Request List of Routine Program Changes 2018, Hawaii CZM Program

Added - Attachment I	
1)	HRS § 342D-61
2)	HRS § 342D-72
3)	HAR Chapter 11-20
4)	HAR Chapter 11-260.1
5)	HAR Chapter 11-261.1
6)	HAR Chapter 11-262.1
7)	HAR Chapter 11-263.1
8)	HAR Chapter 11-264.1
9)	HAR Chapter 11-265.1
10)	HAR Chapter 11-266.1
11)	HAR Chapter 11-268.1
12)	HAR Chapter 11-270.1
13)	HAR Chapter 11-271.1
14)	HAR Chapter 11-273.1
15)	HAR Chapter 11-279.1
16)	HAR Chapter 11-280.1
17)	HAR Chapter 13-86.1
18)	HAR § 19-42-131
19)	HAR § 19-42-136
20)	HAR § 19-42-161
21)	HAR § 19-42-162
22)	HAR § 19-42-164
23)	City and County of Honolulu Rules Chapter 20-3
Modified - Attachment II	
24)	HRS § 171-58.5
25)	HRS § 205A-22
26)	HRS § 205A-44(a)
27)	HRS § 342D-6.5
28)	SMA Rules of the County of Hawaii §§ 9-4(e)(2)(A) and(R), §§ 9-4(q) and (r), § 9-8, § 9-9, §§ 9-10(a), (b), (d), (e), (f) and (i), and § 9-11(b)
29)	HAR §§ 13-60.4-2, 13-60.4-3, and 13-60.4-5
30)	HAR § 13-256-152
Deleted - Attachment III	
31)	HAR Chapter 11-260
32)	HAR Chapter 11-261
33)	HAR Chapter 11-262
34)	HAR Chapter 11-263
35)	HAR Chapter 11-264
36)	HAR Chapter 11-265
37)	HAR Chapter 11-266
38)	HAR Chapter 11-268
39)	HAR Chapter 11-270
40)	HAR Chapter 11-271
41)	HAR Chapter 11-279
42)	HAR Chapter 11-280

Added

1) **HRS § 342D-61**
   Relating to: **Household Aerobic Unit Approval**

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 5, 2017

GOV. MSG. NO. 1190

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 5, 2017, the following bill was signed into law:

HB605 HD1 SD1 RELATING TO WASTEWATER
ACT 089 (17)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor
on JUL 5 2017

ORIGINAL

HOUSE OF REPRESENTATIVES
TWENTY-NINTH LEGISLATURE, 2017
STATE OF HAWAII

ACT 089

H.B. NO. 605 H.D. 1 S.D. 1

A BILL FOR AN ACT

RELATING TO WASTEWATER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 342D, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

"**§342D- Household aerobic unit approval.** (a) The installation or use of household aerobic units that discharge directly to groundwater are prohibited in the State unless approved by the director.

(b) The director shall approve household aerobic units based on the National Sanitation Foundation/American National Standards Institute Standard 245 for class I aerobic units.

(c) The director may adopt rules, pursuant to chapter 91, necessary for the purposes of this section."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

APPROVED this 5 day of JUL , 2017

GOVERNOR OF THE STATE OF HAWAII

HB No. 605, HD 1, SD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 26, 2017
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2017.

Joseph M. Souki
Speaker
House of Representatives

Brian L. Takeshita
Chief Clerk
House of Representatives

H.B. No. 605, H.D. 1, S.D. 1

THE SENATE OF THE STATE OF HAWAII

Date: April 6, 2017
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the Senate of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2017.

President of the Senate

Clerk of the Senate

[§342D-61] Household aerobic unit approval. (a) The installation or use of household aerobic units that discharge directly to groundwater are prohibited in the State unless approved by the director.

(b) The director shall approve household aerobic units based on the National Sanitation Foundation/American National Standards Institute Standard 245 for class I aerobic units.

(c) The director may adopt rules, pursuant to chapter 91, necessary for the purposes of this section. [L 2017, c 89, §1]

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Added

2) HRS § 342D-72
Relating to: **Cesspools; Mandatory Upgrade, Conversion, or Connection**

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 10, 2017 **GOV. MSG. NO. 1226**

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 10, 2017, the following bill was signed into law:

HB1244 HD1 SD2 CD1 RELATING TO CESSPOOLS
ACT 125 (17)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor
on JUL 10 2017

HOUSE OF REPRESENTATIVES
TWENTY-NINTH LEGISLATURE, 2017
STATE OF HAWAII

ORIGINAL

ACT 125
H.B. NO. 1244 H.D. 1 S.D. 2 C.D. 1

A BILL FOR AN ACT

RELATING TO CESSPOOLS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 342D, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated and to read as follows:

"**§342D- Cesspools; mandatory upgrade, conversion, or connection.** (a) Prior to January 1, 2050, every cesspool in the State, excluding cesspools granted exemptions by the director of health pursuant to subsection (b), shall be:

(1) Upgraded or converted to a septic system or aerobic treatment unit system; or

(2) Connected to a sewerage system.

(b) The director of health may grant exemptions from the requirements of subsection (a) to property owners of cesspools that apply for an exemption and present documentation showing a legitimate reason that makes it infeasible to upgrade, convert, or connect the cesspools. For the purposes of this subsection, a legitimate reason shall include but not be limited to:

(1) Small lot size;

(2) Steep topography;

(3) Poor soils; or

(4) Accessibility issues.

(c) As used in this section:

"Aerobic treatment unit system" means an individual wastewater system that consists of an aerobic treatment unit tank, aeration device, piping, and a discharge method that is in accordance with rules adopted by the department relating to household aerobic units.

"Cesspool" means an individual wastewater system consisting of an excavation in the ground whose depth is greater than its widest surface dimension, which receives untreated wastewater, and retains or is designed to retain the organic matter and solids discharged into it, but permits the liquid to seep through its bottom or sides to gain access to the underground geographic formation.

"Septic system" means an individual wastewater system that typically consists of a septic tank, piping, and a drainage field where there is natural biological decontamination as wastewater discharged into the system is filtered through soil."

SECTION 2. Section 235-16.5, Hawaii Revised Statutes, is amended by amending the definition of "qualified cesspool" in subsection (i) to read:

""Qualified cesspool" means a cesspool that is [~~certified~~]:

(1) Certified by the department of health [~~as being:~~] to be:

[~~(1)~~] (A) Located within:

[~~(A) Two~~] (i) Five hundred feet of a shoreline, perennial stream, or wetland; or

[~~(B)~~] (ii) A source water assessment program area (two year time of travel from a cesspool to a public drinking water source); [~~or~~]

(B) Shown to impact drinking water supplies or recreational waters; or

[~~(2)~~] (C) A residential large capacity cesspool[~~.~~]; or

(2) Certified by a county or private sewer company to be appropriate for connection to its existing sewer system."

SECTION 3. The department of health shall investigate the number, scope, location, and priority of cesspools statewide

that require upgrade, conversion, or connection based on each cesspool's impact on public health. The department of health shall also work in collaboration with the department of taxation to assess the feasibility of a grant program to assist low-income property owners with cesspool upgrade, conversion, or connection. The department of health shall submit a report of its findings and recommendations, including any proposed legislation and recommended administrative action, to the legislature no later than twenty days prior to the convening of the regular session of 2018.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2017.

APPROVED this 10 day of JUL , 2017

GOVERNOR OF THE STATE OF HAWAII

HB No. 1244, HD 1, SD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2017
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2017.

Joseph M. Souki
Speaker
House of Representatives

Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAII

Date: May 2, 2017
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2017.

President of the Senate

Clerk of the Senate

[§342D-72] Cesspools; mandatory upgrade, conversion, or connection. (a) Prior to January 1, 2050, every cesspool in the State, excluding cesspools granted exemptions by the director of health pursuant to subsection (b), shall be:

(1) Upgraded or converted to a septic system or aerobic treatment unit system; or

(2) Connected to a sewerage system.

(b) The director of health may grant exemptions from the requirements of subsection (a) to property owners of cesspools that apply for an exemption and present documentation showing a legitimate reason that makes it infeasible to upgrade, convert, or connect the cesspools. For the purposes of this subsection, a legitimate reason shall include but not be limited to:

(1) Small lot size;

(2) Steep topography;

(3) Poor soils; or

(4) Accessibility issues.

(c) As used in this section:

"Aerobic treatment unit system" means an individual wastewater system that consists of an aerobic treatment unit tank, aeration device, piping, and a discharge method that is in accordance with rules adopted by the department relating to household aerobic units.

"Cesspool" means an individual wastewater system consisting of an excavation in the ground whose depth is greater than its widest surface dimension, which receives untreated wastewater, and retains or is designed to retain the organic matter and solids discharged into it, but permits the liquid to seep through its bottom or sides to gain access to the underground geographic formation.

"Septic system" means an individual wastewater system that typically consists of a septic tank, piping, and a drainage field where there is natural biological decontamination as wastewater discharged into the system is filtered through soil. [L 2017, c 125, §1]

Note

Investigation of cesspools that require upgrade, conversion, or connection; grant program feasibility; report to 2018 legislature. L 2017, c 125, §3.

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Added

3) HAR Chapter 11-20, as amended

Relating to: **Public Water Systems**

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-20
Hawaii Administrative Rules

DEC 28 2017

SUMMARY

1. §§11-20-2 to 11-20-4 are amended.
2. §§11-20-6 to 11-20-7 are amended.
3. §11-20-9 is amended.
4. §11-20-9.1 is added.
5. §§11-20-11 to 11-20-12 are amended.
6. §11-20-13.1 is amended.
7. §11-20-15 is amended.
8. §11-20-18 is amended.
9. §11-20-19.5 is added.
10. §§11-20-45.1 to 11-20-45.2 are amended.
11. §11-20-46 is amended.
12. §11-20-46.2 is amended.
13. §§11-20-48 to 11-20-48.5 are amended.
14. §11-20-50 is amended.
15. Appendices A and G are amended.
16. Appendix K is added.
17. Chapter 20 is compiled.

13244 LHB

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 20

RULES RELATING TO PUBLIC WATER SYSTEMS

Historical Note: Chapter 11-20, is based substantially upon Chapter 49 of the Public Health Regulations, Department of Health. [Eff 8/16/77; R 12/26/81

§11-20-1 Coverage. This chapter applies to each public water system, unless the public water system meets all of the following conditions:

(1) It consists only of distribution and storage facilities (and does not have any collection and treatment facilities);
(2) It obtains all of its water from, but is not owned or operated by, a public water system to which such rules apply;
(3) It does not sell water to any person; and
(4) It is not a carrier which conveys passengers in interstate commerce. [Eff 12/26/81; comp 3/7/92; am and comp 1/2/93; comp 12/15/94; comp 10/13/97; comp 9/7/99; comp 11/30/02; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2; 40 C.F.R. Parts 141, 142, §142.10)

§11-20-2 Definitions. As used in this chapter:

"Act" means the Public Health Service Act, as amended by the Safe Drinking Water Act, P.L. 93-523, December 16, 1974, Safe Drinking Water Act Amendments of 1986, P.L. 99-339, June 19, 1986 and Safe Drinking Water Act Amendments of 1996, P.L. 104-182, August 6, 1996.

"Acute violation" means a violation of the maximum contaminant levels of contaminants that may pose an acute risk to human health. The following violations are acute violations:

(1) Violations determined by the director as posing an acute risk to human health.

(2) Violation of the MCL for nitrate or nitrite as provided in section 11-20-3 and determined according to section 11-20-11(i)(3).

(3) Violation of the MCL for total coliforms, as provided in section 11-20-6(b), and which occurs when a repeat sample is fecal coliform-positive or E. coli-positive, or a total coliform-positive repeat sample follows a fecal coliform-positive or E. coli-positive routine sample.

"Administrator" means the administrator of the United States Environmental Protection Agency, or authorized representative.

"Bag filters" are pressure-driven separation devices that remove particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to outside.

"Bank Filtration" is a water treatment process that uses a well to recover surface water that has naturally infiltrated into ground water through a river bed or bank(s). Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply or other well(s).

"Best available technology" or "BAT" means the best technology, treatment techniques, or other means which the director finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purposes of setting MCLs for synthetic organic chemicals, any BAT shall be at least as effective as granular activated carbon.

"Capacity" means the overall capability of a water system to consistently produce and deliver water meeting all national and state primary drinking water regulations in effect or likely to be in effect when new or modified operations begin. Capacity includes the technical, managerial, and financial capacities of the water system to plan for, achieve, and maintain

compliance with applicable national and state primary drinking water regulations.

"Cartridge filters" are pressure-driven separation devices that remove particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

"Clean compliance history" is, for the purposes of section 11-20-9.1, a record of no MCL violations under section 11-20-6; no monitoring violation under section 11-20-9 or section 11-20-9.1; and no coliform treatment technique trigger exceedances or treatment technique violations under section 11-20-9.1.

"Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.

"Code of Federal Regulations" or "C.F.R." means the official codification of Federal regulations, as previously published in the Federal Register by the Executive departments and agencies of the Federal Government. The effective revision date of the C.F.R. references in this chapter is July 1, [~~2010.~~] 2015.

"Combined distribution system" is the interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water.

"Community water system" means a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.

"Compliance cycle" means the nine-year calendar year cycle during which public water systems must monitor. Each compliance cycle consists of three three-year compliance periods. The first calendar year cycle begins January 1, 1993 and ends December 31, 2001; the second begins January 1, 2002 and ends December 31, 2010; the third begins January 1, 2011 and ends December 31, 2019.

"Compliance period" means a three-year calendar year period within a compliance cycle. Each compliance cycle has three three-year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993 to December 31, 1995; the second from January 1, 1996 to

December 31, 1998; the third from January 1, 1999 to December 31, 2001.

"Composite Correction Program" or "CCP" consists of a Comprehensive Performance Evaluation (CPE) and Comprehensive Technical Assistance (CTA), both performed by a state-approved third party.

"Comprehensive Performance Evaluation" or "CPE" means a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation, and maintenance practices. It is conducted by a state-approved third party to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. The CPE must consist of at least the following components: assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance (CTA); and preparation of a CPE report.

"Comprehensive Technical Assistance" or "CTA" means the performance improvement phase that is implemented if CPE results indicate improved performance potential. During the CTA phase, the system must identify and systematically address plant-specific factors. The CTA is a combination of utilizing CPE results as a basis for follow up, implementing process control priority-setting techniques, and maintaining long-term involvement to systematically train staff and administrators.

"Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

"Consecutive system" is a public water system that receives some or all of its finished water from one or more wholesale systems. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

"Contaminant" means any physical, chemical, biological, or radiological substance or matter in water. An additive contaminant under this definition may have a beneficial or a detrimental effect on the potability of the water.

"Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting

in substantial particulate removal.

"CT" or "CTcalc" is the product of "residual disinfectant concentration" (C) in milligrams per liter or mg/l determined before or at the first customer, and the corresponding "disinfectant contact time" (T) in minutes, i.e., "C" x "T". If a public water system applies disinfectants at more than one point prior to the first customer, it shall determine the CT of each disinfectant sequence before or at the first customer to determine the total per cent inactivation or "total inactivation ratio." In determining the total inactivation ratio, the supplier shall determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before any subsequent disinfection application point(s).

"$CT_{99.9}$" means the CT value required for 99.9 per cent (3-log) inactivation of Giardia lamblia cysts.

"CT inactivation ratio" means $(CTcalc)/(CT_{99.9})$. The sum of the inactivation ratios, or total inactivation ratio shown as $(CTcalc)/(CT_{99.9})$ is calculated by adding together the inactivation ratio for each disinfection sequence. A total inactivation ratio equal to or greater than 1.0 is assumed to provide a 3-log inactivation of Giardia lamblia cysts.

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

"Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which (1) a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum), and (2) while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

"Direct additives" means contaminants added to water in the protection of drinking water.

"Direct filtration" means a series of processes including coagulation, flocculation, and filtration but excluding sedimentation resulting in substantial particulate removal.

"Director" means the director of the Hawaii state department of health or the director's authorized agent.

"Disinfectant contact time" ("T" in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant

application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration ("C") is measured. Where only one "C" is measured, "T" is the time in minutes that it takes for water to move from the point of disinfectant application to a point before or at the point where residual disinfectant concentration ("C") is measured. Where more than one "C" is measured, "T" is (1) for the first measurement of "C", the time in minutes that it takes for water to move from the first or only point of disinfectant application to a point before or at the point where the first "C" is measured, and (2) for subsequent measurements of "C", the time in minutes that it takes for water to move from the previous "C" measurement point to the "C" measurement point for which the particular "T" is being calculated. Disinfectant contact time in pipelines shall be calculated based on "plug flow" by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. Disinfectant contact time within mixing basins and storage reservoirs shall be determined by tracer studies or an equivalent demonstration.

"Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

"Disinfection profile" means a summary of daily Giardia lamblia inactivation through the treatment plant.

"Domestic or other non-distribution system plumbing problem" means a coliform contamination problem in a public water system with more than one service connection that is limited to the specific service connection from which the coliform-positive sample was taken.

"Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRU).

"Dual sample set" is a set of two samples collected at the same time and same location, with one sample analyzed for TTHM and the other sample analyzed for HAA5. Dual sample sets are collected for the purposes of conducting an IDSE under section 11-20-45.2 and determining compliance with the TTHM and HAA5 MCLs under section 11-20-45.3.

"Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

"Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

"Fecal coliform" means part of the total coliform group that are gram negative, non-spore forming rods that ferment lactose in 24 ± 2 hours at 44.5 ± 0.2 degrees Centigrade with the production of gas.

"Federal Register" or "F.R." means the official daily publication for rules, proposed rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents by the National Archives and Records Administration (NARA). The revisions to this chapter include the applicable Federal Register changes to Title 40 Code of Federal Regulations Part 141 and Part 142 through February 13, 2013.

"Filter profile" means a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

"Filtration" means a process for removing particulate matter from water by passage through porous media.

"Financial capacity" refers to the financial resources of the water system, including an adequate budget, adequate fiscal controls, and creditworthiness.

"Finished water" is water that is introduced into the distribution system of a public water system and is intended for distribution and consumption without further treatment, except as treatment necessary to maintain water quality in the distribution system (e.g., booster disinfection, addition of corrosion control chemicals).

"Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

"Flowing stream" is a course of running water flowing in a definite channel.

"Granular activated carbon" or "GAC" consists of fine carbon particles placed in pressure filters to adsorb the organics in the water.

"GAC10" means granular activated carbon filter beds with an empty-bed contact time of ten minutes based on average daily flow and a carbon reactivation frequency of every one hundred eighty days except that the reactivation frequency for GAC10 used as a best available technology for compliance with MCLs under section 11-20-4.1(b)(2)(A) shall be 120 days.

"GAC20" means granular activated carbon filter beds with an empty-bed contact time of 20 minutes based on average daily flow and a carbon reactivation frequency of every 240 days.

"Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

"Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

"Ground water under the direct influence of surface water" (GWUDI) means any water beneath the surface of the ground with:

(1) Significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as Giardia lamblia, or Cryptosporidium; or

(2) Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

Direct influence shall be determined for individual sources in accordance with criteria established by the director. The director's determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well construction characteristics and geology with field evaluation.

"Haloacetic acids (five)" or "HAA5" means the sum of the concentrations in milligrams per liter of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid,

monobromoacetic acid, and dibromoacetic acid), rounded to two significant figures after addition.

"Halogen" means one of the chemical elements chlorine, bromine, or iodine.

"Heterotrophic bacteria" means a broad class of aerobic and facultative anaerobic organisms which use organic nutrients for growth. The group includes many innocuous bacteria as well as virtually all of the bacteria pathogens and those bacteria infect when the host defenses are weakened.

"Heterotrophic plate count" or "HPC" means the number of heterotrophic bacteria contained in a water sample.

"Indirect additives" means contaminants that are introduced into drinking water through contact with surfaces of material or products used for its treatment, storage, transmission, or distribution.

"Initial compliance period" means the first full three-year compliance period which begins at least eighteen months after federal promulgation. For the Phase V contaminants listed in sections 11-20-4(d)(20) through (22), 11-20-4(e)(19) through (33), and 11-20-3(b)(11) through (15), the initial compliance period for systems with 150 or more service connections is January 1993 through December 1995 (the first full three-year compliance period after July 17, 1992), and for systems having fewer than 150 service connections, the initial compliance period is January 1996 through December 1998 (the first full three-year compliance period after January 17, 1994).

"Lake or reservoir" refers to a natural or man-made basin or hollow on the earth's surface in which water collects or is stored that may or may not have a current or single direction of flow.

"Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

"Level 1 assessment" is an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and (when possible) the likely reason that the system triggered the assessment. It is conducted by the

system operator or owner. Minimum elements include review and identification of atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including water storage); source and treatment considerations that bear on distributed water quality, where appropriate (e.g., whether a ground water system is disinfected); existing water quality monitoring data; and inadequacies in sample sites, sampling protocol, and sample processing. The system must conduct the assessment consistent with any State directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system.

"Level 2 assessment" is an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and (when possible) the likely reason that the system triggered the assessment. A Level 2 assessment provides a more detailed examination of the system (including the system's monitoring and operational practices) than does a Level 1 assessment through the use of more comprehensive investigation and review of available information, additional internal and external resources, and other relevant practices. It is conducted by an individual approved by the State, which may include the system operator. Minimum elements include review and identification of atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including water storage); source and treatment considerations that bear on distributed water quality, where appropriate (e.g., whether a ground water system is disinfected); existing water quality monitoring data; and inadequacies in sample sites, sampling protocol, and sample processing. The system must conduct the assessment consistent with any State directives that tailor specific assessment elements

with respect to the size and type of the system and the size, type, and characteristics of the distribution system. The system must comply with any expedited actions or additional actions required by the State in the case of an *E. coli* MCL violation.

"Locational running annual average (LRAA)" is the average of sample analytical results for samples taken at a particular monitoring location during the previous four calendar quarters.

"Managerial capacity" refers to the ability of the water system to manage itself, including clear ownership, organization, and communications, and accountability; adequate management, staffing, policies, training, and information management; and effective relationships with customers and regulatory agencies.

"Man-made beta particle and photon emitters" means all radionuclides emitting beta particles or photons, or both, listed in Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure, National Bureau of Standards Handbook 69, except the daughter products of thorium-232, uranium-235, and uranium-238.

"Maximum contaminant level" or "MCL" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

"Maximum contaminant level goal" or "MCLG" means the maximum level of a contaminant in drinking water at which no known or anticipated adverse effect on the health or persons would occur, and which allows an adequate margin of safety. Maximum contaminant level goals are non-enforceable health goals.

"Maximum residual disinfectant level" or "MRDL" means a level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects. For chlorine and chloramines, a PWS is in compliance with the MRDL when the running annual average of monthly averages of samples taken in the distribution system, computed quarterly, is less than

or equal to the MRDL. For chlorine dioxide, a PWS is in compliance with the MRDL when daily samples are taken at the entrance to the distribution system and no two consecutive daily samples exceed the MRDL. MRDLs are enforceable in the same manner as maximum contaminant levels under Section 1412 of the Safe Drinking Water Act.

"Maximum residual disinfectant level goal" or "MRDLG" means the maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MRDLGs are non-enforceable health goals and do not reflect the benefit of the addition of a chemical for control of waterborne microbial contaminants.

"Maximum total trihalomethane potential" or "MTTHMP" means the maximum concentration of total trihalomethanes produced in a given water containing a disinfectant residual after seven days at a temperature of 25 degrees Centigrade or above.

"Membrane filtration" is a pressure or vacuum driven separation process in which particulate matter larger than 1 micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis.

"Near the first service connection" means at one of the twenty per cent of all service connections in the entire system that are nearest the water supply treatment facility, as measured by water transport time within the distribution system.

"Non-community water system" means a public water system that is not a community water system.

"Non-transient non-community water system" or "NTNCWS" means a public water system that is not a community water system and that regularly serves at least twenty-five of the same persons over six months

per year.

"Packed tower aeration" or "PTA" consists of high-surface area packing material supported and contained in a cylindrical shell. Water flow is normally downward through the packing material with either forced draft or induced draft upward airflow.

"Performance evaluation sample" means a reference sample provided to a laboratory for the purpose of demonstrating that the laboratory can successfully analyze the sample within limits of performance specified by the EPA. The limits of performance for inorganic samples are defined in 40 C.F.R. section 141.23(k)(3)(ii), for volatile organic chemicals are defined in 40 C.F.R. section 141.24(f)(17)(i), and for synthetic organic chemicals are defined in 40 C.F.R. section 141.24(h)(19)(B). The true value of the concentration of the reference material is unknown to the laboratory at the time of the analysis.

"Person" means an individual, corporation, company, association, partnership, county, municipality; or state, federal, or tribal agency.

"Picocurie" or "pCi" means that quantity of radioactive material producing 2.22 nuclear transformations per minute. "pCi/l" is a symbol for picocurie per liter.

"Plant intake" refers to the works or structures at the head of a conduit through which water is diverted from a source (e.g., river or lake) into the treatment plant.

"Point of disinfectant application" is the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

"Point-of-entry treatment device" or "POE" is a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

"Point-of-use treatment device" or "POU" is a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

"Presedimentation" is a preliminary treatment process used to remove gravel, sand and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant.

"Public water system" means a system which provides water for human consumption, through pipes or other constructed conveyances if the system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days out of the year. Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system may be privately or publicly owned or operated. A public water system is a "community water system" or a "non-community water system".

"Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem" or "mrem" is 1/1000 of a rem.

"Repeat compliance period" means any subsequent compliance period after the initial compliance period."Residual disinfectant concentration" ("C" in CT calculations) means the concentration of disinfectant measured in milligrams per liter or mg/l in a representative sample of water.

"Sanitary defect" is a defect that could provide a pathway of entry for microbial contamination into the distribution system or that is indicative of a failure or imminent failure in a barrier that is already in place.

"Sanitary survey" means an on-site review of the water source, facilities, equipment, operation, and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation, and maintenance for producing and distributing safe drinking water.

"Seasonal system" is a non-community water system that is not operated as a public water system on a year-round basis and starts up and shuts down at the beginning and end of each operating season.

"Secondary maximum contaminant levels" or "SMCLS" means the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of the public water system.

"Sedimentation" means a process for removal of solids before filtration by gravity or separation.

"Service connection", as used in the definition of "public water system", does not include a connection to a system that delivers water by a constructed conveyance other than a pipe if: (1) The water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, cooking, or other similar uses); (2) The State determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or (3) The State determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.

"Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than 0.4 meters per hour or 1.2 feet per hour) resulting in substantial particulate removal by physical and biological mechanisms.

"Specific Ultraviolet Absorption (SUVA)" is an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nanometers (nm) (UV_{254}) (in m^{-1}) by its concentration of dissolved organic carbon (DOC) (in mg/L).

"Standard sample" means the aliquot of finished

drinking water that is examined for the presence of coliform bacteria.

"State" means the Hawaii state department of health.

"Subpart H systems" means public water systems using surface water or ground water under the direct influence of surface water as a source that are subject to 40 C.F.R. Part 141 Subpart H.

"Supplier of water" means any person who owns or operates a public water system.

"Surface water" means all water which is open to the atmosphere and subject to surface runoff.

"Surface water treatment rule administrative manual" is a separate document adopted as part of this chapter and, as such, has the effect of law in the uniform enforcement of this chapter.

"System with a single service connection" means a system which supplies drinking water to consumers via a single service line.

"Technical capacity" refers to the physical infrastructure of the water system, including but not limited to the adequacy of the water source(s), treatment, storage, and distribution systems, and the ability of system personnel to adequately operate and maintain the system and to otherwise implement technical knowledge.

"Too numerous to count" means that the total number of bacterial colonies exceeds 200 on a 47-millimeter diameter membrane filter used for coliform detection.

"Total coliform" means all aerobic and facultative anaerobic, gram-negative, nonspore-forming, rod-shaped bacteria that ferment lactose with gas and acid formation within forty-eight hours at 35 degrees Centigrade or hydrolyzes OMPG to form a yellow color.

"Total Organic Carbon" or "TOC" means total organic carbon in mg/L measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.

"Total trihalomethanes" or "TTHM" means the sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane (chloroform), dibromochloromethane, bromodichloromethane, and tribromomethane (bromoform)), rounded to two significant figures."Transient non-community water system" or "TWS" means a non-community water system that does not regularly serve at least twenty-five of the same persons over six months per year.

"Treatment technique requirement" means a requirement of the state primary drinking water rules which specifies for a contaminant a specific treatment technique(s) known to the director which leads to a reduction in the level of such contaminant sufficient to comply with the requirements of this chapter.

"Trihalomethane" or "THM" means one of the family of organic compounds, names as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

"Turbidity" means suspended material such as clay, silt, finely divided organic material, or other inorganic material in water. Turbidity is measured in nephelometric turbidity units (NTU).

"Two-stage lime softening" is a process in which chemical addition and hardness precipitation occur in each of two distinct unit clarification processes in series prior to filtration.

"Uncovered finished water storage facility" means a tank, reservoir, or other facility used to store water that will undergo no further treatment to reduce microbial pathogens except residual disinfection and is directly open to the atmosphere.

"Virus" means a virus of fecal origin which is infectious to humans by waterborne transmission.

"Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the director.

"Wholesale system" is a public water system that

treats source water as necessary to produce finished water and then delivers some or all of that finished water to another public water system. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems. [Eff 12/26/81; am and comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; am and comp 10/13/97; am and comp 9/7/99; am and comp 11/30/02; am and comp 12/16/05; am and comp 11/28/11; am and comp 5/2/14; am and comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-2.5, 340E-9) (Imp: HRS §§340E-2, 340E-2.5, 340E-9; 42 U.S.C. §§300g-1, 300g-2, 300g-3, 300g-9, 300j-4, 300g-b, 300j-9; 40 C.F.R. Parts 141, 142, §141.2, §142.10)

§11-20-3 Maximum contaminant levels for inorganic chemicals. (a) The MCL for nitrate, nitrite, and total nitrate and nitrite is applicable to all public water systems except as provided by subsection (d) and (e). The MCL for fluoride apply only to community water systems. The MCLs for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, mercury, selenium, and thallium apply to community water systems and non-transient non-community water systems. Compliance with MCLs for inorganic chemicals is calculated pursuant to section 11-20-11.

(b) The following are the MCLs for inorganic chemicals:

Contaminant	MCL, Milligrams Per Liter (mg/L)	Chemical Abstract Source Registry Number (CAS #)
(1)Arsenic	0.010	7440-38-2
(2)Asbestos	7 million fibers/liter(longer than 10 µm)	
(3)Barium	2	7440-39-3
(4)Cadmium	0.005	7440-43-9
(5)Chromium	0.1	7440-47-3
(6)Mercury	0.002	7439-97-6

(7)Nitrate	10 (as Nitrogen)	14797-55-8
(8)Nitrite	1 (as Nitrogen)	
(9)Total Nitrate and Nitrite	10 (as Nitrogen)	
(10)Selenium	0.05	7882-49-2
(11)Antimony	0.006	7440-36-0
(12)Beryllium	0.004	7440-41-7
(13)Cyanide	0.2 (as free Cyanide)	
(14)(reserved)		
(15)Thallium	0.002	7440-28-0
(16)Fluoride	4.0	16984-48-8

The MCL of 0.01 mg/l for arsenic is effective January 23, 2006. Prior to January 23, 2006, the MCL for arsenic is 0.05 mg/L.

(c) At the discretion of the director, nitrate levels not to exceed twenty milligrams per liter or mg/l may be allowed in a non-community water system if the supplier of water demonstrates to the satisfaction of the director that:

(1) Such water will not be available to children under six months of age;

(2) The non-community water system is meeting the public notification requirements under section 11-20-18(i), including continuous posting of the fact that nitrate levels exceed 10 mg/L and the potential health effects of exposure;

(3) Local and state public health authorities will be notified annually of nitrate levels that exceed ten milligrams per liter or mg/l; and

(4) No adverse health effects shall result.

(d) The best available technologies (BATs) for treating inorganic chemicals to achieve compliance with their MCLs are found in 40 C.F.R. §141.62(c).

(e) Small system compliance technologies for the treatment of arsenic are identified in 40 C.F.R.

section 141.62(d) for systems serving 10,000 persons or fewer. [Eff 12/26/81; am and comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; am and comp 10/13/97; am and comp 9/7/99; am and comp 11/30/02; am and comp 12/16/05; comp 11/28/11; comp 5/2/14; am and comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2; 40 C.F.R. Parts 141, 142, §141.11, §141.62, §142.10)

§11-20-4 Maximum contaminant levels for organic chemicals. The following are the MCLs for organic chemicals. (a)(Reserved)

(b) (Reserved)

(c) (Reserved)

(d) The following MCLs for organic contaminants apply to community and non-transient, non-community water systems.

Contaminant	MCL(mg/L)	CAS. No.
(1) Benzene	0.005	71-43-2
(2) Carbon tetrachloride	0.005	56-23-5
(3) o-Dichlorobenzene	0.6	95-50-1
(4) para-Dichlorobenzene	0.075	106-46-7
(5) 1,2-Dichloroethane	0.005	107-06-2
(6) 1,1-Dichloroethylene	0.007	75-35-4
(7) cis-1,2-Dichloroethylene	0.07	156-59-2
(8) trans-1,2-Dichloroethylene	0.1	156-60-5
(9) 1,2-Dichloropropane (DCP)	0.005	78-87-5
(10) Ethylbenzene	0.7	100-41-4
(11) Monochlorobenzene	0.1	108-90-7
(12) Styrene	0.1	100-42-5
(13) Tetrachloroethylene	0.005	127-18-4
(14) Toluene	1	108-88-3
(15) 1,1,1-Trichloroethane	0.2	71-55-6
(16) Trichloroethylene	0.005	79-01-6
(17) 1,2,3-Trichloropropane(TCP)	0.0006	96-18-4
(18) Vinyl chloride	0.002	75-01-4
(19) Xylenes (total)	10	1330-20-7

(20) Dichloromethane	0.005	75-09-2
(21) 1,2,4-Trichlorobenzene	0.07	120-82-1
(22) 1,1,2-Trichloroethane	0.005	79-00-5

(e) The following MCLs for synthetic organic contaminants apply to community and non-transient, non-community water systems.

Contaminant	MCL(mg/l)	CAS No.
(1)Alachlor	0.002	15972-60-8
(2)Aldicarb	0.003	116-06-3
(3)Aldicarb sulfoxide	0.004	1646-87-3
(4)Aldicarb sulfone	0.002	1646-87-4
(5)Atrazine	0.003	912-24-9
(6)Carbofuran	0.04	1563-66-2
(7)Chlordane	0.002	57-74-9
(8)Dibromochloropropane(DBCP)	0.00004	96-12-8
(9)2,4-D	0.07	94-75-7
(10)Ethylene dibromide(EDB)	0.00004	106-93-4
(11)Heptachlor	0.0004	76-44-8
(12)Heptachlor epoxide	0.0002	1024-57-3
(13)Lindane	0.0002	58-89-9
(14)Methoxychlor	0.04	72-43-5
(15)Polychlorinated biphenyls (PCB)	0.0005	1336-36-3
(16)Pentachlorophenol	0.001	87-86-5
(17)Toxaphene	0.003	8001-35-2
(18)2,4,5-TP (Silvex)	0.05	93-72-1
(19)Benzo[a]pyrene	0.0002	50-32-8
(20)Dalapon	0.2	75-99-0
(21)Di(2-ethylhexyl) adipate	0.4	103-23-1
(22)Di(2-ethylhexyl)phthalate	0.006	117-81-7
(23)Dinoseb	0.007	88-85-7
(24)Diquat	0.02	85-00-7
(25)Endothall	0.1	145-73-3
(26)Endrin	0.002	72-20-8
(27)Glyphosate	0.7	1071-53-6
(28)Hexachlorobenzene	0.001	118-74-1
(29)Hexachlorocyclopentadiene	0.05	77-47-4
(30)Oxamyl (Vydate)	0.2	3135-22-0

(31) Picloram	0.5	1918-02-1
(32) Simazine	0.004	122-34-9
(33) 2,3,7,8-TCDD (Dioxin)	3×10^{-8}	1746-01-6

(f) The best available technologies (BATs), treatment techniques, or other means available for achieving compliance with the organic contaminant MCLs are identified as either granular activated carbon (GAC), packed tower aeration (PTA), or oxidation (OX) in 40 C.F.R. §141.61(b). [Eff 12/26/81; am and comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; am and comp 10/13/97; am and comp 9/7/99; am and comp 11/30/02; am and comp 12/16/05; am and comp 11/28/11; comp 5/2/14; am and comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2; 40 C.F.R. Parts 141, 142, §142.10, §141.12, §141.61)

§11-20-4.1 Maximum contaminant levels for disinfection byproducts. (a) *Bromate and chlorite.* The maximum contaminant levels (MCLs) for bromate and chlorite are as follows:

Disinfection byproduct	MCL (mg/L)
Bromate	0.010
Chlorite	1.0

(1) *Compliance dates for CWSs and NTNCWSs.* Subpart H systems serving 10,000 or more persons must comply with this paragraph beginning January 1, 2002. Subpart H systems serving fewer than 10,000 persons and systems using only ground water not under the direct influence of surface water must comply with this paragraph beginning January 1, 2004.

(2) The Administrator, pursuant to section 1412 of the Act, hereby identifies the following as the best technology, treatment techniques, or other means available for

achieving compliance with the maximum contaminant levels for bromate and chlorite identified in this paragraph:

Disinfection byproduct	Best available technology
Bromate	Control of ozone treatment process to reduce production of bromate
Chlorite	Control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels

(b) TTHM and HAA5.

(1) Section 11-20-45.1 RAA compliance.

(A) Compliance dates. Subpart H systems serving 10,000 or more persons must comply with this paragraph beginning January 1, 2002. Subpart H systems serving fewer than 10,000 persons and systems using only ground water not under the direct influence of surface water must comply with this paragraph beginning January 1, 2004. All systems must comply with these MCLs until the date specified in section 11-20-45.3(a)(3).

Disinfection byproduct	MCL(mg/L)
Total trihalomethanes(TTHM)	0.080
Haloacetic acids(five)(HAA5)	0.060

(B) The Administrator, pursuant to section 1412 of the Act, hereby identifies the following as the best technology,

treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for TTHM and HAA5 identified in this paragraph: Enhanced coagulation or enhanced softening or GAC10 with chlorine as the primary and residual disinfectant.

(2) Stage 2 Disinfection Byproduct LRAA compliance.

(A) Compliance dates. The MCLs for TTHM and HAA5 must be complied with as a locational running annual average at each monitoring location beginning the date specified in section 11-20-45.3(c).

Disinfection byproduct	MCL(mg/L)
Total trihalomethanes(TTHM)	0.080
Haloacetic acids(five)(HAA5)	0.060

(B) The Administrator, pursuant to section 1412 of the Act, hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for TTHM and HAA5 identified in this paragraph for all systems that disinfect their source water: Enhanced coagulation or enhanced softening, plus GAC10; or nanofiltration with a molecular weight cutoff ≤1000 Daltons; or GAC20.

(C) The Administrator, pursuant to section 1412 of the Act, hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for TTHM and HAA5 identified in this paragraph for consecutive systems and applies only to the disinfected water that consecutive systems buy or otherwise

receive: Systems serving >10,000: Improved distribution system and storage tank management to reduce residence time plus the use of chloramines for disinfectant residual maintenance. Systems serving <10,000: Improved distribution system and storage tank management to reduce residence time. [Eff and comp 11/30/02; comp 12/16/05; am and comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9)(Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, 300j-11; 40 C.F.R. §141.64)

§11-20-5 Maximum contaminant levels for turbidity. (a)The MCLs for turbidity apply to all public water systems using surface water sources in whole or in part.

(b) The requirements in this subsection apply to filtered surface water systems until June 29, 1993. The requirements in this subsection apply to unfiltered systems until June 29, 1993, or until filtration is installed, whichever is later. The director shall determine, in writing pursuant to 42 U.S.C. §300g-1(b)(7)(C)(iii), which systems must install filtration. The MCLs measured at a representative entry point(s) to the distribution system, are:

(1) One turbidity unit, as determined by a monthly average pursuant to section 11-20-10 except that five or fewer turbidity units may be allowed if the supplier of water can demonstrate to the director that the higher turbidity does not do any of the following:

(A) Interfere with disinfection;

(B) Prevent maintenance of an effective disinfectant agent throughout the distribution system; or

(C) Interfere with microbiological determinations.

(2) Five turbidity units based on an average for two consecutive days pursuant to section 11-20-10.

(c) The MCL for filtered water turbidity levels, after June 29, 1993, shall be less than or equal to the applicable value in this subsection in ninety-five per cent of the measurements taken every month, and shall not exceed 5 nephelometric turbidity units or NTU at any time for the following filter units:

(1) Conventional treatment, direct filtration, and other filtration technologies, 0.5 nephelometric turbidity units or NTU; and

(2) Slow sand, and diatomaceous earth, 1.0 nephelometric turbidity units or NTU. [Eff 12/26/81; comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; am and comp 10/13/97; comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11; comp DEC 2 8 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2; 40 C.F.R. Parts 141, 142, §141.13, §142.10)

§11-20-6 Maximum microbiological contaminant levels. (a) Beginning April 1, 2016, a system is in compliance with the MCL for *E. coli* for samples taken under the provisions of section 11-20-9.1 unless any of the conditions identified in paragraphs (1) through 4) occur. For purposes of the public notification requirements in section 11-20-18, violation of the MCL may pose an acute risk to health.

(1) The system has an *E. coli*-positive repeat sample following a total coliform-positive routine sample.

(2) The system has a total coliform-positive repeat sample following an *E. coli*-positive routine sample.

(3) The system fails to take all required repeat samples following an *E. coli*-positive

routine sample.

(4) The system fails to test for *E. coli* when any repeat sample tests positive for total coliform.

(b) Beginning April 1, 2016, a public water system must determine compliance with the MCL for *E. coli* in subsection (a) for each month in which it is required to monitor for total coliforms.

(c) The director hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the MCL for *E. coli* in subsection (a):

(1) Protection of wells from contamination by coliforms by appropriate placement and construction;

(2) Maintenance of a disinfectant residual throughout the distribution system;

(3) Proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, cross connection control, and continual maintenance of positive water pressure in all parts of the distribution system;

(4) Filtration and disinfection of surface water, as described in sections 11-20-46, 11-20-46.1, and 11-20-46.2, or disinfection of ground water, as described in section 11-20-50, using strong oxidants such as chlorine, chlorine dioxide, or ozone; and

(5) For systems using ground water, compliance with the requirements of an EPA-approved State Wellhead Protection Program developed and implemented under section 1428 of the Act.

(d) The director, pursuant to section 1412 of the Act, hereby identifies the technology, treatment techniques, or other means available identified in subsection (c) as affordable technology, treatment techniques, or other means available to systems serving ten thousand or fewer people for achieving

compliance with the MCL for *E. coli* in subsection (a). [Eff 12/26/81; am and comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; comp 10/13/97; comp 9/7/99; am and comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; am and comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9)(Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2; 40 C.F.R. Parts 141, 142, §141.63, §142.10)

§11-20-7 Maximum contaminant levels for radionuclides. (a) (Reserved)

(b) MCL for combined radium-226 and -228. The maximum contaminant level for combined radium-226 and radium-228 is 5 pCi/L. The combined radium-226 and radium-228 value is determined by the addition of the results of the analysis for radium-226 and the analysis for radium-228.

(c) MCL for gross alpha particle activity (excluding radon and uranium). The maximum contaminant level for gross alpha particle activity (including radium-226 but excluding radon and uranium) is 15 pCi/L.

(d) MCL for beta particle and photon radioactivity.

(1) The average annual concentration of beta particle and photon radioactivity from man-made radionuclides in drinking water must not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year (mrem/year).

(2) Except for the radionculides listed in table A, the concentration of man-made radionuclides causing 4 mrem total body or organ dose equivalents must be calculated on the basis of 2 liter per day drinking water intake using the 168 hour data list in "Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure." NBS (National Bureau of Standards) Handbook 69 as amended August 1963. U.S. Department of Commerce. This

incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this document are available from the National Technical Information Service, NTIS ADA 280 282. U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800-553-6847. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed 4 mrem/year.

Table A - Average annual concentrations assumed to produce: a total body or organdose of 4 mrem/yr

Radionuclide	Critical Organ	pCi per Liter
Tritium	Total body	20,000
Strontium-90	Bone Marrow	8

(e) MCL for uranium. The maximum contaminant level for uranium is 30 µg/L.

(f) Compliance dates.

(1) Compliance dates for combined radium-226 and -228, gross alpha particle activity, gross beta particle and photon radioactivity, and uranium; Community water systems must comply with the MCLs listed in subsections (b), (c), (d), and (e) of this section beginning December 8, 2003 and compliance shall be

determined in accordance with the requirements of 40 C.F.R. §§141.25 and 141.26. Compliance with reporting requirements for the radionuclides under appendix A to subpart Q and appendices A and B to subpart Q is required on December 8, 2003.

(2) (Reserved)

(g) Best available technologies (BATs) for radionuclides. The Administrator, pursuant to section 1412 of the Act, hereby identifies as indicated in the following table the best technology available for achieving compliance with the maximum contaminant levels for combined radium-226 and -228, uranium, gross alpha particle activity, and beta particle and photon activity.

Table B - BAT for combined Radium-226 and Radium-228, Uranium, Gross Alpha Particle Activity, and Beta Particle And Photo Radioactivity

Contaminant	BAT
Combined radium-226 and radium-228	Ion exchange, reverse osmosis, lime softening
Uranium	Ion exchange, reverse osmosis, lime softening, coagulation/filtration
Gross alpha particle activity (excluding radon and uranium)	Reverse osmosis
Beta particle and photon radioactivity	Ion exchange, reverse osmosis

(h) Small systems compliance technologies list for radionuclides are listed in Appendix I of this Chapter.

(i) Compliance technologies by system size, category and radionuclide NPDWR's are listed in Appendix J of this Chapter.[Eff 12/26/81; am and comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; am

and comp 10/13/97; comp 9/7/99;comp 11/30/02; comp 12/16/05; am and comp 11/28/11; comp 5/2/14; am and comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2; 40 C.F.R. Parts 141, 142, §141.15, §141.16, §142.10)

§11-20-7.5 Maximum residual disinfectant levels. (a) Maximum residual disinfectant levels (MRDLs) are as follows:

Disinfectant residual	MRDL(mg/L)
Chlorine	4.0 (as Cl_2)
Chloramines	4.0 (as Cl_2)
Chlorine dioxide	0.8 (as ClO_2)

(b) Compliance dates.

