulu, HI 96816

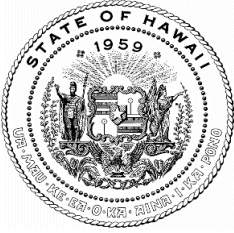
Discussion Leader: Jonathan Shick
Back-up Discussion Leader: Mark Ritchie

- 11. Department of Education..... <http://hawaiipublicschools.org>**
 Address: Christina Kishimoto, Superintendent Phone: (808) 586-3230
 1390 Miller Street Fax: (808) 586-3314
 Honolulu, HI 96813 Email: doe_info@hawaiidoe.org
- Discussion Leader: Garth Yamanaka**
Back-up Discussion Leader: Harris Nakamoto
- 12. Department of Hawaiian Home Lands..... <http://dhhl.hawaii.gov>**
 Address: William J. Aila, Jr., Chairperson Phone: (808) 620-9501
 P.O. Box 1879 Fax: (808) 620-9529
 Honolulu, HI 96805 Email: dhhl.hawaii@gmail.com
- Discussion Leader: Robert Cundiff**
Back-up Discussion Leader: James Kimo Lee
- 13. Department of Health..... <http://health.hawaii.gov>**
 Address: Bruce Anderson, Ph.D., Director Phone: (808) 586-4410
 1250 Punchbowl Street Fax: (808) 586-4368
 Honolulu, HI 96813 Email: webmail@doh.hawaii.gov
- Discussion Leader: Harris Nakamoto**
Back-up Discussion Leader: Nancy Atmospera-Walch
- 14. Department of Human Resources Development..... <http://hrd.hawaii.gov>**
 Address: Ryker Wada, Director Phone: (808) 587-1100
 235 South Beretania Street, Suite 1400 Fax: (808) 587-1106
 Honolulu, HI 96813 Email: dhrd@hawaii.gov
- Discussion Leader: Harris Nakamoto**
Back-up Discussion Leader: Mary Albitz
- 15. Department of Human Services..... <http://humanservices.hawaii.gov>**
 Address: Pankaj Bhanot, Director Phone: (808) 586-4993
 P.O. Box 339 Fax: (808) 586-4890
 Honolulu, HI 96809-0339 Email: dhs@dhs.hawaii.gov
- Discussion Leader: Harris Nakamoto**
Back-up Discussion Leader: Nancy Atmospera-Walch
- 16. Department of Labor & Industrial Relations..... <http://labor.hawaii.gov>**
 Address: Scott T. Murakami, Director Phone: (808) 586-8844
 830 Punchbowl Street Fax: (808) 586-9099
 Honolulu, HI 96813 Email: dlir.director@hawaii.gov
- Discussion Leader: Mary Albitz**
Back-up Discussion Leader: Harris Nakamoto

- 17. Department of Land and Natural Resources..... <http://dlnr.hawaii.gov>**
 Address: Suzanne Case, Chairperson Phone: (808) 587-0401
 Kalanimoku Building Fax: (808) 587-0390
 1151 Punchbowl Street E-mail: dlnr@hawaii.gov
 Honolulu, HI 96813
Discussion Leader: Mary Albitz
Back-up Discussion Leader: Jonathan Shick
- 18. Department of Public Safety..... <http://dps.hawaii.gov>**
 Address: Nolan Espinda, Director Phone: (808) 587-1288
 919 Ala Moana Boulevard, 4th Floor Fax: (808) 587-1282
 Honolulu, HI 96814 Email: psd.office.of.the.director@hawaii.gov
Discussion Leader: Jonathan Shick
Back-up Discussion Leader: William Lydgate
- 19. Department of Taxation..... <http://tax.Hawaii.gov>**
 Address: T.B.A Phone: (808) 587-1540
 P.O. Box 259 Fax: (808) 587-1560
 Honolulu, HI 96809-0259 Email: Tax.Directors.Office@hawaii.gov
Discussion Leader: Garth Yamanaka
Back-up Discussion Leader: Will Lydgate
- 20. Department of Transportation..... <http://hidot.hawaii.gov>**
 Address: Jade Butay, Director Phone: (808) 587-2150
 Aliiimoku Building Fax: (808) 587-2167
 869 Punchbowl Street, Room 509
 Honolulu, HI 96813
Discussion Leader: James Kimo Lee
Back-up Discussion Leader: Jonathan Shick
- 21. University of Hawaii..... <http://www.hawaii.edu>**
 Address: David Lassner, President Phone: (808) 956-7651
 Bachman Hall, Room 202 Email: david@hawaii.edu
 2444 Dole Street
 Honolulu, HI 96822
 Address: Lee Putnam, Chair, Board of Regents Phone: (808) 956-8213
 Bachman Hall, Room 209 Fax: (808) 956-5156
 2444 Dole Street Email: bor@hawaii.edu
 Honolulu, HI 96822
Discussion Leader: Nancy Atmospera-Walch
Back-up Discussion Leader: Mark Ritchie

DRAFT

SMALL BUSINESS REGULATORY REVIEW BOARD



David Y. Ige
Governor

Michael McCartney
DBEDT Director

Members

Robert Cundiff
Chairperson
O'ahu

Mary Albitz
Vice Chairperson
Maui

Garth Yamanaka
2nd Vice Chairperson
Hawai'i

Harris Nakamoto
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Walch
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William Lydgate
Kaua'i

Jonathan Shick
O'ahu

James Kimo Lee
Hawai'i

Taryn Rodighiero
Kaua'i

Director, DBEDT
Voting Ex Officio

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

Tel: (808) 586-2419

Date

Chamber / Organization

Address

Address

Subject: Small Business Regulatory Review Board

Dear Name:

As the Chair of the Small Business Regulatory Review Board (SBRRB), I am pleased to re-introduce the SBRRB to you and your organization.