(1) CWSs and NTNCWSs. Public water systems supplied by either a surface water source or by a ground water source under the direct influence of surface water serving 10,000 or more persons must comply with this section beginning January 1, 2002. Public water systems supplied by either a surface water source or by a ground water source under the direct influence of surface water serving fewer than 10,000 persons and systems using only ground water not under the direct influence of surface water must comply with this section beginning January 1, 2004.

(2) Transient NCWSs. Public water systems supplied by either a surface water source or by a ground water source under the direct influence of surface water serving 10,000 or more persons and using chlorine dioxide as a disinfectant or oxidant must comply with the chlorine dioxide MRDL beginning January 1, 2002. Public water systems supplied by either a surface water source or by a ground water source under the direct influence of

surface water serving fewer than 10,000 persons and using chlorine dioxide as a disinfectant or oxidant and systems using only ground water not under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant must comply with the chlorine dioxide MRDL beginning January 1, 2004.

(c) The director hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum residual disinfectant levels identified in subsection (a): control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels. [Eff and comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, 300j-11; 40 C.F.R. §141.65)

§11-20-8 Sampling and analytical requirements. All sampling and analyses required by this chapter shall be performed in accordance with procedures approved by the administrator. In any case in which a provision of this chapter requires sampling and analysis to be performed by the supplier of water, such sampling may, at the discretion of the director, be performed by the State pursuant to prior notification to the water supplier by the director and under such conditions as the director may specify. [Eff 12/26/81; comp 3/7/92; am and comp 1/2/93; comp 12/15/94; comp 10/13/97; comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2; 40 C.F.R. Parts 141, 142, §141.21, §142.10)

§11-20-9 Microbiological contaminant sampling and analytical requirements. (a) (Reserved)

(b) Repeat monitoring.

(1) If a routine sample is total coliform-positive, the supplier of water shall collect a set of repeat samples within twenty-four hours of being notified of the positive result. The supplier who collects more than one routine sample per month shall collect no fewer than three repeat samples for each total coliform-positive sample found. A supplier who normally collects one routine sample per month shall collect no fewer than four repeat samples for each total coliform-positive sample found. The director may extend the twenty-four hour limit on a case-by-case basis if the supplier has a logistical problem in collecting or analyzing the repeat samples within twenty-four hours that is beyond the supplier's control. In the case of an extension, the director shall specify how much time the supplier has to collect the repeat samples.

(2) The supplier shall collect at least one repeat sample from the sampling tap where the original total coliform-positive sample was taken, and at least one repeat sample at a tap within five service connections upstream and at least one repeat sample at a tap within five service connections downstream of the original sampling site. If a total coliform-positive sample is at the end of the distribution system, or one away from the end of the distribution system, the director may waive the requirement to collect at least one repeat sample upstream or downstream of the original sampling site. However, the supplier shall collect the required number of repeat samples. A system with a single service connection may take all repeats from

the same sample tap.

(3) The supplier shall collect all repeat samples on the same day.

(4) If one or more repeat samples in the set is total coliform-positive, the supplier shall collect an additional set of repeat samples in the manner specified in paragraphs (1) to (3) unless the supplier determines the MCL for total coliforms in section 11-20-6 has been exceeded and notifies the director. The additional samples shall be collected within twenty-four hours of being notified of the positive result, unless the director extends the limit as provided in paragraph (1). The supplier shall repeat this process until either total coliforms are not detected in one complete set of repeat samples or the supplier determines that the MCL for total coliforms in section 11-20-6 has been exceeded and notifies the director.

(5) If a supplier collecting fewer than five routine samples per month has one or more total coliform-positive samples and the director does not invalidate the sample(s) under subsection (c), the supplier shall collect at least five routine samples during the next month the system provides water to the public.

(6) Results of all routine and repeat samples not invalidated by the director shall be included in determining compliance with the MCL for total coliforms in section 11-20-6.

(c) Invalidation of total coliform samples. A total coliform-positive sample invalidated under this subsection does not count towards meeting the minimum monitoring requirements of this section.

(1) The director may invalidate a total coliform-positive sample if one or more of the following are met:

(A) The laboratory establishes that improper sample analysis caused the total coliform-positive result.

(B) The director, on the basis of the results of repeat samples collected as required by subsection (b)(1) to (4) determines that the total coliform-positive sample resulted from a domestic or other non-distribution system plumbing problem. The director cannot invalidate a sample on the basis of repeat sample results unless all repeat sample(s) collected at the same tap as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected within five service connections of the original tap are total coliform-negative (e.g., the director cannot invalidate a total coliform-positive sample on the basis of repeat samples if all the repeat samples are total coliform-negative, or if the public water system has only one service connection).

(C) The director has substantial grounds to believe that a total coliform-positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. In this case, the supplier shall still collect all repeat samples required under subsection (b)(1) to (4), and use them to determine compliance with the MCL for total coliforms in section 11-20-6. To invalidate a total coliform-positive sample under this paragraph, the decision with the rationale for the decision shall be documented in writing, and approved and signed by the director. The director shall make this document available to EPA and the public. The written documentation shall specify the cause of the total coliform-positive sample,

and what action the supplier has taken, or will take, to correct this problem. The director may not invalidate a total coliform-positive sample solely on the grounds that all repeat samples are total coliform-negative.

(2) A laboratory shall invalidate a total coliform sample (unless total coliforms are detected) if the sample produces a turbid culture in the absence of gas production using an analytical method where gas formation is examined (e.g., the Multiple-Tube Fermentation Technique), produces a turbid culture in the absence of an acid reaction in the Presence-Absence (P-A) Coliform Test, or exhibits confluent growth or produces colonies too numerous to count with an analytical method using a membrane filter (e.g., Membrane Filter Technique). If a laboratory invalidates a sample because of such interference, the supplier shall collect another sample from the same location as the original sample within twenty-four hours of being notified of the interference problem, and have it analyzed for the presence of total coliforms. The supplier shall continue to re-sample within twenty-four hours and have the samples analyzed until it obtains a valid result. The director may waive the twenty-four hour time limit on a case-by-case basis.

(d) (Reserved)

(e) Fecal coliforms/Escherichia coli (E. coli) testing.

(1) If any routine or repeat sample is total coliform-positive, the laboratory shall analyze the total coliform-positive culture medium to determine if fecal coliforms or E. coli are present.

(2) The director has the discretion to allow a supplier of water, on a case-by-case basis,

to forgo fecal coliform or E. coli testing on a total coliform-positive sample if that supplier classifies the total coliform-positive sample as fecal coliform-positive or E. coli-positive. In the event the laboratory fails to perform the required fecal coliform or E. coli analysis, the total coliform-positive sample will be classified as fecal coliform positive or E. coli-positive.

(f) Response to positive result.

(1) The supplier shall report the positive result for total coliforms or fecal coliforms or E. coli to the director by 4:00 p.m. of the day that the supplier is notified of the positive result. However, if the supplier is notified of the result after 4:00 p.m., then the supplier shall notify the director as soon as possible but no later than 10:00 a.m. of the next department business day.

(2) When a public water system has a fecal coliform- positive or E. coli-positive result, the supplier shall issue a boil water notice to all affected consumers.

(A) The boil water order shall be issued no later than twenty-four hours after the system has been notified of the positive fecal coliform or positive E. coli result. The boil water notice shall be in effect until negative total coliform results are obtained from the affected tap and from all other required repeat sample sites.

(B) The boil water notice shall not be required if all repeat samples collected are total coliform-negative, and these results are received within twenty-four hours of the fecal-positive or E. coli-positive result.

(g) Response to violation.

(1) When a public water system has exceeded the

MCL for total coliforms as set forth in section 11-20-6, the supplier shall report the violation to the director no later than the end of the next business day after learning of the violation, and notify the public in accordance with section 11-20-18.

(2) A supplier who has failed to comply with a coliform monitoring requirement, including the sanitary survey requirement, shall report the monitoring violation to the director within ten days after the supplier discovers the violation, and notify the public in accordance with section 11-20-18.

(h) (Reserved)

(i) The provisions of subsections (b), (c), (e), (f), and (g) are applicable until all required repeat monitoring under subsection (b) and fecal coliform or *E. coli* testing under subsection (e) that was initiated by a total coliform-positive sample taken before April 1, 2016 is completed, as well as reporting, recordkeeping, public notification, and consumer confidence report requirements associated with that monitoring and testing. Beginning April 1, 2016, the provisions of section 11-20-9.1 are applicable, with systems required to begin regular monitoring at the same frequency as the system-specific frequency required on March 31, 2016. [Eff 12/26/81; am and comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; am and comp 10/13/97; am and comp 9/7/99; am and comp 11/30/02; am and comp 12/16/05; am and comp 11/28/11; am and comp 5/2/14; am and comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9)(Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2; 40 C.F.R. Parts 141, 142, §141.21, §142.10)

§11-20-9.1 Revised Total Coliform Rule. (a) General.

(1) This section includes both maximum contaminant level and treatment technique requirements.

(2) Applicability. The provisions of this section apply to all public water systems.

(3) Compliance date. Systems must comply with the provisions of this section beginning April 1, 2016, unless otherwise specified in this section.

(4) Implementation with EPA as State. Systems falling under direct oversight of EPA, where EPA acts as the State, must comply with decisions made by EPA for implementation of 40 C.F.R. 141 subpart Y. EPA has authority to establish such procedures and criteria as are necessary to implement 40 C.F.R. 141 subpart Y.

(5) Violations of national primary drinking water regulations. Failure to comply with the applicable requirements of this section, including requirements established by the State pursuant to these provisions, is a violation of the national primary drinking water regulations under 40 C.F.R. 141 subpart Y.

(b) Analytical methods and laboratory certification.

(1) Analytical methodology.

(A) The standard sample volume required for analysis, regardless of analytical method used, is 100 ml.

(B) Systems need only determine the presence or absence of total coliforms and *E. coli;* a determination of density is not required.

(C) The time from sample collection to initiation of test medium incubation may not exceed 30 hours. Systems are encouraged but not required to hold

samples below 10 degrees Celsius during transit.

(D) If water having residual chlorine (measured as free, combined, or total chlorine) is to be analyzed, sufficient sodium thiosulfate ($Na_2S_2O_3$) must be added to the sample bottle before sterilization to neutralize any residual chlorine in the water sample. Dechlorination procedures are addressed in Section 9060A.2 of *Standard Methods for the Examination of Water and Wastewater* (20th and 21st editions).

(E) Systems must conduct total coliform and *E. coli* analyses in accordance with one of the analytical methods in Appendix K, "Analytical Methods for Conducting Total Coliform and E. coli Analyses (HAR §11-20-9.1(b))," dated February 13, 2013, located at the end of this chapter and made a part of this section, or one of the alternative methods listed in 40 CFR part 141, Appendix A to subpart C.

(2) Laboratory certification. Systems must have all compliance samples required under this subpart analyzed by a laboratory certified by the EPA or a primacy State to analyze drinking water samples. The laboratory used by the system must be certified for each method (and associated contaminant(s)) used for compliance monitoring analyses under this section.

(3) Standards. The standards required in this section were taken verbatim from 40 C.F.R. §141.852(c), and are specified in Appendix K, entitled "Analytical Methods for Conducting Total Coliform and *E. coli* Analyses (HAR §11-20-9.1(b))." Appendix K is located at the end of this chapter and made a part of this section.

(c) General monitoring requirements for all

public water systems.

(1) Sample siting plans.

(A) Systems must develop a written sample siting plan that identifies sampling sites and a sample collection schedule that are representative of water throughout the distribution system not later than March 31, 2016. These plans are subject to review and revision by this State. Systems must collect total coliform samples according to the written sample siting plan. Monitoring required by subsections (d) and (e) may take place at a customer's premise, dedicated sampling station, or other designated compliance sampling location. Routine and repeat sample sites and any sampling points necessary to meet the requirements of section 11-20-50 must be reflected in the sampling plan.

(B) Systems must collect samples at regular time intervals throughout the month, except that systems that use only ground water and serve 4,900 or fewer people may collect all required samples on a single day if they are taken from different sites.

(C) Systems must take at least the minimum number of required samples even if the system has had an *E. coli* MCL violation or has exceeded the coliform treatment technique triggers in subsection (f)(1).

(D) A system may conduct more compliance monitoring than is required by this subpart to investigate potential problems in the distribution system and use monitoring as a tool to assist in uncovering problems. A system may take more than the minimum number of required routine samples and must

include the results in calculating whether the coliform treatment technique trigger in subsections (f)(1)(A)(i) and (ii) has been exceeded only if the samples are taken in accordance with the existing sample siting plan and are representative of water throughout the distribution system.

(E) Systems must identify repeat monitoring locations in the sample siting plan. Unless the provisions of clause (i) or (ii) are met, the system must collect at least one repeat sample from the sampling tap where the original total coliform-positive sample was taken, and at least one repeat sample at a tap within five service connections upstream and at least one repeat sample at a tap within five service connections downstream of the original sampling site. If a total coliform-positive sample is at the end of the distribution system, or one service connection away from the end of the distribution system, the system must still take all required repeat samples. However, the State may allow an alternative sampling location in lieu of the requirement to collect at least one repeat sample upstream or downstream of the original sampling site. Except as provided for in clause (ii), systems required to conduct triggered source water monitoring under section 11-20-50(c)(1) must take ground water source sample(s) in addition to repeat samples required under this section.

(i) Systems may propose repeat monitoring locations to the State that the system believes to be

representative of a pathway for contamination of the distribution system. A system may elect to specify either alternative fixed locations or criteria for selecting repeat sampling sites on a situational basis in a standard operating procedure (SOP) in its sample siting plan. The system must design its SOP to focus the repeat samples at locations that best verify and determine the extent of potential contamination of the distribution system area based on specific situations. The State may modify the SOP or require alternative monitoring locations as needed.

(ii) Ground water systems serving 1,000 or fewer people may propose repeat sampling locations to the State that differentiate potential source water and distribution system contamination (e.g., by sampling at entry points to the distribution system). A ground water system with a single well required to conduct triggered source water monitoring may, with written state approval, take one of its repeat samples at the monitoring location required for triggered source water monitoring under section 11-20-50(c)(1) if the system demonstrates to the State's satisfaction that the sample siting plan remains representative of water quality in the distribution system. If approved by the State, the system may use that sample result to meet the monitoring requirements in

both section 11-20-50(c)(1) and this subsection. If a repeat sample taken at the monitoring location required for triggered source water monitoring is *E. coli*-positive, the system has violated the *E. coli* MCL and must also comply with section 11-20-50(c)(1)(C). If a system takes more than one repeat sample at the monitoring location required for triggered source water monitoring, the system may reduce the number of additional source water samples required under section 11-20-50(c)(1)(C) by the number of repeat samples taken at that location that were not *E. coli*-positive. If a system takes more than one repeat sample at the monitoring location required for triggered source water monitoring under section 11-20-50(c)(1), and more than one repeat sample is *E. coli*-positive, the system has violated the *E. coli* MCL and must also comply with section 11-20-50(d)(1)(A). If all repeat samples taken at the monitoring location required for triggered source water monitoring are *E. coli*-negative and a repeat sample taken at a monitoring location other than the one required for triggered source water monitoring is *E. coli*-positive, the system has violated the *E. coli* MCL, but is not required to comply with section 11-20-50(c)(1)(C).

(F) States may review, revise, and approve, as appropriate, repeat sampling proposed by systems under

subparagraphs (E)(i) and (ii). The system must demonstrate that the sample siting plan remains representative of the water quality in the distribution system. The State may determine that monitoring at the entry point to the distribution system (especially for undisinfected ground water systems) is effective to differentiate between potential source water and distribution system problems.

(2) Special purpose samples. Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, must not be used to determine whether the coliform treatment technique trigger has been exceeded. Repeat samples taken pursuant to subsection (e) are not considered special purpose samples, and must be used to determine whether the coliform treatment technique trigger has been exceeded.

(3) Invalidation of total coliform samples. A total coliform-positive sample invalidated under this subsection does not count toward meeting the minimum monitoring requirements of this section.

(A) The State may invalidate a total coliform-positive sample only if the conditions of clause (i), (ii), or (iii) are met.

(i) The laboratory establishes that improper sample analysis caused the total coliform-positive result.

(ii) The State, on the basis of the results of repeat samples collected as required under subsection (e)(1), determines that the total coliform-positive sample resulted from a domestic or other

non-distribution system plumbing problem. The State cannot invalidate a sample on the basis of repeat sample results unless all repeat sample(s) collected at the same tap as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected at a location other than the original tap are total coliform-negative (e.g., a state cannot invalidate a total coliform-positive sample on the basis of repeat samples if all the repeat samples are total coliform-negative, or if the system has only one service connection).

(iii) The State has substantial grounds to believe that a total coliform-positive result is due to a circumstance or condition that does not reflect water quality in the distribution system. In this case, the system must still collect all repeat samples required under subsection (e)(1), and use them to determine whether a coliform treatment technique trigger in subsection (f) has been exceeded. To invalidate a total coliform-positive sample under this paragraph, the decision and supporting rationale must be documented in writing, and approved and signed by the supervisor of the State official who recommended the decision. The State must make this document available to EPA and the public. The written documentation must state the specific cause of the

total coliform-positive sample, and what action the system has taken, or will take, to correct this problem. The State may not invalidate a total coliform-positive sample solely on the grounds that all repeat samples are total coliform-negative.

(B) A laboratory must invalidate a total coliform sample (unless total coliforms are detected) if the sample produces a turbid culture in the absence of gas production using an analytical method where gas formation is examined (e.g., the Multiple-Tube Fermentation Technique), produces a turbid culture in the absence of an acid reaction in the Presence-Absence (P-A) Coliform Test, or exhibits confluent growth or produces colonies too numerous to count with an analytical method using a membrane filter (e.g., Membrane Filter Technique). If a laboratory invalidates a sample because of such interference, the system must collect another sample from the same location as the original sample within 24 hours of being notified of the interference problem, and have it analyzed for the presence of total coliforms. The system must continue to re-sample within 24 hours and have the samples analyzed until it obtains a valid result. The State may waive the 24-hour time limit on a case-by-case basis. Alternatively, the State may implement criteria for waiving the 24-hour sampling time limit to use in lieu of case-by-case extensions.

(d) Routine monitoring requirements for public water systems.

(1) General.

(A) This subsection applies to all public water systems.

(B) Following any total coliform-positive sample taken under this section, systems must comply with the repeat monitoring requirements and *E. coli* analytical requirements in subsection (e).

(C) Once all monitoring required by this subsection and subsection (e) for a calendar month has been completed, systems must determine whether any coliform treatment technique triggers specified in subsection (f) have been exceeded. If any trigger has been exceeded, systems must complete assessments as required by subsection (f).

(2) Monitoring frequency for total coliforms. The monitoring frequency for total coliforms is based on the population served by the system, as follows:

TOTAL COLIFORM MONITORING FREQUENCY

Population Served			Minimum Samples/Month
25	to	1,000	1
1,001	to	2,500	2
2,501	to	3,300	3
3,301	to	4,100	4
4,101	to	4,900	5
4,901	to	5,800	6
5,801	to	6,700	7
6,701	to	7,600	8
7,601	to	8,500	9
8,501	to	12,900	10
12,901	to	17,200	15
17,201	to	21,500	20
21,501	to	25,000	25
25,001	to	33,000	30
33,001	to	41,000	40

41,001	to	50,000	50
50,001	to	59,000	60
59,001	to	70,000	70
70,001	to	83,000	80
83,001	to	96,000	90
96,001	to	130,000	100
130,001	to	220,000	120
220,001	to	320,000	150
320,001	to	450,000	180
450,001	to	600,000	210
600,001	to	780,000	240
780,001	to	970,000	270
970,001	to	1,230,000	300
1,230,001	to	1,520,000	330
1,520,001	to	1,850,000	360
1,850,001	to	2,270,000	390
2,270,001	to	3,020,000	420
3,020,001	to	3,960,000	450
3,960,001	or more		480

(e) Repeat monitoring and *E. coli* requirements.

(1) Repeat monitoring.

(A) If a sample taken under subsection (d) is total coliform-positive, the system must collect a set of repeat samples within 24 hours of being notified of the positive result. The system must collect no fewer than three repeat samples for each total coliform-positive sample found. The State may extend the 24-hour limit on a case-by-case basis if the system has a logistical problem in collecting the repeat samples within 24 hours that is beyond its control. Alternatively, the State may implement criteria for the system to use in lieu of case-by-case extensions. In the case of an extension, the State must specify how

much time the system has to collect the repeat samples. The State cannot waive the requirement for a system to collect repeat samples in subparagraphs (A) through (C).

(B) The system must collect all repeat samples on the same day, except that the State may allow a system with a single service connection to collect the required set of repeat samples over a three-day period or to collect a larger volume repeat sample(s) in one or more sample containers of any size, as long as the total volume collected is at least 300 ml.

(C) The system must collect an additional set of repeat samples in the manner specified in subparagraphs (A) through (C) if one or more repeat samples in the current set of repeat samples is total coliform-positive. The system must collect the additional set of repeat samples within 24 hours of being notified of the positive result, unless the State extends the limit as provided in subparagraph (A). The system must continue to collect additional sets of repeat samples until either total coliforms are not detected in one complete set of repeat samples or the system determines that a coliform treatment technique trigger specified in subsection (f)(1) has been exceeded as a result of a repeat sample being total coliform-positive and notifies the State. If a trigger identified in subsection (f) is exceeded as a result of a routine sample being total coliform-positive, systems are required to conduct only one round of repeat monitoring for each total coliform-positive routine sample.

(D) After a system collects a routine sample and before it learns the results of the analysis of that sample, if it collects another routine sample(s) from within five adjacent service connections of the initial sample, and the initial sample, after analysis, is found to contain total coliforms, then the system may count the subsequent sample(s) as a repeat sample instead of as a routine sample.

(E) Results of all routine and repeat samples taken under subsection (d) and this subsection not invalidated by the State must be used to determine whether a coliform treatment technique trigger specified in subsection (f) has been exceeded.

(2) *Escherichia coli (E. coli)* testing.

(A) If any routine or repeat sample is total coliform-positive, the system must analyze that total coliform-positive culture medium to determine if *E. coli* are present. If total coliforms or *E. coli* are present, the system must notify the State by the end of the day when the system is notified of the test result, unless the system is notified of the result after the State office is closed and the State does not have either an after-hours phone line or an alternative notification procedure, in which case the system must notify the State before the end of the next business day.

(B) The State has the discretion to allow a system, on a case-by-case basis, to forgo *E. coli* testing on a total coliform-positive sample if that system assumes that the total coliform-positive sample is *E. coli*-positive. Accordingly, the system must notify the

State as specified in subparagraph (A) and the provisions of section 11-20-6(c) apply.

(C) When a public water system has an *E. coli*-positive result, the supplier shall issue a boil water notice to all affected consumers.

(i) The boil water order shall be issued no later than twenty-four hours after the system has been notified of the positive *E. coli* result. The boil water notice shall be in effect until negative total coliform results are obtained from the affected tap and from all other required repeat sample sites.

(ii) The boil water notice shall not be required if all repeat samples collected are total coliform-negative, and these results are received within twenty-four hours of the *E. coli*-positive result.

(f) Coliform treatment technique triggers and assessment requirements for protection against potential fecal contamination.

(1) Treatment technique triggers. Systems must conduct assessments in accordance with paragraph (2) after exceeding treatment technique triggers in subparagraphs (A) and (B).

(A) Level 1 treatment technique triggers.

(i) For systems taking 40 or more samples per month, the system exceeds 5.0% total coliform-positive samples for the month.

(ii) For systems taking fewer than 40 samples per month, the system has two or more total coliform-positive samples in the same month.

(iii) The system fails to take every required repeat sample after any single total coliform-positive sample.

(B) Level 2 treatment technique triggers.

(i) An *E. coli* MCL violation, as specified in subsection (g)(1).

(ii) A second Level 1 trigger as defined in subparagraph (A) , within a rolling 12-month period, unless the State has determined a likely reason that the samples that caused the first Level 1 treatment technique trigger were total coliform-positive and has established that the system has corrected the problem.

(2) Requirements for assessments.

(A) Systems must ensure that Level 1 and 2 assessments are conducted in order to identify the possible presence of sanitary defects and defects in distribution system coliform monitoring practices. Level 2 assessments must be conducted by parties approved by the State.

(B) When conducting assessments, systems must ensure that the assessor evaluates minimum elements that include review and identification of inadequacies in sample sites; sampling protocol; sample processing; atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including water storage); source and treatment considerations that bear on distributed water quality, where appropriate (e.g., small ground water systems); and existing water quality

monitoring data. The system must conduct the assessment consistent with any State directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system.

(C) Level 1 assessments. A system must conduct a Level 1 assessment consistent with State requirements if the system exceeds one of the treatment technique triggers in paragraph (1)(A).

(i) The system must complete a Level 1 assessment as soon as practical after any trigger in paragraph (1)(A). In the completed assessment form, the system must describe sanitary defects detected, corrective actions completed, and a proposed timetable for any corrective actions not already completed. The assessment form may also note that no sanitary defects were identified. The system must submit the completed Level 1 assessment form to the State within 30 days after the system learns that it has exceeded a trigger.

(ii) If the State reviews the completed Level 1 assessment and determines that the assessment is not sufficient (including any proposed timetable for any corrective actions not already completed), the State must consult with the system. If the State requires revisions after consultation, the system must submit a revised assessment form to the State on an agreed-upon schedule not to exceed

30 days from the date of the consultation.

(iii) Upon completion and submission of the assessment form by the system, the State must determine if the system has identified a likely cause for the Level 1 trigger and, if so, establish that the system has corrected the problem, or has included a schedule acceptable to the State for correcting the problem.

(D) Level 2 assessments. A system must ensure that a Level 2 assessment consistent with State requirements is conducted if the system exceeds one of the treatment technique triggers in paragraph (1)(B). The system must comply with any expedited actions or additional actions required by the State in the case of an *E. coli* MCL violation.

(i) The system must ensure that a Level 2 assessment is completed by the State or by a party approved by the State as soon as practical after any trigger in paragraph (1)(B). The system must submit a completed Level 2 assessment form to the State within 30 days after the system learns that it has exceeded a trigger. The assessment form must describe sanitary defects detected, corrective actions completed, and a proposed timetable for any corrective actions not already completed. The assessment form may also note that no sanitary defects were identified.

(ii) The system may conduct Level 2 assessments if the system has

staff or management with the certification or qualifications specified by the State unless otherwise directed by the State.

(iii) If the State reviews the completed Level 2 assessment and determines that the assessment is not sufficient (including any proposed timetable for any corrective actions not already completed), the State must consult with the system. If the State requires revisions after consultation, the system must submit a revised assessment form to the State on an agreed-upon schedule not to exceed 30 days.

(iv) Upon completion and submission of the assessment form by the system, the State must determine if the system has identified a likely cause for the Level 2 trigger and determine whether the system has corrected the problem, or has included a schedule acceptable to the State for correcting the problem.

(3) Corrective action. Systems must correct sanitary defects found through either Level 1 or 2 assessments conducted under paragraph (2). For corrections not completed by the time of submission of the assessment form, the system must complete the corrective action(s) in compliance with a timetable approved by the State in consultation with the system. The system must notify the State when each scheduled corrective action is completed.

(4) Consultation. At any time during the assessment or corrective action phase, either the water system or the State may request a consultation with the other party

to determine the appropriate actions to be taken. The system may consult with the State on all relevant information that may impact on its ability to comply with a requirement of this section, including the method of accomplishment, an appropriate timeframe, and other relevant information.

(g) Violations.

(1) *E. coli* MCL violation. A system is in violation of the MCL for *E. coli* when any of the conditions identified in subparagraphs (A) through (D) occur.

(A) The system has an *E. coli*-positive repeat sample following a total coliform-positive routine sample.

(B) The system has a total coliform-positive repeat sample following an *E. coli*-positive routine sample.

(C) The system fails to take all required repeat samples following an *E. coli*-positive routine sample.

(D) The system fails to test for *E. coli* when any repeat sample tests positive for total coliform.

(2) Treatment technique violation.

(A) A treatment technique violation occurs when a system exceeds a treatment technique trigger specified in subsection (f)(1) and then fails to conduct the required assessment or corrective actions within the timeframe specified in subsections (f)(2) and (f)(3).

(3) Monitoring violations.

(A) Failure to take every required routine or additional routine sample in a compliance period is a monitoring violation.

(B) Failure to analyze for *E. coli* following a total coliform-positive routine sample is a monitoring violation.

(4) Reporting violations.

(A) Failure to submit a monitoring report or completed assessment form after a system properly conducts monitoring or assessment in a timely manner is a reporting violation.

(B) Failure to notify the State following an *E. coli*-positive sample as required by subsection (e)(2)(A) in a timely manner is a reporting violation.

(h) Reporting and recordkeeping.

(1) Reporting.

(A) *E. coli*.

(i) A system must notify the State by the end of the day when the system learns of an *E. coli* MCL violation, unless the system learns of the violation after the state office is closed and the State does not have either an after-hours phone line or an alternative notification procedure, in which case the system must notify the State before the end of the next business day, and notify the public in accordance with section 11-20-18.

(ii) A system must notify the State by the end of the day when the system is notified of a total coliform or an *E. coli*-positive routine sample, unless the system is notified of the result after the state office is closed and the State does not have either an after-hours phone line or an alternative notification procedure, in which case the system must notify the State before the end of the next business day.

(B) A system that has violated the treatment technique for coliforms in subsection (f) must report the violation to the State no later than the end of the next business day after it learns of the violation, and notify the public in accordance with section 11-20-18.

(C) A system required to conduct an assessment under subsection (f) must submit the assessment report within 30 days. The system must notify the State in accordance with subsection (f)(3) when each scheduled corrective action is completed for corrections not completed by the time of submission of the assessment form.

(D) A system that has failed to comply with a coliform monitoring requirement must report the monitoring violation to the State within 10 days after the system discovers the violation, and notify the public in accordance with section 11-20-18.

(2) Recordkeeping.

(A) The system must maintain any assessment form, regardless of who conducts the assessment, and documentation of corrective actions completed as a result of those assessments, or other available summary documentation of the sanitary defects and corrective actions taken under subsection (f) for state review. This record must be maintained by the system for a period not less than five years after completion of the assessment or corrective action.

(B) The system must maintain a record of any repeat sample taken that meets State criteria for an extension of the 24-hour period for collecting repeat samples as provided for under 40 C.F.R.

section 141.858(a)(1). [Eff and comp DEC 28 2017](Auth: HRS §§340E-2, 340E-9)(Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300f, 300g-1, 300g-2 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, and 300j-11; 40 C.F.R. Parts 141, §§141.851, 141.852, 141.853, 141.857, 141.858, 141.859, 141.860, and 141.861)

§11-20-10 Turbidity sampling and analytical requirements. (a) Samples shall be taken by suppliers of water for public water systems using surface water sources in whole or in part. Turbidity measurements shall be made by the Nephelometric Method 2130B cited in the 18th edition of Standard Methods for the Examination of Water and Wastewater, 1992, or by the methods cited in 40 C.F.R. §141.74(a)(1).

(b) The requirements in this subsection apply to filtered surface water systems until June 29, 1993. The requirements in this subsection apply to unfiltered systems until June 29, 1993, or until filtration is installed, whichever is later. The director shall determine, in writing pursuant to 42 U.S.C. §300g-1(b)(7)(C)(iii), which systems must install filtration.

(1) Samples shall be taken by suppliers of water for public water systems using surface water sources in whole or in part. Samples shall be taken at a representative entry point(s) to the water distribution system at least once per day, for the purpose of making turbidity measurements to determine compliance with section 11-20-5. If the director determines that a reduced sampling frequency in a non-community system will not pose a risk to public health, the director may reduce the required sampling frequency. The option of reducing the turbidity frequency shall be permitted only in those public water systems that practice

disinfection and which maintain an active residual disinfectant in the distribution system, and in those cases where the director has indicated in writing that no unreasonable risk to health existed under the circumstances of this option.

(2) If the result of a turbidity analysis indicates that the maximum allowable limit has been exceeded, the sampling and measurement shall be confirmed by resampling as soon as practicable and preferably within one hour. If the repeat sample confirms that the maximum allowable limit has been exceeded, the supplier of water shall report to the director within forty-eight hours. The repeat sample shall be the sample used for the purpose of calculating the monthly average. If the monthly average of the daily samples exceeds the maximum allowable limit, or if the average of two samples taken on consecutive days exceeds five NTU, the supplier of water shall report to the director and notify the public as directed in sections 11-20-17 and 11-20-18.

(c) After June 29, 1993, samples shall be collected at the filtration plant effluent or immediately prior to entry into the distribution system. Sampling of the plant effluent is acceptable if there are no storage tanks between the sampling point and entry into the distribution system. Continuous monitoring with a turbidimeter and recording chart, or collection of grab samples every four hours is required for conventional treatment, direct, and diatomaceous earth filtration. [Eff 12/26/81; am and comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; am and comp 10/13/97; comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2; 40 C.F.R. Parts 141, 142, §141.22, §142.10)

§11-20-11 Inorganic chemical sampling and analytical requirements. (a) Community water systems shall conduct monitoring to determine compliance with the MCLs specified in section 11-20-3 in accordance with this section. Non-transient, non-community water systems shall conduct monitoring to determine compliance with the MCLs specified in section 11-20-3 in accordance with this section. Transient, non-community water systems shall conduct monitoring to determine compliance with the nitrate and nitrite MCLs in section 11-20-3 in accordance with this section. Monitoring shall be conducted as follows:

(1) Ground water systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point) beginning in the initial compliance period. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(2) Surface water systems shall take a minimum of one sample at every entry point to the distribution system after any application of treatment or in the distribution system at a point which is representative of each source after treatment (hereafter called a sampling point) beginning in the initial compliance period. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. Note: For purposes of this paragraph, surface water systems include systems with a combination of surface and ground sources.

(3) If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating

conditions (i.e., when water is representative of all sources being used).

(4) The director may reduce the total number of samples which must be analyzed by allowing the use of compositing. Composite samples from a maximum of five samples are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples must be done in the laboratory.

(A) If the concentration in the composite sample is greater than or equal to one-fifth of the MCL of any inorganic chemical, then a follow-up sample must be taken within fourteen days at each sampling point included in the composite. These samples must be analyzed for the contaminants which exceeded one-fifth of the MCL in the composite sample. Detection limits for each analytical method and MCLs for each inorganic contaminant are specified in 40 C.F.R. §141.23(a)(4)(i).

(B) If the population served by the system is greater than 3,300 persons, then compositing may only be permitted by the director at sampling points within a single system. In systems serving less than or equal to 3,300 persons, the director may permit compositing among different systems provided the five-sample limit is maintained.

(C) If duplicates of the original sample taken from each sampling point used in the composite are available, the system may use these instead of resampling. The duplicates must be analyzed and the results reported to the State within fourteen days of collection.

(5) The frequency of monitoring for asbestos shall be in accordance with subsection (b);

the frequency of monitoring for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, and thallium shall be in accordance with subsection (c); the frequency of monitoring for nitrate shall be in accordance with subsection (d); and the frequency of monitoring for nitrite shall be in accordance with subsection (e).

(b) The frequency of monitoring conducted to determine compliance with the MCL for asbestos specified in section 11-20-3(b) shall be conducted as follows:

(1) Each community and non-transient, non-community water system is required to monitor for asbestos during the first three-year compliance period of each nine-year compliance cycle beginning in the compliance period starting January 1, 1993.

(2) If the system believes it is not vulnerable to either asbestos contamination in its source water or due to corrosion of asbestos-cement pipe, or both, it may apply to the director for a waiver of the monitoring requirement in paragraph (1). If the director grants the waiver, the system is not required to monitor.

(3) The director may grant a waiver based on a consideration of the following factors:

(A) Potential asbestos contamination of the water source; and

(B) The use of asbestos-cement pipe for finished water distribution and the corrosive nature of the water.

(4) A waiver remains in effect until the completion of the three-year compliance period. Systems not receiving a waiver must monitor in accordance with the paragraph (1).

(5) A system vulnerable to asbestos contamination due solely to corrosion of asbestos-cement pipe shall take one sample

at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(6) A system vulnerable to asbestos contamination due solely to source water shall monitor in accordance with the provision of subsection (a).

(7) A system vulnerable to asbestos contamination due both to its source water supply and corrosion of asbestos-cement pipe shall take one sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(8) A system which exceeds the MCLs as determined in subsection (i) shall monitor quarterly beginning in the next quarter after the violation occurred.

(9) The director may decrease the quarterly monitoring requirement to the frequency specified in paragraph (1) provided the director has determined that the system is reliably and consistently below the MCL. In no case shall the director make this determination unless a ground water system takes a minimum of two quarterly samples and a surface (or combined surface and ground) water system takes a minimum of four quarterly samples.

(10) If monitoring data collected after January 1, 1990 are generally consistent with the requirements of this subsection, then the director may allow systems to use that data to satisfy the monitoring requirement for the initial compliance period beginning January 1, 1993.

(c) The frequency of monitoring conducted to determine compliance with the MCLs in section 11-20-3 for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, and thallium shall be as follows:

(1) Ground water systems shall take one sample

at each sampling point during each compliance period. Surface water systems (or combined surface and ground) shall take one sample annually at each sampling point.

(2) The system may apply to the director for a waiver from the monitoring frequencies specified in paragraph (1). States may grant a public water system a waiver for monitoring of cyanide, provided that the director determines that the system is not vulnerable due to lack of any industrial source of cyanide.

(3) A condition of the waiver shall require that a system shall take a minimum of one sample while the waiver is effective. The term during which the waiver is effective shall not exceed one compliance cycle (i.e., nine years).

(4) The director may grant a waiver provided surface water systems have monitored annually for at least three years and ground water systems have conducted a minimum of three rounds of monitoring. (At least one sample shall have been taken since January 1, 1990). Both surface and ground water systems shall demonstrate that all previous analytical results were less than the MCL. Systems that use a new water source are not eligible for a waiver until three rounds of monitoring from the new source have been completed.

(5) In determining the appropriate reduced monitoring frequency, the director shall consider:

(A) Reported concentrations from all previous monitoring;

(B) The degree of variation in reported concentrations; and

(C) Other factors which may affect contaminant concentrations such as changes in ground water pumping rates, changes in the system's configuration,

changes in the system's operating procedures, or changes in stream flows or characteristics.

(6) A decision by the director to grant a waiver shall be made in writing and shall set forth the basis for the determination. The determination may be initiated by the director or upon an application by the public water system. The public water system shall specify the basis for its request. The director shall review and, where appropriate, revise its determination of the appropriate monitoring frequency when the system submits new monitoring data or when other data relevant to the system's appropriate monitoring frequency become available.

(7) Systems which exceed the MCLs as calculated in subsection (i) shall monitor quarterly beginning in the next quarter after the violation occurred.

(8) The director may decrease the quarterly monitoring requirement to the frequencies specified in paragraphs (1) and (2) provided the director has determined that the system is reliably and consistently below the MCL. In no case shall the director make this determination unless a ground water system takes a minimum of two quarterly samples and a surface water system takes a minimum of four quarterly samples.

(9) All new systems or systems that use a new source of water that begin operation after January 22, 2004 must demonstrate compliance with the MCL within a period of time specified by the director. The system must also comply with the initial sampling frequencies specified by the director to ensure that a system can demonstrate compliance with the MCL. Routine and increased monitoring frequencies shall be conducted in accordance with the

requirements of this section.

(d) All public water systems (community and non-community systems) shall monitor to determine compliance with the MCL for nitrate in section 11-20-3.

(1) Community and non-transient, non-community water systems served by ground water systems shall monitor annually beginning January 1, 1993; systems served by surface water shall monitor quarterly beginning January 1, 1993.

(2) For community and non-transient, non-community water systems, the repeat monitoring frequency for ground water systems shall be quarterly for at least one year following any one sample in which the concentration is greater than or equal to 50 per cent of the MCL. The director may allow a ground water system to reduce the sampling frequency to annually after four consecutive quarterly samples are reliably and consistently less than the MCL.

(3) For community and non-transient, non-community water systems, the director may allow a surface water system to reduce the sampling frequency to annually if all analytical results from four consecutive quarters are less than 50 per cent of the MCL. A surface water system shall return to quarterly monitoring if any one sample is greater than or equal to 50 per cent of the MCL.

(4) Each transient non-community water system shall monitor annually beginning January 1, 1993.

(5) After the initial round of quarterly sampling is completed, each community and non-transient non-community system which is monitoring annually shall take subsequent samples during the quarter(s) which previously resulted in the highest analytical result.

(e) All public water systems (community and non-

community systems) shall monitor to determine compliance with the MCL for nitrite in section 11-20-3(b).

(1) All public water systems shall take one sample at each sampling point in the compliance period beginning January 1, 1993 and ending December 31, 1995.

(2) After the initial sample, systems where an analytical result for nitrite is less than 50 per cent of the MCL shall monitor at the frequency specified by the director.

(3) For community and non-community water systems, the repeat monitoring frequency for any water system shall be quarterly for at least one year following any one sample in which the concentration is greater than or equal to 50 per cent of the MCL. The director may allow a system to reduce the sampling frequency to annually after determining the system is reliably and consistently less than the MCL.

(4) Systems which are monitoring annually shall take each subsequent sample during the quarter(s) which previously resulted in the highest analytical result.

(f) Confirmation samples:

(1) Where the results of sampling for asbestos, antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, or thallium indicate an exceedance of the MCL, the director may require that one additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point.

(2) Where nitrate or nitrite sampling results indicate an exceedance of the MCL, the system shall take a confirmation sample within twenty-four hours of the system's receipt of notification of the analytical results of the first sample. Systems unable

to comply with the twenty-four hour sampling requirement must immediately notify the consumers served by the area served by the public water system in accordance with section 11-20-18(b) and meet other Tier 1 public notification requirements under section 11-20-18. Systems exercising this option must take and analyze a confirmation sample within two weeks of notification of the analytical results of the first sample.

(3) If a director-required confirmation sample is taken for any contaminant, then the results of the initial and confirmation sample shall be averaged. The resulting average shall be used to determine the system's compliance in accordance with subsection (i). The director has the discretion to delete results of obvious sampling errors.

(g) The director may require more frequent monitoring than specified in subsections (b), (c), (d), and (e) or may require confirmation samples for positive and negative results at his or her discretion.

(h) Systems may apply to the director to conduct more frequent monitoring than the minimum monitoring frequencies specified in this section.

(i) Compliance with section 11-20-3 shall be determined based on the analytical result(s) obtained at each sampling point.

(1) For systems which are conducting monitoring at a frequency greater than annual, compliance with the MCLs for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, or thallium is determined by a running annual average at any sampling point. If the average at any sampling point is greater than the MCL, then the system is out of compliance. If any one sample would cause the annual average to exceed the MCL, then the system is out of

compliance immediately. Any sample below the method detection limit shall be calculated at zero for the purpose of determining the annual average.
If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.

(2) For systems which are monitoring annually, or less frequently, the system is out of compliance with the MCLs for asbestos, antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, or thallium if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the director, the determination of compliance will be based on the average of the two samples.

(3) Compliance with the MCLs for nitrate and nitrite is determined based on one sample if the levels of these contaminants are below the MCLs. If the levels of nitrate, nitrite, or both, exceed the MCLs in the initial sample, a confirmation sample is required in accordance with subsection (f)(2), and compliance shall be determined based on the average of the initial and confirmation samples.

(4) Arsenic sampling results will be reported to the nearest 0.001 mg/L.

(j) Each public water system shall monitor at the time designated by the director during each compliance period.

(k) Inorganic analysis:

(1) Analysis for the following contaminants shall be conducted in accordance with the methods in 40 C.F.R. §141.23(k)(1), or the alternative methods listed in Appendix A to subpart C of part 141, or their equivalent as determined by EPA. Criteria for analyzing

arsenic, barium, beryllium, cadmium, calcium, chromium, copper, lead, nickel, selenium, sodium, and thallium with digestion or directly without digestion, and other analytical test procedures are contained in Technical Notes on Drinking Water Methods, EPA-600/R-94-173, October 1994. This document is available from the National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242-0419 or http://www.epa.gov/nscep/.

(2) Sample collection for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium, and thallium under this section shall be conducted using the sample preservation, container, and maximum holding time procedures specified in 40 C.F.R. §141.23(k)(2).

(3) Analysis under this section shall only be conducted by laboratories that have been certified by EPA or the director. Laboratories may conduct sample analysis under provisional certification until January 1, 1996. To receive certification to conduct analyses for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium, and thallium, the laboratory must:

(A) Analyze Performance Evaluation samples which include those substances provided by EPA; the director; or by a third party (with the approval of the director or EPA) at least once a year.

(B) For each contaminant that has been included in the PE sample and for each method for which the laboratory desires certification,achieve quantitative results on the analyses that are within

the acceptance limits specified in 40 C.F.R. §141.23(k)(3)(ii).

(l) Analyses for the purpose of determining compliance with section 11-20-3 shall be conducted using the requirements specified in subsections (l) through (q).

(1) Analyses for all community water systems utilizing surface water sources shall be completed by June 24, 1978. These analyses shall be repeated at yearly intervals.

(2) Analyses for all community water systems utilizing only ground water sources shall be completed by June 24, 1979. These analyses shall be repeated at three-year intervals.

(3) For non-community water systems, whether supplied by surface or ground sources, analyses for nitrate shall be completed by December 24, 1980. These analyses shall be repeated at intervals determined by the director.

(4) The director has the authority to determine compliance or initiate enforcement action based upon analytical results and other information compiled by their sanctioned representatives and agencies.

(m) If the result of an analysis made under subsection (l) indicates that the level of any contaminant listed in section 11-20-3 exceeds the MCL, the supplier of the water shall report to the director within seven days and initiate three additional analyses at the same sampling point within one month.

(n) When the average of four analyses made pursuant to subsection (m) rounded to the same number of significant figures as the MCL for the substance in question, exceeds the MCL, the supplier of water shall notify the director pursuant to section 11-20-17 and give notice to the public pursuant to section 11-20-18. Monitoring after public notification shall be at a frequency designated by the director and shall continue until the MCL has not been exceeded in two successive samples or until a monitoring schedule as a condition to a variance, exemption, or enforcement

action shall become effective.

(o) The provisions of subsections (m) and (n) notwithstanding, compliance with the MCL for nitrate shall be determined on the basis of the mean of two analyses. When a level exceeding the MCL for nitrate is found, a second analysis shall be initiated within twenty-four hours, and if the mean of the two analyses exceeds the MCL,
the supplier of water shall report his findings to the director pursuant to section 11-20-17 and shall notify the public pursuant to section 11-20-18.

(p) For the initial analyses required by subsection (1)(1),(2), or (3), data for surface waters acquired within one year prior to the effective date and data for ground waters acquired within three years prior to the effective date of this part may be substituted at the discretion of the director.

(q) (Reserved) [Eff 12/26/81; comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; am and comp 10/13/97; am and comp 9/7/99; comp 11/30/02; am and comp 12/16/05; am and comp 11/28/11; comp 5/2/14; am and comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2; 40 C.F.R. Parts 141, 142, §141.23, §142.10)

§11-20-12 Organic chemicals other than total trihalomethanes, sampling and analytical requirements.

(a) (Reserved)

(b) (Reserved)

(c) (Reserved)

(d) (Reserved)

(e) Analysis for the contaminants in section 11-20-4(d) and (e) shall be conducted using the EPA methods cited in 40 C.F.R. §141.24(e), or alternative methods listed in Appendix A to Title 40 Code of Federal Regulations, Part 141, Subpart C, or their equivalent as approved by EPA. Analysis for 1,2,3-trichloropropane shall be conducted using the EPA methods cited in 40 C.F.R. §141.40(g), or their equivalent as determined by EPA.

(f) Beginning with the initial compliance period, analysis of the contaminants listed in section 11-20-4(d) for the purpose of determining compliance with the MCL shall be conducted as follows:

(1) Ground water systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source, treatment plant, or within the distribution system.

(2) Surface water systems (or combined surface and ground) shall take a minimum of one sample at points in the distribution system that are representative of each source or at each entry point to the distribution system after treatment (hereafter "sampling point"). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source, treatment plant, or within the distribution system.

(3) If the system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water representative of all sources is being used).

(4) Each community and non-transient non-community water system shall take four consecutive quarterly samples for each contaminant listed in section 11-20-4(d), with the exception of vinyl chloride, during each compliance period beginning in the initial compliance period.

(5) If the initial monitoring for benzene, carbon tetrachloride, para-dichlorobenzene, 1,2-dichloroethane, 1,1-dichloroethylene, 1,1,1-trichloroethane, trichloroethylene,

and vinyl chloride and the monitoring for all of the other contaminants listed in section 11-20-4(d) as allowed in paragraph (18) has been completed by December 31, 1992 and the system did not detect any contaminant listed in section 11-20-4(d) then each ground and surface water system shall take one sample annually beginning with the initial compliance period.

(6) After a minimum of three years of annual sampling, the director may allow ground water systems which have no previous detection of any contaminant listed in section 11-20-4(d) to take one sample during each compliance period.

(7) Each community and non-transient non-community ground water system which does not detect a contaminant listed in section 11-20-4(d) may apply to the director for a waiver from the requirements of paragraphs (5) and (6) after completing the initial monitoring. (For the purposes of this section, detection is defined as greater than or equal to 0.0005 mg/l.) A waiver shall be effective for no more than six years (two compliance periods). States may also issue waivers to small systems for the initial round of monitoring for 1,2,4-trichlorobenzene.

(8) The director may grant a waiver after evaluating the following factor(s):

(A) Knowledge of previous use (including transport, storage, or disposal) of the contaminant within the watershed or zone of influence of the system. If a determination by the director reveals no previous use of the contaminant within the watershed or zone of influence, a waiver may be granted.

(B) If previous use of the contaminant is unknown or it has been used previously, then the following factors shall be

used to determine whether a waiver is granted.

(i) Previous analytical results.

(ii) The proximity of the system to potential point or non-point source of contamination. Point sources include spills and leaks of chemicals at or near a water treatment facility or at manufacturing, distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities.

(iii) The environmental persistence and transport of the contaminants.

(iv) The number of persons served by the public water system and the proximity of a smaller system to a larger system.

(v) How well the water source is protected against contamination such as whether it is a surface or ground water system. Ground water systems must consider factors such as depth of the well, the type of soil, and wellhead protection. Surface water systems must consider watershed protection.

(9) As a condition of the waiver a system must take one sample at each sampling point during the time the waiver is effective (i.e., one sample during two compliance periods or six years), and update its vulnerability assessment considering the factors listed in paragraph (8). Based on this vulnerability assessment the director must reconfirm that the system is non-vulnerable. If the director does not make this reconfirmation within three years of the initial determination, then the waiver is invalidated and the system is required to

sample annually as specified in paragraph (5).

(10) Each community and non-transient non-community surface water system which does not detect a contaminant listed in section 11-20-4(d) may apply to the director for a waiver from the requirements of paragraph (5) after completing the initial monitoring. Composite samples from a maximum of five sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Systems meeting this criteria must be determined by the director to be non-vulnerable based on a vulnerability assessment during each compliance period. Each system receiving a waiver shall sample at the frequency specified by the director (if any).

(11) If a contaminant listed in section 11-20-4(d), with the exception of vinyl chloride, is detected at a level exceeding 0.0005 mg/l in any sample, then:

(A) The system must monitor quarterly at each sampling point which resulted in a detection.

(B) The director may decrease the quarterly monitoring requirement specified in subparagraph (A) provided it has determined that the system is reliably and consistently below the MCL. In no case shall the director make this determination unless a ground water system takes a minimum of two quarterly samples and a surface water system takes a minimum of four quarterly samples.

(C) If the director determines that the system is reliably and consistently below the MCL, the director may allow the system to monitor annually. Systems which monitor annually must

monitor during the quarter(s) which previously yielded the highest analytical result.

(D) Systems which have three consecutive annual samples with no detection of a contaminant may apply to the director for a waiver as specified in paragraph (7).

(E) Ground water systems which have detected one or more of the following two-carbon organic compounds: trichloroethylene, tetrachloroethylene, 1-2-dichloroethane, 1,1,1-trichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene, or 1,1-dichloroethylene shall monitor quarterly for vinyl chloride. A vinyl chloride sample shall be taken at each sampling point at which one or more of the two-carbon organic compounds was detected. If the results of the first analysis do not detect vinyl chloride, the director may reduce the quarterly monitoring frequency of vinyl chloride monitoring to one sample during each compliance period. Surface water systems are required to monitor for vinyl chloride as specified by the director.

(12) Systems which violate the requirements of section 11-20-4(d) as determined by paragraph (15) must monitor quarterly. After a minimum of four consecutive quarterly samples which show the system is in compliance as specified in paragraph (15), and the director determines that the system is reliably and consistently below the MCL, the system may monitor at the frequency and time specified in paragraph (11)(C).

(13) The director may require a confirmation

sample for positive or negative results. If a confirmation sample is required by the director, the result must be averaged with the first sampling result and the average is used for the compliance determination as specified by paragraph (15). The director has discretion to delete results of obvious sampling errors from this calculation.

(14) The director may reduce the total number of samples a system must analyze by allowing the use of compositing. Composite samples from a maximum of five sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples must be done in the laboratory and analyzed within fourteen days of sample collection.

(A) If the concentration in the composite sample is greater than or equal to 0.0005 mg/l for any contaminant listed in section 11-20-4(d), then a follow-up sample must be taken within fourteen days at each sampling point included in the composite, and be analyzed for that contaminant.

(B) Duplicates may be analyzed as specified by section 11-20-11(a)(4)(C).

(C) Compositing based on population served by the system shall be performed as specified in section 11-20-11(a)(4)(B).

(D) Compositing samples prior to GC analysis shall be performed as specified in 40 C.F.R. §141.24(f)(14)(iv).

(E) Compositing samples prior to GC-MS analysis shall be performed as specified in 40 C.F.R. §141.24(f)(14)(v).

(15) Compliance with section 11-20-4(d) shall be determined based on the analytical results obtained at each sampling point. If one

sampling point is in violation of an MCL, the system is in violation of the MCL.

(A) For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average at each sampling point.

(B) Systems monitoring annually or less frequently whose sample result exceeds the MCL must begin quarterly sampling. The system will not be considered in violation of the MCL until it has completed one year of quarterly sampling.

(C) If any sample result will cause the running annual average to exceed the MCL at any sampling point, the system is out of compliance with the MCL immediately.

(D) If a system fails to collect the required number of samples, compliance will be based on the total number of samples collected.

(E) If a sample result is less than the detection limit, zero will be used to calculate the annual average.

(16) (Reserved)

(17) Analysis under this section shall only be conducted by laboratories that are certified by EPA or the director according to the conditions as specified in 40 C.F.R. §141.24(f)(17).

(18) The director may allow the use of monitoring data collected after January 1, 1988 required under section 1445 of the Safe Drinking Water Act for purposes of initial monitoring compliance. If the data are generally consistent with the other requirements in this section, the director may use those data (i.e., a single sample rather than four quarterly samples) to satisfy the initial monitoring requirement of paragraph (4). Systems which use

grandfathered samples and did not detect any contaminant listed in section 11-20-4(d) shall begin monitoring annually in accordance with paragraph (5) beginning with the initial compliance period.

(19) The director may increase required monitoring where necessary to detect variations within the system.

(20) Each certified laboratory must determine the method detection limit (MDL), as defined in Appendix B of 40 C.F.R. Part 136, at which it is capable of detecting VOCs. The acceptable method detection limit is 0.0005 mg/l. This concentration is the detection concentration for purposes of this section.

(21) Each public water system shall monitor at the time designated by the director within each compliance period.

(22) All new systems or systems that use a new source of water that begin operation after January 22, 2004 must demonstrate compliance with the MCL within a period of time specified by the director. The system must also comply with the initial sampling frequencies specified by the director to ensure that a system can demonstrate compliance with the MCL. Routine and increased monitoring frequencies shall be conducted in accordance with the requirements of this section.

(g) (Reserved)

(h) Analysis of the contaminants listed in section 11-20-4(e) for the purposes of determining compliance with the MCL shall be conducted as follows:

(1) Ground water systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment

plant.

(2) Surface water systems shall take a minimum of one sample at points in the distribution system that are representative of each source or at each entry point to the distribution system after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. For purposes of this paragraph, surface water systems include systems with a combination of surface and ground sources.

(3) If the system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water representative of all sources is being used).

(4) Monitoring frequency:

(A) Each community and non-transient non-community water system shall take four consecutive quarterly samples for each contaminant listed in section 11-20-4(e) during each compliance period beginning with the initial compliance period.

(B) Systems serving more than 3,300 persons which do not detect a contaminant in the initial compliance period may reduce the sampling frequency to a minimum of two quarterly samples in one year during each repeat compliance period.

(C) Systems serving 3,300 persons or less which do not detect a contaminant in the initial compliance period may reduce the sampling frequency to a minimum of one sample during each repeat compliance period.

(5) Each community and non-transient water system may apply to the director for a waiver from the requirement of paragraph (4). A system must reapply for a waiver for each compliance period.

(6) The director may grant a waiver after evaluating the following factor(s): Knowledge of previous use (including transport, storage, or disposal) of the contaminant within the watershed or zone of influence of the system. If a determination by the director reveals no previous use of the contaminant within the watershed or zone of influence, a waiver may be granted. If previous use of the contaminant is unknown or it has been used previously, then the following factors shall be used to determine whether a waiver is granted:

(A) Previous analytical results.

(B) The proximity of the system to a potential point or non-point source of contamination. Point sources include spills and leaks of chemicals at or near a water treatment facility or at manufacturing distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities. Non-point sources include the use of pesticides to control insect and weed pests on agricultural areas, forest lands, home and gardens, and other land application uses.

(C) The environmental persistence and transport of the pesticide or PCBs.

(D) How well the water source is protected against contamination due to such factors as depth of the well and the type of soil and the integrity of the well casing.

(E) Elevated nitrate levels at the water supply source.

(F) Use of PCBs in equipment used in the production, storage, or distribution of water (i.e., PCBs used in pumps, transformers, etc.).

(7) If an organic contaminant listed in section 11-20-4(e) is detected (as defined by paragraph (18)) in any sample, then:

(A) Each system must monitor quarterly at each sampling point which resulted in a detection.

(B) The director may decrease the quarterly monitoring requirement specified in subparagraph (A) provided it has determined that the system is reliably and consistently below the MCL. In no case shall the director make this determination unless a ground water system takes a minimum of two quarterly samples and a surface water system takes a minimum of four quarterly samples.

(C) After the director determines the system is reliably and consistently below the MCL, the director may allow the system to monitor annually. Systems which monitor annually must monitor during the quarter that previously yielded the highest analytical result.

(D) Systems which have three consecutive annual samples with no detection of a contaminant may apply to the director for a waiver as specified in paragraph (6).

(E) If monitoring results in detection of one or more of certain related contaminants ([aldicarb, aldicarb sulfone, aldicarb sulfoxide and] heptachlor, heptachlor epoxide), then subsequent monitoring shall analyze for all related contaminants.

(8) Systems which violate the requirements of

section 11-20-4(e) as determined by paragraph (11) must monitor quarterly. After a minimum of four quarterly samples show the system is in compliance and the director determines the system is reliably and consistently below the MCL, as specified in paragraph (11), the system shall monitor at the frequency specified in paragraph (7)(C).

(9) The director may require a confirmation sample for positive or negative results. If a confirmation sample is required by the director, the result must be averaged with the first sampling result and the average used for the compliance determination as specified by paragraph (11). The director has discretion to delete results of obvious sampling errors from this calculation.

(10) The director may reduce the total number of samples a system must analyze by allowing the use of compositing. Composite samples from a maximum of five sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples must be done in the laboratory and analyzed within fourteen days of sample collection.

(A) If the concentration in the composite sample detects one or more contaminants listed in section 11-20-4(e), then a follow-up sample must be taken within fourteen days at each sampling point included in the composite, and be analyzed for that contaminant.

(B) Duplicates may be analyzed as specified in section 11-20-11(a)(4)(C).

(C) Compositing based on population served by the system shall be performed as specified in section 11-20-11(a)(4)(B).

(11) Compliance with section 11-20-4(e) shall be determined based on the analytical results

obtained at each sampling point. If one sampling point is in violation of an MCL, the system is in violation of the MCL.

(A) For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average at each sampling point.

(B) Systems monitoring annually or less frequently whose sample result exceeds the regulatory detection level as defined by paragraph (18) must begin quarterly sampling. The system will not be considered in violation of the MCL until it has completed one year of quarterly sampling.

(C) If any sample result will cause the running annual average to exceed the MCL at any sampling point, the system is out of compliance with the MCL immediately.

(D) If a system fails to collect the required number of samples, compliance will be based on the total number of samples collected.

(E) If a sample result is less than the detection limit, zero will be used to calculate the annual average.

(12) (Reserved)

(13) Analysis for PCBs shall be conducted as specified in 40 C.F.R. §141.24(h)(13).

(14) If monitoring data collected after January 1, 1990, are generally consistent with the requirements of this subsection then the director may allow systems to use that data to satisfy the monitoring requirement for the initial compliance period beginning January 1, 1993.

(15) The director may increase the required monitoring frequency, where necessary, to detect variations within the system (e.g., fluctuations in concentration due to seasonal use, changes in water source).

(16) The director has the authority to determine compliance or initiate enforcement action based upon analytical results and other information compiled by his or her sanctioned representatives and agencies.

(17) Each public water system shall monitor at the time designated by the director within each compliance period.

(18) Detection as used in this paragraph shall be defined as greater than or equal to the concentrations for each contaminant specified in 40 C.F.R. §141.24(h)(18).

(19) Analysis under this section shall only be conducted by laboratories that have received certification by EPA or the director and have met the conditions as specified in 40 C.F.R. §141.24(h)(19).

(20) All new systems or systems that use a new source of water that begin operation after January 22, 2004 must demonstrate compliance with the MCL within a period of time specified by the director. The system must also comply with the initial sampling frequencies specified by the director to ensure a system can demonstrate compliance with the MCL. Routine and increased monitoring frequencies shall be conducted in accordance with the requirements of this section. [Eff 12/16/81; am and comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; am and comp 10/13/97; am and comp 9/7/99; am and comp 11/30/02; am and comp 12/16/05; am and comp 11/28/11; comp 5/2/14; am and comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2, 300g-3, 300j-4, 300g-6, and 300j-9; 40 C.F.R. Parts 141, 142, §141.24, §142.10)

§11-20-13 REPEALED [R 11/28/11]

§11-20-13.1 Radionuclide analytical methods, monitoring frequency and compliance requirements in community water systems. (a) Analysis for the following contaminants shall be conducted to determine compliance with section 11-20-7 in accordance with the methods in 40 C.F.R. 141.25(a) or the alternative methods listed in Appendix A to subpart C of 40 C.F.R. 141, or their equivalent determined by the State in accordance with section 11-20-14.

(b) When the identification and measurement of radionuclides other than those listed in subsection (a) of this section is required, the following references are to be used, except in cases where alternative methods have been approved in accordance with section 11-20-14.

(1) *Procedures for Radiochemical Analysis of Nuclear Reactor Aqueous Solutions*, H.L. Krieger and S. Gold, EPA-R4-73-014. USEPA, Cincinnati, Ohio, May 1973

(2) *HASL Procedure Manual,* Edited by John H. Harley, HASL, 300, ERDA Health and Safety Laboratory, New York, NY., 1973.

(c) For the purpose of monitoring radioactivity concentrations in drinking water, the required sensitivity of the radioanalysis is defined in terms of a detection limit. The detection limit shall be that concentration which can be counted with a precision of plus or minus 100 percent at the 95 percent confidence level (1.96σ where σ is the standard deviation of the net counting rate of the sample).

(1) To determine compliance with section 11-20-7(b), (c), and (e), the detection limit shall not exceed the concentrations in Table B of this paragraph.

TABLE B - Detection limits for gross alpha particle activity, Radium 226, Radium 228 and Uranium

Contaminant	Detection Limit
Gross alpha particle activity	3 pCi/L
Radium 226	1 pCi/L

Radium 228	1 pCi/L
Uranium	1 µg/L

(2) To determine compliance with section 11-20-7(d) the detection limits shall not exceed the concentrations listed in Table C of this paragraph.

TABLE C - Detection limits for man-made beta particle and photon emitters

Radionuclide	Detection Limit
Tritium	1,000 pCi/L
Strontium-89	10 pCi/L
Strontium-90	2 pCi/L
Iodine-131	1 pCi/L
Cesium-134	10 pCi/L
Gross beta	4 pCi/L
Other radionuclides	1/10 of applicable limit

(d) To judge compliance with the maximum contaminant levels listed in section 11-20-07, averages of data shall be used and shall be rounded to the same number of significant figures as the maximum contaminant level for the substance in question.

(e) The State has the authority to determine compliance or initiate enforcement action based upon analytical results or other information compiled by their sanctioned representatives and agencies.

(f) Monitoring and compliance requirements for gross alpha particle activity, radium-226, radium-228, and uranium.

(1) Community water systems (CWSs) must conduct initial monitoring to determine compliance with 40 C.F.R. §141.66(b), (c), and (e) by December 31, 2007. For the purposes of monitoring for gross alpha particle activity, radium-226, radium-228, uranium, and beta particle and photon radioactivity

in drinking water, "detection limit" is defined as in section 11-20-13(c).

(A) Applicability and sampling location for existing community water systems or sources. All existing CWSs using ground water, surface water or systems using both ground and surface water (for the purpose of this section hereafter referred to as systems) must sample at every entry point to the distribution system that is representative of all sources being used (hereafter called a sampling point) under normal operating conditions. The system must take each sample at the same sampling point unless conditions make another sampling point more representative of each source or the State has designated a distribution system location, in accordance with subsection (f)(2)(B)(iii) of this section.

(B) Applicability and sampling locations for new community water systems or sources. All new CWSs or CWSs that use a new source of water must begin to conduct initial monitoring for the new source within the first quarter after initiating use of the source. CWSs must conduct more frequent monitoring when ordered by the State in the event of possible contamination or when changes in the distribution system or treatment processes occur which may increase the concentration of radioactivity in finished water.

(2) Initial monitoring. Systems must conduct initial monitoring for gross alpha particle activity, radium-226, radium-228, and uranium as follows:

(A) Systems without acceptable historical data, as defined below, must collect

four consecutive quarterly samples at all sampling points before December 31, 2007.

(B) Grandfathering of data: States may allow historical monitoring data collected at a sampling point to satisfy the initial monitoring requirements for that sampling point, for the following situations.

(i) To satisfy initial monitoring requirements, a community water system having only one entry point to the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 8, 2003.

(ii) To satisfy initial monitoring requirements, a community water system with multiple entry points and having appropriate historical monitoring data for each entry point to the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 8, 2003.

(iii) To satisfy initial monitoring requirements, a community water system with appropriate historical data for a representative point in the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 8, 2003, provided that the State finds that the historical data satisfactorily demonstrate that each entry point to the distribution system is expected to be in compliance based upon historical data and

reasonable assumptions about the variability of contaminant levels between entry points. The State must make a written finding indicating how the data conforms to these requirements.

(C) For gross alpha particle activity, uranium, radium-226, and radium-228 monitoring, the State may waive the final two quarters of initial monitoring for a sampling point if the results of the samples from the previous two quarters are below the detection limit.

(D) If the average of the initial monitoring results for a sampling point is above the MCL, the system must collect and analyze quarterly samples at that sampling point until the system has results from four consecutive quarters that are at or below the MCL, unless the system enters into another schedule as part of a formal compliance agreement with the State.

(3) Reduced monitoring. States may allow community water systems to reduce the future frequency of monitoring from once every three years to once every six or nine years at each sampling point based on the following criteria:

(A) If the average of the initial monitoring results for each contaminant (i.e., gross alpha particle activity, uranium, radium-226, or radium-228) is below the detection limit specified in Table B, in section 11-20-13(c)(1), the system must collect and analyze for that contaminant using at least one sample at that sampling point every nine years.

(B) For gross alpha particle activity and uranium, if the average of the initial

monitoring results for each contaminant is at or above the detection limit but at or below ½ the MCL, the system must collect and analyze for that contaminant using at least one sample at that sampling point every six years. For combined radium-226 and radium-228, the analytical results must be combined. If the average of the combined initial monitoring results for radium-226 and radium-228 is at or above the detection limit, but at or below ½ the MCL, the system must collect and analyze for that contaminant using at least one sample at that sampling point every six years.

(C) For gross alpha particle activity and uranium, if the average of the initial monitoring results for each contaminant is above ½ the MCL but at or below the MCL, the system must collect and analyze at least one sample at that sampling point every three years. For combined radium-226 and radium-228, the analytical results must be combined. If the average of the combined initial monitoring results for radium-226 and radium-228 is above ½ the MCL but at or below the MCL, the system must collect and analyze at least one sample at that sampling point every three years.

(D) Systems must use the samples collected during the reduced monitoring period to determine the monitoring frequency for subsequent monitoring periods (e.g., if a system's sampling point is on a nine year monitoring period, and the sample result is above ½ the MCL, then the next monitoring period for that sampling points is three years).

(E) If a system has a monitoring result that exceeds the MCL while on reduced

monitoring, the system must collect and analyze quarterly samples at that sampling point until the system has results from four consecutive quarters that are below the MCL, unless the system enters into another schedule as part of a formal compliance agreement with the State.

(4) Compositing: To fulfill quarterly monitoring requirements for gross alpha particle activity, radium-226, radium-228, or uranium, a system may composite up to four consecutive quarterly samples from a single entry point if analysis is done within a year of the first sample. States will treat analytical results from the composited as the average analytical result to determine compliance with the MCLs and the future monitoring frequency. If the analytical result from the composited sample is greater than ½ MCL, the State may direct the system to take additional quarterly samples before allowing the system to sample under a reduced monitoring schedule.

(5) A gross alpha particle activity measurement may be substituted for the required radium-226 measurement provided that the measured gross alpha particle activity does not exceed 5 pCi/l. A gross alpha particle activity measurement may be substituted for the required uranium measurement provided that the measured gross alpha particle activity does not exceed 15 pCi/l. The gross alpha measurement shall have a confidence interval of 95% (1.65σ, where σ is the standard deviation of the net counting rate of the sample) for radium-226 and uranium. When a system uses a gross alpha particle activity measurement in lieu of a radium-226 and/or uranium measurement, the gross alpha particle activity analytical result will be used to determine the future

monitoring frequency for radium-226 and/or uranium. If the gross alpha particle activity result is less than detection, ½ the detection limit will be used to determine compliance and the future monitoring frequency.

(g) Monitoring and compliance requirements for beta particle and photon radioactivity. To determine compliance with the maximum contaminant levels in §141.66(d) for beta particle and photon radioactivity, a system must monitor at a frequency as follows:

(1) Community water systems (both surface and ground water) designated by the State as vulnerable must sample for beta particle and photon radioactivity. Systems must collect quarterly samples for beta emitters and annual samples for tritium and strontium-90 at each entry point to the distribution system (hereafter called a sampling point), beginning within one quarter after being notified by the State. Systems already designated by the State must continue to sample until the State reviews and either reaffirms or removes the designation.

(A) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average (computed quarterly) less than or equal to 50 pCi/L (screening level), the State may reduce the frequency of monitoring at that sampling point to once every 3 years. Systems must collect all samples required in subsection (g)(1) during the reduced monitoring period.

(B) For systems in the vicinity of a nuclear facility, the State may allow the CWS to utilize environmental surveillance data collected by the nuclear facility in lieu of monitoring at the system's entry point(s), where

the State determines if such data is applicable to a particular water system. In the event that there is a release from a nuclear facility, systems which are using surveillance data must begin monitoring at the community water system's entry point(s) in accordance with subsection (g)(1).

(2) Community water systems (both surface and ground water) designated by the State as utilizing waters contaminated by effluents from nuclear facilities must sample for beta particle and photon radioactivity. Systems must collect quarterly samples for beta emitters and iodine-131 and annual samples for tritium and strontium-90 at each entry point to the distribution system (hereafter called a sampling point), beginning within one quarter after being notified by the State. Systems already designated by the State as systems using waters contaminated by effluents from nuclear facilities must continue to sample until the State reviews and either reaffirms or removes the designation.

(A) Quarterly monitoring for gross beta particle activity shall be based on the analysis of monthly samples or the analysis of a composite of three monthly samples. The former is recommended.

(B) For iodine-131, a composite of five consecutive daily samples shall be analyzed once each quarter. As ordered by the State, more frequent monitoring shall be conducted when iodine-131 is identified in the finished water.

(C) Annual monitoring for strontium-90 and tritium shall be conducted by means of the analysis of a composite of four consecutive quarterly samples or analysis of four quarterly samples.

The latter procedure is recommended.

(D) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average (computed quarterly) less than or equal to 15 pCi/L (screening level), the State may reduce the frequency of monitoring at that sampling point to every 3 years. Systems must collect the same type of samples required in paragraph (2) during the reduced monitoring period.

(E) For systems in the vicinity of a nuclear facility, the State may allow the CWS to utilize environmental surveillance data collected by the nuclear facility in lieu of monitoring at the system's entry point(s), where the State determines if such data is applicable to a particular water system. In the event that there is a release from a nuclear facility, systems which are using surveillance data must begin monitoring at the community water system's entry point(s) in accordance with paragraph (2).

(3) Community water systems designated by the State to monitor for beta particle and photon radioactivity cannot apply to the State for a waiver from the monitoring frequencies specified in paragraph (1) or (2).

(4) Community water systems may analyze for naturally occurring potassium-40 beta particle activity from the same or equivalent sample used for the gross beta particle activity analysis. Systems are allowed to subtract the potassium-40 beta particle activity value from the total gross beta particle activity value to determine if the screening level is exceeded. The

potassium-40 beta particle activity must be calculated by multiplying elemental potassium concentrations (in mg/L) by a factor of 0.82.

(5) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity exceeds the appropriate screening level, an analysis of the sample must be performed to identify the major radioactive constituents present in the sample and the appropriate doses must be calculated and summed to determine compliance with 40 C.F.R. 141.66(d)(1), using the formula in 40 C.F.R. 141.66(d)(2). Doses must also be calculated and combined for measured levels of tritium and strontium to determine compliance.

(6) Systems must monitor monthly at the sampling point(s) which exceed the maximum contaminant level in 40 C.F.R. 141.66(d) beginning the month after the exceedance occurs. Systems must continue monthly monitoring until the system has established, by a rolling average of 3 monthly samples, that the MCL is being met. Systems who establish that the MCL is being met must return to quarterly monitoring until they meet the requirements set forth in paragraph (1)(A) or (2)(D).

(h) General monitoring and compliance requirements for radionuclides.

(1) The State may require more frequent monitoring than specified in subsections (f) and (g) of this section, or may require confirmation samples at its discretion. The results of the initial and confirmation samples will be averaged for use in compliance determinations.

(2) Each public water system shall monitor at the time designated by the State during each compliance period.

(3) Compliance. Compliance with 40 C.F.R.

141.66(b) through (c) will be determined based on the analytical result(s) obtained at each sampling point. If one sampling point is in violation of an MCL, the system is in violation of the MCL.

(A) For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average at each sampling point. If the average of any sampling point is greater than the MCL, then the system is out of compliance with the MCL.

(B) For systems more than once per year, if any sample result will cause the running average to exceed the MCL at any sample point, the system is out of compliance with the MCL immediately.

(C) Systems must include all samples taken and analyzed under the provisions of this section in determining compliance, even if that number is greater than the minimum required.

(D) If a system does not collect all required samples when compliance is based on a running annual average of quarterly samples, compliance will be based on the running average of the samples collected.

(E) If a sample result is less than the detection limit, zero will be used to calculate the annual average, unless a gross alpha particle activity is being used in lieu of radium-226 and/or uranium. If the gross alpha particle activity result is less than detection, ½ the detection limit will be used to calculate the annual average.

(4) States have the discretion to delete results of obvious sampling or analytic errors.

(5) If the MCL for radioactivity set forth in 40 C.F.R. 141.66(b) through (e) is exceeded, the operator of a community water system

must give notice to the State pursuant to 40 C.F.R. §141.31 and to the public as required by subpart Q of this part. [Eff and comp 11/28/11; comp 5/2/14; am and comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2; 40 C.F.R. Parts 141, 142, §141.25, §141.26, §141.66)

§11-20-14 Alternative analytical techniques. With the written permission of the director, concurred with by the administrator, an alternative analytical technique may be employed. An alternative technique shall be acceptable only if it is substantially equivalent to the prescribed test in both precision and accuracy as it relates to the determination of compliance with any MCL. The use of the alternative analytical technique shall not decrease the frequency of monitoring required by this chapter. [Eff 12/26/81; comp 3/7/92; comp 1/2/93; comp 12/15/94; am and comp 10/13/97; comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2; 40 C.F.R. Parts 141, 142, §141.27, §142.10)

§11-20-15 Certified laboratories. (a) For the purpose of determining compliance with sections 11-20-9 through 11-20-14, 11-20-34, 11-20-35, 11-20-46(d), 11-20-48, and 11-20-50, samples may be considered only if they have been analyzed by a laboratory certified by the director as specified in EPA 815-R-05-004 "Manual for the Certification of Laboratories Analyzing Drinking Water", 5th edition, January 2005, except that measurements for turbidity, disinfectant residual, temperature, alkalinity, calcium, conductivity, orthophosphate, silica, and pH may be performed by any person acceptable to the director.

(b) Nothing in this chapter shall be construed

to preclude the director from taking samples or from using the results from such samples to determine compliance by a supplier of water with the applicable requirements of this chapter. [Eff 12/26/81; am and comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; am and comp 10/13/97; comp 9/7/99; am and comp 11/30/02; comp 12/16/05; comp 11/28/11; am and comp 5/2/14; am and comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2; 40 C.F.R. Parts 141, 142, §141.28, §142.10)

§11-20-16 Monitoring of consecutive public water systems. When a public water system supplies water to one or more other public water systems, the director may modify the monitoring requirements imposed by this chapter to the extent that the interconnection of the public water systems justifies treating them as a single public water system for monitoring purposes. Any modified monitoring shall be conducted pursuant to a schedule specified by the director. [Eff 12/26/81; am and comp 3/7/92; am and comp 1/2/93; comp 12/15/95; comp 10/13/97; comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2; 40 C.F.R. Parts 141, 142, §141.29, §142.10)

§11-20-17 Reporting requirements. (a) Except where a shorter period is specified in this chapter, the supplier of water shall report to the director the results of any test measurements or analysis required by this chapter:

(1) Within the first ten days following the month in which the result is received; or

(2) Within the first ten days following the end of the required monitoring period as stipulated by the director, whichever of these is shortest.

(b) Except where a different reporting period is

specified in this chapter, the supplier of water shall report to the director within forty-eight hours the failure to comply with any primary drinking water regulations (including failure to comply with monitoring requirements) set forth in this chapter.

(c) The supplier of water need not report analytical results to the director in cases where a state laboratory performs the analysis and reports the results to the director's office which would normally receive such notification from the supplier.

(d) The supplier of water, within ten days of completion of each public notification required pursuant to section 11-20-18, shall submit to the director a certification that it has fully complied with the public notification regulations. The water supplier must include with the certification a representative copy of each type of notice distributed, published, posted, made available to the persons served by the public water system, and to the media.

(e) The supplier of water shall submit to the director within the time stated in the request copies of any records required to be maintained under section 11-20-19 or copies of any documents then in existence which the director or the administrator is entitled to inspect pursuant to the authority of P.L. No. 95-10, section 1445, or chapter 340E, HRS.

(f) The supplier of water shall report information requested by the State in a format approved by the director. [Eff 12/26/81; am and comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; am and comp 10/13/97; comp 9/7/99; comp 11/30/02; am and comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-6, 340E-9; 42 U.S.C. §§300g-1, 300g-2, 300g-4; 40 C.F.R. Parts 141, 142, §141.31, §142.10)

§11-20-18 Public notice requirements. (a) Public water systems shall give notice as described below.

(1) Each owner or operator of a public water

system (community water systems, non-transient non-community water systems, and transient non-community water systems) must give notice for all violations of national primary drinking water regulations (NPDWR) and for other situations, as listed below to include violations of the maximum contaminant level (MCL), maximum residual disinfection level (MRDL), treatment technique (TT), monitoring requirements, and testing procedures in this chapter. Appendix G entitled "NPDWR Violations and Other Situations Requiring Public Notice", dated February 13, 2013, located at the end of this chapter and made a part of this section, identifies the tier assignment for each specific violation or situation requiring a public notice;

(A) NPDWR violations:
  (i) Failure to comply with an applicable maximum contaminant level (MCL) or maximum residual disinfectant level (MRDL);
  (ii) Failure to comply with a prescribed treatment technique (TT);
  (iii) Failure to perform water quality monitoring as required by the drinking water regulations;
  (iv) Failure to comply with testing procedures as prescribed by a drinking water regulation;

(B) Variance and exemptions:
  (i) Operation under a variance or an exemption;
  (ii) Failure to comply with the requirements of any schedule that has been set under a variance or exemption;

(C) Special public notices:
  (i) Occurrence of a waterborne disease outbreak or other waterborne

emergency;

(ii) Exceedance of the nitrate MCL by non-community water systems (NCWS), where granted permission by the State under section 11-20-3(c);

(iii) Exceedance of the secondary maximum contaminant level (SMCL) for fluoride;

(iv) Availability of unregulated contaminant monitoring data;

(v) Other violations and situations determined by the State to require a public notice under this section, not already listed in Appendix G.

(2) Public notice requirements are divided into three tiers as defined below:

(A) Tier 1 public notice - required for NPDWR violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure.

(B) Tier 2 public notice - required for all other NPDWR violations and situations with potential to have serious adverse effects on human health.

(C) Tier 3 public notice - required for all other NPDWR violations and situations not included in Tier 1 and Tier 2.

(3) Each public water system must provide public notice to persons served by the water system, in accordance with this section.

(A) Public water systems that sell or otherwise provide drinking water to other public water systems (i.e., to consecutive systems) are required to give public notice to the owner or operator of the consecutive system. The consecutive system is responsible for providing public notice to the persons it serves.

(B) If a public water system has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the State may allow the system to limit distribution of the public notice to only persons served by that portion of the system which is out of compliance. Permission by the State for limiting distribution of the notice must be granted in writing;

(C) A copy of the notice must also be sent to the State, in accordance with the requirements under section 11-20-17(d).

(b) Tier 1 Public Notice - form, manner, and frequency of notice.

(1) Tier 1 public notices are required for the following violations or situations:

(A) Violation of the MCL for *E. coli* (as specified in section 11-20-6(a);

(B) Violation of the MCL for nitrate, nitrite, or total nitrate and nitrite, as defined in section 11-20-3, or when the water system fails to take a confirmation sample within 24 hours of the system's receipt of the first sample showing an exceedance of the nitrate or nitrite MCL, as specified in section 11-20-11(f)(2);

(C) Exceedance of the nitrate MCL by non-community water systems, where permitted to exceed the MCL by the State under section 11-20-3(c) as required under subsection (i);

(D) Violation of the MRDL for chlorine dioxide, as defined in section 11-20-7.5(a), when one or more samples taken in the distribution system the day following an exceedance of the MRDL at the entrance of the distribution system exceed the MRDL, or when the water

system does not take the required samples in the distribution system, as specified in section 11-20-45.1(c)(3)(B)(i);

(E) Violation of the turbidity MCL under section 11-20-5(b)(2), where the state determines after consultation that a Tier 1 notice is required or where consultation does not take place within 24 hours after the system learns of the violation;

(F) Violation of the Surface Water Treatment Rule (SWTR), Interim Enhanced Surface Water Treatment rule (IESWTR), or Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR) treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit (as identified in Appendix G, where the State determines after consultation that a Tier 1 notice is required or where consultation does not take place within 24 hours after the system learns of the violation;

(G) Occurrence of a waterborne disease outbreak, as defined in section 11-20-2, or other waterborne emergency (such as a failure or significant interruption in key water treatment processes, a natural disaster that disrupts the water supply or distribution system, or a chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination);

(H) Detection of *E. coli* in source water samples as specified in sections 11-20-50(c)(1) and 11-20-50-(c)(2); and

(I) Other violations or situations with significant potential to have serious

adverse effects on human health as a result of short-term exposure, as determined by the State either in its regulations or on a case-by-case basis.

(2) Public water systems must issue Tier 1 public notices at the following times and under the following conditions:

(A) Provide a public notice as soon as practical but no later than 24 hours after the system learns of the violation;

(B) Initiate consultation with the state as soon as practical, but no later than 24 hours after the public water system learns of the violation or situation, to determine additional public notice requirements; and

(C) Comply with any additional public notification requirements (including any repeat notices or direction on the duration of the posted notices) that are established as a result of the consultation with the State. Such requirements may include the timing, form, manner, frequency, and content of repeat notices (if any) and other actions designed to reach all persons served.

(3) Public water systems must provide Tier 1 public notices within 24 hours in a manner designed to reach all persons served including: residential, transient, and non-transient users employing one or more of the following forms of delivery:

(A) Appropriate broadcast media (such as radio and television);

(B) Posting of the notice in conspicuous locations throughout the area served by the water system;

(C) Hand delivery of the notice to persons served by the water system; or

(D) Another delivery method approved or

ordered in writing by the State.

(c) Tier 2 Public Notice - form, manner, and frequency of notice.

(1) Tier 2 public notices are required for the following violations or situations:

(A) All violations of the MCL, MRDL, and treatment technique requirements, except where a Tier 1 notice is required under subsection (b)(1) or where the State determines that a Tier 1 notice is required;

(B) Violations of the monitoring and testing procedure requirements, where the State determines that a Tier 2 rather than a Tier 3 public notice is required, taking into account potential health impacts and persistence of the violation;

(C) Failure to comply with the terms and conditions of any variance or exemption in place; and

(D) Failure to take corrective action or failure to maintain at least 4-log treatment of viruses (using inactivation, removal, or a state-approved combination of 4-log virus inactivation and removal) before or at the first customer under section 11-20-50(d)(1).

(2) Public water systems must issue Tier 2 public notices at the following times and under the following conditions:

(A) Public water systems must provide the public notice as soon as practical, but no later than thirty days after the system learns of the violation. If the public notice is posted, the notice must remain in place for as long as the violation or situation persists, but in no case for less than seven days, even if the violation or situation is

resolved. The State may, in appropriate circumstances, allow additional time for the initial notice of up to three months from the date the system learns of the violation. Extensions granted by the State must be in writing;

(B) The public water system must repeat the notice every three months as long as the violation or situation persists, unless the State determines that appropriate circumstances warrant a different repeat notice frequency. In no circumstances may the repeat notice be given less frequently than once per year. It is not appropriate for the State to allow less frequent repeat notice for an MCL violation under sections 11-20-6 or 11-20-9.1 or a treatment technique violation under sections 11-20-46 or 11-20-46.1. It is also not appropriate for the State to allow through its rules or policies across-the-board reductions in the repeat notice frequency for other ongoing violations required a Tier 2 repeat notice. State determinations allowing repeat notices to be given less frequently than once every three months must be in writing;

(C) For the turbidity violations specified in this section, public water systems must consult with the state as soon as practical but no later than 24 hours after the public water system learns of the violation, to determine whether a Tier 1 public notice under subsection (b)(1) is required to protect public health. When consultation does not take place within the 24-hour period, the water system must distribute a Tier 1 notice of the violation within the

next 24 hours (i.e., no later than forty-eight hours after the system learns of the violation), following the requirements under subsections (b)(2) and (b)(3). Consultation with the State is required for:

(i) Violation of the turbidity MCL under section 11-20-5; or

(ii) Violation of the SWTR, IESWTR, or LT1ESWTR treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit;

(3) Public water systems must provide Tier 2 public notices in a manner designed to reach residential, transient, and non-transient users in the required time period, employing one or more of the following forms of delivery:

(A) Unless directed otherwise by the State in writing, community water systems must provide notice by:

(i) Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and

(ii) Any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in clause (i). Such persons may include those who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.). Other methods may include: Publication in a local newspaper; delivery of multiple copies for distribution

by customers that provide their drinking water to others (e.g., apartment building owners or large private employers); posting in public places served by the system or on the Internet; or delivery to community organizations;

(B) Unless directed otherwise by the State in writing, non-community water systems must provide notice by:

(i) Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection (where known); and

(ii) Any other method reasonably calculated to reach other persons served by the system if they would not normally be reached by the notice required in clause (i). Such persons may include those served who may not see a posted notice because the posted notice is not in a location they routinely pass by. Other methods may include: Publications in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or, delivery of multiple copies in central locations (e.g., community centers).

(d) Tier 3 Public Notice - form, manner, and frequency of notice.

(1) Tier 3 public notices are required for the following violations or situations:

(A) Monitoring violations of this chapter except where a Tier 1 notice is required under subsection (b)(1) or where the State determines that a Tier

2 notice is required;

(B) Failure to comply with a testing procedure established in this chapter, except where a Tier 1 notice is required under subsection (b)(1) or where the State determines that a Tier 2 notice is required;

(C) Operation under a variance granted under section 11-20-20 or an exemption granted under section 11-20-23;

(D) Availability of unregulated contaminant monitoring results, as required under subsection (g);

(E) Exceedance of the fluoride secondary maximum contaminant level (SMCL), as required under subsection (h); and

(F) Reporting and recordkeeping violations under section 11-20-9.1.

(2) Public water systems must issue Tier 3 public notices at the following times and under the following conditions:

(A) Public water systems must provide the Tier 3 public notice not later than one year after the public water system learns of the violation or situation or begins operating under a variance or exemption. Following the initial notice, the public water system must repeat the notice annually for as long as the violation, variance, exemption, or other situation persists. If the public notice is posted, the notice must remain in place for as long as the violation, variance, exemption, or other situation persists, but in no case less than seven days (even if the violation or situation is resolved);

(B) Instead of individual Tier 3 public notices, a public water system may use an annual report detailing all violations and situations that occurred during the previous twelve months, as

long as the timing requirements of subparagraph (A) are met.

(3) Public water systems must provide the initial Tier 3 notice and any repeat notices in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the Tier 3 public notice must, at a minimum meet the following requirements:

(A) Unless directed otherwise by the State in writing, community water systems must provide notice by:

(i) Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and

(ii) Any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in clause (i). Such persons may include those who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.). Other methods may include: publication in a local newspaper; delivery of multiple copies for distribution by customers that provide their drinking water to others (e.g., apartment building owners or large private employers); posting in public places or on the Internet; or delivery to community organizations;

(B) Unless directed otherwise by the State in writing, non-community water systems must provide notice by:

(i) Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection (where known); and

(ii) Any other method reasonably calculated to reach other persons served by the system, if they would not normally be reached by the notice required in clause (i). Such persons may include those who may not see a posted notice because the notice is not in a location they routinely pass by. Other methods may include: publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or delivery of multiple copies in central locations (e.g., community centers).

(4) For community water systems, the Consumer Confidence Report (CCR) required under section 11-20-48.5 may be used as a vehicle for the initial Tier 3 public notice and all required repeat notices, as long as:

(A) The CCR is provided to persons served no later than 12 months after the system learns of the violation or situation as required under paragraph (2);

(B) The Tier 3 notice contained in the CCR follows the content requirements under subsection (e); and

(C) The CCR is distributed following the delivery requirements under paragraph (3).

(e) Content of public notice.

(1) Each public notice of a violation of a NPDWR

or other situation requiring public notice, must include the following elements:

(A) A description of the violation or situation, including the contaminants(s) of concern, and as applicable, the contaminant levels(s);

(B) When the violation or situation occurred:

(C) Any potential adverse health effects from the violation or situation, including the standard language under paragraphs (4)(A) or (4)(B) whichever is applicable;

(D) The population at risk, including subpopulations particularly vulnerable if exposed to the contaminant in their drinking water;

(E) Whether alternative water supplies should be used;

(F) What actions consumers should take, including when they should seek medical help, if known;

(G) What the system is doing to correct the violation or situation;

(H) When the water system expects to return to compliance or resolve the situation;

(I) The name, business address, and phone number of the water system owner, operator, or designee of the public water system as a source of additional information concerning the notice; and

(J) A statement to encourage the notice recipient to distribute the public notice to other persons served, using the standard language under paragraph (4)(C), where applicable.

(2) Public notices for variances and exemptions.

(A) Each public notice of a new variance or exemption must contain:

(i) An explanation of the reasons for the variance or exemption;

(ii) The date on which the variance or

exemption was issued;

(iii) A brief status report on the steps the system is taking to install treatment, find alternative sources of water or otherwise comply with the terms and schedules of the variance or exemption; and

(iv) A notice of any opportunity for public input in the review of the variance or exemption.

(B) If a public water system violates the conditions of a variance or exemption, the public notice must contain the ten elements listed in paragraph (1).

(3) Public notice presentation.

(A) Each public notice required by this section:

(i) Must be displayed in a conspicuous way when printed or posted;

(ii) Must not contain overly technical language or very small print;

(iii) Must not be formatted in a way that defeats the purpose of the notice;

(iv) Must not contain language which nullifies the purpose of the notice.