The SBRRB has been in existence since 1998 with the mission to work toward a regulatory environment that encourages and supports the vitality of small business in Hawaii. Board members meet monthly and review State and County Hawaii Administrative Rules (HAR) that impact small business, both before and after the public hearings. Upon review of the rules and public testimony from stakeholders, we make recommendations to the Governor, the Mayors and the Agencies on whether to proceed or any other recommendation deemed necessary to support a regulatory environment where small business can grow and succeed.

We also consider requests from small business owners for review of proposed, amended or adopted HAR and will make recommendations to State and County agencies or the Legislature regarding the need for a rule change or legislation.

The SBRRB's website can be viewed at - <https://sbrrb.hawaii.gov/>

Even though the SBRRB has been around for over 22 years, it seems that many small businesses may not know or understand how we can support their efforts. In this regard, our objective is to increase the community outreach to small business, and an introduction through your organization would be a great platform to accomplish this objective. Please let us know if you would be interested in scheduling a time where we can speak to you and/or your organization's members about this very important board. Please contact our DBEDT staff support at (808) 586-2594 at your earliest convenience.

Thank you for your consideration and support. We look forward to hearing from you.

Sincerely,

Robert Cundiff, Chair

cc: Governor David Y. Ige or
Mayor XXXX, County of XXX
Enclosure (SBRRB Brochure)

Small Business Regulatory Review Board (SBRRB)

Department of Business, Economic Development and Tourism

How was the SBRRB established?

- Created- 1980 U.S. Congress passed the Regulatory Flexibility Act (RFA)
- Purpose- Insure regulators do not burden small businesses disproportionately by imposing uniform regulations on all entities, regardless of size.
- Created- 1998 Hawaii's Small Business Regulatory Flexibility Act went into effect based on the federal act by creating Chapter 201M HRS.

SBRRB's Vision and Mission

Vision

Make Hawai'i the most business-friendly state in the nation

Mission

Work toward a regulatory environment that encourages & supports the vitality of small business in Hawai'i

What is the SBRRB's Purpose?

- Chapter 201M, HRS created SBRRB:
 - 11 owners or officers of businesses from across the State.
 - Advocate for small businesses & entrepreneurs
 - Small business defined as a “for profit” with fewer than 100 FT/PT employees, Sec. 201M-1, HRS
- Authority to comment, make recommendations on small business regulations & administrative rules

BOARD MEMBERS

DBEDT Staff:
Dori Palcovich
Jetaime Alcos



Taryn Rodighiero
Kaua'i County



Mark Ritchie
DBEDT
Director
designated
Representative



Mary Albitz
Maui County



William Lydgate
2nd Vice Chair
Kaua'i County



James Lee
Hawai'i County



Garth Yamanaka
Vice Chair
Hawai'i County



Harris Nakamoto
City & County of
Honolulu



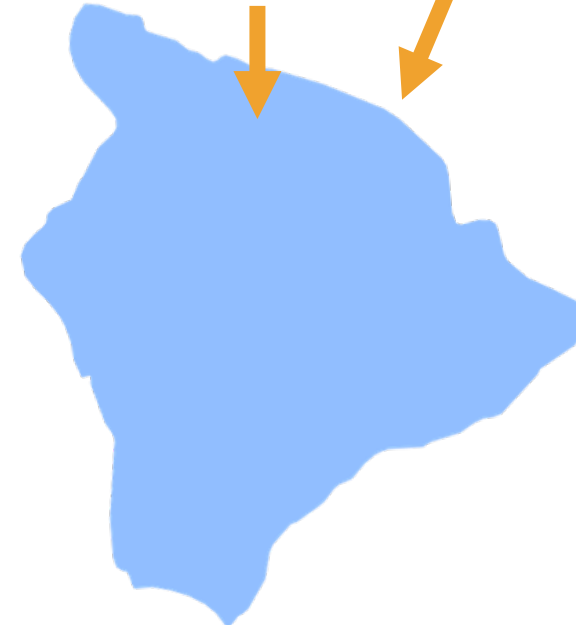
Jonathan Shick
City & County of
Honolulu



Dr. Nancy Atmospera-
Walch
City & County of
Honolulu



Robert Cundiff
Chair
City & County of
Honolulu



What Can the SBRRB Do for Small Businesses?

- Identify Burdensome Regulations
 - Recommend modifications to rules that unevenly impose burdens on small business
- Work with State and County agencies to avoid unnecessary burdens on small businesses during rule writing
- Respond to Small Business Complaints
 - *Regulation for Review*
 - *Petition*

How YOU Can Help the SBRRB

The SBRRB wants to hear from you!

- Get involved as rules are being written
- Identify rules that are especially burdensome / suggest alternatives for compliance with necessary rules
- Submit a *Regulation for Review* through the SBRRB website
- Submit a *Petition for Regulatory Review*
Chapter 201M-6 HRS

Tools for Small Businesses on our website

<https://sbrrb.hawaii.gov/>

- Historical information on rules
- Regulation for Review
- Rule Making Process
- Rule Status Tracker
- Meeting dates, Agenda, Minutes & Packet information



How to CONTACT the SBRRB



<https://sbrrb.hawaii.gov/>



DBEDT.sbrrb.info@hawaii.gov



(808) 586-2419



Visit Monthly SBRRB meetings

Leiopapa A Kamehameha -State Office Tower, Conference Room 405
235 South Beretania Street
Honolulu, HI 96813



@SBRRBHI