(B) Each public notice required by this section must comply with multilingual requirements as follows:

(i) For public water systems serving a large proportion of non-English speaking consumers, as determined by the State, the public notice must contain information in the appropriate language(s) regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the notice or

to request assistance in the appropriate language;

(ii) In cases where the State has not determined what constitutes a large proportion of non-English speaking consumers, the public water system must include in the public notice the same information as in clause (i), where appropriate to reach a large proportion of non-English speaking persons served by the water system.

(4) Public water systems are required to include the following standard language in their public notice:

(A) Standard health effects language for MCL or MRDL violations, treatment technique violations, and violations of the condition of a variance or exemption. Public water systems must include in each public notice the health effects language specified in Appendix A entitled "Standard Health Effects Language For Public Notification", dated February 13, 2013, located at the end of this chapter and made a part of this section, corresponding to each MCL, MRDL, and treatment technique violation listed in Appendix G, and for each violation of a condition of a variance or exemption;

(B) Standard language for monitoring and testing procedure violations. Public water systems must include the following language in their notice, including the language necessary to fill in the blanks, for all monitoring and testing procedure violations listed in Appendix G: "We are required to monitor your drinking water for specific contaminants on a regular

basis. Results of regular monitoring are an indicator of whether or not your drinking water meets health standards. During [compliance period], we "did not monitor or test" or "did not complete all monitoring or testing" for [contaminant(s)], and therefore cannot be sure of the quality of your drinking water during that time."

(C) Standard language to encourage the distribution of the public notice to all persons served. Public water systems must include in their notice the following language (where applicable):
"Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail."

(f) Notice of new billing units or new customers.

(1) Community water systems must give a copy of the most recent public notice for any continuing violation, the existence of a variance or exemption, or other ongoing situations requiring a public notice to all new billing units or new customers prior to or at the time service begins.

(2) Non-community water systems must continuously post the public notice in conspicuous locations in order to inform new consumers of any continuing violation, variance or exemption, or other situation requiring a public notice for as long as the violation, variance, exemption, or other situation persists.

(g) Special notice of the availability of

unregulated contaminant monitoring results.

(1) The owner or operator of a community water system or non-transient, non-community water system required to monitor under 40 C.F.R. section 141.40 must notify persons served by the system of the availability of the results of such sampling no later than 12 months after the monitoring results are known.

(2) The form and manner of the public notice must follow the requirements for a Tier 3 public notice prescribed in subsections (d)(3), (d)(4)(A), and (d)(4)(C). The notice must also identify a person and provide the telephone number to contact for information on the monitoring results.

(h) Special notice for exceedance of the SMCL for fluoride.

(1) Community water systems that exceed the fluoride secondary maximum contaminant level (SMCL) of 2 mg/l as specified in 40 C.F.R. section 143.3 (determined by the last single sample taken in accordance with section 11-20-11), but do not exceed the maximum contaminant level (MCL) of 4 mg/l for fluoride (as specified in section 11-20-3), must provide the public notice in paragraph (3) to persons served. Public notice must be provided as soon as practical but no later than 12 months from the day the water system learns of the exceedance. A copy of the notice must also be sent to all new billing units and new customers at the time service begins and to the director. The public water system must repeat the notice at least annually for as long as the SMCL is exceeded. If the public notice is posted, the notice must remain in place for as long as the SMCL is exceeded, but in no case less than seven days (even if the exceedance is eliminated). On a case-by-case basis, the state may require an initial notice sooner

than 12 months and repeat notices more frequently than annually.

(2) The form and manner of the public notice (including repeat notices) must follow the requirements for a Tier 3 public notice in subsections (d)(3), (d)(4)(A), and (d)(4)(C).

(3) The notice must contain the following language, including the language necessary to fill in the blanks:

"This is an alert about your drinking water and a cosmetic dental problem that might affect children under nine years of age. At low levels, fluoride can help prevent cavities, but children drinking water containing more than 2 milligrams per liter (mg/l) of fluoride may develop cosmetic discoloration of their permanent teeth (dental fluorosis). The drinking water provided by your community water system [name] has a fluoride concentration of [insert value] mg/l.

Dental fluorosis, in its moderate or severe forms, may result in a brown staining and/or pitting of the permanent teeth. This problem occurs only in developing teeth, before they erupt from the gums. Children under nine should be provided with alternative sources of drinking water or water that has been treated to remove the fluoride to avoid the possibility of staining and pitting of their permanent teeth. You may also want to contact your dentist about proper use by young children of fluoride containing products. Older children and adults may safely drink the water.

Drinking water containing more than 4 mg/L of fluoride (the U.S. Environmental

Protection Agency's drinking water standard) can increase your risk of developing bone disease. Your drinking water does not contain more than 4 mg/l of fluoride, but we're required to notify you when we discover the fluoride levels in your drinking water exceed 2 mg/l because of this cosmetic dental problem.

For more information, please call [name of water system contact] of [name of community water system] at [phone number]. Some home water treatment units are also available to remove fluoride from drinking water. To learn more about available home water treatment units, you may call NSF International at 1-877-8-NSF-HELP."

(i) Special notice for nitrate exceedance above MCL by non-community water systems (NCWS), where granted permission by the state under section 11-20-3(c).

(1) The owner or operator of a non-community water system granted permission by the State under section 11-20-3(c) to exceed the nitrate MCL must provide notice to persons served according to the requirements for a Tier 1 notice under subsections (b)(1) and (b)(2);

(2) Non-community water systems granted permission by the state to exceed the nitrate MCL under section 11-20-3(c) must provide continuous posting of the fact that nitrate levels exceed 10 mg/l and the potential health effects of exposure, according to the requirements for Tier 1 notice delivery under subsection (b)(3) and the content requirements under subsection (e).

(j) Notice by State on behalf of the public water system.

(1) The State may give the notice required by

the section on behalf of the owner and operator of the public water system if the State complies with the requirements of this section;

(2) The owner or operator of the public water system remains responsible for ensuring that the requirements of this section are met.

(k) Notice for repeated failure to conduct monitoring of the source water for *Cryptosporidium* and for failure to determine bin classification or mean *Cryptosporidium* level.

(1) The owner or operator of a community or non-community water system that is required to monitor source water under subsection 11-20-46.2(b) must notify persons served by the water system that monitoring has not been completed as specified no later than 30 days after the system has failed to collect any 3 months of monitoring as specified in section 11-20-46.2(b)(3). The notice must be repeated as specified in subsection (c)(2)(B).

(2) The owner or operator of a community or non-community water system that is required to determine a bin classification under section 11-20-46.2(k), or to determine mean *Cryptosporidium* level under section 11-20-46.2(m), must notify persons served by the water system that the determination has not been made as required no later than 30 days after the system has failed report the determination as specified in section 11-20-46.2(k)(5) or (m)(1), respectively. The notice must be repeated as specified in subsection (c)(2)(B). The notice is not required if the system is complying with a state-approved schedule to address the violation.

(3) The form and manner of the public notice must follow the requirements for a Tier 2 public notice prescribed in subsection(c)(3). The public notice must be

presented as required in subsection (e)(3).

(4) The notice must contain the following language, including the language necessary to fill in the blanks.

(A) The special notice for repeated failure to conduct monitoring must contain the following language: "We are required to monitor the source of your drinking water for *Cryptosporidium*. Results of the monitoring are to be used to determine whether water treatment at the (treatment plant name) is sufficient to adequately remove *Cryptosporidium* from your drinking water. We are required to complete this monitoring and make this determination by (required bin determination date). We "did not monitor or test" or "did not complete all monitoring or testing" on schedule and, therefore, we may not be able to determine by the required date what treatment modifications, if any, must be made to ensure adequate *Cryptosporidium* removal. Missing this deadline may, in turn, jeopardize our ability to have the required treatment modifications, if any, completed by the deadline required, (date). For more information, please call (name of water system contact) of (name of water system) at (phone number)."

(B) The special notice for failure to determine bin classification or mean *Cryptosporidium* level must contain the following language: "We are required to monitor the source of your drinking water for *Cryptosporidium* in order to determine by (date) whether water treatment at the (treatment plant name) is sufficient to adequately remove *Cryptosporidium* from your drinking water. We have not made this

determination by the required date. Our failure to do this may jeopardize our ability to have the required treatment modifications, if any, completed by the required deadline of (date). For more information, please call (name of water system contact) of (name of water system) at (phone number)."

(C) Each special notice must also include a description of what the system is doing to correct the violation and when the system expects to return to compliance or resolve the situation. [Eff 12/26/81; am and comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; am and comp 10/13/97; am and comp 9/7/99; am and comp 11/30/02; am and comp 12/16/05; am and comp 11/28/11; comp 5/2/14; am and comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-6, 340E-9; 42 U.S.C. §§300g-1, 300g-2, 300g-3, 300g-4, 300g-6, 300j-4, 300j-9; 40 C.F.R. Parts 141, §§141.201, 141.202, 141.203, 141.204, 141.205, 141.206, 141.207, 141.208, 141.209, 141.210, 141.211, §142, §142.10, §143.5)

§11-20-19 Record maintenance. (a) Any supplier of water of a public water system subject to the provisions of this chapter shall retain on its premises or at a convenient location near its premises the following records.

(b) Records of microbiological analyses and turbidity analyses made pursuant to this chapter shall be kept for not less than five years. Records of chemical analyses made pursuant to this chapter shall be kept for not less than ten years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:

(1) The date, place, and time of sampling, and the name of the person who collected the sample;
(2) Identification of the sample as to whether it was a routine distribution system sample, check sample, raw or process water sample or other special purpose sample;
(3) Date of analysis;
(4) Laboratory and person responsible for performing analysis;
(5) The analytical technique or method used; and
(6) The results of the analysis.

(c) Records of action taken by the public water system to correct violations of primary drinking water regulations shall be kept for a period not less than three years after the last action taken with respect to the particular violation involved.

(d) Copies of any written reports, summaries, or communications relating to sanitary surveys of the public water system shall be kept for a period of not less than ten years after completion of the sanitary survey involved.

(e) Records concerning a variance or exemption granted to the public water system shall be kept for a period ending not less than five years following the expiration of such variance or exemption.

(f) Copies of public notices issued pursuant to section 11-20-18 and certifications made to the State pursuant to section 11-20-17(d) must be kept for three years after issuance.

(g) Copies of monitoring plans developed pursuant to this chapter shall be kept for the same period of time as the records of analyses taken under the plan are required to be kept under subsection (b), except as specified elsewhere in this chapter. [Eff 12/26/81; am and comp 3/7/92; am and comp 1/2/93; comp 12/15/94; comp 10/13/97; comp 9/7/99; comp 11/30/02; am and comp 12/16/05; am and comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2, 300g-4; 40 C.F.R. Parts 141, 142, §141.33, §142.10, §142.16)

§11-20-19.5 Variances and exemptions.

(a) Variances or exemptions from certain provisions of this chapter may be granted pursuant to sections 1415 and 1416 of the Safe Drinking Water Act and subpart K of 40 C.F.R. part 142 (for small system variances) by the director, except that variances or exemptions from the MCLs for total coliforms and *E. coli* and variances from any of the treatment technique requirements of section 11-20-46 may not be granted. Note: As provided in 40 C.F.R. section 142.304(a), small system variances are not available for rules addressing microbial contaminants, which would include sections 11-20-9.1, 11-20-46, 11-20-46.1, 11-20-46.2, and 11-20-50.

(b) The EPA has stayed the effective date of this section relating to the total coliform MCL of section 11-20-6(a) for systems that demonstrate to the State that the violation of the total coliform MCL is due to a persistent growth of total coliforms in the distribution system rather than fecal or pathogenic contamination, a treatment lapse or deficiency, or a problem in the operation of maintenance of the distribution system. This is stayed until March 31, 2016, at which time the total coliform MCL is no longer effective. [Eff and comp: DEC 28 2017](Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-3, 340E-9; 42 U.S.C. §§300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, and 300j-11; 40 C.F.R. Parts 141, §141.4, and 142)

§11-20-20 Requirements for a variance. (a) The director may grant one or more variances to any public water system from any MCL requirement of an applicable state primary drinking water regulation upon a finding that:

(1) Because of characteristics of the raw water sources which are reasonably available to the public water system, the public water system cannot meet the MCL requirement despite application of the best technology,

treatment techniques, or other means, which the director finds are generally available (taking costs into consideration); and

(2) The granting of a variance will not result in an unreasonable risk to the health of persons served by the public water system.

(b) The director may grant one or more variances to any public water system from any requirement of a specified treatment technique of an applicable state primary drinking water regulation upon a finding that the public water system applying for the variance has demonstrated that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such public water system.

(c) The director will not grant any variance from the filtration and disinfection criteria.

(d) The director will not grant any variance from the MCL for total coliform. [Eff 12/26/81; am and comp 3/7/92; am and comp 1/2/93; comp 12/15/94; comp 10/13/97; comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-3, 340E-9; 42 U.S.C. §§300g-1, 300g-2, 300g-4; 40 C.F.R. Parts 141, 142, §141.4, §142.10, §142.20)

§11-20-21 Variance request. (a) A supplier of water seeking a variance shall submit a written request to the director. Suppliers of water may submit a joint request for variances when they seek similar variances under similar circumstances. Any written request for a variance or variances shall include the following information:

(1) The nature and duration of variance requested; and

(2) Relevant analytical results of water quality sampling of the public water system, including sampling of raw water relevant to the variance request.

(b) For any request made under section

11-20-20(a), the following shall be required:

(1) Full discussion of, and supporting data regarding, the best available treatment technology and techniques, including evidence of the inability of the public water system to comply despite the application of such technology and techniques;

(2) Information on economic and legal factors relevant to the ability to comply;

(3) A proposed compliance schedule, including the dates for achieving each step in the compliance schedule. Such schedule shall include as a minimum the following dates:

(A) Date by which arrangement for alternative raw water source or for improvement of existing raw water source will be completed;

(B) Date by which the connection of the alternative raw water source or improvement of existing raw water source will be initiated; and

(C) Date by which final compliance is to be achieved;

(4) A plan for the provision of safe drinking water in the case of an excessive rise in the contaminant level for which the variance is requested; and

(5) A plan for interim control measures during the effective period of variance.

(c) For any request made under section 11-20-20(b) a statement that the public water system will perform monitoring and other reasonable requirements prescribed by the director as a condition to the variance.

(d) Any other information the applicant believes to be pertinent.

(e) Such other information as the director may require to minimize the risk to human health or welfare. [Eff 12/26/81; am and comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; comp 10/13/97; comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11;

comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-3, 340E-9; 42 U.S.C. §§300g-1, 300g-4; 40 C.F.R. Parts 141, 141.4, 142, §142.10, §142.20)

§11-20-22 Consideration of a variance request. (a) In the director's consideration of whether the public water system is unable to comply with a contaminant level requirement of a state primary drinking water regulation because of the nature of the raw water source, the director shall consider such factors as he considers to be relevant, including the following:

(1) The availability, effectiveness, and reliability of treatment methods for the contaminant for which the variance is requested; and

(2) Cost and other economic considerations such as for implementing treatment, improving the quality of the source water or using an alternate source.

(b) In the director's consideration of whether a public water system should be granted a variance to a required treatment technique because such treatment is unnecessary to protect the public health, the director shall consider such factors as the following:

(1) Quality of the water source including water quality data and pertinent sources of pollution; and

(2) Susceptibility of the source to contamination and the source protection measures employed by the public water system. [Eff 12/26/81; comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; comp 10/13/97; comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-3, 340E-9; 42 U.S.C. §§300g-1, 300g-2, 300g-4; 40 C.F.R. Parts 141, 142, §141.4, §142.10, §142.20)

§11-20-23 Requirements for an exemption. (a) The director may exempt any public water system from any MCL requirement or any treatment technique requirement, or from both, of an applicable state primary drinking water regulation upon a finding that:

(1) Due to compelling factors (which may include economic factors), the public water system is unable to comply with such contaminant level or treatment technique requirement;

(2) The public water system was in operation on the effective date of such contaminant level or treatment technique requirement; and

(3) The granting of the exemption will not result in an unreasonable risk to health.

(b) The director will not exempt any surface water system or a ground water system under the direct influence of surface water from the requirements to provide disinfection for the water entering the distribution system.

(c) The director will not grant any exemptions to the MCL for total coliform. [Eff 12/26/81; comp 3/7/92; am and comp 1/2/93; comp 12/15/94; comp 10/13/97; comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-3, 340E-9; 42 U.S.C. §§300g-1, 300g-2, 300g-5; 40 C.F.R. Parts 141, 142, §141.4, §142.10, §142.20)

§11-20-24 Exemption request. A supplier of water seeking an exemption shall submit a written request to the director. Suppliers of water may submit a joint request for exemptions when they seek similar exemptions under similar circumstances. Any written request for an exemption or exemptions shall include the following information:

(1) The nature and duration of exemption requested;

(2) Relevant analytical results of water quality sampling of the public water system;

(3) Explanation of the compelling factors such as time or economic factors which prevent

such public water system from achieving compliance;

(4) A proposed compliance schedule, including the date when each step toward compliance will be achieved;

(5) Any other information the applicant believes to be pertinent; and

(6) Such other information as the director may require to minimize the risk to human health and welfare. [Eff 12/26/81; am and comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; comp 10/13/97; comp 9/7/99;comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-3, 340E-9; 42 U.S.C. §§300g-1, 300g-2, 300g-5; 40 C.F.R. Parts 141, 142, §141.4, §142.10, §142.20)

§11-20-25 Consideration of an exemption request. In the director's consideration of whether the public water system is unable to comply due to compelling factors, the director shall consider such factors as the director determines to be relevant, including the following:

(1) Construction, installation, or modification of treatment equipment or public water systems;

(2) The time needed to put into operation a new treatment facility to replace an existing system which is not in compliance; and

(3) Economic feasibility of compliance. [Eff 12/26/81; am and comp 3/7/92; am and comp 1/2/93; comp 12/15/94; comp 10/13/97; comp 9/7/99; comp 11/30/02; am and comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-3, 340E-9; 42 U.S.C. §§300g-1, 300g-2, 300g-5; 40 C.F.R. Parts 141, 142, §141.4, §142.10, §142.20)

§11-20-26 Disposition of a request for variance or exemption. (a) If the director determines that a request for a variance or exemption is inadequate or incomplete, the director may deny the request. If the director fails to act on a variance or exemption request within one hundred eighty days after the request is submitted, the request will be deemed to be granted.

(b) If the director proposes to grant a variance or exemption request submitted pursuant to section 11-20-21 or 11-20-24, respectively, the director shall notify the applicant of the director's decision in writing. Such notice shall identify the variance or exemption, the facility covered, and shall specify, as appropriate, the period of time for which the variance will be effective or the termination date of the exemption.

(1) For the type of variance specified in section 11-20-20(a) or for an exemption, such notice shall also provide that the variance or exemption will be terminated when the public water system comes into compliance with the applicable regulation, and may be terminated upon a finding by the director that the public water system has failed to comply with any requirements of a final schedule issued pursuant to section 11-20-28.

(2) For the type of variance specified in section 11-20-20(b) such notice shall provide that the variance may be terminated at any time upon a finding that the nature of the raw water source is such that the specified treatment technique for which the variance was granted is necessary to protect the health of persons or upon a finding that the public water system has failed to comply with monitoring and other requirements prescribed by the director as a condition to the granting of the variance.

(c) For a variance specified in section

11-20-20(a)(1) or an exemption, the director shall propose a schedule for:

(1) Compliance (including increments of progress) by the public water system with each contaminant level requirement covered by the variance or each contaminant level and treatment technique covered by the exemption; and

(2) Implementation by the public water system of such control measures as the director may require for each contaminant covered by the variance or exemption.

(d) The proposed schedule for compliance shall contain such conditions as the director may prescribe and shall specify dates by which steps towards compliance are to be taken, including, where applicable:

(1) Date by which arrangement for an alternative raw water source or improvement or existing raw water source will be completed;

(2) Date of initiation of the connection of the alternative raw water source or improvement of the existing raw water source; and

(3) Date by which final compliance is to be achieved.

(e) The proposed schedule for compliance for a variance specified in section 11-20-20(a)(1) may, if the public water system has no access to an alternative raw water source, and can effect or anticipate no adequate improvement of the existing raw water source, specify an indefinite time period for compliance until a new and effective treatment technology is developed at which time a new compliance schedule shall be prescribed by the director.

(f) The proposed schedule for implementation of interim control measures during the period of the variance shall specify interim treatment techniques, methods and equipment, and dates by which steps toward meeting the interim control measures are to be met.

(g) The schedule shall be prescribed by the director within one year after the granting of the variance or exemption, subsequent to provision of

opportunity for hearing pursuant to section 11-20-27.

(h) The director may prescribe reasonable conditions as part of any variance or exemption. [Eff 12/26/81; comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; comp 10/13/97; comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-3, 340E-9; 42 U.S.C. §§300g-1, 300g-2, 300g-4, 300g-5; 40 C.F.R. Parts 141, 142, §141.4, §142.10, §142.20)

§11-20-27 Public hearings on variances, variance schedules, and exemption schedules. (a) Before a variance, variance schedule, or exemption schedule proposed by the director pursuant to section 11-20-26 may take effect, the director shall provide notice and opportunity for public hearing on the variance, variance schedule, or exemption schedule. A notice given pursuant to the preceding sentence may cover the granting of more than one variance, variance schedule, or exemption schedule and a hearing held pursuant to such notice shall include each of the variances, variance schedules, or exemption schedules covered by the notice. Such notice shall include a summary of the proposed variance, variance schedule, or exemption schedule, and shall inform interested persons that they may submit written comments on the proposed variance, variance schedule, or exemption schedule, and may request a public hearing.

(b) Public notice of an opportunity for hearing on a variance, variance schedule, or exemption schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed variance, variance schedule, or exemption schedule, and shall, in addition to compliance with section 92-41, HRS, include at least the following:

(1) Posting of a notice in the principal post office of each community or area served by the public water system, and publishing of a notice in a newspaper or newspapers of

general circulation in the area served by the public water system; and

(2) Mailing of a notice to other appropriate state or local agencies at the director's discretion.

(c) Requests for hearing may be submitted by an interested person. Frivolous or insubstantial requests for hearing may be denied by the director. Requests shall be submitted to the director within thirty days after issuance of the public notices provided for in subsection (b). Such requests shall include the following information:

(1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing;

(2) A brief statement of the interest of the person making the request in the proposed variance, variance schedule, or exemption schedule and of information that the requesting person intends to submit at such hearing; and

(3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

(d) The director shall give notice in the manner set forth in subsection (b) of any hearing to be held pursuant to a request submitted by an interested person or on the person's own motion. Notice of the hearing shall also be sent to the persons requesting the hearing, if any. Notice of the hearing shall include a statement of the purpose of the hearing, information regarding the time and location for the hearing, and the address and telephone number of an office at which interested persons may obtain further information concerning the hearing. Notice of the hearing shall be given not less than fifteen days prior to the time scheduled for the hearing.

(e) A hearing convened pursuant to subsection (d) shall not be deemed to be a "contested case" hearing within the meaning of chapter 91, Hawaii

Revised Statutes. The hearing shall be conducted before a hearing officer to be designated by the director, or the director may conduct the hearing. The hearing shall be conducted by the hearing officer in an informal, orderly and expeditious manner. The hearing officer shall have authority to call witnesses, receive oral and written testimony and take such other action as may be necessary to assure the fair and efficient conduct of the hearing.

(f) The director may provide that the variance, variance schedule, or exemption schedule shall become effective thirty days after notice of opportunity for hearing is given pursuant to subsection (b) if no timely request for hearing is submitted and the director does not determine to hold a public hearing on the director's own motion. [Eff 12/26/81; am and comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; comp 10/13/97; comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 40E-9)(Imp: HRS §§340E-2, 340E-3, 340E-9; 42 U.S.C. §§300g-1, 300g-2, 300g-4, 300g-5; 40 C.F.R. Parts 141, 142, §141.4, §142.10, §142.20)

§11-20-28 Final schedule. (a) Within sixty days after the termination of any public hearing held pursuant to section 11-20-27, the director shall, taking into consideration information obtained during such hearing, and other relevant information which shall include any written comments submitted pursuant to the public notice specified in section 11-20-27(a):

(1) With respect to a variance or variance schedule, confirm, revise, or rescind the proposed variance or schedule as necessary; and

(2) With respect to an exemption schedule, confirm or revise the proposed schedule as necessary.

(b) The exemption schedule referred to in subsection (a)(2) shall require compliance by the public water system with each contaminant level and

treatment technique requirement prescribed as state regulations comparable to:

(1) Interim national primary drinking water regulations promulgated by the administrator pursuant to 40 C.F.R. Part 141, by no later than January 1, 1984; and

(2) Revised national primary drinking water regulations promulgated by the administrator pursuant to 40 C.F.R. Part 141, by no later than seven years after the effective date of such regulations.

(c) If the public water system has entered into an enforceable agreement to become a part of a regional public water system, as determined by the director, the schedule referred to in subsection (a)(2) shall require compliance by the public water system with each contaminant level and treatment technique requirement prescribed by state rules comparable to:

(1) Interim national primary drinking water regulations promulgated by the administrator pursuant to 40 C.F.R. Part 141, by no later than January 1, 1986; and

(2) Revised national primary drinking water regulations promulgated by the administrator pursuant to 40 C.F.R. Part 141, by no later than nine years after the effective date of such regulations. [Eff 12/26/81; comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; comp 10/13/97; comp 9/7/99; am and comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-3, 340E-9; 42 U.S.C. §§300g-1, 300g-2, 300g-4, 300g-5; 40 C.F.R. Parts 141, 142, §141.4, §142.10, §142.20)

§11-20-29 Use of new sources of raw water for public water systems. (a) No person shall use a new source of raw water to supply a public water system unless the source and its treatment facilities,

if any, have been approved by the director.

(b) Any person proposing to use a new raw water source to supply a public water system shall submit plans, supporting data, and information in an engineering report to the department. The engineering report shall be prepared by a licensed professional engineer, experienced in such fields as water resources, hydrogeology, water supply, or environmental engineering, and shall include the following:

(1) Identification of all significant factors having potential for contaminating or reducing the quality of the water source or which could cause the quality of water delivered to users of the public water system to be in violation of any state primary drinking water rule;

(2) Data relating to quality and quantity of the source waters under normal conditions and during stress periods, drought, or heavy precipitation, as determined by field and laboratory analyses and investigations of available records; if records are not available or are inadequate to determine source quality under stress conditions, an estimate of expected quality and quantity during stress conditions should be established;

(3) If the proposed new water source is a surface source, identification of the:

(A) Proximity and effects of sources of pollution and the possibility of contamination due to operation of waste treatment facilities or waste disposal systems, accidental spills of hazardous materials, agricultural operations, and any other activities which could introduce contaminants into the water source;

(B) Factors affecting the time of travel of actual and potential pollution from its source to the water source;

(C) Actual and potential siltation problems; and

(D) Possible effects on water quality from existing or proposed upstream impoundments;

(4) If the proposed new water source is a well, spring, or infiltration gallery, identification of the:

(A) Nature of soil and stratum overlaying the water source, with special emphasis on identification of fissures and faults as it relates to the natural purification or treatment of percolating fluids from existing or future activities;

(B) Nature, distance, direction of flow and time of travel of contaminants from present and projected domestic, industrial, and agricultural sources of pollution, and waste injection wells and other waste disposal facilities; and

(C) The probability and effect of surface drainage or contaminated underground water entering the subject water source;

(5) For each present and projected potential source of contamination, identification and evaluation of alternative control measures which could be implemented to reduce or eliminate the potential for contamination of the water source, including treatment of the water source if subject to contamination, and evaluation of the physical, economic, and social effects of implementing such control measures;

(6) Certification by the person proposing to use the new source of raw water to supply a public water system that the new source of raw water and its treatment system, if any, will be operated and maintained to provide water to the public water system that

complies with state primary drinking water regulations. This requirement does not apply to new sources of raw water for the county department or board of water or water supply;

(7) Certification by the licensed professional engineer responsible for the preparation of the report, that the facts presented in the engineering report are true, to the best of the engineer's information and belief, and that the development of the new source of raw water, and the collection, treatment, and distribution of water from the new source of raw water and its treatment system, if any, are designed to supply water that will comply with state primary drinking water regulations. This requirement does not apply to engineering reports prepared by personnel in the county department or board of water or water supply;

(8) Where required by the director, the identification, qualifications, education, training, and work experience of the engineer and other individuals involved in the preparation of the engineering report; and

(9) Such other data and information as the director may require.

(c) In deciding whether to approve or deny the proposed use of a new source of raw water to supply a public water system, the director may:

(1) Require the person proposing to use the new water source to provide notice and opportunity for public comment on the proposed use of the new water source. If the director determines that a public hearing is warranted, the director may require the person proposing to use the new water source to publish the notice of a public hearing. The hearing shall be subject to the provisions of public notice and hearing provided in section 11-20-27.

If a public hearing is required, the person proposing to use the new water source shall pay all publication costs related to the public hearing(s) notification(s) for each water source requiring such notice;

(2) Consult with appropriate experts, state and county officials, including appointing a committee of such persons as the director may determine to be appropriate to advise the director in making his or her decision; or

(3) Take any other action which the director may determine to be appropriate to obtain adequate data and information on which to base his or her decision.

(d) The director may grant approvals with conditions that the director considers necessary to ensure that the water delivered to the public water system complies with state primary drinking water regulations or otherwise protects public health.

(e) Before the director approves the use of a new source of raw water to supply a new community public water system or a new non-transient non-community public water system, the proposed supplier of water shall demonstrate that the new public water system to be supplied by the new source of raw water has adequate capacity under section 11-20-29.5. Approvals for the use of a new source of raw water to supply a proposed public water system subject to section 11-20-30(d) shall be processed concurrently with the director's approval to construct the public water system and granted concurrently with the director's approval to use the public water system.

(f) A county department or board of water or water supply may submit to the director a program plan for the development by the county of new water sources for existing public water systems. Such plan shall be sufficiently detailed to include the basic information required by this section, with special attention paid to projections of future land use and other activities as they may affect the susceptibility of the water source to contamination. When approved in writing by

the director, the requirements of such program, rather than those of subsections (a), (b), (c), and (d), shall govern the development of new sources of water for existing public water systems in that county to the extent covered by that program.

(g) The director shall process written requests for approvals of new sources of raw water in a timely manner.

(1) The director shall decide whether an engineering report is complete within ninety days of receipt. The director shall notify the person proposing to use the new source of raw water to supply a public water system or its duly authorized representative in writing if the engineering report is incomplete or otherwise deficient and describe the additional information necessary to complete the report or correct the deficiency. Failure to provide the additional information or to correct a deficiency is sufficient ground to suspend or terminate the processing of the report.

(2) The director shall notify the person proposing to use the new source of raw water to supply a public water system or its duly authorized representative in writing when an engineering report is considered complete.

(3) The director shall act on a written request for a new source approval within one year from the date the director notifies the person proposing to use the new source of raw water to supply a public water system or its duly authorized representative that the engineering report is complete. This time period of one year may be extended to the extent of delays of the department's inspection of the raw water source and the public water system caused by the person proposing to use the new source of raw water or the supplier of water.

(4) This subsection does not apply to the approval of new sources of raw water to

supply a public water system subject to subsection (e).

(h) The person proposing to use the new source of raw water or its duly authorized representative shall notify the department in writing of changes which may affect the engineering report. Failure to provide such information shall be sufficient grounds for denial or termination of the processing of the request for a new source approval. [Eff 12/26/81; am and comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; comp 10/13/97; am and comp 9/7/99; am and comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-2.5, 340E-9) (Imp: HRS §§340E-2, 340E-2.5, 340E-9; 42 U.S.C. §§300g-1, 300g-2, 300g-9; 40 C.F.R. Parts 141, 142, §142.10)

§11-20-29.5 Capacity demonstration and evaluation. (a) To demonstrate adequate capacity, the proposed or existing supplier of water shall submit to the director, written information sufficient to show that the requirements in subsections (b) through (d) are met.

(b) A public water system with adequate technical capacity has at least the following items:

(1) A clear system description, including identification of plans and specifications, showing all water sources, infrastructure facilities, distribution systems, interconnections with other water systems, and protective measures against vandalism. Plans and specifications identified shall include those approved by the director, any as-built plans, originals, and modifications;

(2) Adequate water source(s), including:

(A) Sufficient water available to serve all customers or water users based on the public water system's average daily and peak water usage, and the system's treated water output;

(B) Sufficient water resources for the future, based on the maximum flow or pumping capacity of each source and a five year or more projected growth rate study which shall be submitted;

(C) Adequate protection of water source(s) or watershed(s), based on the identification of existing and potential contamination hazards as required under the source water protection program and a description of how a protective area will be maintained around the source(s) or the watershed(s); and

(D) Contracts or agreements to obtain water when the water source(s) are not owned by the public water system, and contracts or agreements for supplementary water sources for systems affected by drought. The contracts and agreements shall be identified and copies shall be provided if requested by the director;

(3) Adequate technical performance, shown by the water system's actual or planned compliance with national and state primary drinking water regulations and any permit requirement;

(4) An adequate infrastructure replacement plan which includes estimates of the useful life and plans for the eventual replacement of the public water system's infrastructure, including:

(A) Wells;

(B) Pumping facilities;

(C) Storage tanks;

(D) Treatment facilities; and

(E) Distribution system (pipes, valves, meters, etc.);

(5) An adequate operation plan which shows that the public water system has:

(A) Established the appropriate operator

certification level for the distribution and treatment systems and has hired or contracted, and designated appropriately certified primary and backup operators in sufficient numbers to operate the water system treatment and distribution systems at all necessary times;

(B) A program identifying the responsibilities, qualifications, and training requirements of the operations personnel;

(C) Adequate preventive and corrective maintenance program to identify, schedule, perform, and record inspections, repairs, and replacements in a timely manner;

(D) An adequate water quality monitoring plan for its water source(s), treatment facilities, and distribution system for both compliance with national and state primary drinking water regulations and operational informational purposes; and

(E) Where necessary, the proper contract, agreements, or other documents establishing the use of a contractor to represent the public water system owner(s), operate and maintain the water system, or leasing land to locate infrastructure, or to obtain right-of-way easements;

(6) Adequate operator training, including:

(A) A program to qualify new and to educate existing water treatment plant and distribution system operators under HRS chapter 340F and its rules, including classes, on the job, and periodic refresher training; and

(B) A safety program which includes safety training on hazards that may be encountered by water treatment plant and distribution system operators, and

periodic refresher training;

(7) A cross connection and backflow prevention program to ensure that there is an accurate inventory of backflow prevention devices throughout the public water system, and that devices are regularly tested and maintained; and

(8) A system to maintain and update plans of the public water system, including:

(A) All plans, specifications, modifications reviewed and approved by the director as described in section 11-20-30;

(B) Certification by a licensed professional engineer that the public water system was constructed or modified in accordance with the plans, specifications, and supporting information which were previously reviewed and approved by the director for delivering water which will comply with the national and state primary drinking water regulations; and

(C) Certification by a licensed professional engineer that any deviations from the original plans are accurately recorded and noted on "as-built" plans, and approved by the director.

(c) A public water system with adequate managerial capacity has at least the following items:

(1) Clear organizational structure and communications, including:

(A) The name, title, telephone, and fax numbers of the manager responsible for policy decisions and the public water system's compliance with national and state primary drinking water regulations;

(B) A chart showing the organizational structure, the working relationships between personnel, and a summary of the

primary duties and responsibilities of personnel;

(C) List of personnel, their positions, telephone and fax numbers, and any other means of communication; and

(D) Where contractors are hired to manage and operate the public water system, the information described in subparagraphs (B) and (C) shall also be provided on the contractor(s);

(2) Clear identification of the public water system ownership, including:

(A) The legal name, address, telephone, and fax numbers of the public water system owner(s); and

(B) The legal name, address, telephone, and fax numbers of the contractor(s) hired to manage and operate the public water system for the water system owner(s);

(3) An adequate information management system, including:

(A) Procedures to collect, receive, and distribute necessary information quickly from and to public water system personnel, and where applicable, any contractor(s), and actual or potential users; and

(B) Procedures for filing, recordkeeping, tracking regulatory compliance, and implementation of programs;

(4) Qualified management and training, including:

(A) The manager and other key personnel have adequate qualifications, training, education, and work experience in managing and operating public water systems; and

(B) An adequate program to provide continuing training for managers to maintain their knowledge and skills, and to keep informed of issues affecting public water systems;

(5) Adequate emergency response plan which describes:
  (A) Plausible emergencies;
  (B) Abatement actions for each emergency described in subparagraph (A);
  (C) Public notification procedures; and
  (D) Identification of personnel and their specific responsibilities in each emergency situation;
(6) Adequate internal policies, including:
  (A) A policy to inform customers or water users adequately about water quality as necessary, the public water system's operation as it may affect them, and the customers' or water users' duties, including any need for disinfection or alternate sources, cooperation with public water system personnel during service interruptions or emergencies, compliance with rules, help with water quality monitoring, water conservation, cross connection and backflow prevention, infrastructure changes, meter reading, rates, payment, and complaints;
  (B) Design and construction standards for public water system modifications and repairs, and expansion, and internal review and inspection procedures for such work;
  (C) Policies and procedures for keeping regulatory agencies and customers or water users informed of items such as water quality monitoring results, violations, disruption of water service, emergencies, infrastructure changes, and other problems;
  (D) A policy for the development of budgets and rate structures; and
  (E) A policy to seek information in a timely manner and use the information to adjust policies, plans, and programs

appropriately.

(d) A public water system with adequate financial capacity has at least the following items:

(1) An adequate budget, including:

(A) Annual budgets that are prepared and approved by the water system owner(s) or its duly authorized representative for water system operation. A description of the budgeting process and copies of proposed and, if applicable, actual budgets, shall be provided; and

(B) Income and cash reserves adequate to pay annual operating expenses, unexpected significant repairs, and planned major work. Dedicated source(s) of income shall be identified;

(2) Adequate budget controls, including:

(A) Periodic performance reviews of actual expenditures and the annual budget;

(B) Procedures to safeguard financial assets; and

(C) Maintenance of detailed financial records which clearly identify the sources of income and the expenses involved in operating the public water system;

(3) Credit worthiness, including:

(A) Long term dedicated revenue projections which indicate that there will be sufficient revenue for operating and maintaining the public water system, performing anticipated repairs and replacement of major equipment, future expansion, and repayment of loans; and

(B) Credit report(s) which indicate that the public water system is financially healthy and credit worthy. [Eff and comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS

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§§340E-2.5, 340E-9)(Imp: HRS §§340E-2.5, 340E-9; 42U.S.C. §§300g-1, 300g-2, 300g-9)

§11-20-30 New and modified public water systems. (a) No new public water system shall be constructed or used to deliver water to any user and no existing public water system shall be substantially modified nor shall the substantial modification be used to deliver water to any user until the new public water system or the substantial modification has been approved by the director.

(1) Except for county owned systems using a surface water source or ground water under the direct influence of surface water source, the director may waive the approval required by this subsection for substantial modifications to existing county owned and operated public water systems when the appropriate county department or board of water or water supply has capability acceptable to the director to sample and analyze the water source and water to be delivered by the public water system such that the county department or board of water or water supply can satisfactorily demonstrate to the director that the public water system is capable of delivering water which will comply with the state primary drinking water regulations.

(2) For the purposes of this section, a "substantial modification" shall include, but not be limited to, such things as any physical modification to the source, storage, collection, treatment, or distribution facilities of the public water system which is determined by the director to have an actual or potential significant impact on the quality of water delivered to users of the public water system.

(3) Any person proposing physical modification

to a public water system which increases the number of service connections or population served by the public water system shall consult with the director prior to commencement of such modification for a determination by the director whether the proposed modification is a "substantial modification" subject to the requirements of this section.

(b) A proposed or existing supplier of water or its duly authorized representative shall demonstrate that the new or modified public water system will deliver water in compliance with state primary drinking water regulations before construction. A proposed or existing supplier of water or its duly authorized representative shall provide the following information:

(1) Plans, specifications, supporting information, and documents detailing the design and location of the proposed new public water system or the existing public water system and the proposed substantial modifications;

(2) Documents and supporting information on the raw water source(s) and proposed treatment, if any, demonstrating that the source(s) of raw water to supply the public water system complies with state primary drinking water regulations. Where a new source of raw water is proposed to supply a public water system, the documents must demonstrate that the new source of raw water complies with section 11-20-29;

(3) Documents and information demonstrating that the public water system will be adequately operated and maintained;

(4) Documents and information demonstrating that the new public water system or substantial modifications to an existing public water system will be located and constructed in conformance with all applicable State of Hawaii laws and county ordinances relating

to floods, tsunamis, earthquakes, and fires. To the extent practicable, part or all of the new or substantially modified existing facility shall avoid any site which is subject to a significant risk from earthquakes, floods, tsunamis, fires, or other disasters which could cause a breakdown of the public water system or a portion thereof or which is, except for intake structures, within the floodplain of a hundred-year flood or is lower than any recorded high tide where appropriate records exist;

(5) Certification by the licensed professional engineer(s) responsible for the preparation of the plans and specifications for the new public water system or the substantial modifications to the existing public water system, and the operation and maintenance documents, that the water system or the modifications have been designed to deliver water that will comply with state primary drinking water regulations. This certification is not required for plans and specifications prepared by personnel in the county department or board of water or water supply, in compliance with applicable county department or board of water or water supply rules, regulations, and standards;

(6) Certification by the proposed or existing supplier of water that the public water system will be operated and maintained to provide water in compliance with state primary drinking water regulations. This certification is not required for new or modified public water systems owned and operated by the county department or board of water or water supply; and

(7) Other information, including testing or inspections, as the director considers necessary to decide on whether to grant approval to construct.

(c) After construction has been completed, the new public water system or substantial modifications to an existing public water system shall not be used to deliver water to any user until approved by the director. The supplier of water or its duly authorized representative shall provide the following:

(1) A detailed description of the changes made from the planned system or modification approved by the director and analysis of the effect, if any, that the changes will have on the quality of water delivered by the new or modified public water system and compliance with primary drinking water regulations, certified by a licensed professional engineer; and

(2) Other information, including testing or inspections, as the director considers necessary to approve of the changes or evaluate the need for corrective actions.

(d) For approval of a new community public water system or a new non-transient non-community public water system, required under subsection (a), before construction or use of the system, the proposed supplier of water or its duly authorized representative shall comply with the requirements of subsection (b) and demonstrate to the director's satisfaction that the proposed system has adequate capacity as described in section 11-20-29.5.

(1) A new community public water system or new non-transient non-community public water system shall include:

(A) Newly constructed community public water systems or non-transient non-community public water systems; and

(B) Water systems that do not currently meet the definition of a public water system as defined in section 11-20-2 but which expand their infrastructure and thereby grow to become a community public water system or a non-transient non-community public water system; and

(2) A demonstration of adequate capacity under

section 11-20-29.5 shall include the obtaining of the director's approval of any new sources of raw water as described in section 11-20-29.

(e) For approval of a new transient non-community public water system or substantial modification of an existing public water system, which has failed to comply with state primary drinking water regulations or has significant problems noted by sanitary surveys or inspections, required under subsection (a), the proposed or existing supplier of water may, at the director's discretion, also be required to demonstrate to the director's satisfaction that the system has adequate capacity as described in section 11-20-29.5.

(f) Before granting approval of the construction or use of the new public water system or substantial modifications to an existing public water system, the director may:

(1) Conduct inspections, before, during, and after construction or implementation as deemed appropriate by the director;

(2) Require the proposed or existing supplier of water or its duly authorized representative to perform sampling, and testing as deemed appropriate to determine the ability of the new or substantially modified public water system to deliver water that complies with state primary drinking water regulations;

(3) Review the ability of the source(s) of raw water and treatment, if any, to supply water to the new or substantially modified public water system in compliance with state primary drinking water regulations; and

(4) Impose conditions, such as monitoring or operating requirements or restrictions, as deemed appropriate by the director to ensure that the water delivered meets state primary drinking water regulations.

(g) The director shall process written requests for approval of the construction or use of new public water systems or proposed substantial modifications to

existing public water systems in a timely manner.

(1) The director shall notify the proposed or existing supplier of water or its duly authorized representative whether the written request for preconstruction approval is complete within one-hundred eighty days of receipt.

(2) The director shall notify the proposed or existing supplier of water or its duly authorized representative whether a written request for postconstruction and pre-use approval is complete within sixty days of receipt.

(3) If the director finds a written request for preconstruction or postconstruction and pre-use approval is incomplete or otherwise deficient, the director shall describe the additional information necessary to complete the written request or correct the deficiency. Failure to provide the additional information or to correct the deficiency is sufficient grounds to suspend or terminate review of the written request for preconstruction or postconstruction and pre-use approval.

(4) The director shall act on a written request for preconstruction approval within one year from the date the director notifies the proposed or existing supplier of water or its duly authorized representative that the written request was considered complete.

(5) The director shall act on a written request for postconstruction and pre-use approval within sixty days from the date the director notifies the proposed or existing supplier of water or its duly authorized representative that the written request was considered complete.

(6) The director may extend the deadline for postconstruction and pre-use approval to the extent of delays in inspections, sampling, testing, or providing information requested

or to be conducted by the department and caused by the proposed or existing supplier of water or its duly authorized representative.

(7) This subsection does not apply to approvals of public water systems subject to subsection (d).

(h) The proposed or existing supplier of water or its duly authorized representative shall notify the department in writing of changes which may affect the director's decision to approve the construction or use of a new public water system or a substantial modification of a public water system. Failure to provide such information shall be sufficient grounds for denial or termination of the plan review. [Eff 12/26/81; am and comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; comp 10/13/97; am and comp 9/7/99; comp 11/30/02; am and comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-2.5, 340E-9) (Imp: HRS §§340E-2, 340E-2.5, 340E-9; 42 U.S.C. §§300g-1, 300g-2, 300g-9; 40 C.F.R. Parts 141, 142, §141.5, §142.10)

§11-20-31 Use of trucks to deliver drinking water. (a) Before any person, other than a county department or board of water or water supply, may use a truck to deliver drinking water to supply a public water system, such person shall first notify the director and shall comply with procedures specified by the director to ensure that the water to be delivered will not endanger the health of users of the water. Such procedures may relate to design and construction of the tank used to carry the water, the prior use of the tank, cleaning and disinfecting the tank, monitoring of the quality of water delivered by the truck, or other appropriate requirements.

(b) The director may waive, with appropriate conditions, the requirement of notification in subsection (a) for a person who proposes to use a truck to deliver drinking water to supply a public water system on a regular basis, if satisfactory

assurances are given that he or she will comply with procedures acceptable to the director to ensure that the water to be delivered will not endanger the health of users. [Eff 12/26/81; comp 3/7/92; am and comp 1/2/93; comp 12/15/94; comp 10/13/97; comp 9/7/99; comp 11/30/02; am and comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2; 40 C.F.R. Parts 141, 142, §141.5, §142.10)

§11-20-32 Penalties and remedies. Any person who violates any provision of this chapter, or any variance or exemption issued pursuant thereto, shall be subject to enforcement action by the director pursuant to section 340E-8, HRS. [Eff 12/26/81; comp 3/7/92; comp 1/2/93; am and comp 12/15/94; comp 10/13/97; comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-7, 340E-8, 340E-9; 42 U.S.C. §§300g-1, 300g-2; 40 C.F.R. Parts 141, 142, §142.10)

§11-20-33 Entry and inspection. The director shall have the right:

(1) To enter premises on which any public water system is located;
(2) To inspect any equipment, operation, or sampling of any public water system;
(3) To take water samples from any public water system; and
(4) To have access to and copy any record required to be kept pursuant to this chapter. [Eff 12/26/81; am and comp 3/7/92; comp 1/2/93; comp 12/15/94; comp 10/13/97; comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2, 300g-4; 40 C.F.R.

Parts 141, 142, §142.10)

§11-20-34 Special monitoring for sodium.
(a) Suppliers of water for community public water systems shall collect and analyze one sample per plant at the entry point of the distribution system for the determination of sodium concentration levels; samples shall be collected and analyzed annually for public water systems utilizing solely surface water sources in whole or in part, and at least every three years for public water systems utilizing ground water sources. The minimum number of samples required to be taken by the public water system shall be based on the number of treatment plants used by the public water system, except that multiple wells drawing raw water from a single aquifer may, with the director's approval, be considered one treatment plant for determining the minimum number of samples. The supplier of water may be required by the director to collect and analyze water samples for sodium more frequently in locations where the sodium content is variable.

(b) The supplier of water shall report to the director the results of the analyses for sodium within the first ten days of the month following the month in which the sample results were received or within the first ten days following the end of the required monitoring period as stipulated by the director, whichever of these is first. If more than annual sampling is required, the supplier shall report the average sodium concentration within ten days of the month following the month in which the analytical results of the last sample used for the annual average was received.

(c) The supplier of water shall notify appropriate local and state public health officials of the sodium levels by written notice by direct mail within three months. A copy of each notice required to be provided by this paragraph shall be sent to the director within ten days of its issuance.

(d) Analyses for sodium shall be performed by

the methods specified in 40 C.F.R. §141.23(k)(1). [Eff 12/26/81; am and comp 3/7/92; am and comp 1/2/93; comp 12/15/94; am and comp 10/13/97; comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2; 40 C.F.R. Parts 141, 142, §141.41, §142.10)

§11-20-35 Special monitoring for corrosivity characteristics. (a) (Reserved)

(b) (Reserved)

(c) (Reserved)

(d) Community water supply systems shall identify whether the following construction materials are present in their distribution system and report to the department:

(1) Lead from piping, solder, caulking, interior lining of distribution mains, alloys, and home plumbing;

(2) Copper from piping and alloys, service lines, and home plumbing;

(3) Galvanized piping, service lines, and home plumbing;

(4) Ferrous piping materials such as cast iron and steel;

(5) Asbestos cement pipe; and

(6) In addition, the director may require identification and reporting of other materials of construction present in distribution systems that may contribute contaminants to the drinking water, such as:

(A) Vinyl lined asbestos cement pipe; and

(B) Coal tar lined pipes and tanks. [Eff 12/26/81; am and comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; am and comp 10/13/97; comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2; 40 C.F.R. Parts 141,

142, §141.42, §142.10)

§11-20-36 Reporting and public notification for certain unregulated contaminants. (a) The requirements of this section apply only to owners and operators of a public water system required to monitor for unregulated contaminants under 40 C.F.R. §141.40.

(b) Public water systems monitoring for unregulated contaminants under 40 C.F.R. §141.40 must comply with the reporting of unregulated contaminant monitoring results requirements under 40 C.F.R. §141.35. [Eff 12/26/81; comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; comp 10/13/97; comp 9/7/99; am and comp 11/30/02; comp 12/16/05; comp11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-3, 300j-4, 300g-6, 40 C.F.R. Parts 141, 142, §§141.35)

§11-20-37 REPEALED. [R 11/30/02]

§11-20-38 Additives. (a) No supplier of water shall directly or indirectly add any chemical, material, or product to the drinking water supplied by a public water systems unless the chemical, material, or product has been tested and certified as meeting the specifications of American National Standards Institute/National Sanitation Foundation Standard 60, Drinking Water Treatment Chemicals - Health Effects. This requirement shall be met under testing conducted by a product certification organization accredited for this purpose by the American National Standards Institute.

(b) A supplier of water may use a chemical, material, or product that has not been certified as described in subsection (a) if the director finds that the use will not pose an adverse risk to public health and:

(1) There are no certified alternatives

available; or

(2) The chemical, material, or product is in the process of being tested and certified and there are no certified alternatives available.

(c) Prior to using an uncertified chemical, material, or product the supplier of water shall submit to the director:

(1) A detailed explanation of the need for the chemical, material, or product;

(2) The date the chemical, material, or product was submitted for testing;

(3) Where applicable, the name of the accredited product certification organization conducting the testing;

(4) A statement that certified alternatives are not available; and

(5) Any other information deemed necessary by the director.

(d) The use of any chemical, material, or product in drinking water treatment or supply shall conform to the manufacturer's instructions or recommendations for use, maximum dosage, application rates, installation, restrictions, and any other conditions imposed by the product certification organization accredited by the American National Standards Institute or the director. [Eff 12/26/81; am, ren §11-20-38, and comp 3/7/92; am and comp 1/2/93; comp 12/15/94; comp 10/13/97; am and comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §340E-9) (Imp: HRS §340E-2)

§11-20-39 Time requirements. (a) Suppliers of community public water systems shall comply with section 11-20-34 monitoring requirements by February 27, 1982. Said suppliers shall complete the first round of sampling and reporting by August 27, 1981.

(b) Suppliers of community public water systems shall comply with section 11-20-35 monitoring requirements by February 27, 1982. Said suppliers

shall comply completely with all requirements in section 11-20-35 by August 27, 1983.

(c) All other duties imposed by this chapter apply immediately. [Eff 12/26/81; am, ren §11-20-39, and comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; comp 10/13/97; comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 2 8 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2; 40 C.F.R. Parts 141, 142, §141.6, §142.10)

§11-20-40 Criteria and procedures for public water systems using point-of-entry devices. (a) Supplier of water may use point-of-entry devices to comply with MCLs only if they meet all the requirements of this section.

(b) The supplier of water has the responsibility to operate and maintain the point-of-entry treatment system.

(c) The supplier of water shall develop and obtain the director's approval for a monitoring plan before point-of-entry devices are installed for compliance. Under the plan approved by the director, point-of-entry devices shall provide health protection equivalent to central water treatment. "Equivalent" means that the water would meet all primary drinking water regulations and would be of acceptable quality similar to water distributed by a well-operated central treatment plant. In addition to the VOCs, monitoring shall include physical measurements and observations such as total flow treated and mechanical condition of the treatment equipment.

(d) Effective technology shall be properly applied under a plan approved by the director and the microbiological safety of the water shall be maintained.

(1) The supplier of water shall provide certification of performance, field testing, and, if not included in the certification process, a rigorous engineering design

review of the point-of-entry devices to the director.

(2) The design and application of the point-of-entry devices shall consider the tendency for increase in heterotrophic bacteria concentrations in water treated with activated carbon. It may be necessary to use frequent backwashing, post-contactor disinfection, and Heterotrophic Plate Count monitoring to ensure that the microbiological safety of the water is not compromised.

(e) All consumers shall be protected. Every building connected to the public water system shall have a point-of-entry device installed, maintained, and adequately monitored. Every building shall be subject to treatment and monitoring, and that the rights and responsibilities of the public water system customer shall convey with title upon sale of property. [Eff 12/26/81; comp 3/7/92; am and comp 1/2/93; comp 12/15/94; comp 10/13/97; comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-3, 300j-4, 300g-6, 300j-9; 40 C.F.R. Parts 141, 142, §141.100)

§11-20-41 Use of other non-centralized treatment devices. The supplier of water shall not use bottled water or point-of-use devices to achieve compliance with an MCL. Bottled water or point-of-use devices may be used on a temporary basis to avoid an unreasonable risk to health. [Eff 12/26/81; comp 3/7/92; comp 1/2/93; comp 12/15/94; comp 10/13/97; comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-3, 300j-4, 300g-6, 300j-9; 40 C.F.R. Parts 141, 142, §141.101)

§11-20-42 Bottled water and point-of-use

devices. (a) The director may require the supplier of water to use bottled water or point-of-use devices as a condition for granting an exemption from the requirements of section 11-20-4(d).

(b) The supplier of water that uses bottled water as a condition of obtaining an exemption from the requirements of section 11-20-4(d) shall meet the requirements set out in section 11-20-43(f).

(c) The supplier of water that uses point-of-use devices as a condition for receiving an exemption shall meet the requirements set out in section 11-20-43(g). [Eff 12/26/81; comp 3/7/92; comp 1/2/93; am and comp 12/15/94; comp 10/13/97; comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-3, 300j-4, 300g-6, 300j-9; 40 C.F.R. Parts 141, 142, §142.56)

§11-20-43 Variances from the maximum contaminant levels for synthetic organic chemicals. (a) The following is the best technology, treatment techniques, or other means available for achieving compliance with the MCLs for synthetic organic chemicals: Removal using packed tower aeration; removal using granular activated carbon (except for vinyl chloride).

(b) Community water systems and non-transient non-community water systems shall agree to install or use any treatment method identified in subsection (a), or both, as a condition for granting a variance except as provided in subsection (c). If, after the supplier of water's installation of the treatment method, the public water system cannot meet the MCL, that supplier of water shall be eligible for a variance under the provisions of section 11-20-20.

(c) If a supplier of water can demonstrate through comprehensive engineering assessments, which may include pilot plant studies, that the treatment methods identified in subsection (a) would only achieve a de minimis reduction in contaminants, the

director may issue a schedule of compliance that requires the supplier of water being granted the variance to examine other treatment methods as a condition of obtaining the variance.

(d) If the director determines that a treatment method identified in subsection (c) is technically feasible, the director may require the supplier of water to install or use that treatment method, or both, in connection with a compliance schedule issued under the provisions of section 11-20-26. The director's determination shall be based upon studies by the supplier of water and other relevant information.

(e) The director may require a supplier of water to use bottled water or point-of-use devices or other means as a condition of granting a variance or an exemption from the requirements of section 11-20-4(d), to avoid an unreasonable risk to health.

(f) The supplier of water that uses bottled water as a condition for receiving a variance or an exemption from the requirements of section 11-20-4(d) is fully responsible for the provision of a minimum quantity of bottled water to every person via door-to-door bottled water delivery and shall meet the requirements in either paragraph (1) or (2) below:

(1) The director shall require and approve a monitoring program for bottled water. The supplier of water shall develop and put in place a monitoring program that provides reasonable assurances that the bottled water meets all MCLs. The supplier of water shall monitor a representative sample of the bottled water for all contaminants regulated under section 11-20-4(d) the first three months that it supplies the bottled water to the public, and annually thereafter. Results of the monitoring program shall be provided to the director; or

(2) The supplier of water shall obtain a certification from the bottled water company that the bottled water supplied has been taken from an "approved source" as defined

in 21 C.F.R. §§129.3(a); the bottled water company has conducted monitoring in accordance with 21 C.F.R. §§129.80(g)(1) through (3); and the bottled water does not exceed any MCLs or quality limits as set out in 21 C.F.R. §§103.35, 110, and 129. The supplier of water shall provide the certification to the director the first three months after it supplies bottled water and annually thereafter.

(g) The supplier of water that uses point-of-use devices as a condition for obtaining a variance or an exemption from NPDWRs for volatile organic compounds shall meet the following requirements:

(1) The supplier of water has the responsibility to operate and maintain the point-of-use treatment system;

(2) The supplier of water shall develop a monitoring plan and obtain the director's approval for the plan before point-of-use devices are installed for compliance. This monitoring plan shall provide health protection equivalent to a monitoring plan for central water treatment;

(3) Effective technology shall be properly applied under a plan approved by the director and the microbiological safety of the water shall be maintained;

(4) The supplier of water shall provide certification of performance, field testing, and, if not included in the certification process, a rigorous engineering design review of the point-of-use devices to the director;

(5) The design and application of the point-of-use devices shall consider the tendency for an increase in heterotrophic bacteria concentrations in water treated with activated carbon. It may be necessary to use frequent backwashing, post-contactor disinfection, and Heterotrophic Plate Count monitoring to ensure that the

microbiological safety of the water is not compromised; and

(6) All consumers shall be protected. Every building connected to the public water system shall have a point-of-use device installed, maintained, and adequately monitored. Every building is subject to treatment and monitoring, and that the rights and responsibilities of the public water system customer shall convey with title upon sale of property. [Eff 12/26/81; comp 3/7/92; am and comp 1/2/93; am and comp 12/15/94; comp 10/13/97; comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-3, 300j-4, 300g-6, 300j-9; 40 C.F.R. Parts 141, 142, §142.62)

§11-20-44 REPEALED. [R 1/2/93]

§11-20-45 REPEALED. [R 11/28/11]

§11-20-45.1 Disinfectant residuals, disinfection byproducts, and disinfection byproduct precursors.

(a) General requirements.

(1) The requirements of this section constitute state primary drinking water regulations.(A) The regulations in this section establish criteria under which community water systems (CWSs) and nontransient, non-community water systems (NTNCWSs) which add a chemical disinfectant to the water in any part of the drinking water treatment process must modify their practices to meet MCLs and MRDLs in sections 11-20-4.1 and 11-20-7.5, respectively, and must meet the treatment technique requirements for disinfection byproduct precursors in subsection (f).

(B) The regulations in this section establish criteria under which transient NCWSs that use chlorine dioxide as a disinfectant or oxidant must modify their practices to meet the MRDL for chlorine dioxide in section 11-20-7.5.

(2) Compliance dates.

(A) CWSs and NTNCWSs. Unless otherwise noted, systems must comply with the requirements of this section as follows. Public water systems with a surface water source or a GWUDI source serving 10,000 or more persons must comply with this section beginning January 1, 2002. Public water systems with a surface water source or a GWUDI source serving fewer than 10,000 persons and systems using only ground water not under the direct influence of surface water must comply with this section beginning January 1, 2004.

(B) Transient NCWSs. Public water systems with a surface water source or a GWUDI source serving 10,000 or more persons and using chlorine dioxide as a

disinfectant or oxidant must comply with any requirements for chlorine dioxide in this section beginning January 1, 2002. Public water systems with a surface water source or a GWUDI source serving fewer than 10,000 persons and using chlorine dioxide as a disinfectant or oxidant and systems using only ground water not under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant must comply with any requirements for chlorine dioxide in this section beginning January 1, 2004.

(3) Each CWS and NTNCWS regulated under paragraph (1) must be operated by qualified personnel who meet the requirements specified by the director and are included in a state register of qualified operators.

(4) Control of disinfectant residuals. Notwithstanding the MRDLs in section 11-20-7.5, systems may increase residual disinfectant levels in the distribution system of chlorine or chloramines (but not chlorine dioxide) to a level and for a time necessary to protect public health, i.e., to address specific microbiological contamination problems caused by circumstances such as, but not limited to, distribution line breaks, storm run-off events, source water contamination events, or cross-connection events.

(b) Analytical requirements.

(1) General.

(A) Systems must use only the analytical method(s) specified in this subsection, or their equivalent as approved by EPA, to demonstrate compliance with the requirements of this section and with the requirements of sections 11-20-45.2 and 11-20-45.3. These methods are

effective for compliance monitoring beginning on February 16, 1999, unless a different effective date is specified in this section or by the director.

(B) Documents on analytical methods incorporated by reference into this subsection per 5 U.S.C. 552(a) and 1 C.F.R. part 51 are listed in 40 C.F.R. §141.131(a)(2).

(2) Disinfection byproducts.

(A) Systems must measure disinfection byproducts by the methods listed in 40 C.F.R. §141.131(b)(1) or alternative methods listed in Appendix A to Title 40 Code of Federal Regulations, Part 141, Subpart C.

(B) Analysis under this section for disinfection byproducts must be conducted by laboratories that have received certification by EPA or the director, except as specified under subparagraph (C). To receive certification to conduct analyses for the DBP contaminants in section 11-20-4.1(a), 11-20-45.2, and 11-20-45.3, and subsection (f), the laboratory must meet 40 C.F.R. §141.131(b)(2)(i - iv).(C) A party approved by EPA or the director must measure daily chlorite samples at the entrance to the distribution system.

(3) Disinfectant residuals.

(A) Systems must measure residual disinfectant concentrations for free chlorine, combined chlorine (chloramines), and chlorine dioxide by the methods listed in 40 C.F.R. §141.131(c)(1) or alternative methods listed in Appendix A to Title 40 Code of Federal Regulations, Part 141, Subpart C.

(B) If approved by the director, systems

may also measure residual disinfectant concentrations for chlorine, chloramines, and chlorine dioxide by using DPD colorimetric test kits.

(C) A party approved by EPA or the director must measure residual disinfectant concentration.

(4) Additional analytical methods. Systems required to analyze parameters not included in paragraphs (2) and (3) must use the following methods or alternative methods listed in Appendix A to Title 40 Code of Federal Regulations, Part 141, Subpart C. A party approved by EPA or the director must measure these parameters.

(A) Alkalinity. All methods allowed in 40 C.F.R. §141.89(a) for measuring alkalinity.

(B) Bromide. EPA Method 300.0 or EPA Method 300.1, 317.0 Revision 2.0, 326.0, or ASTM D 6581-00.

(C) Total Organic Carbon (TOC). Standard Method 5310 B or 5310 B-00_(High-Temperature Combustion Method) or Standard Method 5310 C or 5310 C-00 (Persulfate-Ultraviolet or Heated-Persulfate Oxidation Method) or Standard Method 5310 D or 5310 D-00_ (Wet-Oxidation Method) or EPA Method 415.3 Revision 1.1. Inorganic carbon must be removed from the samples prior to analysis. TOC samples may not be filtered prior to analysis. TOC samples must be acidified at the time of sample collection to achieve pH less than or equal to 2 with minimal addition of the acid specified in the method or by the instrument manufacturer. Acidified TOC samples must be analyzed within twenty-eight days.

(D) Specific Ultraviolet Absorbance (SUVA). SUVA is equal to the UV absorption at

254nm (UV_{254}) (measured in m^{-1}) divided by the dissolved organic carbon (DOC) concentration (measured as mg/L). In order to determine SUVA, it is necessary to separately measure UV_{254} and DOC. When determining SUVA, systems must use the methods stipulated in this subparagraph to measure DOC and the method stipulated in this subparagraph to measure UV_{254}. SUVA must be determined on water prior to the addition of disinfectants/oxidants by the system. DOC and UV_{254} samples used to determine a SUVA value must be taken at the same time and at the same location.

(i) Dissolved Organic Carbon (DOC). Standard Method 5310 B or 5310 B-00_(High-Temperature Combustion Method) or Standard Method 5310 C or 5310 C-00 (Persulfate-Ultraviolet or Heated-Persulfate Oxidation Method) or Standard Method 5310 D or 5310 D-00_(Wet-Oxidation Method) or EPA Method 415.3 Revision 1.1. DOC samples must be filtered through the 0.45 um pore diameter filter as soon as practical after sampling, not to exceed forty-eight hours. After filtration, DOC samples must be acidified to achieve pH less than or equal to 2 with minimal addition of the acid specified in the method or by the instrument manufacturer. Acidified DOC samples must be analyzed within twenty-eight days of sample collection. Inorganic carbon must be removed from the samples prior to analysis. Water passed through the filter prior to filtration of

the sample must serve as the filtered blank. This filtered blank must be analyzed using procedures identical to those used for analysis of the samples and must meet the following criteria: DOC less than 0.5 mg/L.

(ii) Ultraviolet Absorption at 254 nm (UV_{254}). Method 5910 B or 5910 B-00 (Ultraviolet Absorption Method) or EPA Method 415.3 Revision 1.1. UV absorption must be measured at 253.7 nm (may be rounded off to 254 nm). Prior to analysis, UV_{254} samples must be filtered through a 0.45 um pore-diameter filter. The pH of UV_{254} samples may not be adjusted. Samples must be analyzed as soon as practical after sampling, not to exceed forty-eight hours.

(E) pH. All methods allowed in 40 C.F.R §141.23(k)(1) for measuring pH.

(F) Magnesium. All methods allowed in 40 C.F.R. §141.23(k)(1) for measuring magnesium.

(c) Monitoring requirements.

(1) General requirements.

(A) Systems must take all samples during normal operating conditions.

(B) Systems may consider multiple wells drawing water from a single aquifer as one treatment plant for determining the minimum number of TTHM and HAA5 samples required, with director approval. Systems shall submit an evaluation report by a professional competent in the field of hydrogeology which proves with reasonable certainty that the affected wells are completed in, and drawing water from, the same aquifer, and that the water quality

characteristics/chemistry of each well are enough alike to conclude that disinfection byproduct formation would be similar. Aquifer boundaries and designations shall be based on maps of the State Commission on Water Resource Management.

(C) Failure to monitor in accordance with the monitoring plan required under paragraph (6) is a monitoring violation.

(D) Failure to monitor will be treated as a violation for the entire period covered by the annual average where compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MCLs or MRDLs.

(E) Systems may use only data collected under the provisions of this subsection or
40 C.F.R. subpart M to qualify for reduced monitoring.

(2) Monitoring requirements for disinfection byproducts.

(A) TTHMs and HAA5.

(i) Routine monitoring. Systems must monitor at the frequency indicated in Appendix B entitled "Routine Monitoring Frequency For TTHM and HAA5 (HAR 11-20-45.1(c)(2)(A))", dated January 1, 2002, located at the end of this chapter and made a part of this section.

(ii) Systems may reduce monitoring, except as otherwise provided, in accordance with Appendix C entitled "Reduced Monitoring Frequency For TTHM and HAA5 (HAR 11-20-45.1(c)(2)(B))", dated

January 1, 2002, located at the end of this chapter and made a part of this section.

(iii) Monitoring requirements for source water TOC. In order to qualify for reduced monitoring for TTHM and HAA5 under clause (ii), Subpart H systems not monitoring under the provisions of paragraph (c)(4) must take monthly TOC samples every thirty days at a location prior to any treatment, beginning April 1, 2008 or earlier, if specified by the director. In addition to meeting other criteria for reduced monitoring in clause (ii), the source water TOC running annual average must be <4.0 mg/L (based on the most recent four quarters of monitoring) on a continuing basis at each treatment plant to reduce or remain on reduced monitoring for TTHM and HAA5. Once qualified for reduced monitoring for TTHM and HAA5 under clause (ii), a system may reduce source water tOC monitoring to quarterly TOC samples taken every ninety days at a location prior to any treatment.

(iv) Systems on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year (for systems which must monitor quarterly) or the result of the sample (for systems which must monitor no more frequently than annually) is no more than 0.060 mg/L and 0.045 mg/L for TTHMs and HAA5, respectively. Systems that do not meet these

levels must resume monitoring at the minimum frequency identified in Appendix B (minimum monitoring frequency column) in the quarter immediately following the monitoring period in which the system exceeds 0.060 mg/L and 0.045 mg/L for TTHMs and HAA5, respectively. For systems using only ground water not under the direct influence of surface water and serving fewer than 10,000 persons, if either the TTHM annual average is > 0.080 mg/L or the HAA5 annual average is > 0.060 mg/L, the system must go to the increased monitoring identified in Appendix B (sample location column) in the quarter immediately following the monitoring period in which the system exceeds 0.080 mg/L or 0.060 mg/L for TTHMs or HAA5 respectively.

(v) Systems on increased monitoring may return to routine monitoring if, after at least one year of monitoring their TTHM annual average is ≤ 0.060 mg/L and their HAA5 annual average is ≤ 0.045 mg/L.

(vi) The director may return a system to routine monitoring at the director's discretion.

(B) Chlorite. Community and nontransient non-community water systems using chlorine dioxide, for disinfection or oxidation, must conduct monitoring for chlorite.

(i) Routine daily monitoring. Systems must take daily samples at the entrance to the distribution system. For any daily sample that

exceeds the chlorite MCL, the system must take additional samples in the distribution system the following day at the locations required by clause (iii) in addition to the sample required at the entrance to the distribution system.

(ii) Routine monthly monitoring. Systems must take a three-sample set each month in the distribution system. The system must take one sample at each of the following locations: near the first customer, at a location representative of average residence time, and at a location reflecting maximum residence time in the distribution system. Any additional routine sampling must be conducted in the same manner (as three-sample sets, at the specified locations). The system may use the results of additional monitoring conducted under clause (iii) to meet the requirement for monitoring under this clause.

(iii) Additional monitoring. On each day following a routine sample monitoring result that exceeds the chlorite MCL at the entrance to the distribution system, the system is required to take three chlorite distribution system samples at the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution

system).

(iv) Reduced monitoring at entrance to distribution system. Chlorite monitoring at the entrance to the distribution system required by clause (i) may not be reduced.

(v) Reduced monitoring in distribution system. Chlorite monitoring in the distribution system required by clause (ii) may be reduced to one three-sample set per quarter after one year of monitoring where no individual chlorite sample taken in the distribution system under clause (ii) has exceeded the chlorite MCL and the system has not been required to conduct monitoring under clause (iii). The system may remain on the reduced monitoring schedule until either any of the three individual chlorite samples taken quarterly in the distribution system under clause (ii) exceeds the chlorite MCL or the system is required to conduct monitoring under clause (iii), at which time the system must revert to routine monitoring.

(C) Bromate.

(i) Routine monitoring. Community and nontransient non-community systems using ozone, for disinfection or oxidation, must take one sample per month for each treatment plant in the system using ozone. Systems must take samples monthly at the entrance to the distribution system while the ozonation system is operating under normal conditions.

(ii) Reduced monitoring. Until March 31, 2009, systems required to

analyze for bromate may reduce monitoring from monthly to quarterly, if the system's average source water bromide concentration is less than 0.05 mg/L based on representative monthly bromide measurements for one year. The system may remain on reduced bromate monitoring until the running annual average source water bromide concentration, computed quarterly, is equal to or greater than 0.05 mg/L based upon representative monthly measurements. If the running annual average source water bromide concentration is equal to or greater than 0.05 mg/L, the system must resume routine monitoring required by clause (i) in the following month. Beginning April 1, 2009, systems may no longer use the provisions of this clause to qualify for reduced monitoring. A system required to analyze for bromate may reduce monitoring from monthly to quarterly, if the system's running annual average bromate concentration is $\leq$0.0025 mg/L based on monthly bromate measurements under clause (i) for the most recent four quarters, with samples analyzed using Method 317.0 Revision 2.0, 326.0 or 321.8. If the running annual average bromate concentration is >0.0025 mg/L, the system must resume routine monitoring required by clause (i).

(3) Monitoring requirements for disinfectant residuals.

(A) Chlorine and chloramines.

(i) Routine monitoring. Beginning April 1, 2016, community and non-transient non-community water systems that use chlorine or chloramines must measure the residual disinfectant level in the distribution system at the same point in the distribution system and at the same time as total coliforms are sampled, as specified in sections 11-20-9.1(d) and (e). Public water systems which filter either a surface water source or a GWUDI source may use the results of residual disinfectant concentration sampling conducted under section 11-20-46(d)(2)(B)(iii), in lieu of taking separate samples.

(ii) Reduced monitoring. Monitoring may not be reduced.

(B) Chlorine dioxide.

(i) Routine monitoring. Community, nontransient non-community, and transient non-community water systems that use chlorine dioxide for disinfection or oxidation must take daily samples at the entrance to the distribution system. For any daily sample that exceeds the MRDL, the system must take samples in the distribution system the following day at the locations required by clause (ii), in addition to the sample required at the entrance to the distribution system.

(ii) Additional monitoring. On each day following a routine sample monitoring result that exceeds the MRDL, a system covered by this

paragraph is required to take three chlorine dioxide distribution system samples. If chlorine dioxide or chloramines are used to maintain a disinfectant residual in the distribution system, or if chlorine is used to maintain a disinfectant residual in the distribution system and there are no disinfection addition points after the entrance to the distribution system (i.e., no booster chlorination), the system must take three samples as close to the first customer as possible, at intervals of at least six hours. If chlorine is used to maintain a disinfectant residual in the distribution system and there are one or more disinfection addition points after the entrance to the distribution system (i.e., booster chlorination), the system must take one sample at each of the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system). All sampling locations shall be approved by the director.

(iii) Reduced monitoring. Chlorine dioxide monitoring may not be reduced.

(4) Monitoring requirements for disinfection byproduct precursors(DBPP).

(A) Routine monitoring. Public water systems with a surface water source or

a GWUDI source which use conventional filtration treatment (as defined in section 11-20-2) must monitor each treatment plant for TOC no later than the point of combined filter effluent turbidity monitoring and representative of the treated water. All systems required to monitor under this subparagraph must also monitor for TOC in the source water prior to any treatment at the same time as monitoring for TOC in the treated water. These samples (source water and treated water) are referred to as paired samples. At the same time as the source water sample is taken, all affected systems must monitor for alkalinity in the source water prior to any treatment. Systems must take one paired sample and one source water alkalinity sample per month per plant at a time representative of normal operating conditions and influent water quality.

(B) Reduced monitoring. Public water systems with a surface water source or a GWUDI source with an average treated water TOC of less than 2.0 mg/L for two consecutive years, or less than 1.0 mg/L for one year, may reduce monitoring for both TOC and alkalinity to one paired sample and one source water alkalinity sample per plant per quarter. The system must revert to routine monitoring in the month following the quarter when the annual average treated water TOC is equal to or greater than 2.0 mg/L.

(5) Bromide. Systems required to analyze for bromate may reduce bromate monitoring from monthly to once per quarter, if the system demonstrates that the average source water

bromide concentration is less than 0.05 mg/L based upon representative monthly measurements for one year. The system must continue bromide monitoring to remain on reduced bromate monitoring.

(6) Monitoring plans. Each system required to monitor under this subsection must develop and implement a monitoring plan. The system must maintain the plan and make it available for inspection by the director and the general public no later than thirty days following the applicable compliance dates in subsection (a)(2). All public water systems with a surface water source or a GWUDI source serving more than 3,300 people must submit a copy of the monitoring plan to the director no later than the date of the first report required under subsection (e). The director may also require the plan to be submitted by any other system. After review, the director may require changes in any plan elements. The plan must include at least the following elements:

(A) Specific locations and schedules for collecting samples for any parameters included in this section.

(B) How the system will calculate compliance with MCLs, MRDLs, and treatment techniques.

(C) If approved for monitoring as a consecutive system, or if providing water to a consecutive system, under the provisions of section 11-20-16, the sampling plan must reflect the entire distribution system.

(d) Compliance requirements.

(1) General requirements.

(A) Where compliance is based on a running annual average of monthly or quarterly samples or averages and the system fails to monitor for TTHM, HAA5, or bromate, this failure to monitor will

be treated as a monitoring violation for the entire period covered by the annual average. Where compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MRDLs for chlorine and chloramines, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average.

(B) All samples taken and analyzed under the provisions of this section must be included in determining compliance, even if that number is greater than the minimum required.

(C) If, during the first year of monitoring under subsection (c), any individual quarter's average will cause the running annual average of that system to exceed the MCL for total trihalomethanes, haloacetic acids (five), or bromate; or the MRDL for chlorine or chloramine, the system is out of compliance at the end of that quarter.

(2) Disinfection byproducts.

(A) TTHMs and HAA5.

(i) For systems monitoring quarterly, compliance with MCLs in section 11-20-4.1 must be based on a running annual arithmetic average, computed quarterly, of quarterly arithmetic averages of all samples collected by the system as prescribed by subsections (c)(2)(A).

(ii) For systems monitoring less frequently than quarterly, systems demonstrate MCL compliance if the average of samples taken that year

under the provisions of subsection (c)(2)(A) does not exceed the MCLs in section 11-20.4.1. If the average of these samples exceeds the MCL, the system must increase monitoring to once per quarter per treatment plant and such a system is not in violation of the MCL until it has completed one year of quarterly monitoring , unless the result of fewer than four quarters of monitoring will cause the running annual average to exceed the MCL, in which case the system is in violation at the end of that quarter. Systems required to increase monitoring frequency to quarterly monitoring must calculate compliance by including the sample which triggered the increased monitoring plus the following three quarters of monitoring.

(iii) If the running annual arithmetic average of quarterly averages covering any consecutive four-quarter period exceeds the MCL, the system is in violation of the MCL and must notify the public pursuant to section 11-20-18 or 40 C.F.R. §141.202, whichever is effective for your system, in addition to reporting to the director pursuant to subsection (e).

(iv) If a PWS fails to complete four consecutive quarters of monitoring (e.g., when the PWS has not been operating for four quarters), compliance with the MCL for the last four-quarter compliance period must be based on an average

of the available data.

(B) Bromate. Compliance must be based on a running annual arithmetic average, computed quarterly, of monthly samples (or, for months in which the system takes more than one sample, the average of all samples taken during the month) collected by the system as prescribed by subsection (c)(2)(C). If the average of samples covering any consecutive four-quarter period exceeds the MCL, the system is in violation of the MCL and must notify the public pursuant to section 11-20-18, in addition to reporting to the director pursuant to subsection (e). If a PWS fails to complete twelve consecutive months of monitoring, compliance with the MCL for the last four-quarter compliance period must be based on an average of the available data.

(C) Chlorite. Compliance must be based on an arithmetic average of each three sample set taken in the distribution system as prescribed by subsection (c)(2)(B)(ii) and (iii). If the arithmetic average of any three sample set exceeds the MCL, the system is in violation of the MCL and must notify the public pursuant to section 11-20-18, in addition to reporting to the director pursuant to subsection (e).

(3) Disinfectant residuals.

(A) Chlorine and chloramines.

(i) Compliance must be based on a running annual arithmetic average, computed quarterly, of monthly averages of all samples collected by the system under subsection (c)(3)(A). If the average covering any consecutive four-quarter period exceeds the MRDL, the

system is in violation of the MRDL and must notify the public pursuant to section 11-20-18, in addition to reporting to the director pursuant to subsection (e).

(ii) In cases where systems switch between the use of chlorine and chloramines for residual disinfection during the year, compliance must be determined by including together all monitoring results of both chlorine and chloramines in calculating compliance. Reports submitted pursuant to subsection (e) must clearly indicate which residual disinfectant was analyzed for each sample.

(B) Chlorine dioxide.

(i) Acute violations. Compliance must be based on consecutive daily samples collected by the system under subsection (c)(3)(B). If any daily sample taken at the entrance to the distribution system exceeds the MRDL, and on the following day one (or more) of the three samples taken in the distribution system exceed the MRDL, the system is in violation of the MRDL and must take immediate corrective action to lower the level of chlorine dioxide below the MRDL and must notify the public pursuant to the procedures for acute health risks in section 11-20-18(b)(2)(D) in addition to reporting to the director pursuant to subsection (e). Failure to take samples in the distribution system the day following an exceedance of the

chlorine dioxide MRDL at the entrance to the distribution system will also be considered an MRDL violation and the system must notify the public of the violation in accordance with the provisions for acute violations in section 11-20-18(b)(2)(D) in addition to reporting to the director pursuant to subsection (e).

(ii) Nonacute violations. Compliance must be based on consecutive daily samples collected by the system under subsection (c)(3)(B). If any two consecutive daily samples taken at the entrance to the distribution system exceed the MRDL and all distribution system samples taken are below the MRDL, the system is in violation of the MRDL and must take corrective action to lower the level of chlorine dioxide below the MRDL at the point of sampling and will notify the public pursuant to the procedures for nonacute health risks in section 11-20-18 in addition to reporting to the director pursuant to subsection (e). Failure to monitor at the entrance to the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system is also an MRDL violation and the system must notify the public of the violation in accordance with the provisions for nonacute violations under section 11-20-18 in addition to reporting to the director pursuant to subsection (e).

(4) Disinfection byproduct precursors (DBPP). Compliance must be determined as specified by subsection (f)(3). Systems may begin monitoring to determine whether Step 1 TOC removals can be met twelve months prior to the compliance date for the system. This monitoring is not required and failure to monitor during this period is not a violation. However, any system that does not monitor during this period, and then determines in the first twelve months after the compliance date that it is not able to meet the Step 1 requirements in subsection (f)(2)(B) and must therefore apply for alternate minimum TOC removal (Step 2) requirements, is not eligible for retroactive approval of alternate minimum TOC removal (Step 2) requirements as allowed pursuant to subsection (f)(2)(C) and is in violation of a treatment technique under subsection (f). Systems may apply for alternate minimum TOC removal (Step 2) requirements any time after the compliance date. For systems required to meet Step 1 TOC removals, if the value calculated under subsection (f)(3)(A)(iv) is less than 1.00, the system is in violation of the treatment technique requirements and must notify the public pursuant to section 11-20-18, in addition to reporting to the director pursuant to subsection (e).

(e) Reporting and record keeping requirements.

(1) Systems required to sample quarterly or more frequently, pursuant to this subsection shall report to the director within ten days after the end of each quarter in which samples were collected, notwithstanding the provisions of section 11-20-17. Systems required to sample less frequently than quarterly must report to the director within ten days after the end of each monitoring period in which samples were collected.

(2) Disinfection byproducts. Systems must report the information specified in Appendix D entitled "Reporting Requirements For Disinfection Byproducts (HAR 11-20-45.1(e)(2))", dated January 1, 2002, located at the end of this chapter and made a part of this section.

(3) Disinfectants. Systems must report the information specified in Appendix E entitled "Reporting Requirements For Disinfection Residuals (HAR 11-20-45.1(e)(3))", dated January 1, 2002, located at the end of this chapter and made a part of this section.

(4) Disinfection byproduct precursors and enhanced coagulation or enhanced softening. Systems must report the information specified in Appendix F entitled "Reporting Requirements For Disinfection Byproduct Precursors and Enhanced Coagulation or Enhanced Softening (HAR 11-20-45.1(e)(4))", dated January 1, 2002, located at the end of this chapter and made a part of this section.

(f) Treatment technique for control of disinfection byproduct (DBP) precursors.

(1) Applicability.

(A) Public water systems with a surface water source or a GWUDI source using conventional filtration treatment (as defined in section 11-20-2) must operate with enhanced coagulation or enhanced softening to achieve the TOC per cent removal levels specified in paragraph (2) unless the system meets at least one of the alternative compliance criteria listed in subparagraphs (B) or (C).

(B) Alternative compliance criteria for enhanced coagulation and enhanced softening systems. Public water systems with a surface water source or a GWUDI source using conventional filtration

treatment may use the alternative compliance criteria in this subparagraph to comply with this subsection in lieu of complying with paragraph (2). Systems shall still comply with monitoring requirements in subsection (c)(4).

(i) The system's source water TOC level, measured according to subsection (b)(4)(C), is less than 2.0 mg/L, calculated quarterly as a running annual average.

(ii) The system's treated water TOC level, measured according to subsection (b)(4)(C), is less than 2.0 mg/L, calculated quarterly as a running annual average.

(iii) The system's source water TOC level, measured according to subsection (b)(4)(C), is less than 4.0 mg/L, calculated quarterly as a running annual average; the source water alkalinity, measured according to subsection (b)(4)(A), is greater than 60 mg/L (as $CaCO_3$), calculated quarterly as a running annual average; and either the TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively; or prior to the effective date for compliance in subsection (a)(2), the system has made a clear and irrevocable financial commitment not later than the effective date for compliance in subsection (a)(2) to use technologies that will limit the levels of TTHMs and HAA5 to no more than 0.040 mg/L and 0.030 mg/L, respectively. Systems must submit evidence of a clear and irrevocable financial

commitment, in addition to a schedule containing milestones and periodic progress reports for installation and operation of appropriate technologies, to the director for approval not later than the effective date for compliance in subsection (a)(2). These technologies must be installed and operating not later than June 30, 2005. Failure to install and operate these technologies by the date in the approved schedule will constitute a violation of National Primary Drinking Water Regulations.

(iv) The TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively, and the system uses only chlorine for primary disinfection and maintenance of a residual in the distribution system.

(v) The system's source water SUVA, prior to any treatment and measured monthly according to subsection (b)(4)(D), is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(vi) The system's finished water SUVA, measured monthly according to subsection (b)(4)(D), is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(C) Additional alternative compliance criteria for softening systems. Systems practicing enhanced softening that cannot achieve the TOC removals required by paragraph (2)(B) may use the alternative compliance criteria in

this subparagraph in lieu of complying with paragraph (2). Systems must still comply with monitoring requirements in subsection (c)(4).

(i) Softening that results in lowering the treated water alkalinity to less than 60 mg/L (as $CaCO_3$), measured monthly according to subsection (b)(4)(A) and calculated quarterly as a running annual average.

(ii) Softening that results in removing at least 10 mg/L of magnesium hardness (as $CaCO_3$), measured monthly according to subparagraph (b)(4)(F) and calculated quarterly as an annual running average.

(2) Enhanced coagulation and enhanced softening performance requirements.

(A) Systems must achieve the per cent reduction of TOC specified in subparagraph (B) between the source water and the combined filter effluent, unless the director approves a system's request for alternate minimum TOC removal (Step 2) requirements under subparagraph (C).

(B) Required Step 1 TOC reductions, indicated in the following table, are based upon specified source water parameters measured in accordance with subsection (b)(4). Systems practicing softening are required to meet the Step 1 TOC reductions in the far-right column (source water alkalinity greater than 120 mg/L) for the specified source water TOC:

Step 1 Required Removal of TOC By Enhanced Coagulation and Enhanced Softening for Subpart H Systems Using Conventional Treatment

	Source-water alkalinity, mg/L as

	$CaCO_3$		
Source-water TOC, mg/L	0-60	>60-120	>120
>2.0-4.0	35.0%	25.0%	15.0%
>4.0-8.0	45.0%	35.0%	25.0%
>8.0	50.0%	40.0%	30.0%

(C) Public water systems with a surface water source or a GWUDI source using conventional treatment systems that cannot achieve the Step 1 TOC removals required by subparagraph (B) due to water quality parameters or operational constraints must apply to the State, within three months of failure to achieve the TOC removals required by subparagraph (B), for approval of alternative minimum TOC (Step 2) removal requirements submitted by the system. If the director approves the alternative minimum TOC removal (Step 2) requirements, the director may make those requirements retroactive for the purposes of determining compliance. Until the director approves the alternate minimum TOC removal (Step 2) requirements, the system must meet the Step 1 TOC removals contained in subparagraph (B).

(D) Alternate minimum TOC removal (Step 2) requirements. Applications made to the director by enhanced coagulation systems for approval of alternative minimum TOC removal (Step 2) requirements under subparagraph (C) must include, as a minimum, results of bench- or pilot-scale testing conducted under clause (i). The submitted bench- or pilot-scale testing must be used to determine the alternate enhanced coagulation level.

(i) Alternate enhanced coagulation

level is defined as coagulation at a coagulant dose and pH as determined by the method described in this subparagraph such that an incremental addition of 10 mg/L of alum (or equivalent amount of ferric salt) results in a TOC removal of less than or equal to 0.3 mg/L. The per cent removal of TOC at this point on the "TOC removal versus coagulant dose" curve is then defined as the minimum TOC removal required for the system. Once approved by the director, this minimum requirement supersedes the minimum TOC removal required by the table in subparagraph (B). This requirement will be effective until such time as the director approves a new value based on the results of a new bench- and pilot-scale test. Failure to achieve State-set alternative minimum TOC removal levels is a violation of National Primary Drinking Water Regulations.

(ii) Bench- or pilot-scale testing of enhanced coagulation must be conducted by using representative water samples and adding 10 mg/L increments of alum (or equivalent amounts of ferric salt) until the pH is reduced to a level less than or equal to the enhanced coagulation Step 2 target pH shown in the following table:

Enhanced Coagulation Step 2 Target pH	
Alkalinity (mg/L as CaCO3)	Target pH

0-60	5.5
>60-120	6.3
>120-240	7.0
>240	7.5
5.5	

(iii) For waters with alkalinities of less than 60 mg/L for which addition of small amounts of alum or equivalent addition of iron coagulant drives the pH below 5.5 before significant TOC removal occurs, the system must add necessary chemicals to maintain the pH between 5.3 and 5.7 in samples until the TOC removal of 0.3 mg/L per 10 mg/L alum added (or equivalent addition of iron coagulant) is reached.

(iv) The system may operate at any coagulant dose or pH necessary (consistent with other NPDWRs) to achieve the minimum TOC per cent removal approved under subparagraph (C).

(v) If the TOC removal is consistently less than 0.3 mg/L of TOC per 10 mg/L of incremental alum dose at all dosages of alum (or equivalent addition of iron coagulant), the water is deemed to contain TOC not amenable to enhanced coagulation. The system may then apply to the director for a waiver of enhanced coagulation requirements.

(3) Compliance calculations.

(A) Public water systems with a surface water source or a GWUDI source other than those identified in paragraphs (1)(B) and (1)(C) must comply with requirements contained in paragraph (2)(B) or (2)(C), whichever is

applicable. Systems must calculate compliance quarterly, beginning after the system has collected twelve months of data, by determining an annual average using the following method:

(i) Determine actual monthly TOC per cent removal, equal to: (1-(treated water TOC/source water TOC)) x 100

(ii) Determine the required monthly TOC per cent removal (from either the table in paragraph (2)(B) or from paragraph (2)(C)).

(iii) Divide the value in clause (i) by the value in clause (ii).

(iv) Add together the results of clause (iii) for the last twelve months and divide by twelve.

(v) If the value calculated in clause (iv) is less than 1.00, the system is not in compliance with the TOC per cent removal requirements.

(B) Systems may use the provisions in this subparagraph in lieu of the calculations in subparagraph (A) to determine compliance with TOC per cent removal requirements.

(i) In any month that the system's treated or source water TOC level, measured according to subsection (b)(4)(C), is less than 2.0 mg/L, the system may assign a monthly value of 1.0 in lieu of the value calculated in subparagraph (A)(iii) when calculating compliance under the provisions of subparagraph (A).

(ii) In any month that a system practicing softening removes at least 10 mg/L of magnesium hardness (as $CaCO_3$), the system may assign a monthly value of 1.0 in

lieu of the value calculated in subparagraph (A)(iii) when calculating compliance under the provisions of subparagraph (A).

(iii) In any month that the system's source water SUVA, prior to any treatment and measured according to subsection (b)(4)(D), is less than or equal to 2.0 L/mg-m, the system may assign a monthly value of 1.0 in lieu of the value calculated in subparagraph (A)(iii) when calculating compliance under the provisions of subparagraph (A).

(iv) In any month that the system's finished water SUVA, measured according to subsection (b)(4)(D), is less than or equal to 2.0 L/mg-m, the system may assign a monthly value of 1.0 in lieu of the value calculated in subparagraph (A)(iii) when calculating compliance under the provisions of subparagraph (A).(v) In any month that a system practicing enhanced softening lowers alkalinity below 60 mg/L (as $CaCO_3$), the system may assign a monthly value of 1.0 in lieu of the value calculated in subparagraph (A)(iii) when calculating compliance under the provisions of subparagraph (A).

(C) Public water systems with a surface water source or a GWUDI source using conventional filtration treatment may also comply with the requirements of this subsection by meeting the criteria in paragraphs (1)(B) or (1)(C).

(4) Treatment technique requirements for DBP precursors. The Administrator identifies the

following as treatment techniques to control the level of disinfection byproduct precursors in drinking water treatment and distribution systems: for public water systems with a surface water source or a GWUDI source using conventional treatment, enhanced coagulation or enhanced softening. [Eff and comp 11/30/02; am and compiled 12/16/05; am and comp 11/28/11; comp 5/2/14; am and comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, 300j-11; 40 C.F.R. §141.130, §141.131, §141.132, §141.133, §141.134, §141.135)

§11-20-45.2 Initial Distribution System Evaluations. (a) General requirements.

(1) The requirements of this section constitute national primary drinking water regulations. The regulations in this section establish monitoring and other requirements for identifying Stage 2 Disinfection Byproduct compliance monitoring locations for determining compliance with maximum contaminant levels for total trihalomethanes (TTHM) and haloacetic acids (five)(HAA5). You must use an Initial Distribution System Evaluation (IDSE) to determine locations with representative high TTHM and HAA5 concentrations throughout your distribution system. IDSEs are used in conjunction with, but separate from, section 11-20-45.1 compliance monitoring, to identify and select Stage 2 Disinfection Byproduct compliance monitoring locations.

(2) Applicability. You are subject to these requirements if your system is a community water system that uses a primary or residual disinfectant other than ultraviolet light or

delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light; or if your system is a nontransient noncommunity water system that serves at least 10,000 people and uses a primary or residual disinfectant other than ultraviolet light or delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light.

(3) Schedule. You must comply with the requirements of this section on the schedule in the following table.

If you serve this population	You must submit your standard monitoring plan or system specific study plan[1] or 40/30 certification[2] to the State by or receive very small system waiver from the State	You must complete your standard monitoring or system specific study by	You must submit your IDSE report to the State by[3]
Systems that are not part of a combined distribution system and systems that serve the largest population in the combined distribution system			
>100,000	October 1, 2006	September 30, 2008	January 1, 2009
50,000-99,999	April 1, 2007	March 31, 2009	July 1, 2009
10,000-49,999	October 1, 2007	September 30, 2009	January 1, 2010
<10,000(CWS	April 1,	March 31, 2010	July 1, 2010

only)	2008		
Other systems that are part of a combined distribution system			
Wholesale system or consecutive system	-at the same time as the system with the earliest compliance date in the combined distribution system	-at the same time as the system with the earliest compliance date in the combined distribution system	-at the same time as the system with the earliest compliance date in the combined distribution system

[1]If, within 12 months after the date identified in this column, the State does not approve your plan or notify you that it has not yet completed its review, you may consider the plan that you submitted as approved. You must implement that plan and you must complete standard monitoring or a system specific study no later than the date identified in the third column.
[2]You must submit your 40/30 certification under subsection (d) by the date indicated.
[3]If, within three months after the date identified in this column (nine months after the date identified in this column if you must comply on the schedule with a service population of between 10,000 and 49,999), the State does not approve your IDSE report or notify you that it has not yet completed its review, you may consider the report that you submitted as approved and you must implement the recommended Stage 2 Disinfection Byproduct monitoring as required.

For the purpose of the schedule in this paragraph, the State may determine that the combined distribution system does not include certain consecutive systems based on factors such as receiving water from a wholesale system only on an emergency basis or receiving only a small percentage and small volume of water from a wholesale system. The State may also determine that

the combined distribution system does not include certain wholesale systems based on factors such as delivering water to a consecutive system only on an emergency basis or delivering only a small percentage and small volume of water to a consecutive system.

(4) You must conduct standard monitoring that meets the requirements in subsection (b), or a system specific study that meets the requirements in subsection (c), or certify to the State that you meet 40/30 certification criteria under subsection (d), or qualify for a very small system waiver under subsection (e).

(A) You must have taken the full complement of routine TTHM and HAA5 compliance samples required of a system with your population and source water under section 11-20-45.1 (or you must have taken the full complement of reduced TTHM and HAA5 compliance samples required of a system with your population and source water under section 11-20-45.1 if you meet reduced monitoring criteria under section 1-20-45.1) during the period specified in paragraph (d)(1) to meet the 40/30 certification criteria in subsection (d). You must have taken TTHM and HAA5 samples under subsections 11-20-45.1(b) and (c) to be eligible for the very small system waiver in subsection (e).

(B) If you have not taken the required samples, you must conduct standard monitoring that meets the requirements in subsection (b), or a system specific study that meets the requirements in subsection (c).

(5) You must use only the analytical methods specified in subsection 11-20-45.1(b), or otherwise approved by EPA for monitoring

under this section, to demonstrate compliance with the requirements of this section.

(6) IDSE results will not be used for the purpose of determining compliance with MCLs in section 11-20-4.1.

(b) Standard monitoring.

(1) Your standard monitoring plan must comply with subparagraphs (A) through (D). You must prepare and submit your standard monitoring plan to the State according to the schedule following subsection (a)(3).

(A) Your standard monitoring plan must include a schematic of your distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating locations and dates of all projected standard monitoring, and all projected section 11-20-45.1 compliance monitoring.

(B) Your standard monitoring plan must include justification of standard monitoring location selection and a summary of data you relied on to justify standard monitoring location selection.

(C) Your standard monitoring plan must specify the population served and system type (subpart H or ground water).

(D) You must retain a complete copy of your standard monitoring plan submitted under this paragraph, including any State modification of your standard monitoring plan, for as long as you are required to retain your IDSE report under subparagraph (3)(D).

(2) Standard monitoring requirements.

(A) You must monitor as indicated in the table in this subparagraph. You must collect dual sample sets at each

monitoring location. One sample in the dual sample set must be analyzed for TTHM. The other sample in the dual sample set must be analyzed for HAA5. You must conduct one monitoring period during the peak historical month for TTHM levels or HAA5 levels or the month of warmest water temperature. You must review available compliance, study, or operational data to determine the peak historical month for TTHM or HAA5 levels or warmest water temperature.

Source water type	Population size category	Monitoring periods and sampling frequency	Distribution system monitoring locations[1]				
			Total per monitoring period	Near entry points	Average residence time	High TTHM	High HAA5
Subpart H	<500 consecutive systems	One (during peak historical month)[2]	2	1		1	
	<500 non -consecutive systems		2			1	1
	500-3,300 consecutive systems	Four (every 90 days)	2	1		1	
	500-3,300 non -consecutive systems		2			1	1
	3,301-9,999		2		1	2	1
	10,000 -49,999	Six (every 60 days)	4		2	3	2
	50,000 -249,999		16	3	4	5	4
	250,000 -999,999		24	4	6	8	6
	1,000,000 -4,999,999		32	6	8	10	8
	>5,000,000		40	8	10	12	10
Ground water	<500 consecutive systems	One (during peak historical month)[2]	2	1		1	

Source water type	Population size category	Monitoring periods and sampling frequency	Distribution system monitoring locations[1]				
			Total per monitoring period	Near entry points	Average residence time	High TTHM	High HAA5
	<500 non-consecutive systems		2			1	1
	500-9,999	Four (every 90 days)	2			1	1
	10,000-99,999		6	1	1	2	2
	100,000-499,999		8	1	1	3	3
	>500,000		12	2	2	4	4

[1]A dual sample set (i.e. a TTHM and an HAA5 sample) must be taken at each monitoring location during each monitoring period.
[2]The peak historical month is the month with the highest TTHM or HAA5 levels or the warmest water temperature

(B) You must take samples at locations other than the existing section 11-20-45.1 monitoring locations. Monitoring locations must be distributed throughout the distribution system.

(C) If the number of entry points to the distribution system is fewer than the specified number of entry point monitoring locations, excess entry point samples must be replaced equally at high TTHM and HAA5 locations. If there is an odd extra location number, you must take a sample at a high TTHM location. If the number of entry points to the distribution system is more than the specified number of entry point monitoring locations, you must take samples at entry points to the distribution system having the highest annual water flows.

(D) Your monitoring under this paragraph may not be reduced under the provisions

of section 11-20-16.

(3) IDSE report. Your IDSE report must include the elements required in subparagraphs (A) through (D). You must submit your IDSE report to the State according to the schedule under subsection (a)(3).

(A) Your IDSE report must include all TTHM and HAA5 analytical results from section 11-20-45.1 compliance monitoring and all standard monitoring conducted during the period of the IDSE as individual analytical results and LRAAs presented in a tabular or spreadsheet format acceptable to the State. If changed from your standard monitoring plan submitted under this subsection, your report must also include a schematic of your distribution system, the population served, and system type (subpart H or ground water).

(B) Your IDSE report must include an explanation of any deviations from your approved standard monitoring plan.

(C) You must recommend and justify Stage 2 Disinfection Byproduct compliance monitoring locations and timing based on the protocol in subsection (f).

(D) You must retain a complete copy of your IDSE report submitted under this section for 10 years after the date that you submitted your report. If the State modifies the Stage 2 Disinfection Byproduct monitoring requirements that you recommended in your IDSE report or if the State approves alternative monitoring locations, you must keep a copy of the State's notification on file for 10 years after the date of the State's notification. You must make the IDSE report and any State notification available for review by the State or

the public.

(c) System specific studies and study plan. Your system specific study plan must be based on either existing monitoring results as required under paragraph (1) or modeling as required under paragraph (2). You must prepare and submit your system specific study plan to the State according to the schedule under subsection (a)(3).

(1) Existing monitoring results. You may comply by submitting monitoring results collected before you are required to begin monitoring under paragraph (a)(3). The monitoring results and analysis must meet the criteria in subparagraphs (A) and (B).

(A) Minimum requirements. TTHM and HAA5 results must be based on samples collected and analyzed in accordance with section 11-20-45.1(b). Samples must be collected no earlier than five years prior to the study plan submission date. The monitoring locations and frequency must meet the conditions identified in this subparagraph. Each location must be sampled once during the peak historical month for TTHM levels or HAA5 levels or the month of warmest water temperature for every 12 months of data submitted for that location. Monitoring results must include all section 11-20-45.1 compliance monitoring results plus additional monitoring results as necessary to meet minimum sample requirements.

System type	Population size category	Number of monitoring locations	Number of samples	
			TTHM	HAA5
Subpart H	<500	3	3	3
	500-3,300	3	9	9

System type	Population size category	Number of monitoring locations	Number of samples	
			TTHM	HAA5
	3,301-9,999	6	36	36
	10,000-49,999	12	72	72
	50,000-249,999	24	144	144
	250,000-999,999	36	216	216
	1,000,000-4,999,999	48	288	288
	>5,000,000	60	360	360
Ground	<500	3	3	3
water	500-9,999	3	9	9
	10,000-99,999	12	48	48
	100,000-499,999	18	72	72
	>500,000	24	96	96

(B) Reporting monitoring results. You must report the information in this subparagraph.

(i) You must report previously collected monitoring results and certify that the reported monitoring results include all compliance and non-compliance results generated during the time period beginning with the first reported result and ending with the most recent section 11-20-45.1 results.

(ii) You must certify that the samples were representative of the entire distribution system and that treatment, and distribution system have not changed significantly since the samples were collected.

(iii) Your study monitoring plan must include a schematic of your distribution system (including distribution system entry points and their sources, and storage

facilities), with notes indicating the locations and dates of all completed or planned system specific study monitoring.

(iv) Your system specific study plan must specify the population served and system type (subpart H or ground water).

(v) You must retain a complete copy of your system specific study plan submitted under paragraph (1), including any State modification of your system specific study plan, for as long as you are required to retain your IDSE report under paragraph (3)(G).

(vi) If you submit previously collected data that fully meet the number of samples required under paragraph (1)(A) and the State rejects some of the data, you must either conduct additional monitoring to replace rejected data on a schedule the State approves or conduct standard monitoring under subsection (b).

(2) Modeling. You may comply through analysis of an extended period simulation hydraulic model. The extended period simulation hydraulic model and analysis must meet the criteria in this paragraph.

(A) Minimum requirements.

(i) The model must simulate 24 hour variation in demand and show a consistently repeating 24 hour pattern of residence time.

(ii) The model must represent the criteria listed in 40 C.F.R. §141.602(a)(2)(i)(B)(1) through (9).

(iii) The model must be calibrated, or have calibration plans, for the

current configuration of the distribution system during the period of high TTHM formation potential. All storage facilities must be evaluated as part of the calibration process. All required calibration must be completed no later than 12 months after plan submission.

(B) Reporting modeling. Your system specific study plan must include the information listed in 40 C.F.R. §141.602(a)(2)(ii)(A-H).

(C) If you submit a model that does not fully meet the requirements under this paragraph, you must correct the deficiencies and respond to State inquiries concerning the model. If you fail to correct deficiencies or respond to inquiries to the State's satisfaction, you must conduct standard monitoring under subsection (b).

(3) IDSE report. Your IDSE report must include the elements required in subparagraphs (A) through (F). You must submit your IDSE report according to the schedule in paragraph (a)(3).

(A) Your IDSE report must include all TTHM and HAA5 analytical results from section 11-20-45.1 compliance monitoring and all system specific study monitoring conducted during the period of the system specific study presented in a tabular or spreadsheet format acceptable to the State. If changed from your system specific study plan submitted under this subsection, your IDSE report must also include a schematic of your distribution system, the population served, and system type (subpart H or ground water).

(B) If you used the modeling provision

under paragraph (2), you must include final information for the elements described in paragraph (2)(B), and a 24-hour time series graph of residence time for each Stage 2 Disinfection Byproduct compliance monitoring location selected.

(C) You must recommend and justify Stage 2 Disinfection Byproduct compliance monitoring locations and timing based on the protocol in subsection (f).

(D) Your IDSE report must include an explanation of any deviations from your approved system specific study plan.

(E) Your IDSE report must include the basis (analytical and modeling results) and justification you used to select the recommended Stage 2 Disinfection Byproduct monitoring locations.

(F) You may submit your IDSE report in lieu of your system specific study plan on the schedule identified in subsection (a)(3) for submission of the system specific study plan if you believe that you have the necessary information by the time that the system specific study plan is due. If you elect this approach, your IDSE report must also include all information required under this subsection.

(G) You must retain a complete copy of your IDSE report submitted under this section for 10 years after the date that you submitted your IDSE report. If the State modifies the Stage 2 Disinfection Byproduct monitoring requirements that you recommended in your IDSE report or if the State approves alternative monitoring locations, you must keep a copy of the State's notification on file for 10 years after the date of the State's

notification. You must make the IDSE report and any State notification available for review by the State or the public.

(d) 40/30 certification

(1) Eligibility. You are eligible for 40/30 certification if you had no TTHM or HAA5 monitoring violations under section 11-20-45.1 of this part and no individual sample exceeded 0.040 mg/L for TTHM or 0.030 mg/L for HAA5 during an eight consecutive calendar quarter period beginning no earlier than the date specified in this paragraph.

If your 40/30 certification is due	Then your eligibility for 40/30 certification is based on eight consecutive calendar quarters of Section 11-20-45.1 compliance monitoring results beginning no earlier than[1]
October 1, 2006	January 2004
April 1, 2007	January 2004
October 1, 2007	January 2005
April 1, 2008	January 2005

[1]Unless you are on reduced monitoring under section 11-20-45.1 and were not required to monitor during the specified period. If you did not monitor during the specified period, you must base your eligibility on compliance samples taken during the 12 months preceeding the specified period.

(2) 40/30 certification requirements.

(A) You must certify to your State that every individual compliance sample taken under section 11-20-45.1 during the periods specified in paragraph (1) were ≤ 0.040 mg/L for TTHM and ≤ 0.030 mg/L for HAA5, and that you have not had any TTHM or HAA5 monitoring violations during the period specified in paragraph (1).

(B) The State may require you to submit compliance monitoring results, distribution system schematics, and/or recommended Stage 2 Disinfection Byproduct compliance monitoring locations in addition to your certification. If you fail to submit the requested information, the State may require standard monitoring under subsection (b) or a system specific study under subsection (c).

(C) The State may still require standard monitoring under subsection (b) or a system specific study under subsection (c) even if you meet the criteria in paragraph (1).

(D) You must retain a complete copy of your certification submitted under this section for 10 years after the date that you submitted your certification. You must make the certification, all data upon which the certification is based, and any State notification available for review by the State or the public.

(e) Very small system waivers.

(1) If you serve fewer than 500 people and you have taken TTHM and HAA5 samples under section 11-20-45.1, you are not required to comply with this section unless the State notifies you that you must conduct standard monitoring under subsection (b) or a system specific study under subsection (c).

(2) If you have not taken TTHM and HAA5 samples under section 11-20-45.1 or if the State notifies you that you must comply with this section, you must conduct standard monitoring under subsection (b) or a system specific study under subsection (c).

(f) Stage 2 Disinfection Byproducts compliance monitoring location recommendations.

(1) Your IDSE report must include your

recommendations and justification for where and during what month(s) TTHM and HAA5 monitoring under section 11-20-45.3 should be conducted. You must base your recommendations on the criteria in paragraphs (2) through (5).

(2) You must select the number of monitoring locations specified in the following table. You will use these recommended locations as Stage 2 Disinfection Byproduct routine compliance monitoring locations, unless State requires different or additional locations. You should distribute locations throughout the distribution system to the extent possible.

Source water type	Population size category	Monitoring frequency[1]	Distribution system monitoring locations[2]			
			Total per monitoring period[3]	Highest TTHM	Highest HAA5	Existing section 11-20-45.1 compliance
Subpart H	<500	per year	2	1	1	-
	500-3,300	per quarter	2	1	1	-
	3,301-9,999	per quarter	2	1	1	-
	10,000 -49,999	per quarter	4	2	1	1
	50,000 -249,999	per quarter	8	3	3	2
	250,000 -999,999	per quarter	12	5	4	3
	1,000,000 -4,999,999	per quarter	16	6	6	4
	>5,000,000	per quarter	20	8	7	5
Ground water	<500	per year	2	1	1	-
	500-9,999	per year	2	1	1	-
	10,000 -99,999	per quarter	4	2	1	1
	100,000 -499,999	per quarter	6	3	2	1

	>500,000	per quarter	8	3	3	2

[1]All systems must monitor during month of highest DBP concentrations.
[2]Systems on quarterly monitoring must take dual sample sets every 90 days at each monitoring location, except for subpart H systems serving 500-3,300. Ground water systems serving 500-9,999 on annual monitoring must take dual sample sets at each monitoring location. All other systems on annual monitoring and subpart H systems serving 500-3,300 are required to take individual TTHM and HAA5 samples (instead of a dual sample set) at the locations with the highest TTHM and HAA5 concentrations, respectively. For systems serving fewer than 500 people, only one location with a dual sample set per monitoring period is needed if highest TTHM and HAA5 concentrations occur at the same location, and month.

(3) You must recommend Stage 2 Disinfection Byproduct compliance monitoring locations based on standard monitoring results, system specific study results, and section 11-20-45.1 compliance monitoring results. You must follow the protocol in subparagraphs (A) through (H). If required to monitor at more than eight locations, you must repeat the protocol as necessary. If you do not have existing section 11-20-45.1 compliance monitoring results or if you do not have enough existing section 11-20-45.1 compliance monitoring results, you must repeat the protocol, skipping the provisions of subparagraphs (C) and (G) as necessary, until you have identified the required total number of monitoring locations.Location with the highest TTHM LRAA not previously selected as a Stage 2 Disinfection Byproduct monitoring location.

(A) Location with the highest HAA5 LRAA not previously selected as a Stage 2 Disinfection Byproduct monitoring

location.

(B) Existing section 11-20-45.1 average residence time compliance monitoring location (maximum residence time compliance monitoring location for ground water systems) with the highest HAA5 LRAA not previously selected as a Stage 2 Disinfection Byproduct monitoring location.

(C) Location with the highest TTHM LRAA not previously selected as a Stage 2 Disinfection Byproduct monitoring location.

(D) Location with the highest TTHM LRAA not previously selected as a Stage 2 Disinfection Byproduct monitoring location.

(E) Location with the highest HAA5 LRAA not previously selected as a Stage 2 Disinfection Byproduct monitoring location.

(F) Existing section 11-20-45.1 average residence time compliance monitoring location (maximum residence time compliance monitoring location for ground water systems) with the highest TTHM LRAA not previously selected as a Stage 2 Disinfection Byproduct monitoring location.

(G) Location with the highest HAA5 LRAA not previously selected as a Stage 2 Disinfection Byproduct monitoring location.

(4) You may recommend locations other than those specified in paragraph (3) if you include a rationale for selecting other locations. If the State approves the alternate locations, you must monitor at these locations to determine compliance under section 11-20-45.3. Your recommended schedule must include Stage 2 Disinfection Byproduct monitoring during the peak historical month

for TTHM and HAA5 concentration, unless the State approves another month. Once you have identified the peak historical month, and if you are required to conduct routine monitoring at least quarterly, you must schedule Stage 2 Disinfection Byproduct compliance monitoring at a regular frequency of every 90 days or fewer. [Eff and comp 11/28/11; comp 5/2/14; am and comp DEC 28 2017](Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, 300j-11; 40 C.F.R. §141.600, §141.601, §141.602, §141.603, §141.604, §141.605

§11-20-45.3 Stage 2 Disinfection Byproducts Requirements. (a) General Requirements.

(1) The requirements of this section constitute national primary drinking water regulations. The regulations in this section establish monitoring and other requirements for achieving compliance with maximum contaminant levels based on locational running annual averages (LRAA) for total trihalomethanes (TTHM) and haloacetic acids (five)(HAA5), and for achieving compliance with maximum residual disinfectant residuals for chlorine and chloramine for certain consecutive systems.

(2) Applicability. You are subject to these requirements if your system is a community water system or a nontransient noncommunity water system that uses a primary or residual disinfectant other than ultraviolet light or delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light.

(3) Schedule. You must comply with the requirements in this section on the schedule in the following table based on your system

type.

If you are this type of system	You must comply with Stage 2 Disinfection Byproduct monitoring by:[1]
Systems that are not part of a combined distribution system and systems that serve the largest population in the combined distribution system	
System serving >100,000	April 1, 2012
System serving 50,000-99,999	October 1, 2012
System serving 10,000-49,999	October 1, 2013
System serving <10,000	October 1, 2013[2] or
	October 1, 2014[3]

If you are this type of system	You must comply with Stage 2 Disinfection Byproduct monitoring by:[1]
Other systems that are part of a combined distribution system	
Consecutive or wholesale system	-at the same time as the system with the earliest compliance date in the combined distribution system

[1]The State may grant up to an additional 24 months for compliance with MCLs and operational evaluation levels if you require capital improvements to comply with an MCL.

[2]If no Cryptosporidium monitoring is required under section 11-20-46.2(b)(1)(D).

[3]If no Cryptosporidium monitoring is required under section 11-20-46.2(b)(1)(D) or (F).

(A) Your monitoring frequency is specified in subsection (b)(1)(B).

(i) If you are required to conduct quarterly monitoring, you must begin monitoring in the first full calendar quarter that includes the compliance date in the table in

this paragraph.

(ii) If you are required to conduct monitoring at a frequency that is less than quarterly, you must begin monitoring in the calendar month recommended in the IDSE report prepared under section 11-20-45.2(b) or (c) or the calendar month identified in the Stage 2 Disinfection Byproduct monitoring plan developed under subsection (c) no later than 12 months after the compliance date in this table.

(B) If you are required to conduct quarterly monitoring, you must make compliance calculations at the end of the fourth calendar quarter that follows the compliance date and at the end of each subsequent quarter (or earlier if the LRAA calculated based on fewer than four quarters of data would cause the MCL to be exceeded regardless of the monitoring results of subsequent quarters). If you are required to conduct monitoring at a frequency that is less than quarterly, you must make compliance calculations beginning with the first compliance sample taken after the compliance date.

(C) For the purpose of the schedule in this paragraph, the State may determine that the combined distribution system does not include certain consecutive systems based on factors such as receiving water from a wholesale system only on an emergency basis or receiving only a small percentage and small volume of water from a wholesale system. The State may also determine that the combined distribution system does not include certain wholesale systems based on factors such as delivering water to

a consecutive system only on an emergency basis or delivering only a small percentage and small volume of water to a consecutive system.

(4) Monitoring and compliance

(A) Systems required to monitor quarterly. To comply with this section MCLs in section 11-20-4.1(b)(2), you must calculate LRAAs for TTHM and HAA5 using monitoring results collected under this subpart and determine that each LRAA does not exceed the MCL. If you fail to complete four consecutive quarters of monitoring, you must calculate compliance with the MCL based on the average of the available data from the most recent four quarters. If you take more than one sample per quarter at a monitoring location, you must average all samples taken in the quarter at that location to determine a quarterly average to be used in the LRAA calculation.

(B) Systems required to monitor yearly or less frequently. To determine compliance with this section MCLs in section 11-20-4.1(b)(2), you must determine that each sample taken is less than the MCL. If any sample exceeds the MCL, you must comply with the requirements of subsection (f). If no sample exceeds the MCL, the sample result for each monitoring location is considered the LRAA for that monitoring location.

(5) Violation. You are in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating an LRAA if you fail to monitor.

(b) Routine Monitoring.

(1) Monitoring.

(A) If you submitted an IDSE report, you

must begin monitoring at the locations and months you have recommended in your IDSE report submitted under section 11-20-45.2(f) following the schedule in subsection (a)(3), unless the State requires other locations or additional locations after its review. If you submitted a 40/30 certification under section 11-20-45.2(d) or you qualified for a very small system waiver under section 11-20-45.2(e) or you are a nontransient noncommunity water system serving <10,000, you must monitor at the location(s) and dates identified in your monitoring plan in section 11-20-45.1(c)(6), updated as required by subsection (c).

(B) You must monitor at no fewer than the number of locations identified in this paragraph.

Source water type	Population size category	Monitoring frequency[1]	Distribution system monitoring location total per monitoring period
Subpart H	<500	per year	2
	500-3,300	per quarter	2
	3,301-9,999	per quarter	2
	10,000-49,999	per quarter	4
	50,000-249,999	per quarter	8
	250,000-999,999	per quarter	12
	1,000,000-4,999,999	per quarter	16
	>5,000,000	per quarter	20
Ground water	<500	per year	2
	500-9,999	per year	2

Source water type	Population size category	Monitoring frequency[1]	Distribution system monitoring location total per monitoring period
	10,000-99,999	per quarter	4
	100,000-499,999	per quarter	6
	>500,000	per quarter	8

[1]All systems must monitor during month of highest DBP concentrations.
[2]Systems on quarterly monitoring must take dual sample sets every 90 days at each monitoring location, except for subpart H systems serving 500-3,300. Ground water systems serving 500-9,999 on annual monitoring must take dual sample sets at each monitoring location. All other systems on annual monitoring and subpart H systems serving 500-3,300 are required to take individual TTHM and HAA5 samples (instead of a dual sample set) at the locations with the highest TTHM and HAA5 concentrations, respectively. For systems serving fewer than 500 people, only one location with a dual sample set per monitoring period is needed if highest TTHM and HAA5 concentrations occur at the same location, and month, if monitored annually).

(C) If you are an undisinfected system that begins using a disinfectant other than UV light after the dates in section 11-20-45.2 for complying with the Initial Distribution System Evaluation requirements, you must consult with the State to identify compliance monitoring locations for this subpart. You must then develop a monitoring plan under subsection (c) that includes those monitoring locations.

(2) Analytical methods. You must use an approved method listed in section 11-20-45.1(b) for TTHM and HAA5 analyses in this section. Analyses must be conducted by laboratories

that have received certification by EPA or the State as specified in section 11-20-45.1(b).

(c) Monitoring plan.

(1) You must develop and implement a monitoring plan to be kept on file for State and public review. The monitoring plan must contain the elements in this paragraph and be complete no later than the date you conduct your initial monitoring under this section.

(A) Monitoring locations;

(B) Monitoring dates;

(C) Compliance calculation procedures; and

(D) Monitoring plans for any other systems in the combined distribution system.

(2) If you were not required to submit an IDSE report under either section 11-20-45.2(b) or (c), and you do not have sufficient section 11-20-45.1 monitoring locations to identify the required number of this section compliance monitoring locations indicated in section 11-20-45.2(f)(2), you must identify additional locations by alternating selection of locations representing high TTHM levels and high HAA5 levels until the required number of compliance monitoring locations have been identified. You must also provide the rationale for identifying the locations as having high levels of TTHM or HAA5. If you have more section 11-20-45.1 monitoring locations than required for this section compliance monitoring in section 11-20-45.2(f)(2), you must identify which locations you will use for this section compliance monitoring by alternating selection of locations representing high TTHM levels and high HAA5 levels until the required number of this section compliance monitoring locations have been identified.

(3) If you are a subpart H system serving > 3,300 people, you must submit a copy of your monitoring plan to the State prior to the

date you conduct your initial monitoring, unless your IDSE report submitted under section 11-20-45.2 contains all the information required by this section.

(4) You may revise your monitoring plan to reflect changes in treatment, distribution system operations and layout (including new service areas), or other factors that may affect TTHM or HAA5 formation, or for State-approved reasons, after consultation with the State regarding the need for changes and the appropriateness of changes. If you change monitoring locations, you must replace existing compliance monitoring locations with the lowest LRAA with new locations that reflect the current distribution system locations with expected high TTHM or HAA5 levels. The State may also require modifications in your monitoring plan. If you are a subpart H system serving > 3,300 people, you must submit a copy of your modified monitoring plan to the State prior to the date you are required to comply with the revised monitoring plan.

(d) Reduced monitoring.

(1) You may reduce monitoring to the level specified in the table in 40 C.F.R. §141.623(a) any time the LRAA is ≤ 0.040 mg/L for TTHM and ≤ 0.030 mg/L for HAA5 at all monitoring locations. You may only use data collected under the provisions of this section or section 11-20-45.1 to qualify for reduced monitoring. In addition, the source water annual average TOC level, before any treatment, must be ≤ 4.0 mg/L at each treatment plant treating surface water or ground water under the direct influence of surface water, based on monitoring conducted under either section 11-20-45.1(c)(2)(A)(iii) or section 11-20-45.1(c)(4).

(2) You may remain on reduced monitoring as long

as the TTHM LRAA ≤ 0.040 mg/L and the HAA5 LRAA
≤ 0.030 mg/L at each monitoring location (for systems with quarterly reduced monitoring) or each TTHM sample ≤ 0.060 mg/L and each HAA5 sample ≤ 0.045 mg/L (for systems with annual or less frequent monitoring). In addition, the source water annual average TOC level, before any treatment, must be ≤ 4.0 mg/L at each treatment plant treating surface water or ground water under the direct influence of surface water, based on monitoring conducted under either section 11-20-45.1(c)(2)(A)(iii) or section 11-20-45.1(c)(4).

(3) If the LRAA based on quarterly monitoring at any monitoring location exceeds either 0.040 mg/L for TTHM or 0.030 mg/L for HAA5 or if the annual (or less frequent) sample at any location exceeds either 0.060 mg/L for TTHM or 0.045 mg/L for HAA5, or if the source water annual average TOC level, before any treatment, >4.0 mg/L at any treatment plant treating surface water or ground water under the direct influence of surface water, you must resume routine monitoring under subsection (b) or begin increased monitoring if subsection (f) applies.

(4) The State may return your system to routine monitoring at the State's discretion.

(e) Additional requirements for consecutive systems. If you are a consecutive system that does not add a disinfectant but delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light, you must comply with analytical and monitoring requirements for chlorine and chloramines in section 11-20-45.1(b)(3) and section 11-20-45.1(c)(3)(A) and the compliance requirements in section 11-20-45.1(d)(3)(A) beginning April 1, 2009, unless required earlier by the State, and report monitoring results under section 11-20-

45.1(e)(3).

(f) Conditions requiring increased monitoring.

(1) If you are required to monitor at a particular location annually or less frequently than annually under subsection (b)(or (d), you must increase monitoring to dual sample sets once per quarter (taken every 90 days) at all locations if a TTHM sample is > 0.080 mg/L or a HAA5 sample is > 0.060 mg/L at any location.

(2) You are in violation of the MCL when the LRAA exceeds the this section MCLs in section 11-20-4.1(b)(2), calculated based on four consecutive quarters of monitoring (or the LRAA calculated based on fewer than four quarters of data if the MCL would be exceeded regardless of the monitoring results of subsequent quarters). You are in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating an LRAA if you fail to monitor.

(3) You may return to routine monitoring once you have conducted increased monitoring for at least four consecutive quarters and the LRAA for every monitoring location is ≤ 0.060 mg/L for TTHM and ≤ 0.045 mg/L for HAA5.

(g) Operational evaluation levels.

(1) You have exceeded the operational evaluation level at any monitoring location where the sum of the two previous quarters' TTHM results plus twice the current quarter's TTHM result, divided by 4 to determine an average, exceeds 0.080 mg/L, or where the sum of the two previous quarters' HAA5 results plus twice the current quarter's HAA5 result, divided by 4 to determine an average, exceeds 0.060 mg/L.

(2) If you exceed the operational evaluation level, you must conduct an operational evaluation and submit a written report of

the evaluation to the State no later than 90 days after being notified of the analytical result that causes you to exceed the operational evaluation level. The written report must be made available to the public upon request.

(A) Your operational evaluation must include an examination of system treatment and distribution operational practices, including storage tank operations, excess storage capacity, distribution system flushing, changes in sources or source water quality, and treatment changes or problems that may contribute to TTHM and HAA5 formation and what steps could be considered to minimize future exceedances.

(B) You may request and the State may allow you to limit the scope of your evaluation if you are able to identify the cause of the operational evaluation level exceedance. Your request to limit the scope of the evaluation does not extend the schedule in paragraph (2) for submitting the written report. The State must approve this limited scope of evaluation in writing and you must keep that approval with the completed report.

(h) Requirements for remaining on reduced TTHM and HAA5 monitoring based on section 11-20-45.1 results. You may remain on reduced monitoring after the dates identified in section (a)(3) for compliance with this section only if you qualify for a 40/30 certification under section 11-20-45.2(d) or have received a very small system waiver under section 11-20-45.2(e), plus you meet the reduced monitoring criteria in subsection (d)(1), and you do not change or add monitoring locations from those used for compliance monitoring under section 11-20-45.1. If your monitoring locations under this section differ from your monitoring locations under section 11-20-

45.1, you may not remain on reduced monitoring after the dates identified in paragraph (a)(3) for compliance with this section.

(i) Requirements for remaining on increased TTHM and HAA5 monitoring based on section 11-20-45.1 results. If you were on increased monitoring under section 11-20-45.1(c)(2)(A), you must remain on increased monitoring until you qualify for a return to routine monitoring under subsection (f)(3). You must conduct increased monitoring under subsection (f) at the monitoring locations in the monitoring plan developed under subsection (c) beginning at the date identified in subsection (a)(3) for compliance with this section and remain on increased monitoring until you qualify for a return to routine monitoring under subsection (f)(3).

(j) Reporting and recordkeeping requirements.

(1) Reporting.

(A) You must report the following information for each monitoring location to the State within 10 days of the end of any quarter in which monitoring is required:

(i) Number of samples taken during the last quarter.

(ii) Date and results of each sample taken during the last quarter.

(iii) Arithmetic average of quarterly results for the last four quarters for each monitoring location (LRAA), beginning at the end of the fourth calendar quarter that follows the compliance date and at the end of each subsequent quarter. If the LRAA calculated based on fewer than four quarters of data would cause the MCL to be exceeded regardless of the monitoring results of subsequent quarters, you must report this information to the State as part of the first report due following

the compliance date or anytime thereafter that this determination is made. If you are required to conduct monitoring at a frequency that is less than quarterly, you must make compliance calculations beginning with the first compliance sample taken after the compliance date, unless you are required to conduct increased monitoring under subsection (f).

(iv) Whether, based on subsection 11-20-4.1(b)(2) and this section, the MCL was violated at any monitoring location.

(v) Any operational evaluation levels that were exceeded during the quarter and, if so, the location and date, and the calculated TTHM and HAA5 levels.

(B) If you are a subpart H system seeking to qualify for or remain on reduced TTHM/HAA5 monitoring, you must report the following source water TOC information for each treatment plant that treats surface water or ground water under the direct influence of surface water to the State within 10 days of the end of any quarter in which monitoring is required:

(i) The number of source water TOC samples taken each month during last quarter.

(ii) The date and result of each sample taken during last quarter.

(iii) The quarterly average of monthly samples taken during last quarter or the result of the quarterly sample.

(iv) The running annual average (RAA) of quarterly averages from the past four quarters.

(v) Whether the RAA exceeded 4.0 mg/L.

(C) The State may choose to perform calculations and determine whether the MCL was exceeded or the system is eligible for reduced monitoring in lieu of having the system report that information.

(2) Recordkeeping. You must retain any this section monitoring plans and your this section monitoring results as required by section 11-20-19. [Eff and comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, 300j-11; 40 C.F.R. §141.620 through §141.629)

§11-20-46 Filtration and disinfection (Surface Water Treatment Rule). (a) General requirements. This section, also known as the Surface Water Treatment Rule (SWTR), establishes criteria under which filtration is required as treatment for public water systems supplied by either a surface water source or by a ground water source under the direct influence of surface water (GWUDI). In addition, these rules establish treatment requirements in lieu of MCLs for the following contaminants: Giardia lamblia, viruses, heterotrophic plate count (HPC) bacteria, Legionella, and turbidity.

(1) Each public water system with a surface water source or a GWUDI source shall provide treatment of that source water by installing and properly operating water treatment processes which reliably achieve at least:

(A) A total of 99.9 per cent (3-log) removal and inactivation of Giardia lamblia cysts between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the

first customer; and

(B) A total of 99.99 per cent (4-log) removal and inactivation of viruses between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer.

(2) A public water system using a surface water source or a GWUDI source shall meet the requirements of this section if it meets the disinfection requirements in subsection (b) and the filtration requirements in subsection (c).

(3) Each public water system using a surface water source or a GWUDI source shall be operated by qualified personnel who meet the requirements specified by the director to minimize risk to human health or welfare.

(4) Water purveyors with a surface water or GWUDI source shall implement the requirements of the "Surface Water Treatment Rule Administrative Manual" dated January 1, 2002. Copies of the administrative manual are available upon request from the safe drinking water branch office in Honolulu, or the district health offices on Kauai, Maui, and Hawaii.

(5) In addition to complying with the requirements in this section, systems must also comply with the requirements in section 11-20-46.1.

(b) Disinfection. A public water system that uses a surface water source or a GWUDI source shall comply, before filtration is installed, with any interim disinfection requirements the director deems necessary to protect human health and welfare. A system that uses a surface water source or a GWUDI source shall provide the disinfection treatment specified in this subsection beginning June 29, 1993, or beginning when filtration is installed, whichever is later. Each public water system that provides

filtration treatment shall provide disinfection treatment as follows:

(1) The disinfection treatment shall be sufficient to ensure that the total treatment processes of that system achieve at least a total of 99.9 per cent (3-log) inactivation and removal of Giardia lamblia cysts and at least a total of 99.99 per cent (4-log) inactivation and removal of viruses, as determined by the director. Each public water system shall prove that it is meeting the previous disinfection criteria by determining CTs and total inactivation ratios of 1.0 or greater and reporting these data to the director on a monthly basis;

(2) The residual disinfectant concentration in the water entering the distribution system, measured as specified in subsections (d)(1)(B) and (d)(2)(B)(ii), cannot be less than 0.2 mg/l for more than four hours; and

(3) The residual disinfectant concentration in the distribution system, measured as total chlorine, combined chlorine, or chlorine dioxide, as specified in subsection (d)(1)(B), cannot be undetectable in more than five per cent of the samples each month, for any two consecutive months that the system serves water to the public. Water in the distribution system with a heterotrophic bacteria concentration greater than 500/ml, measured as HPC as specified in subsection (d)(1)(A), is deemed to have an undetectable disinfectant residual for purposes of determining compliance with this requirement. Thus, the value "v" in the formula given in subsection (e)(2)(B)(iv) cannot exceed five per cent in one month, for any two consecutive months.

(c) Filtration. A public water system that uses a surface water source or a GWUDI source shall provide treatment consisting of both disinfection, as

specified in subsection (b), and filtration treatment which complies with the requirements of paragraphs (1) and (2) by June 29, 1993.

(1) Except where specified in section 11-20-46.1(c), the turbidity level of representative samples of a system's filtered water shall at no time exceed 5 NTU, measured as specified in subsections (d)(1)(A) and (d)(2)(B)(i).

(2) The turbidity level of representative samples of a systems filtered water shall be less than or equal to the following values in at least ninety-five per cent of the measurements taken each month as specified in subsections (d)(1)(A) and (d)(2)(B)(i).

(A) Conventional filtration treatment or direct filtration. 0.5 NTU, measured as specified in subsections (d)(1)(A) and (d)(2)(B)(i).

(i) Beginning January 1, 2002, systems serving at least 10,000 people must meet the turbidity requirements in section 11-20-46.1(c)(1).

(ii) Beginning January 1, 2005, systems serving fewer than 10,000 people must meet the turbidity requirements in section 11-20-46.1(c)(1).

(B) Slow sand filtration. 1 NTU.

(C) Diatomaceous earth filtration. 1 NTU.

(D) Other filtration technologies. A public water system may use a filtration technology not listed in subparagraphs (A) to (C) if the supplier demonstrates to the director, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment meeting the requirements of subsection (b), consistently achieves at least a total

of 99.9 per cent removal and inactivation of Giardia lamblia cysts and at least a total of 99.99 per cent removal and inactivation of viruses. For a system that makes this demonstration, the requirements for subparagraph A apply. Beginning January 1, 2002, systems serving at least 10,000 people must meet the requirements for other filtration technologies in section 11-20-46.1(c)(2). Beginning January 1, 2005, systems serving fewer than 10,000 people must meet the requirements for other filtration technologies in section 11-20-46.1(c)(2).

(d) Analytical and monitoring requirements.

(1) Analytical requirements. Only the analytical method(s) specified in this paragraph, or otherwise approved by EPA, may be used to demonstrate compliance with the requirements of subsections (b) and (c). Measurements for pH, temperature, turbidity, and residual disinfectant concentrations shall be conducted by a party approved by the director. Measurements for total coliforms, fecal coliforms or E. coli, and HPC shall be conducted by a laboratory certified by the director or EPA to do such analysis. Until laboratory certification criteria are developed for the analysis of HPC and fecal coliforms or E. coli, any laboratory certified for total coliform analysis by EPA is deemed certified for HPC and fecal coliform or E. coli analysis. The following procedures shall be performed in accordance with the publications listed in the following subparagraphs.

(A) Public water systems must conduct analysis of pH and temperature in accordance with one of the methods listed in 40 C.F.R. §141.23(k)(1).

Public water systems must conduct analyses of total coliforms, fecal coliforms or E. coli, heterotrophic bacteria, and turbidity in accordance with the analytical methods in 40 C.F.R. §141.74(a)(1) or alternative methods listed in Appendix A to Title 40 Code of Federal Regulations, Part 141, Subpart C, and by using analytical test procedures contained in *Technical Notes on Drinking Water Methods*, EPA-600/R-94-173, October 1994. This document is available from the National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, Ohio 45242-0419 or *http://www.epa.gov/nscep/*.

(B) Public water systems must measure residual disinfectant concentrations with one of the analytical methods in 40 C.F.R. §141.74(a)(2) or alternative methods listed in Appendix A to Title 40 Code of Federal Regulations, Part 141, Subpart C. If approved by the director, residual disinfectant concentrations for free chlorine and combined chlorine also may be measured by using DPD colorimetric test kits. Free and total chlorine residuals may be measured continuously by adapting a specified chlorine residual method for use with a continuous monitoring instrument provided the chemistry, accuracy, and precision remain the same. Instruments used for continuous monitoring must be calibrated with a grab sample measurement at least every five days, or with a protocol approved by the director.

(2) Monitoring requirements.

(A) A public water system that uses a surface water source or a GWUDI source

shall comply with any interim reporting requirements, as specified by the director to minimize risk to human health or welfare, until filtration is in place.

(B) A public water system that uses a surface water source or a GWUDI source and provides filtration treatment shall monitor in accordance with this paragraph beginning June 29, 1993, or when filtration is installed, whichever is later.

(i) Turbidity measurements as required by subsection (c) shall be performed on representative samples of the system's filtered water at least every four hours that the system serves water to the public. A supplier may substitute continuous turbidity monitoring for grab sample monitoring if the supplier validates the continuous measurement for accuracy on a regular basis using a protocol approved by the director.

(ii) The residual disinfectant concentration of the water entering the distribution system shall be monitored continuously, and the lowest value shall be recorded each day, except that if there is a failure in the continuous monitoring equipment, grab sampling every four hours may be conducted in lieu of continuous monitoring, but for no more than five working days following the failure of the equipment. If at any time the residual disinfectant concentration falls below 0.2 mg/l in a system using grab sampling in

lieu of continuous monitoring, the supplier shall take a grab sample every four hours until the residual disinfectant concentration is equal to or greater than 0.2 mg/l.

(iii) Beginning April 1, 2016, HPC must be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in sections 11-20-9.1(d) and (e). The director may allow a public water system which uses both a surface water source or a GWUDI source, and a ground water source to take HPC samples at points other than the total coliform sampling points if the director determines that such points are more representative of treated (disinfected) water quality within the distribution system. Residual disinfectant concentration should also be measured for operational control.

(e) Reporting and recordkeeping requirements.

(1) A public water system that uses a surface water source or a GWUDI source shall comply with any interim reporting requirements, as specified by the director to minimize risk to human health and welfare, until filtration is in place.

(2) When a public water system that uses a surface water source or a GWUDI source and provides filtration treatment, the supplier shall report monthly to the director the information specified in this paragraph beginning June 29, 1993, or when filtration is installed, whichever is later.

(A) Turbidity measurements as required by subsection (d)(2)(B)(i) shall be

reported within ten days after the end of each month the system serves water to the public. Information that shall be reported includes:

(i) The total number of filtered water turbidity measurements taken during the month.

(ii) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified in subsection (c) for the filtration technology being used.

(iii) The date and value of any turbidity measurements taken during the month which exceed 5 NTU.

(B) Disinfection information specified in subsection (d)(2) shall be reported to the director within ten days after the end of each month the system serves water to the public. Information that shall be reported includes:

(i) For each day, the lowest measured residual disinfectant concentration in mg/l in water entering the distribution system.

(ii) The date and duration of each period when the residual disinfectant concentration in water entering the distribution system fell below 0.2 mg/l and when the director was notified of the occurrence.

(iii) The following information on the samples taken in the distribution system in conjunction with total coliform monitoring pursuant to subsection (b): the number of routine total coliform samples collected and the number of

instances in which HPC is more than 500 per milliliter.

(iv) For the current and previous month the system serves water to the public, the value of "V" in the following formula:

$$V = \frac{b \times 100}{a}$$

where

a = the number of routine total coliform samples collected,
b = the number of instances in which HPC is more than 500 per milliliter.

(C) (i) Each supplier, upon discovering that a waterborne disease outbreak potentially attributable to that water system has occurred, shall report that occurrence to the director as soon as possible, but no later than 24 hours after the waterborne disease outbreak is known, in compliance with section 11-20-18(b).

(ii) If at any time the turbidity exceeds 5 NTU, the system must consult with the State as soon as practical, but no later than 24 hours after the exceedance is known, in accordance with the public notification requirements under section 11-20-18(c)(2)(C).

(iii) If at any time the disinfectant residual falls below 0.2 mg/l in the water entering the distribution system, the supplier shall notify the director within 24 hours of the time that the inadequate disinfection level is

known. The supplier also shall notify the director within 24 hours whether or not the residual was restored to at least 0.2 mg/l within four hours.

(f) Recycle provisions.

(1) Applicability. All public water systems supplied by a surface water source or a GWUDI source that employ conventional filtration or direct filtration treatment and that recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes must meet the requirements in paragraphs (2) through (4).

(2) Reporting. A system must notify the director in writing by December 8, 2003, if the system recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes. New plants shall be given 15 months from the startup date approved by the director to report the information required under this subsection. This notification must include, at a minimum, the information specified in subparagraphs (A) and (B).

(A) A plant schematic showing the origin of all flows which are recycled (including, but not limited to, spent filter backwash water, thickener supernatant, and liquids from dewatering processes), the hydraulic conveyance used to transport them, and the location where they are reintroduced back into the treatment plant.

(B) Typical recycle flow in gallons per minute (gpm), the highest observed plant flow experienced in the previous year (gpm), design flow for the treatment plant (gpm), and State-approved operating capacity for the plant where the director has made such

determinations.

(3) Treatment technique requirement. Any system that recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes must return these flows through the processes of a system's existing conventional or direct filtration system as defined in section 11-20-2 or at an alternate location approved by the director by June 8, 2004. If capital improvements are required to modify the recycle location to meet this requirement, all capital improvements must be completed no later than June 8, 2006. New plants shall return these recycle flows through the processes of a system's conventional or direct filtration system or at an alternate location approved by the director.

(4) Recordkeeping. The system must collect and retain on file recycle flow information specified in subparagraphs (A) through (F) for review and evaluation by the director beginning June 8, 2004.

(A) Copy of the recycle notification and information submitted to the director under paragraph (2).

(B) List of all recycle flows and the frequency with which they are returned.

(C) Average and maximum backwash flow rate through the filters and the average and maximum duration of the filter backwash process in minutes.

(D) Typical filter run length and a written summary of how filter run length is determined.

(E) The type of treatment provided for the recycle flow.

(F) Data on the physical dimensions of the equalization and/or treatment units, typical and maximum hydraulic loading rates, type of chemicals used and average dose and frequency of use, and

frequency at which solids are removed, if applicable. [Eff and comp 1/2/93; am and comp 12/15/94; am and comp 10/13/97; comp 9/7/99; am and comp 11/30/02; am and comp 12/16/05; am and comp 11/28/11; comp 5/2/14; am and comp DEC 26 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, and 300j-9; 40 C.F.R. §§141.70, §141.72, §141.73, §141.74, and §141.75)

§11-20-46.1 Enhanced filtration and disinfection. (a) General requirements. The requirements of this section constitute national primary drinking water regulations. This section establishes requirements for filtration and disinfection that are in addition to criteria under which filtration and disinfection are required under section 11-20-46(a). The requirements of this section are applicable to public water systems with a surface water source or a GWUDI source serving at least 10,000 people, beginning January 1, 2002 and serving fewer than 10,000 people, beginning January 1, 2005, unless otherwise specified in this section. The regulations in this section establish or extend treatment technique requirements in lieu of maximum contaminant levels for the following contaminants: Giardia lamblia, viruses, heterotrophic plate count bacteria, Legionella, Cryptosporidium, and turbidity.

(1) Each public water system with a surface water source or a GWUDI source shall provide treatment of that source water that complies with these treatment technique requirements and are in addition to those identified in section 11-20-46. The treatment technique requirements consist of installing and properly operating water treatment processes which reliably achieve:

(A) At least 99 per cent (2-log) removal of Cryptosporidium between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer.

(B) Compliance with the profiling and benchmark requirements under the provisions of subsection (b).

(2) A public water system subject to the requirements of this section is considered to be in compliance with the requirements of this subsection if it meets the applicable filtration requirements in either section 11-20-46(c) or subsection (c) and the disinfection requirements in section 11-20-46(b) and subsection (b).

(3) Systems are not permitted to begin construction of uncovered finished water storage facilities beginning February 16, 1999.

(4) Public water systems with a surface water source or a GWUDI source that did not conduct optional monitoring under subsection (b) because they served fewer than 10,000 persons when such monitoring was required, but serve more than 10,000 persons prior to January 1, 2005 must comply with this subsection.

(b) Disinfection profiling and benchmarking.

(1) Determination of systems required to profile. A public water system with a surface water source or GWUDI source serving at least 10,000 people subject to the requirements of this paragraph must determine its TTHM annual average using the procedure in subparagraph (A) and its HAA5 annual average using the procedure in subparagraph (B). The annual average is the arithmetic average of the quarterly averages of four consecutive quarters of monitoring. For a public water system with a surface

water source or GWUDI source serving fewer than 10,000 people, the director may determine that a system's profile is unnecessary if a system's reported TTHM and HAA5 levels are below 0.064 mg/L and 0.048 mg/L, respectively. To determine these levels, TTHM and HAA5 samples must be collected after January 1, 1998, during the month with the warmest water temperature, and at the point of maximum residence time in your distribution system. Any affected system having either a TTHM level ≥ 0.064mg/L or an HAA5 level ≥ 0.048 mg/L must comply with paragraph (2).

(A) The TTHM annual average must be the annual average during the same period as is used for the HAA5 annual average.

(i) Those systems that collected data under the provisions of 40 C.F.R. 141 subpart M (Information Collection Rule) must use the results of the samples collected during the last four quarters of required monitoring under Sec. 141.142 of that subpart.

(ii) Those systems that use "grandfathered" HAA5 occurrence data that meet the provisions of subparagraph (B)(ii) must use TTHM data collected at the same time under the provisions of sections 11-20-4 and 11-20-45.

(iii) Those systems that use HAA5 occurrence data that meet the provisions of subparagraph (B)(iii) must use TTHM data collected at the same time under the provisions of sections 11-20-4 and 11-20-45.

(B) The HAA5 annual average must be the annual average during the same period as is used for the TTHM annual average.

(i) Those systems that collected data under the provisions of 40 C.F.R. subpart M (Information Collection Rule) must use the results of the samples collected during the last four quarters of required monitoring under 40 C.F.R. Sec. 141.142.

(ii) Those systems that have collected four quarters of HAA5 occurrence data that meets the routine monitoring sample number and location requirements for TTHM in sections 11-20-4 and 11-20-45 and handling and analytical method requirements of 40 C.F.R. Sec. 141.142(b)(1) may use those data to determine whether the requirements of this section apply.

(iii) Those systems that have not met the provisions of either clause (i) or (ii) by March 16, 1999 must either: conduct monitoring for HAA5 that meets the routine monitoring sample number and location requirements for TTHM in sections 11-20-4 and 11-20-45 and the handling and analytical method requirements of 40 C.F.R. Sec. 141.142(b)(1) to determine the HAA5 annual average and whether the requirements of paragraph (2) apply (this monitoring must be completed so that the applicability determination can be made no later than March 31, 2000), or comply with all other provisions of this subsection as if the HAA5 monitoring had been conducted and the results required compliance with paragraph (2).

(C) The system may request that the director approve a more representative annual data set than the data set determined under subparagraph (A) or (B) for a public water system with a surface water source or GWUDI source serving at least 10,000 people, or paragraph (b)(1) for a public water system with a surface water source or GWUDI source serving fewer than 10,000 people for the purpose of determining applicability of the requirements of this subsection.

(D) The director may require that a system use a more representative annual data set than the data set determined under subparagraph (A) or (B) for the purpose of determining applicability of the requirements of this subsection.

(E) The system must submit data to the director on the schedule in clauses (i) through (v).

(i) Those systems that collected TTHM and HAA5 data under the provisions of 40 C.F.R. subpart M (Information Collection Rule), as required by subparagraphs (A)(i) and (B)(i), must submit the results of the samples collected during the last twelve months of required monitoring under 40 C.F.R. Sec. 141.142 not later than December 31, 1999.

(ii) Those systems that have collected four consecutive quarters of HAA5 occurrence data that meets the routine monitoring sample number and location for TTHM in sections 11-20-4 and 11-20-45 and handling and analytical method requirements of 40 C.F.R. Sec. 141.142(b)(1), as allowed by subparagraphs

(A)(ii) and (B)(ii), must submit those data to the director not later than April 16, 1999. Until the director has approved the data, the system must conduct monitoring for HAA5 using the monitoring requirements specified under subparagraph (B)(iii).

(iii) Those systems that conduct monitoring for HAA5 using the monitoring requirements specified by subparagraphs (A)(iii) and (B)(iii), must submit TTHM and HAA5 data not later than March 31, 2000.

(iv) Those systems that elect to comply with all other provisions of this subsection as if the HAA5 monitoring had been conducted and the results required compliance with this subsection, as allowed under subparagraph (B)(iii), must notify the director in writing of their election not later than December 31, 1999.

(v) If the system elects to request that the director approve a more representative annual data set than the data set determined under subparagraph (B)(i), the system must submit this request in writing not later than December 31, 1999.

(F) Any system having either a TTHM annual average $\geq$ 0.064 mg/L or an HAA5 annual average $\geq$ 0.048 mg/L during the period identified in subparagraphs (A) and (B) must comply with paragraph (2).

(2) Disinfection profiling.

(A) Any system that meets the criteria in paragraph (1)(F) must develop a disinfection profile of its

disinfection practice for a period of up to three years.

(B) The system must monitor daily for a period of twelve consecutive calendar months to determine the total logs of inactivation for each day of operation, based on the CT99.9 values in Tables E-1 thru E-6, E-8, E-10, and E-12 of the Hawaii Surface Water Treatment Rule Administrative Manual, as appropriate, through the entire treatment plant. Public water systems with a surface water source or GWUDI source serving at least 10,000 people, must begin this monitoring not later than April 1, 2000. For a public water system with a surface water source or GWUDI source serving fewer than 10,000 people, monitoring must begin no later than July 1, 2003. New or substantially modified systems, as defined under sections 11-20-29 and 11-20-30 respectively, applying after April 1, 2000 shall begin monitoring not later than a date determined by the director. As a minimum, the system with a single point of disinfectant application prior to entrance to the distribution system must conduct the monitoring specified in this subparagraph. A system with more than one point of disinfectant application must conduct the monitoring in this subparagraph for each disinfection segment. The system must monitor the parameters necessary to determine the total inactivation ratio, using analytical methods in section 11-20-46(d)(1), as follows:

(i) The temperature of the disinfected water must be measured once per day at each residual disinfectant concentration sampling point

during peak hourly flow.

(ii) If the system uses chlorine, the pH of the disinfected water must be measured once per day at each chlorine residual disinfectant concentration sampling point during peak hourly flow.

(iii) The disinfectant contact time(s) ("T") must be determined for each day during peak hourly flow.

(iv) The residual disinfectant concentration(s) ("C") of the water before or at the first customer and prior to each additional point of disinfection must be measured each day during peak hourly flow.

(C) In lieu of the monitoring conducted under the provisions of subparagraph (B) to develop the disinfection profile, the system may elect to meet the requirements of clause (i). In addition to the monitoring conducted under the provisions of subparagraph (B) to develop the disinfection profile, the system may elect to meet the requirements of clause (ii).

(i) A PWS that has three years of existing operational data may submit those data, a profile generated using those data, and a request that the director approve use of those data in lieu of monitoring under the provisions of subparagraph (B) not later than March 31, 2000 for a public water system with a surface water source or GWUDI source serving at least 10,000 people, and July 1, 2003 for a public water system with a surface water source or GWUDI source serving fewer than 10,000

people. The director must determine whether these operational data are substantially equivalent to data collected under the provisions of subparagraph (B). These data must also be representative of Giardia lamblia inactivation through the entire treatment plant and not just of certain treatment segments. Until the director approves this request, the system is required to conduct monitoring under the provisions of subparagraph (B).

(ii) In addition to the disinfection profile generated under subparagraph (B), a PWS that has existing operational data may use those data to develop a disinfection profile for additional years. Such systems may use these additional yearly disinfection profiles to develop a benchmark under the provisions of paragraph (3). The director must determine whether these operational data are substantially equivalent to data collected under the provisions of subparagraph (B). These data must also be representative of inactivation through the entire treatment plant and not just of certain treatment segments.

(D) The system must calculate the total inactivation ratio as follows:

(i) If the system uses only one point of disinfectant application, the system may determine the total inactivation ratio for the disinfection segment based on either: determining one

inactivation ratio ($CTcalc/CT_{99.9}$) before or at the first customer during peak hourly flow, or determining successive $CTcalc/CT_{99.9}$ values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Under this alternative, the system must calculate the total inactivation ratio by determining ($CTcalc/CT_{99.9}$) for each sequence and then adding the ($CTcalc/CT_{99.9}$) values together to determine $\Sigma(CTcalc/CT_{99.9})$.

(ii) If the system uses more than one point of disinfectant application before the first customer, the system must determine the CT value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow. The ($CTcalc/CT_{99.9}$) value of each segment and $\Sigma(CTcalc/CT_{99.9})$ must be calculated using the method in clause (i).

(iii) The system must determine the total logs of inactivation by multiplying the value calculated in clause (i) or (ii) by 3.0.

(E) A system that uses either chlorine dioxide, chloramines, or ozone for primary disinfection must also calculate the logs of inactivation for viruses and develop an additional disinfection profile for viruses using a method approved by the State.

(F) The system must retain disinfection

profile data in graphic form, as a spreadsheet, or in some other format acceptable to the director for review as part of sanitary surveys conducted by the State.

(3) Disinfection benchmarking.

(A) Any system required to develop a disinfection profile under the provisions of paragraphs (1) and (2) and that decides to make a significant change to its disinfection practice must consult with the director prior to making such change. Significant changes to disinfection practice are:

(i) Changes to the point of disinfection;

(ii) Changes to the disinfectant(s) used in the treatment plant;

(iii) Changes to the disinfection process; and

(iv) Any other modification identified by the State.

(B) Any system that is modifying its disinfection practice must calculate its disinfection benchmark using the procedure specified in this subparagraph.

(i) For each year of profiling data collected and calculated under paragraph (2), the system must determine the lowest average monthly Giardia lamblia inactivation in each year of profiling data. The system must determine the average Giardia lamblia inactivation for each calendar month for each year of profiling data by dividing the sum of daily Giardia lamblia of inactivation by the number of values calculated for that month.

(ii) The disinfection benchmark is the

lowest monthly average value(for systems with one year of profiling data) or average of lowest monthly average values (for systems with more than one year of profiling data) of the monthly logs of Giardia lamblia inactivation in each year of profiling data.

(C) A system that uses either chlorine dioxide, chloramines, or ozone for primary disinfection must also calculate the disinfection benchmark for viruses using a method approved by the State.

(D) As part of its consultation process with the director, the system must submit the following information:

(i) A description of the proposed change, including why the change is being proposed, a summary of alternatives considered with positive and negative impacts, and a final analysis of the selected alternative;

(ii) The disinfection profile for Giardia lamblia (and, if necessary, viruses) under paragraph (2) and benchmark as required by paragraph (3)(B);

(iii) An analysis of how the proposed change will affect the current levels of disinfection; and

(iv) Any additional information requested by the director.

(c) Filtration. A public water system is subject to the requirements of this subsection consisting of both disinfection, as specified in section 11-20-46(b), and filtration treatment which complies with the requirements of this subsection or section 11-20-46.

(1) Conventional filtration treatment or direct filtration.

(A) For systems using conventional filtration or direct filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to 0.3 NTU in at least 95 per cent of the measurements taken each month, measured as specified in section 11-20-46(d)(1) and (2).

(B) The turbidity level of representative samples of a system's filtered water must at no time exceed 1 NTU, measured as specified in section 11-20-46(d)(1) and (2).

(C) A system that uses lime softening may acidify representative samples prior to analysis using a protocol approved by the State.

(2) Filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration. A public water system may use a filtration technology not listed in either paragraph (1) or in section 11-20-46(c)(2)(B) or (C) if it demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of section 11-20-46(b), consistently achieves 99.9 per cent removal and/or inactivation of Giardia lamblia cysts and 99.99 per cent removal and/or inactivation of viruses, and 99 per cent removal of Cryptosporidium oocysts, and the director approves the use of the filtration technology. For a system that makes this demonstration, the requirements for conventional filtration apply.

(d) Filtration sampling requirements.

(1) Monitoring requirements for systems using filtration treatment. In addition to

monitoring required by section 11-20-46(d), a public water system subject to the requirements of this section that provides filtration treatment, other than slow sand filtration or diatomaceous earth filtration, must conduct continuous monitoring of turbidity for each individual filter using an approved method in section 11-20-46(d)(1) and must calibrate turbidimeters using the procedure specified by the manufacturer. Systems must record the results of individual filter monitoring every fifteen minutes.

(2) If there is a failure in the continuous turbidity monitoring equipment, the system must conduct grab sampling every four hours in lieu of continuous monitoring, but for no more than five working days for a public water system with a surface water source or GWUDI source serving at least 10,000 people, and fourteen calendar days for a public water system with a surface water source or GWUDI source serving fewer than 10,000 people following the failure of the equipment.

(e) Reporting and recordkeeping requirements. In addition to the reporting and recordkeeping requirements in section 11-20-46(e), a public water system subject to the requirements of this section that provides conventional filtration treatment or direct filtration must report monthly to the director the information specified in paragraphs (1) and (2). In addition to the reporting and recordkeeping requirements in section 11-20-46(e), a public water system subject to the requirements of this section that provides filtration approved under subsection (c)(2) must report monthly to the director the information specified in paragraph (1). The reporting in paragraph (1) is in lieu of the reporting specified in section 11-20-46(e)(2)(A).

(1) Turbidity measurements as required by subsection (c) must be reported within ten

days after the end of each month the system serves water to the public. Information that must be reported includes:

(A) The total number of filtered water turbidity measurements taken during the month.

(B) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified in subsection (c)(1) or (2).

(C) The date and value of any turbidity measurements taken during the month which exceed 1 NTU for systems using conventional filtration treatment or direct filtration, or which exceed the maximum level set by the director under subsection (c)(2).

(2) Systems must maintain the results of individual filter monitoring taken under subsection (d) for at least three years. Systems must report that they have conducted individual filter turbidity monitoring under subsection (d) within ten days after the end of each month the system serves water to the public. Systems must report individual filter turbidity measurement results taken under subsection (d) within ten days after the end of each month the system serves water to the public only if measurements demonstrate one or more of the conditions in subparagraphs (A) through (D). Systems that use lime softening may apply to the director for alternative exceedance levels for the levels specified in subparagraphs (A) through (D) if they can demonstrate that higher turbidity levels in individual filters are due to lime carryover only and not due to degraded filter performance.

(A) For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive

measurements taken fifteen minutes apart, the system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the system must either produce a filter profile for the filter within seven days of the exceedance (if the system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.

(B) For any individual filter that has a measured turbidity level of greater than 0.5 NTU in two consecutive measurements taken fifteen minutes apart at the end of the first four hours of continuous filter operation after the filter has been backwashed or otherwise taken offline, the system must report the filter number, the turbidity, and the date(s) on which the exceedance occurred. In addition, the system must either produce a filter profile for the filter within seven days of the exceedance (if the system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.

(C) For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken fifteen minutes apart at any time in each of three consecutive months, the system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the system must conduct a self-

assessment of the filter within fourteen days of the exceedance and report that the self-assessment was conducted. The self-assessment must consist of at least the following components: assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report.

(D) For any individual filter that has a measured turbidity level of greater than 2.0 NTU in two consecutive measurements taken fifteen minutes apart at any time in each of two consecutive months, the system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the system must arrange for the conduct of a comprehensive performance evaluation (CPE) by a third party approved by the director no later than thirty days following the exceedance and have the evaluation completed and submitted to the director no later than ninety days following the exceedance. The director may require systems that have undergone a CPE to subsequently perform a comprehensive technical assistance (CTA) evaluation if the CPE findings determine that a CTA, and the implementation of its recommendations by the system, have the potential to improve water quality in the plant effluent or in the distribution system.

(3) Additional reporting requirements.

(A) If at any time the turbidity exceeds 1 NTU in representative samples of

filtered water in a system using conventional filtration treatment or direct filtration, the system must consult with the State as soon as practical, but no later than 24 hours after the exceedance is known, in accordance with the public notification requirements under section 11-20-18(c)(2)(C).

(B) If at any time the turbidity in representative samples of filtered water exceeds the maximum level set by the director under subsection (c)(2) for filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration or diatomaceous earth filtration, the system must consult with the State as soon as practical, but no later than 24 hours after the exceedance is known, in accordance with the public notification requirements under section 11-20-18(c)(2)(C).

(C) Public water systems with a surface water source or GWUDI source serving fewer than 10,000 people must report the results of optional monitoring, which show TTHM levels <0.064 mg/L and HAA5 levels <0.048 mg/L if that system wishes to forgo profiling, pursuant to subsection (b)(1). Other systems must report the commencement of disinfection profiling by July 1, 2003.

(4) Additional recordkeeping requirements. All systems subject to this section that are required to profile or calculate a benchmark under subsection (b) must keep their results, including raw data and analyses, indefinitely.

(f) Composite correction program. The director may require systems regulated under subsection (a) to perform a composite

correction program (CCP) and implement any follow up recommendations that result from the program.

(1) The director may require that a system perform a CCP if one of the following occurs:

(A) A waterborne disease outbreak; or

(B) System deficiencies are identified which:

(i) Degrade water quality in the plant effluent or distribution system; or

(ii) In the director's opinion, have the potential to result in an unreasonable risk to the health of persons served by the system.

(2) Third parties performing CCPs on behalf of the system must be approved by the director.

(g) Sanitary surveys. The director shall conduct sanitary surveys for all systems, regulated under subsection (a), no less frequently than every three years for community PWSs and every five years for non-community PWSs.

(1) Sanitary surveys shall address, as a minimum, the following eight components:

(A) Source;

(B) Treatment;

(C) Distribution system;

(D) Finished water storage;

(E) Pumps, pump facilities, and controls;

(F) Monitoring and reporting and data verification;

(G) System management and operation; and

(H) Operator compliance with state requirements

(2) Significant deficiencies are defined as any defect in a system's design, operation and maintenance, as well as any failure or malfunction of any system component, that the director determines to cause, or have the potential to cause, an immediate sanitary risk to health.

(A) The director has determined that the following conditions meet the definition in this paragraph:

(i) Source water infrastructure (wellhead or surface water intake) that is susceptible to harmful land use activities, pollution sources or water quality conditions that indicate an immediate sanitary risk to an untreated ground water source or to the designed treatment capabilities of an existing water treatment plant, and are within the control of the PWS.

(ii) An unauthorized bypass around a water treatment plant which treats surface water or ground water under the direct influence of a surface water (GWUDI).

(iii) (Drainage, sewer, chemical, or raw water line cross connections that may allow contaminants to enter the drinking water system.

(iv) Potential backpressure and backsiphonage conditions, including those observed outside the PWS system (i.e. private property), which could impact the PWS' water system quality. As a minimum, a PWS must contact private property owners to resolve potential cross connection hazard to their distribution system.

(v) Tank contents are exposed to contamination due to corrosion, poorly designed or maintained roof-wall interface, roof vents, overflow or washout line piping, hatches, manways or any other unprotected openings.

(vi) Well contamination potential at

pump discharge head including: vent or air line tubing openings into well column are not sealed properly; drain for packing lubrication water is plugged and lubrication water is either stagnant or harbors small animals.

(B) PWSs shall respond to the director in writing to significant deficiencies outlined in sanitary survey reports no later than forty-five calendar days after receipt of the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey.

(C) PWSs subject to subparagraph (B) shall take the necessary steps to correct significant deficiencies identified in sanitary survey reports if such deficiencies are within the control of the PWS and its governing body.

(D) Failure of a PWS to respond to the requirements of either subparagraph (B) or (C) shall constitute a violation of these rules and subject the system to administrative penalties under section 340E-8, HRS.

(3) Community PWSs meeting the criteria in the subparagraphs (A) through (E) may be eligible for sanitary surveys to be performed on their systems at a reduced frequency of no less than every five years. Community PWSs achieving this reduced frequency status must continue to meet the criteria in subparagraphs (A) through (E) for the period between surveys, or risk an immediate adjustment of their reduced frequency status by the director.

(A) No significant deficiencies identified in the system's most recent survey performed in compliance with this subsection;

(B) No waterborne disease outbreaks attributable to the system during the past five years;
(C) No violations of chapter 11-20 during the past five years;
(D) Evidence of an active cross connection control program; and
(E) Evidence of an up-to-date operator training and certification program.

(4) The director will review the system's disinfection profiling data, as defined in subsection (b)(2), whenever a sanitary survey is performed. [Eff and comp 11/30/02; am and comp 12/16/05; am and comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, 300j-11; 40 C.F.R. §141.170, §141.172, §141.173, §141.174, §141.175)

§11-20-46.2 Enhanced treatment for Cryptosporidium. (a) General Requirements.

(1) The requirements of this section constitute national primary drinking water regulations. The regulations in this section establish or extend treatment technique requirements in lieu of maximum contaminant levels for Cryptosporidium. These requirements are in addition to requirements for filtration and disinfection in sections 11-20-46 and 11-20-46.1.

(2) Applicability. The requirements of this section apply to all subpart H systems, which are public water systems supplied by a surface water source and public water systems supplied by a ground water source under the direct influence of surface water.
(A) Wholesale systems, as defined in section 11-20-2, must comply with the requirements of this section based on the population of the largest system in the combined distribution

system.

(B) The requirements of this section for filtered systems apply to systems required by National Primary Drinking Water Regulations to provide filtration treatment, whether or not the system is currently operating a filtration system.

(C) The requirements of this section for unfiltered systems apply only to unfiltered systems that timely met and continue to meet the filtration avoidance criteria in sections 11-20-46 and 11-20-46.1, as applicable.

(3) Requirements. Systems subject to this section must comply with the following requirements:

(A) Systems must conduct an initial and a second round of source water monitoring for each plant that treats a surface water or GWUDI source. This monitoring may include sampling for Cryptosporidium, E. coli, and turbidity as described in subsections (b) through (g), to determine what level, if any, of additional Cryptosporidium treatment they must provide.

(B) Systems that plan to make a significant change to their disinfection practice must develop disinfection profiles and calculate disinfection benchmarks, as described in subsections (i) through (j).

(C) Filtered systems must determine their Cryptosporidium treatment bin classification as described in subsection (k) and provide additional treatment for Cryptosporidium, if required, as described in subsection (l). All unfiltered systems must provide treatment for Cryptosporidium as described in subsection (m). Filtered and unfiltered systems must implement Cryptosporidium treatment according to the schedule in subsection (n).

(D) Systems with uncovered finished water storage facilities must comply with the

requirements to cover the facility or treat the discharge from the facility as described in subsection (o).

(E) Systems required to provide additional treatment for Cryptosporidium must implement microbial toolbox options that are designed and operated as described in sections (p) through (u).

(F) Systems must comply with the applicable recordkeeping and reporting requirements described in subsection (v) through (w).

(G) Systems must address significant deficiencies identified in sanitary surveys performed by EPA as described in subsection (x).

(b) Source water monitoring.

(1) Initial round of source water monitoring. Systems must conduct the following monitoring on the schedule in paragraph (3) unless they meet the monitoring exemption criteria in paragraph (4).

(A) Filtered systems serving at least 10,000 people must sample their source water for Cryptosporidium, E. coli, and turbidity at least monthly for 24 months.

(B) Unfiltered systems serving at least 10,000 people must sample their source water for Cryptosporidium at least monthly for 24 months.

(C) Filtered systems serving fewer than 10,000 people must sample their source water for E. coli at least once every two weeks for 12 months. A filtered system serving fewer than 10,000 people may avoid E. coli monitoring if the system notifies the State that it will monitor for Cryptosporidium as described in subparagraph (D). The system must notify the State no later than 3 months prior to the date the system is otherwise required to start E. coli monitoring under paragraph (3).

(D) Filtered systems serving fewer than 10,000 people must sample their source water for

Cryptosporidium at least twice per month for 12 months or at least monthly for 24 months if they meet one of the following, based on monitoring conducted under subparagraph (C):

(i) For systems using lake/reservoir sources, the annual mean E. coli concentration is greater than 10 E. coli/100 mL.

(ii) For systems using flowing stream sources, the annual mean E. coli concentration is greater than 50 E. coli/100 mL.

(iii) The system does not conduct E. coli monitoring as described in subparagraph (C).

(iv) Systems using ground water under the direct influence of surface water (GWUDI) must comply with the requirements of this subparagraph based on the E. coli level that applies to the nearest surface water body. If no surface water body is nearby, the system must comply based on the requirements that apply to systems using lake/reservoir sources.

(E) For filtered systems serving fewer than 10,000 people, the State may approve monitoring for an indicator other than E. coli under subparagraph (C). The State also may approve an alternative to the E. coli concentration in subparagraphs (D)(i),(ii) and (iv) to trigger Cryptosporidium monitoring. This approval by the State must be provided to the system in writing and must include the basis for the State's determination that the alternative indicator and/or trigger level will provide a more accurate identification of whether a system will exceed the Bin 1 Cryptosporidium level in subsection (k).

(F) Unfiltered systems serving fewer than 10,000 people must sample their source water for

Cryptosporidium at least twice per month for 12 months or at least monthly for 24 months.

(G) Systems may sample more frequently than required under this section if the sampling frequency is evenly spaced throughout the monitoring period.

(2) Second round of source water monitoring. Systems must conduct a second round of source water monitoring that meets the requirements for monitoring parameters, frequency, and duration described in paragraph (1), unless they meet the monitoring exemption criteria in paragraph (4). Systems must conduct this monitoring on the schedule in paragraph (3).

(3) Monitoring schedule. Systems must begin the monitoring required in paragraphs (1) and (2) no later than the month beginning with the date listed in this table:

Source Water Monitoring Starting Dates Table

Systems that serve ...	Must begin the first round of source water monitoring no later than the month beginning ...	And must begin the second round of source water monitoring no later than the month beginning...
At least 100,000 people.	October 1, 2006	April 1, 2015
From 50,000 to 99,999 people.	April 1, 2007	October 1, 2015
From 10,000 to 49,999 people.	April 1, 2008	October 1, 2016
Fewer than 10,000 and monitor for E. coli[1].	October 1, 2008	October 1, 2017
Fewer than 10,000 and monitor for Cryptosporidium[2]	April 1, 2010	April 1, 2019

[1]Applies only to filtered systems.

[2]Applies to filtered systems that meet the conditions of paragraph (1)(D) and unfiltered systems.

(4) Monitoring avoidance.

(A) Filtered systems are not required to conduct source water monitoring under this section if the system will provide a total of at least 5.5-log of treatment for Cryptosporidium, equivalent to meeting the treatment requirements of Bin 4 in subsection (l).

(B) Unfiltered systems are not required to conduct source water monitoring under this section if the system will provide a total of at least 3-log Cryptosporidium inactivation, equivalent to meeting the treatment requirements for unfiltered systems with a mean Cryptosporidium concentration of greater than 0.01 oocysts/L in subsection (m).

(C) If a system chooses to provide the level of treatment in subparagraphs (A) or (B), as applicable, rather than start source water monitoring, the system must notify the State in writing no later than the date the system is otherwise required to submit a sampling schedule for monitoring under subsection (c). Alternatively, a system may choose to stop sampling at any point after it has initiated monitoring if it notifies the State in writing that it will provide this level of treatment. Systems must install and operate technologies to provide this level of treatment by the applicable treatment compliance date in subsection (n).

(5) Plants operating only part of the year. Systems with subpart H plants that operate for only part of the year must conduct source water monitoring in accordance with this section, but with the following modifications:

(A) Systems must sample their source water only during the months that the plant operates

unless the State specifies another monitoring period based on plant operating practices.

(B) Systems with plants that operate less than six months per year and that monitor for Cryptosporidium must collect at least six Cryptosporidium samples per year during each of two years of monitoring. Samples must be evenly spaced throughout the period the plant operates.

(6) New sources.

(A) A system that begins using a new source of surface water or GWUDI after the system is required to begin monitoring under paragraph (3) must monitor the new source on a schedule the State approves. Source water monitoring must meet the requirements of this section. The system must also meet the bin classification and Cryptosporidium treatment requirements of subsections (k), (l), and (m), as applicable, for the new source on a schedule the State approves.

(B) The requirements of this paragraph apply to subpart H systems that begin operation after the monitoring start date applicable to the system's size under paragraph (3).

(C) The system must begin a second round of source water monitoring no later than 6 years following initial bin classification under subsection (k) or determination of the mean Cryptosporidium level under subsection (m), as applicable.

(7) Failure to collect any source water sample required under this section in accordance with the sampling schedule, sampling location, analytical method, approved laboratory, and reporting requirements of subsections (c) through (g) is a monitoring violation.

(8) Grandfathering monitoring data. Systems may use (grandfather) monitoring data collected prior to the applicable monitoring start date in paragraph (3) to meet the initial source water monitoring

requirements in paragraph (1). Grandfathered data may substitute for an equivalent number of months at the end of the monitoring period. All data submitted under this paragraph must meet the requirements in subsection (h).

(c) Sampling schedules.

(1) Systems required to conduct source water monitoring under subsection (b) must submit a sampling schedule that specifies the calendar dates when the system will collect each required sample.

(A) Systems must submit sampling schedules no later than 3 months prior to the applicable date listed in subsection (b)(3) for each round of required monitoring.

(B) Systems serving at least 10,000 people must submit their sampling schedule for the initial round of source water monitoring under subsection (b)(1) to EPA electronically at https://intranet.epa.gov/lt2/. If a system is unable to submit the sampling schedule electronically, the system may use an alternative approach for submitting the sampling schedule that EPA approves.

(C) Systems serving fewer than 10,000 people must submit their sampling schedules for the initial round of source water monitoring subsection (b)(1) to the State.

(D) Systems must submit sampling schedules for the second round of source water monitoring subsection (b)(2) to the State.

(E) If EPA or the State does not respond to a system regarding its sampling schedule, the system must sample at the reported schedule.

(2) Systems must collect samples within two days before or two days after the dates indicated in their sampling schedule (i.e., within a five-day period around the schedule date) unless one of the conditions of subparagraph (A) or (B) applies.

(A) If an extreme condition or situation exists

that may pose danger to the sample collector, or that cannot be avoided and causes the system to be unable to sample in the scheduled five-day period, the system must sample as close to the scheduled date as is feasible unless the State approves an alternative sampling date. The system must submit an explanation for the delayed sampling date to the State concurrent with the shipment of the sample to the laboratory.

(B) If a system is unable to report a valid analytical result for a scheduled sampling date due to equipment failure, loss of or damage to the sample, failure to comply with the analytical method requirements, including the quality control requirements in subsection (e), or the failure of an approved laboratory to analyze the sample, then the system must collect a replacement sample. The system must collect the replacement sample not later than 21 days after receiving information that an analytical result cannot be reported for the scheduled date unless the system demonstrates that collecting a replacement sample within this time frame is not feasible or the State approves an alternative resampling date. The system must submit an explanation for the delayed sampling date to the State concurrent with the shipment of the sample to the laboratory.

(3) Systems that fail to meet the criteria of paragraph (2) for any source water sample required under subsection (b) must revise their sampling schedules to add dates for collecting all missed samples. Systems must submit the revised schedule to the State for approval prior to when the system begins collecting the missed samples.

(d) Sampling locations.

(1) Systems required to conduct source water monitoring under subsection (b) must collect samples for each plant that treats a surface water or GWUDI source. Where multiple plants draw water from the same influent, such as the same pipe or intake, the State may approve one set of monitoring results to be used to satisfy the requirements of subsection (b) for all plants.

(2) Systems must collect source water samples prior to chemical treatment, such as coagulants, oxidants and disinfectants, unless the system meets the condition of this paragraph. The State may approve a system to collect a source water sample after chemical treatment. To grant this approval, the State must determine that collecting a sample prior to chemical treatment is not feasible for the system and that the chemical treatment is unlikely to have a significant adverse effect on the analysis of the sample.

(3) Systems that recycle filter backwash water must collect source water samples prior to the point of filter backwash water addition.

(4) Bank filtration. Systems that receive Cryptosporidium treatment credit for bank filtration under section 11-20-46.1(c)(2), as applicable, must collect source water samples in the surface water prior to bank filtration. Systems that use bank filtration as pretreatment to a filtration plant must collect source water samples from the well (i.e., after bank filtration). Use of bank filtration during monitoring must be consistent with routine operational practice. Systems collecting samples after a bank filtration process may not receive treatment credit for the bank filtration under subsection (r)(3).

(5) Multiple sources. Systems with plants that use multiple water sources, including multiple surface water sources and blended surface water and ground water sources, must collect samples as

specified in subparagraph (A) or (B). The use of multiple sources during monitoring must be consistent with routine operational practice.

(A) If a sampling tap is available where the sources are combined prior to treatment, systems must collect samples from the tap.

(B) If a sampling tap where the sources are combined prior to treatment is not available, systems must collect samples at each source near the intake on the same day and must follow either clauses (i) or (ii) for sample analysis.

(i) Systems may composite samples from each source into one sample prior to analysis. The volume of sample from each source must be weighted according to the proportion of the source in the total plant flow at the time the sample is collected.

(ii) Systems may analyze samples from each source separately and calculate a weighted average of the analysis results for each sampling date. The weighted average must be calculated by multiplying the analysis result for each source by the fraction the source contributed to total plant flow at the time the sample was collected and then summing these values.

(6) Additional Requirements. Systems must submit a description of their sampling location(s) to the State at the same time as the sampling schedule required under subsection (c). This description must address the position of the sampling location in relation to the system's water source(s) and treatment processes, including pretreatment, points of chemical treatment, and filter backwash recycle. If the State does not respond to a system regarding sampling location(s), the system must sample at the reported location(s).

(e) Analytical methods.

(1) Cryptosporidium. Systems must analyze for Cryptosporidium using Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/FA, 2005, United States Environmental Protection Agency, EPABB815-RBB05BB002 or Method 1622: Cryptosporidium in Water by Filtration/IMS/FA, 2005, United States Environmental Protection Agency, EPABB815BBRBB05BB001, which are incorporated by reference or alternative methods listed in Appendix A to Title 40 Code of Federal Regulations, Part 141, Subpart C. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 C.F.R. part 51. You may obtain a copy of these methods online from http://www.epa.gov/safewater/disinfection/lt2 or from the United States Environmental Protection Agency, Office of Ground Water and Drinking Water, 1201 Constitution Ave., NW, Washington, DC 20460 (Telephone: 800BB426BB4791). You may inspect a copy at the Water Docket in the EPA Docket Center, 1301 Constitution Ave., NW, Washington, DC, (Telephone: 202BB566BB2426) or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202BB741BB6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(A) Systems must analyze at least a 10 L sample or a packed pellet volume of at least 2 mL as generated by the methods listed in this paragraph. Systems unable to process a 10 L sample must analyze as much sample volume as can be filtered by two filters approved by EPA for the methods listed in this paragraph, up to a packed pellet volume of at least 2 mL.

(B) Matrix spike (MS) samples, as required by the methods in this paragraph, must be spiked and filtered by a laboratory approved

for Cryptosporidium analysis under subsection (f). If the volume of the MS sample is greater than 10 L, the system may filter all but 10 L of the MS sample in the field, and ship the filtered sample and the remaining 10 L of source water to the laboratory. In this case, the laboratory must spike the remaining 10 L of water and filter it through the filter used to collect the balance of the sample in the field.

(C) Flow cytometer-counted spiking suspensions must be used for MS samples and ongoing precision and recovery (OPR) samples.

(2) E. coli. Systems must use methods for enumeration of E. coli in source water approved in 40 C.F.R. 136.3(a).

(A) The time from sample collection to initiation of analysis may not exceed 30 hours unless the system meets the condition of subparagraph (B).

(B) The State may approve on a case-by-case basis the holding of an E. coli sample for up to 48 hours between sample collection and initiation of analysis if the State determines that analyzing an E. coli sample within 30 hours is not feasible. E. coli samples held between 30 to 48 hours must be analyzed by the Colilert reagent version of Standard Method 9223B as listed in 40 C.F.R. 136.3(a) of this title or alternative methods listed in Appendix A to Title 40 Code of Federal Regulations, Part 141, Subpart C.

(C) Systems must maintain samples between 0°C and 10°C during storage and transit to the laboratory.

(3) Turbidity. Systems must use methods for turbidity measurement approved in 40 C.F.R. 141.74(a)(1).

(f) Approved laboratories.

(1) Cryptosporidium. Systems must have Cryptosporidium samples analyzed by a laboratory

that is approved under EPA's Laboratory Quality Assurance Evaluation Program for Analysis of Cryptosporidium in Water or a laboratory that has been certified for Cryptosporidium analysis by an equivalent State laboratory certification program.

(2) E. coli. Any laboratory certified by the EPA, the National Environmental Laboratory Accreditation Conference or the State for total coliform or fecal coliform analysis under 40 C.F.R. 141.74 is approved for E. coli analysis under this section when the laboratory uses the same technique for E. coli that the laboratory uses for 40 C.F.R. 141.74.

(3) Turbidity. Measurements of turbidity must be made by a party approved by the State.

(g) Reporting source water monitoring results.

(1) Systems must report results from the source water monitoring required under subsection (b) no later than 10 days after the end of the first month following the month when the sample is collected.

(2) All systems serving at least 10,000 people must report the results from the initial source water monitoring required under subsection (b)(1) to EPA electronically at https://intranet.epa.gov/lt2/. If a system is unable to report monitoring results electronically, the system may use an alternative approach for reporting monitoring results that EPA approves.

(3) Systems serving fewer than 10,000 people must report results from the initial source water monitoring required under subsection (b)(1) to the State.

(4) All systems must report results from the second round of source water monitoring required under subsection (b)(2) to the State.

(5) Systems must report the applicable information in subparagraphs (A) and (B) for the source water monitoring required under subsection (b).

(A) Systems must report the following data elements for each Cryptosporidium analysis:

Data element.
PWS ID.
Facility ID.
Sample collection date.
Sample type (field or matrix spike).
Sample volume filtered(L), to nearest 1/4 L.
Was 100% of filtered volume examined.
Number of oocysts counted.

(i) For matrix spike samples, systems must also report the sample volume spiked and estimated number of oocysts spiked. These data are not required for field samples.

(ii) For samples in which less than 10 L is filtered or less than 100% of the sample volume is examined, systems must also report the number of filters used and the packed pellet volume.

(iii) For samples in which less than 100% of sample volume is examined, systems must also report the volume of resuspended concentrate and volume of this resuspension processed through immunomagnetic separation.

(B) Systems must report the following data elements for each E. coli analysis:

Data element.
PWS ID.
Facility ID.
Sample collection date.
Analytical method number.
Method type.
Source type (flowing stream, lake/reservoir, GWUDI).
E. coli/100 mL.
Turbidity. \1\

\1\ Systems serving fewer than 10,000 people that are not required to monitor for turbidity under subsection (b) are not

required to report turbidity with their E. coli results.

(h) Grandfathering previously collected data.

(1) Systems may comply with the initial source water monitoring requirements of subsection (b)(1) by grandfathering sample results collected before the system is required to begin monitoring (i.e., previously collected data). To be grandfathered, the sample results and analysis must meet the criteria in this section and the State must approve. A filtered system may grandfather Cryptosporidium samples to meet the requirements of subsection (b)(1) when the system does not have corresponding E. coli and turbidity samples. A system that grandfathers Cryptosporidium samples without E. coli and turbidity samples is not required to collect E. coli and turbidity samples when the system completes the requirements for Cryptosporidium monitoring under subsection (b)(1).

(2) E. coli sample analysis. The analysis of E. coli samples must meet the analytical method and approved laboratory requirements of subsection (e) through (f).

(3) Cryptosporidium sample analysis. The analysis of Cryptosporidium samples must meet the criteria in this paragraph.

(A) Laboratories analyzed Cryptosporidium samples using one of the analytical methods in clauses (i) through (vi), which are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 C.F.R. part 51. You may obtain a copy of these methods on-line from the United States Environmental Protection Agency, Office of Ground Water and Drinking Water, 1201 Constitution Ave, NW, Washington, DC 20460 (Telephone: 800BB426BB4791). You may inspect a copy at the Water Docket in the EPA Docket Center,

1301 Constitution Ave., NW, Washington, DC, (Telephone: 202BB566BB2426) or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202BB741BB6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(i) Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/FA, 2005, United States Environmental Protection Agency, EPABB815BBRBB05BB002.

(ii) Method 1622: Cryptosporidium in Water by Filtration/IMS/FA, 2005, United States Environmental Protection Agency, EPABB815BBRBB05BB001.

(iii) Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/FA, 2001, United States Environmental Protection Agency, EPABB821BBRBB01BB025.

(iv) Method 1622: Cryptosporidium in Water by Filtration/IMS/FA, 2001, United States Environmental Protection Agency, EPABB821BB-RBB01BB026.

(v) Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/FA, 1999, United States Environmental Protection Agency, EPABB821BBRBB99BB006.

(vi) Method 1622: Cryptosporidium in Water by Filtration/IMS/FA, 1999, United States Environmental Protection Agency, EPABB821BBRBB99BB001.

(B) For each Cryptosporidium sample, the laboratory analyzed at least 10 L of sample or at least 2 mL of packed pellet or as much volume as could be filtered by 2 filters that EPA approved for the methods listed in subparagraph (A).

(4) Sampling location. The sampling location must meet the conditions in subsection (d).

(5) Sampling frequency. Cryptosporidium samples were collected no less frequently than each calendar month on a regular schedule, beginning no earlier than January 1999. Sample collection intervals may vary for the conditions specified in subsections (c)(2)(A) and (B) if the system provides documentation of the condition when reporting monitoring results.

(A) The State may approve grandfathering of previously collected data where there are time gaps in the sampling frequency if the system conducts additional monitoring the State specifies to ensure that the data used to comply with the initial source water monitoring requirements of subsection (b)(1) are seasonally representative and unbiased.

(B) Systems may grandfather previously collected data where the sampling frequency within each month varied. If the Cryptosporidium sampling frequency varied, systems must follow the monthly averaging procedure in subsections (k)(2)(E) or (m)(1)(C), as applicable, when calculating the bin classification for filtered systems or the mean Cryptosporidium concentration for unfiltered systems.

(6) Reporting monitoring results for grandfathering. Systems that request to grandfather previously collected monitoring results must report the following information by the applicable dates listed in this paragraph. Systems serving at least 10,000 people must report this information to EPA unless the State approves reporting to the State rather than EPA. Systems serving fewer than 10,000 people must report this information to the State.

(A) Systems must report that they intend to submit previously collected monitoring results for grandfathering. This report must specify the number of previously collected

results the system will submit, the dates of the first and last sample, and whether a system will conduct additional source water monitoring to meet the requirements of subsection (b)(1). Systems must report this information no later than the date the sampling schedule under subsection (c) is required.

(B) Systems must report previously collected monitoring results for grandfathering, along with the associated documentation listed in clauses (i) through (iv), no later than two months after the applicable date listed in subsection (b)(3).

(i) For each sample result, systems must report the applicable data elements in subsection (g).

(ii) Systems must certify that the reported monitoring results include all results the system generated during the time period beginning with the first reported result and ending with the final reported result. This applies to samples that were collected from the sampling location specified for source water monitoring under this section, not spiked, and analyzed using the laboratory's routine process for the analytical methods listed in this section.

(iii) Systems must certify that the samples were representative of a plant's source water(s) and the source water(s) have not changed. Systems must report a description of the sampling location(s), which must address the position of the sampling location in relation to the system's water source(s) and treatment processes, including points of chemical addition and filter backwash recycle.

(iv) For Cryptosporidium samples, the

laboratory or laboratories that analyzed the samples must provide a letter certifying that the quality control criteria specified in the methods listed in paragraph (3)(A) were met for each sample batch associated with the reported results. Alternatively, the laboratory may provide bench sheets and sample examination report forms for each field, matrix spike, IPR, OPR, and method blank sample associated with the reported results.

(7) If the State determines that a previously collected data set submitted for grandfathering was generated during source water conditions that were not normal for the system, such as a drought, the State may disapprove the data. Alternatively, the State may approve the previously collected data if the system reports additional source water monitoring data, as determined by the State, to ensure that the data set used under subsection (k) or subsection (m) represents average source water conditions for the system.

(8) If a system submits previously collected data that fully meet the number of samples required for initial source water monitoring under subsection (b)(1) and some of the data are rejected due to not meeting the requirements of this section, systems must conduct additional monitoring to replace rejected data on a schedule the State approves. Systems are not required to begin this additional monitoring until two months after notification that data have been rejected and additional monitoring is necessary.

(i) Requirements when making a significant change in disinfection practice.

(1) Following the completion of initial source water monitoring under subsection (b)(1), a system that plans to make a significant change to its disinfection practice, as defined in paragraph

(2), must develop disinfection profiles and calculate disinfection benchmarks for Giardia lamblia and viruses as described in subsection (j). Prior to changing the disinfection practice, the system must notify the State and must include in this notice the information in subparagraphs (A) through (C).

(A) A completed disinfection profile and disinfection benchmark for Giardia lamblia and viruses as described in subsection (j).

(B) A description of the proposed change in disinfection practice.

(C) An analysis of how the proposed change will affect the current level of disinfection.

(2) Significant changes to disinfection practice are defined as follows:

(A) Changes to the point of disinfection;

(B) Changes to the disinfectant(s) used in the treatment plant;

(C) Changes to the disinfection process; or

(D) Any other modification identified by the State as a significant change to disinfection practice.

(j) Developing the disinfection profile and benchmark.

(1) Systems required to develop disinfection profiles under subsection (i) must follow the requirements of this section. Systems must monitor at least weekly for a period of 12 consecutive months to determine the total log inactivation for Giardia lamblia and viruses. If systems monitor more frequently, the monitoring frequency must be evenly spaced. Systems that operate for fewer than 12 months per year must monitor weekly during the period of operation. Systems must determine log inactivation for Giardia lamblia through the entire plant, based on $CT_{99.9}$ values in Tables 1.1 through 1.6, 2.1 and 3.1 of 40 C.F.R. 141.74(b) as applicable. Systems must determine log inactivation for viruses through the entire treatment plant based on a protocol approved by the State.

(2) Systems with a single point of disinfectant application prior to the entrance to the distribution system must conduct the monitoring in subparagraphs (A) through (D). Systems with more than one point of disinfectant application must conduct the monitoring in subparagraphs (A) through (D) for each disinfection segment. Systems must monitor the parameters necessary to determine the total inactivation ratio, using analytical methods in 40 C.F.R. 141.74(a).

(A) For systems using a disinfectant other than UV, the temperature of the disinfected water must be measured at each residual disinfectant concentration sampling point during peak hourly flow or at an alternative location approved by the State.

(B) For systems using chlorine, the pH of the disinfected water must be measured at each chlorine residual disinfectant concentration sampling point during peak hourly flow or at an alternative location approved by the State.

(C) The disinfectant contact time(s) (t) must be determined during peak hourly flow.

(D) The residual disinfectant concentration(s) (C) of the water before or at the first customer and prior to each additional point of disinfectant application must be measured during peak hourly flow.

(3) In lieu of conducting new monitoring under paragraph (2), systems may elect to meet the requirements of subparagraphs (A) or (B).

(A) Systems that have at least one year of existing data that are substantially equivalent to data collected under the provisions of paragraph (b) may use these data to develop disinfection profiles as specified in this section if the system has neither made a significant change to its treatment practice nor changed sources since the data were collected. Systems may develop disinfection profiles using up to three

years of existing data.

(B) Systems may use disinfection profile(s) developed under section 11-20-46.1(b) in lieu of developing a new profile if the system has neither made a significant change to its treatment practice nor changed sources since the profile was developed. Systems that have not developed a virus profile under section 11-20-46.1(b) must develop a virus profile using the same monitoring data on which the Giardia lamblia profile is based.

(4) Systems must calculate the total inactivation ratio for Giardia lamblia as specified in subparagraphs (A) through (C).

(A) Systems using only one point of disinfectant application may determine the total inactivation ratio for the disinfection segment based on either of the methods in clauses (i) or (ii).

(i) Determine one inactivation ratio ($CT_{calc}/CT_{99.9}$) before or at the first customer during peak hourly flow.

(ii) Determine successive $CT_{calc}/CT_{99.9}$ values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. The system must calculate the total inactivation ratio by determining ($CT_{calc}/CT_{99.9}$) for each sequence and then adding the ($CT_{calc}/CT_{99.9}$) values together to determine (ΣS ($CT_{calc}/CT_{99.9}$)).

(B) Systems using more than one point of disinfectant application before the first customer must determine the CT value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow. The ($CT_{calc}/CT_{99.9}$) value of each segment and (ΣS

($CTcalc/CT_{99.9}$)) must be calculated using the method in subsection (d)(1)(ii).

(C) The system must determine the total logs of inactivation by multiplying the value calculated in subparagraphs (A) or (B) by 3.0.

(D) Systems must calculate the log of inactivation for viruses using a protocol approved by the State.

(5) Systems must use the procedures specified in subparagraphs (A) and (B) to calculate a disinfection benchmark.

(A) For each year of profiling data collected and calculated under paragraphs (1) through (4), systems must determine the lowest mean monthly level of both Giardia lamblia and virus inactivation. Systems must determine the mean Giardia lamblia and virus inactivation for each calendar month for each year of profiling data by dividing the sum of daily or weekly Giardia lamblia and virus log inactivation by the number of values calculated for that month.

(B) The disinfection benchmark is the lowest monthly mean value (for systems with one year of profiling data) or the mean of the lowest monthly mean values (for systems with more than one year of profiling data) of Giardia lamblia and virus log inactivation in each year of profiling data.

(k) Bin classification for filtered systems.

(1) Following completion of the initial round of source water monitoring required under subsection (b)(1), filtered systems must calculate an initial Cryptosporidium bin concentration for each plant for which monitoring was required. Calculation of the bin concentration must use the Cryptosporidium results reported under subsection (b)(1) and must follow the procedures in paragraphs (2)(A) through (E).

(2) Compliance Calculations

(A) For systems that collect a total of at least

48 samples, the bin concentration is equal to the arithmetic mean of all sample concentrations.

(B) For systems that collect a total of at least 24 samples, but not more than 47 samples, the bin concentration is equal to the highest arithmetic mean of all sample concentrations in any 12 consecutive months during which Cryptosporidium samples were collected.

(C) For systems that serve fewer than 10,000 people and monitor for Cryptosporidium for only one year (i.e., collect 24 samples in 12 months), the bin concentration is equal to the arithmetic mean of all sample concentrations.

(D) For systems with plants operating only part of the year that monitor fewer than 12 months per year under subsection (b)(5), the bin concentration is equal to the highest arithmetic mean of all sample concentrations during any year of Cryptosporidium monitoring.

(E) If the monthly Cryptosporidium sampling frequency varies, systems must first calculate a monthly average for each month of monitoring. Systems must then use these monthly average concentrations, rather than individual sample concentrations, in the applicable calculation for bin classification in paragraphs (2)(A) through (D).

(3) Filtered systems must determine their initial bin classification from the following table and using the Cryptosporidium bin concentration calculated under paragraphs (1) and (2):

For systems that are...	With a Cryptosporidium concentration of...[1]	The bin classification is...
...required to monitor for Cryptosporidium under subsection (b).	Cryptosporidium <0.075 oocysts/L	Bin 1
	0.075 oocysts/L < Cryptosporidium <1.0 oocysts/L	Bin 2
	1.0 oocysts/L < Cryptosporidium <3.0 oocysts/L	Bin 3
	Cryptosporidium >3.0 oocysts/L	Bin 4
...serving fewer than 10,000 and NOT required to monitor for Cryptosporidium under subparagraph (b)(1)(D).	N/A	Bin 1

[1]Based on calculations in paragraphs (1) or (4), as applicable.

(4) Following completion of the second round of source water monitoring required under subsection (b)(2), filtered systems must recalculate their Cryptosporidium bin concentration using the Cryptosporidium results reported under paragraph (b)(2) and following the procedures in paragraphs (2)(A) through (D). Systems must then redetermine their bin classification using this bin concentration and the table in paragraph (3).

(5) Filtered systems must report their initial bin classification under paragraph (3) to the State for approval no later than 6 months after the system is required to complete initial source water monitoring based on the schedule in subsection (b)(3). Systems must report their bin classification under paragraph (4) to the State for approval no later than 6 months after the system is required to complete the second round of source water monitoring based on the schedule

in subsection (b)(3). The bin classification report to the State must include a summary of source water monitoring data and the calculation procedure used to determine bin classification.

(6) Failure to comply with the conditions of paragraph (5) is a violation of the treatment technique requirement.

(l) Filtered system additional Cryptosporidium treatment requirements.

(1) Filtered systems must provide the level of additional treatment for Cryptosporidium specified in this paragraph based on their bin classification as determined under subsection (k) and according to the schedule in subsection (n).

If the system bin classification is…	And the system uses the following filtration treatment in full compliance with sections 11-20-46 and 11-20-46.1 (as applicable), then the additional Cryptosporidium treatment requirements are . . .			
	Conventional filtration treatment (including softening)	Direct filtration	Slow sand or diatomaceous earth filtration	Alternative filtration technologies
Bin 1	No additional treatment	No additional treatment	No additional treatment	No additional treatment
Bin 2	1-log treatment	1.5-log treatment	1-log treatment	See footnote 1
Bin 3	2-log treatment	2.5-log treatment	2-log treatment	See footnote 2
Bin 4	2.5 log treatment	3-log treatment	2.5 log treatment	See footnote 3

[1]As determined by the State such that the total Cryptosporidium removal and inactivation is at least 4.0-log.

[2]As determined by the State such that the total

Cryptosporidium removal and inactivation is at least 5.0-log.
[3]As determined by the State such that the total Cryptosporidium removal and inactivation is at least 5.5-log.

(2) Filtered systems must use one or more of the treatment and management options listed in subsection (p), termed the microbial toolbox, to comply with the additional Cryptosporidium treatment required in paragraph (1). Systems classified in Bin 3 and Bin 4 must achieve at least 1-log of the additional Cryptosporidium treatment required under paragraph (1) using either one or a combination of the following: bag filters, bank filtration, cartridge filters, chlorine dioxide, membranes, ozone, or UV, as described in subsections (q) through (u).

(3) Failure by a system in any month to achieve treatment credit by meeting criteria in subsections (q) through (u) for microbial toolbox options that is at least equal to the level of treatment required in paragraph (1) is a violation of the treatment technique requirement.

(4) If the State determines during a sanitary survey or an equivalent source water assessment that after a system completed the monitoring conducted under subsections (b)(1) or (2), significant changes occurred in the system's watershed that could lead to increased contamination of the source water by Cryptosporidium, the system must take actions specified by the State to address the contamination. These actions may include additional source water monitoring and/or implementing microbial toolbox options listed in subsection (p).

(m) Unfiltered system Cryptosporidium treatment requirements.

(1) Determination of mean Cryptosporidium level.

(A) Following completion of the initial source water monitoring required under subsection (b)(1), unfiltered systems must calculate

the arithmetic mean of all Cryptosporidium sample concentrations reported under subsection (b)(1). Systems must report this value to the State for approval no later than 6 months after the month the system is required to complete initial source water monitoring based on the schedule in subsection (b)(3).

(B) Following completion of the second round of source water monitoring required under subsection (b)(2), unfiltered systems must calculate the arithmetic mean of all Cryptosporidium sample concentrations reported under subsection (b)(2). Systems must report this value to the State for approval no later than 6 months after the month the system is required to complete the second round of source water monitoring based on the schedule in subsection (b)(3).

(C) If the monthly Cryptosporidium sampling frequency varies, systems must first calculate a monthly average for each month of monitoring. Systems must then use these monthly average concentrations, rather than individual sample concentrations, in the calculation of the mean Cryptosporidium level in subparagraphs (A) and (B).

(D) The report to the State of the mean Cryptosporidium levels calculated under subparagraphs (A) and (B) must include a summary of the source water monitoring data used for the calculation.

(E) Failure to comply with the conditions of paragraph (1) is a violation of the treatment technique requirement.

(2) Cryptosporidium inactivation requirements. Unfiltered systems must provide the level of inactivation for Cryptosporidium specified in this paragraph, based on their mean Cryptosporidium levels as determined under paragraph (1) and according to the schedule in subsection (n).

(A) Unfiltered systems with a mean Cryptosporidium level of 0.01 oocysts/L or less must provide at least 2-log Cryptosporidium inactivation.

(B) Unfiltered systems with a mean Cryptosporidium level of greater than 0.01 oocysts/L must provide at least 3-log Cryptosporidium inactivation.

(3) Inactivation treatment technology requirements. Unfiltered systems must use chlorine dioxide, ozone, or UV as described in subsection (u) to meet the Cryptosporidium inactivation requirements of this section.

(A) Systems that use chlorine dioxide or ozone and fail to achieve the Cryptosporidium inactivation required in paragraph (2) on more than one day in the calendar month are in violation of the treatment technique requirement.

(B) Systems that use UV light and fail to achieve the Cryptosporidium inactivation required in paragraph (2) by meeting the criteria in clause (u)(4)(C)(ii) are in violation of the treatment technique requirement.

(4) Use of two disinfectants. Unfiltered systems must meet the combined Cryptosporidium inactivation requirements of this section and Giardia lamblia and virus inactivation requirements of 40 C.F.R. 141.72(a) using a minimum of two disinfectants, and each of two disinfectants must separately achieve the total inactivation required for either Cryptosporidium, Giardia lamblia, or viruses.

(n) Schedule for compliance with Cryptosporidium treatment requirements.

(1) Following initial bin classification under subsection (k)(3), filtered systems must provide the level of treatment for Cryptosporidium required under subsection (l) according to the schedule in paragraph (3).

(2) Following initial determination of the mean

Cryptosporidium level under subsection (m)(1)(A), unfiltered systems must provide the level of treatment for Cryptosporidium required under subsection (m) according to the schedule in paragraph (3).

(3) Cryptosporidium treatment compliance dates.

Cryptosporidium Treatment Compliance Dates Table

Systems that serve...	Must comply with Cryptosporidium treatment requirements no later than...[1]
At least 100,000 people	April 1, 2012
From 50,000 to 99,999 people	October 1, 2012
From 10,000 to 49,999 people	October 1, 2013
Fewer than 10,000 people	October 1, 2014

[1]States may allow up to an additional two years for complying with the treatment requirement for systems making capital improvements.

(4) If the bin classification for a filtered system changes following the second round of source water monitoring, as determined under subsection (k)(4), the system must provide the level of treatment for Cryptosporidium required under subsection (l) on a schedule the State approves.

(5) If the mean Cryptosporidium level for an unfiltered system changes following the second round of monitoring, as determined under subsection (m)(1)(B), and if the system must provide a different level of Cryptosporidium treatment under subsection (m) due to this change, the system must meet this treatment requirement on a schedule the State approves.

(o) Requirements for uncovered finished water storage facilities.

(1) Systems using uncovered finished water storage facilities must comply with the conditions of this section.

(2) Systems must notify the State of the use of each uncovered finished water storage facility no later than April 1, 2008.

(3) Systems must meet the conditions of subparagraph (A) or (B) for each uncovered finished water storage facility or be in compliance with a State-approved schedule to meet these conditions no later than April 1, 2009.

(A) Systems must cover any uncovered finished water storage facility.

(B) Systems must treat the discharge from the uncovered finished water storage facility to the distribution system to achieve inactivation and/or removal of at least 4-log virus, 3-log Giardia lamblia, and 2-log Cryptosporidium using a protocol approved by the State.

(4) Failure to comply with the requirements of this section is a violation of the treatment technique requirement.

(p) Microbial toolbox options for meeting Cryptosporidium treatment requirements.

(1) Systems receive the treatment credits listed in the table in paragraph (2) by meeting the conditions for microbial toolbox options described in subsections (q) through (u). Systems apply these treatment credits to meet the treatment requirements in subsections (l) or (m), as applicable. Unfiltered systems are eligible for treatment credits for the microbial toolbox options described in subsection (u) only.

(2) The following table summarizes options in the microbial toolbox:

Microbial Toolbox Summary Table:
Options, Treatment Credits and Criteria

Toolbox Option	Cryptosporidium treatment credit with design and implementation criteria
Source Protection and Management Toolbox Options	
Watershed control	0.5-log credit for State-

Toolbox Option	Cryptosporidium treatment credit with design and implementation criteria
program	approved program comprising required elements, annual program status report to State, and regular watershed survey. Unfiltered systems are not eligible for credit. Specific criteria are in subsection (q)(1).
Alternative source/intake management	No prescribed credit. Systems may conduct simultaneous monitoring for treatment bin classification at alternative intake locations or under alternative intake management strategies. Specific criteria are in subsection (q)(2).
Pre Filtration Toolbox Options	
Presedimentation basin with coagulation	0.5-log credit during any month that presedimentation basins achieve a monthly mean reduction of 0.5-log or greater in turbidity or alternative State-approved performance criteria. To be eligible, basins must be operated continuously with coagulant addition and all plant flow must pass through basins. Specific criteria are in subsection (r)(1).

Toolbox Option	Cryptosporidium treatment credit with design and implementation criteria
Two-stage lime softening	0.5-log credit for two-stage softening where chemical addition and hardness precipitation occur in both stages. All plant flow must pass through both stages. Single-stage softening is credited as equivalent to conventional treatment. Specific criteria are in subsection (r)(2).
Bank filtration	0.5-log credit for 25-foot setback; 1.0-log credit for 50-foot setback; aquifer must be unconsolidated sand containing at least 10 percent fines; average turbidity in wells must be less than 1 NTU. Systems using wells followed by filtration when conducting source water monitoring must sample the well to determine bin classification and are not eligible for additional credit. Specific criteria are in subsection (r)(3).
Treatment Performance Toolbox Options	
Combined filter performance	0.5-log credit for combined filter effluent turbidity less than or equal to 0.15 NTU in at least 95 percent of measurements each month. Specific criteria are in subsection (s)(1).

Toolbox Option	Cryptosporidium treatment credit with design and implementation criteria
Individual filter performance	0.5-log credit (in addition to 0.5-log combined filter performance credit) if individual filter effluent turbidity is less than or equal to 0.15 NTU in at least 95 percent of samples each month in each filter and is never greater than 0.3 NTU in two consecutive measurements in any filter. Specific criteria are in subsection (s)(2).
Demonstration of performance	Credit awarded to unit process or treatment train based on a demonstration to the State with a State-approved protocol. Specific criteria are in subsection (s)(3).
Additional Filtration Toolbox Options	
Bag or cartridge filters (individual filters)	Up to 2-log credit based on the removal efficiency demonstrated during challenge testing with a 1.0-log factor of safety. Specific criteria are in subsection (t)(1).
Bag or cartridge filters (in series)	Up to 2.5-log credit based on the removal efficiency demonstrated during challenge testing with a 0.5-log factor of safety. Specific criteria are in subsection (t)(1).
Membrane filtration	Log credit equivalent to

Toolbox Option	Cryptosporidium treatment credit with design and implementation criteria
	removal efficiency demonstrated in challenge test for device if supported by direct integrity testing. Specific criteria are in subsection (t)(2).
Second stage filtration	0.5-log credit for second separate granular media filtration stage if treatment train includes coagulation prior to first filter. Specific criteria are in subsection (t)(3).
Slow sand filters	2.5-log credit as a secondary filtration step; 3.0-log credit as a primary filtration process. No prior chlorination for either option. Specific criteria are in subsection (t)(4).
Inactivation Toolbox Options	
Chlorine dioxide	Log credit based on measured CT in relation to CT table. Specific criteria in subsection (u)(2).
Ozone	Log credit based on measured CT in relation to CT table. Specific criteria in subsection (u)(2).

Toolbox Option	Cryptosporidium treatment credit with design and implementation criteria
UV	Log credit based on validated UV dose in relation to UV dose table; reactor validation testing required to establish UV dose and associated operating conditions. Specific criteria in subsection (u)(4).

(q) Source toolbox components.

(1) Watershed control program. Systems receive 0.5-log Cryptosporidium treatment credit for implementing a watershed control program that meets the requirements of this section.

(A) Systems that intend to apply for the watershed control program credit must notify the State of this intent no later than two years prior to the treatment compliance date applicable to the system in subsection (n).

(B) Systems must submit to the State a proposed watershed control plan no later than one year before the applicable treatment compliance date in subsection (n). The State must approve the watershed control plan for the system to receive watershed control program treatment credit. The watershed control plan must include the elements in clauses (i) through (iv).

(i) Identification of an "area of influence" outside of which the likelihood of Cryptosporidium or fecal contamination affecting the treatment plant intake is not significant. This is the area to be evaluated in future watershed surveys under paragraph (1)(E)(ii).

(ii) Identification of both potential and actual sources of Cryptosporidium

contamination and an assessment of the relative impact of these sources on the system's source water quality.

(iii) An analysis of the effectiveness and feasibility of control measures that could reduce Cryptosporidium loading from sources of contamination to the system's source water.

(iv) A statement of goals and specific actions the system will undertake to reduce source water Cryptosporidium levels. The plan must explain how the actions are expected to contribute to specific goals, identify watershed partners and their roles, identify resource requirements and commitments, and include a schedule for plan implementation with deadlines for completing specific actions identified in the plan.

(C) Systems with existing watershed control programs (i.e., programs in place on January 5, 2006) are eligible to seek this credit. Their watershed control plans must meet the criteria in paragraph (1)(B) and must specify ongoing and future actions that will reduce source water Cryptosporidium levels.

(D) If the State does not respond to a system regarding approval of a watershed control plan submitted under this section and the system meets the other requirements of this section, the watershed control program will be considered approved and 0.5 log Cryptosporidium treatment credit will be awarded unless and until the State subsequently withdraws such approval.

(E) Systems must complete the actions in clauses (i) through (iii) to maintain the 0.5-log credit.

(i) Submit an annual watershed control program status report to the State. The annual watershed control program status

report must describe the system's implementation of the approved plan and assess the adequacy of the plan to meet its goals. It must explain how the system is addressing any shortcomings in plan implementation, including those previously identified by the State or as the result of the watershed survey conducted under clause (ii). It must also describe any significant changes that have occurred in the watershed since the last watershed sanitary survey. If a system determines during implementation that making a significant change to its approved watershed control program is necessary, the system must notify the State prior to making any such changes. If any change is likely to reduce the level of source water protection, the system must also list in its notification the actions the system will take to mitigate this effect.

(ii) Undergo a watershed sanitary survey every three years for community water systems and every five years for noncommunity water systems and submit the survey report to the State. The survey must be conducted according to State guidelines and by persons the State approves. The watershed sanitary survey must meet the following criteria: encompass the region identified in the State-approved watershed control plan as the area of influence; assess the implementation of actions to reduce source water Cryptosporidium levels; and identify any significant new sources of Cryptosporidium. If the State determines that significant changes may have occurred in the watershed since

the previous watershed sanitary survey, systems must undergo another watershed sanitary survey by a date the State requires, which may be earlier than the regular date in this clause.

(iii) The system must make the watershed control plan, annual status reports, and watershed sanitary survey reports available to the public upon request. These documents must be in a plain language style and include criteria by which to evaluate the success of the program in achieving plan goals. The State may approve systems to withhold from the public portions of the annual status report, watershed control plan, and watershed sanitary survey based on water supply security considerations.

(F) If the State determines that a system is not carrying out the approved watershed control plan, the State may withdraw the watershed control program treatment credit.

(2) Alternative source.

(A) A system may conduct source water monitoring that reflects a different intake location (either in the same source or for an alternate source) or a different procedure for the timing or level of withdrawal from the source (alternative source monitoring). If the State approves, a system may determine its bin classification under subsection (k) based on the alternative source monitoring results.

(B) If systems conduct alternative source monitoring under subparagraph (A), systems must also monitor their current plant intake concurrently as described in subsection (b).

(C) Alternative source monitoring under subparagraph (A) must meet the requirements for source monitoring to determine bin classification, as described in subsections (b) through (g). Systems must report the

alternative source monitoring results to the State, along with supporting information documenting the operating conditions under which the samples were collected.

(D) If a system determines its bin classification under subsection (k) using alternative source monitoring results that reflect a different intake location or a different procedure for managing the timing or level of withdrawal from the source, the system must relocate the intake or permanently adopt the withdrawal procedure, as applicable, no later than the applicable treatment compliance date in subsection (n).

(r) Pre-filtration treatment toolbox components.

(1) Presedimentation. Systems receive 0.5-log Cryptosporidium treatment credit for a presedimentation basin during any month the process meets the criteria in this paragraph.

(A) The presedimentation basin must be in continuous operation and must treat the entire plant flow taken from a surface water or GWUDI source.

(B) The system must continuously add a coagulant to the presedimentation basin.

(C) The presedimentation basin must achieve the performance criteria in clauses (i) or (ii).

(i) Demonstrates at least 0.5-log mean reduction of influent turbidity. This reduction must be determined using daily turbidity measurements in the presedimentation process influent and effluent and must be calculated as follows: $\log_{10}$(monthly mean of daily influent turbidity) - $\log_{10}$(monthly mean of daily effluent turbidity).

(ii) Complies with State-approved performance criteria that demonstrate at least 0.5-log mean removal of micron-sized particulate material through the presedimentation process.

(2) Two-stage lime softening. Systems receive an

additional 0.5-log Cryptosporidium treatment credit for a two-stage lime softening plant if chemical addition and hardness precipitation occur in two separate and sequential softening stages prior to filtration. Both softening stages must treat the entire plant flow taken from a surface water or GWUDI source.

(3) Bank filtration. Systems receive Cryptosporidium treatment credit for bank filtration that serves as pretreatment to a filtration plant by meeting the criteria in this paragraph. Systems using bank filtration when they begin source water monitoring under subsection (b)(1) must collect samples as described in subsection(d)(4) and are not eligible for this credit.

(A) Wells with a ground water flow path of at least 25 feet receive 0.5-log treatment credit; wells with a ground water flow path of at least 50 feet receive 1.0-log treatment credit. The ground water flow path must be determined as specified in subparagraph (D).

(B) Only wells in granular aquifers are eligible for treatment credit. Granular aquifers are those comprised of sand, clay, silt, rock fragments, pebbles or larger particles, and minor cement. A system must characterize the aquifer at the well site to determine aquifer properties. Systems must extract a core from the aquifer and demonstrate that in at least 90 percent of the core length, grains less than 1.0 mm in diameter constitute at least 10 percent of the core material.

(C) Only horizontal and vertical wells are eligible for treatment credit.

(D) For vertical wells, the ground water flow path is the measured distance from the edge of the surface water body under high flow conditions (determined by the 100 year floodplain elevation boundary or by the floodway, as defined in Federal Emergency

Management Agency flood hazard maps) to the well screen. For horizontal wells, the ground water flow path is the measured distance from the bed of the river under normal flow conditions to the closest horizontal well lateral screen.

(E) Systems must monitor each wellhead for turbidity at least once every four hours while the bank filtration process is in operation. If monthly average turbidity levels, based on daily maximum values in the well, exceed 1 NTU, the system must report this result to the State and conduct an assessment within 30 days to determine the cause of the high turbidity levels in the well. If the State determines that microbial removal has been compromised, the State may revoke treatment credit until the system implements corrective actions approved by the State to remediate the problem.

(F) Springs and infiltration galleries are not eligible for treatment credit under this section, but are eligible for credit under subsection (s)(3).

(G) Bank filtration demonstration of performance. The State may approve Cryptosporidium treatment credit for bank filtration based on a demonstration of performance study that meets the criteria in this subparagraph. This treatment credit may be greater than 1.0-log and may be awarded to bank filtration that does not meet the criteria in subparagraphs (A) through (E).

(i) The study must follow a state-approved protocol and must involve the collection of data on the removal of Cryptosporidium or a surrogate for Cryptosporidium and related hydrogeologic and water quality parameters during the full range of operating conditions.

(ii) The study must include sampling both

from the production well(s) and from monitoring wells that are screened and located along the shortest flow path between the surface water source and the production well(s).

(s) Treatment performance toolbox components.

(1) Combined filter performance. Systems using conventional filtration treatment or direct filtration treatment receive an additional 0.5-log Cryptosporidium treatment credit during any month the system meets the criteria in this paragraph. Combined filter effluent (CFE) turbidity must be less than or equal to 0.15 NTU in at least 95 percent of the measurements. Turbidity must be measured as described in sections 11-20-46(d)(1) and (2).

(2) Individual filter performance. Systems using conventional filtration treatment or direct filtration treatment receive 0.5-log Cryptosporidium treatment credit, which can be in addition to the 0.5-log credit under paragraph (1), during any month the system meets the criteria in this paragraph. Compliance with these criteria must be based on individual filter turbidity monitoring as described in section 11-20-46.1(d), as applicable.

(A) The filtered water turbidity for each individual filter must be less than or equal to 0.15 NTU in at least 95 percent of the measurements recorded each month.

(B) No individual filter may have a measured turbidity greater than 0.3 NTU in two consecutive measurements taken 15 minutes apart.

(C) Any system that has received treatment credit for individual filter performance and fails to meet the requirements of subparagraph (A) or (B) during any month does not receive a treatment technique violation under paragraph (1)(3) if the State determines the following:

(i) The failure was due to unusual and

short-term circumstances that could not reasonably be prevented through optimizing treatment plant design, operation, and maintenance.

(ii) The system has experienced no more than two such failures in any calendar year.

(3) Demonstration of performance. The State may approve Cryptosporidium treatment credit for drinking water treatment processes based on a demonstration of performance study that meets the criteria in this paragraph. This treatment credit may be greater than or less than the prescribed treatment credits in subsection (l) or subsections (r) through (u) and may be awarded to treatment processes that do not meet the criteria for the prescribed credits.

(A) Systems cannot receive the prescribed treatment credit for any toolbox box option in subsections (r) through (u) if that toolbox option is included in a demonstration of performance study for which treatment credit is awarded under this paragraph.

(B) The demonstration of performance study must follow a state-approved protocol and must demonstrate the level of Cryptosporidium reduction the treatment process will achieve under the full range of expected operating conditions for the system.

(C) Approval by the State must be in writing and may include monitoring and treatment performance criteria that the system must demonstrate and report on an ongoing basis to remain eligible for the treatment credit. The State may designate such criteria where necessary to verify that the conditions under which the demonstration of performance credit was approved are maintained during routine operation.

(t) Additional filtration toolbox components.

(1) Bag and cartridge filters. Systems receive Cryptosporidium treatment credit of up to 2.0-log

for individual bag or cartridge filters and up to 2.5-log for bag or cartridge filters operated in series by meeting the criteria in subparagraphs (A) through (J). To be eligible for this credit, systems must report the results of challenge testing that meets the requirements of subparagraphs (B) through (I) to the State. The filters must treat the entire plant flow taken from a subpart H source.

(A) The Cryptosporidium treatment credit awarded to bag or cartridge filters must be based on the removal efficiency demonstrated during challenge testing that is conducted according to the criteria in subparagraphs (B) through (I). A factor of safety equal to 1-log for individual bag or cartridge filters and 0.5-log for bag or cartridge filters in series must be applied to challenge testing results to determine removal credit. Systems may use results from challenge testing conducted prior to January 5, 2006 if the prior testing was consistent with the criteria specified in subparagraphs (B) through (I).

(B) Challenge testing must be performed on full-scale bag or cartridge filters, and the associated filter housing or pressure vessel, that are identical in material and construction to the filters and housings the system will use for removal of Cryptosporidium. Bag or cartridge filters must be challenge tested in the same configuration that the system will use, either as individual filters or as a series configuration of filters.

(C) Challenge testing must be conducted using Cryptosporidium or a surrogate that is removed no more efficiently than Cryptosporidium. The microorganism or surrogate used during challenge testing is referred to as the challenge particulate. The concentration of the challenge

particulate must be determined using a method capable of discreetly quantifying the specific microorganism or surrogate used in the test; gross measurements such as turbidity may not be used.

(D) The maximum feed water concentration that can be used during a challenge test must be based on the detection limit of the challenge particulate in the filtrate (i.e., filtrate detection limit) and must be calculated using the following equation:

Maximum Feed Concentration = 1 x 10^4 x (Filtrate Detection Limit)

(E) Challenge testing must be conducted at the maximum design flow rate for the filter as specified by the manufacturer.

(F) Each filter evaluated must be tested for a duration sufficient to reach 100 percent of the terminal pressure drop, which establishes the maximum pressure drop under which the filter may be used to comply with the requirements of this section.

(G) Removal efficiency of a filter must be determined from the results of the challenge test and expressed in terms of log removal values using the following equation:

$$LRV = LOG_{10}(C_f) - LOG_{10}(C_p)$$

Where:

LRV = log removal value demonstrated during challenge testing; C_f = the feed concentration measured during the challenge test; and C_p = the filtrate concentration measured during the challenge test. In applying this equation, the same units must be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, then the term C_p must be set equal to the detection

limit.

(H) Each filter tested must be challenged with the challenge particulate during three periods over the filtration cycle: within two hours of start-up of a new filter; when the pressure drop is between 45 and 55 percent of the terminal pressure drop; and at the end of the cycle after the pressure drop has reached 100 percent of the terminal pressure drop. An LRV must be calculated for each of these challenge periods for each filter tested. The LRV for the filter (LRV_{filter}) must be assigned the value of the minimum LRV observed during the three challenge periods for that filter.

(I) If fewer than 20 filters are tested, the overall removal efficiency for the filter product line must be set equal to the lowest LRV_{filter} among the filters tested. If 20 or more filters are tested, the overall removal efficiency for the filter product line must be set equal to the 10th percentile of the set of LRV_{filter} values for the various filters tested. The percentile is defined by (i/(n+1)) where i is the rank of n individual data points ordered lowest to highest. If necessary, the 10th percentile may be calculated using linear interpolation.

(J) If a previously tested filter is modified in a manner that could change the removal efficiency of the filter product line, challenge testing to demonstrate the removal efficiency of the modified filter must be conducted and submitted to the State.

(2) Membrane filtration.

(A) Systems receive Cryptosporidium treatment credit for membrane filtration that meets the criteria of this paragraph. Membrane cartridge filters that meet the definition of membrane filtration in subsection 11-20-2 are eligible for this credit. The level of

treatment credit a system receives is equal to the lower of the values determined under clauses (i) and (ii).

(i) The removal efficiency demonstrated during challenge testing conducted under the conditions in subparagraph (B).

(ii) The maximum removal efficiency that can be verified through direct integrity testing used with the membrane filtration process under the conditions in subparagraph (C).

(B) Challenge Testing. The membrane used by the system must undergo challenge testing to evaluate removal efficiency, and the system must report the results of challenge testing to the State. Challenge testing must be conducted according to the criteria in clauses (i) through (vii). Systems may use data from challenge testing conducted prior to January 5, 2006 if the prior testing was consistent with the criteria in clauses (i) through (vii).

(i) Challenge testing must be conducted on either a full-scale membrane module, identical in material and construction to the membrane modules used in the system's treatment facility, or a smaller-scale membrane module, identical in material and similar in construction to the full-scale module. A module is defined as the smallest component of a membrane unit in which a specific membrane surface area is housed in a device with a filtrate outlet structure.

(ii) Challenge testing must be conducted using Cryptosporidium oocysts or a surrogate that is removed no more efficiently than Cryptosporidium oocysts. The organism or surrogate used during challenge testing is referred to

as the challenge particulate. The concentration of the challenge particulate, in both the feed and filtrate water, must be determined using a method capable of discretely quantifying the specific challenge particulate used in the test; gross measurements such as turbidity may not be used.

(iii) The maximum feed water concentration that can be used during a challenge test is based on the detection limit of the challenge particulate in the filtrate and must be determined according to the following equation:

$$\text{Maximum Feed Concentration} = 3.16 \times 10^{6} \times (\text{Filtrate Detection Limit})$$

(iv) Challenge testing must be conducted under representative hydraulic conditions at the maximum design flux and maximum design process recovery specified by the manufacturer for the membrane module. Flux is defined as the throughput of a pressure driven membrane process expressed as flow per unit of membrane area. Recovery is defined as the volumetric percent of feed water that is converted to filtrate over the course of an operating cycle uninterrupted by events such as chemical cleaning or a solids removal process (i.e., backwashing).

(v) Removal efficiency of a membrane module must be calculated from the challenge test results and expressed as a log removal value according to the following equation:

$$LRV = LOG_{10}(C_f) - LOG_{10}(C_p)$$

Where:

LRV = log removal value demonstrated during the challenge test; C_f = the feed concentration measured during the challenge test; and C_p = the filtrate concentration measured during the challenge test. Equivalent units must be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, the term C_p is set equal to the detection limit for the purpose of calculating the LRV. An LRV must be calculated for each membrane module evaluated during the challenge test.

(vi) The removal efficiency of a membrane filtration process demonstrated during challenge testing must be expressed as a log removal value (LRVC-Test). If fewer than 20 modules are tested, then LRVC-Test is equal to the lowest of the representative LRVs among the modules tested. If 20 or more modules are tested, then LRVC-Test is equal to the 10th percentile of the representative LRVs among the modules tested. The percentile is defined by (i/(n+1)) where i is the rank of n individual data points ordered lowest to highest. If necessary, the 10th percentile may be calculated using linear interpolation.

(vii) The challenge test must establish a quality control release value (QCRV) for a non-destructive performance test that demonstrates the Cryptosporidium removal capability of the membrane filtration module. This performance test must be applied to each production membrane module used by the system that was not directly challenge tested in

order to verify Cryptosporidium removal capability. Production modules that do not meet the established QCRV are not eligible for the treatment credit demonstrated during the challenge test.

(viii) If a previously tested membrane is modified in a manner that could change the removal efficiency of the membrane or the applicability of the non-destructive performance test and associated QCRV, additional challenge testing to demonstrate the removal efficiency of, and determine a new QCRV for, the modified membrane must be conducted and submitted to the State.

(C) Direct integrity testing. Systems must conduct direct integrity testing in a manner that demonstrates a removal efficiency equal to or greater than the removal credit awarded to the membrane filtration process and meets the requirements described in clauses (i) through (vi). A direct integrity test is defined as a physical test applied to a membrane unit in order to identify and isolate integrity breaches (i.e., one or more leaks that could result in contamination of the filtrate).

(i) The direct integrity test must be independently applied to each membrane unit in service. A membrane unit is defined as a group of membrane modules that share common valving that allows the unit to be isolated from the rest of the system for the purpose of integrity testing or other maintenance.

(ii) The direct integrity method must have a resolution of 3 micrometers or less, where resolution is defined as the size of the smallest integrity breach that contributes to a response from the direct integrity test.

(iii) The direct integrity test must have a

sensitivity sufficient to verify the log treatment credit awarded to the membrane filtration process by the State, where sensitivity is defined as the maximum log removal value that can be reliably verified by a direct integrity test. Sensitivity must be determined using the approach in this clause as applicable to the type of direct integrity test the system uses. For direct integrity tests that use an applied pressure or vacuum, the direct integrity test sensitivity must be calculated according to the following equation:

$$LRV_{DIT} = LOG_{10} (Q_p / (VCF \times Q_{breach}))$$

Where:

LRV_{DIT} = the sensitivity of the direct integrity test; Q_p = total design filtrate flow from the membrane unit; Q_{breach} = flow of water from an integrity breach associated with the smallest integrity test response that can be reliably measured, and VCF = volumetric concentration factor. The volumetric concentration factor is the ratio of the suspended solids concentration on the high pressure side of the membrane relative to that in the feed water.

For direct integrity tests that use a particulate or molecular marker, the direct integrity test sensitivity must be calculated according to the following equation:

$$LRV_{DIT} = LOG_{10}(C_f) - LOG_{10}(C_p)$$

Where:

LRV_{DIT} = the sensitivity of the direct integrity test; C_f = the typical feed concentration of the marker used in the test; and C_p = the filtrate concentration of the marker from an integral membrane unit.

(iv) Systems must establish a control limit within the sensitivity limits of the direct integrity test that is indicative of an integral membrane unit capable of meeting the removal credit awarded by the State.

(v) If the result of a direct integrity test exceeds the control limit established under clause (iv), the system must remove the membrane unit from service. Systems must conduct a direct integrity test to verify any repairs, and may return the membrane unit to service only if the direct integrity test is within the established control limit.

(vi) Systems must conduct direct integrity testing on each membrane unit at a frequency of not less than once each day that the membrane unit is in operation. The State may approve less frequent testing, based on demonstrated process reliability, the use of multiple barriers effective for Cryptosporidium, or reliable process safeguards.

(D) Indirect integrity monitoring. Systems must conduct continuous indirect integrity monitoring on each membrane unit according to the criteria in clauses (i) through (v). Indirect integrity monitoring is defined as monitoring some aspect of filtrate water quality that is indicative of the removal of

particulate matter. A system that implements continuous direct integrity testing of membrane units in accordance with the criteria in paragraphs (2)(C)(i) through (v) is not subject to the requirements for continuous indirect integrity monitoring. Systems must submit a monthly report to the State summarizing all continuous indirect integrity monitoring results triggering direct integrity testing and the corrective action that was taken in each case.

(i) Unless the State approves an alternative parameter, continuous indirect integrity monitoring must include continuous filtrate turbidity monitoring.

(ii) Continuous monitoring must be conducted at a frequency of no less than once every 15 minutes.

(iii) Continuous monitoring must be separately conducted on each membrane unit.

(iv) If indirect integrity monitoring includes turbidity and if the filtrate turbidity readings are above 0.15 NTU for a period greater than 15 minutes (i.e., two consecutive 15-minute readings above 0.15 NTU), direct integrity testing must immediately be performed on the associated membrane unit as specified in paragraphs (2)(C)(i) through (v).

(v) If indirect integrity monitoring includes a state-approved alternative parameter and if the alternative parameter exceeds a state-approved control limit for a period greater than 15 minutes, direct integrity testing must immediately be performed on the associated membrane units as specified in paragraphs (2)(C)(i) through (v).

(3) Second stage filtration. Systems receive 0.5-log

Cryptosporidium treatment credit for a separate second stage of filtration that consists of sand, dual media, GAC, or other fine grain media following granular media filtration if the State approves. To be eligible for this credit, the first stage of filtration must be preceded by a coagulation step and both filtration stages must treat the entire plant flow taken from a surface water or GWUDI source. A cap, such as GAC, on a single stage of filtration is not eligible for this credit. The State must approve the treatment credit based on an assessment of the design characteristics of the filtration process.

(4) Slow sand filtration (as secondary filter). Systems are eligible to receive 2.5-log Cryptosporidium treatment credit for a slow sand filtration process that follows a separate stage of filtration if both filtration stages treat entire plant flow taken from a surface water or GWUDI source and no disinfectant residual is present in the influent water to the slow sand filtration process. The State must approve the treatment credit based on an assessment of the design characteristics of the filtration process. This paragraph does not apply to treatment credit awarded to slow sand filtration used as a primary filtration process.

(u) Inactivation toolbox components.

(1) Calculation of CT values.

(A) CT is the product of the disinfectant contact time (T, in minutes) and disinfectant concentration (C, in milligrams per liter). Systems with treatment credit for chlorine dioxide or ozone under paragraph (2) or (3) must calculate CT at least once each day, with both C and T measured during peak hourly flow as specified in 40 C.F.R. 141.74(a) through (b).

(B) Systems with several disinfection segments in sequence may calculate CT for each segment, where a disinfection segment is

defined as a treatment unit process with a measurable disinfectant residual level and a liquid volume. Under this approach, systems must add the Cryptosporidium CT values in each segment to determine the total CT for the treatment plant.

(2) CT values for chlorine dioxide and ozone.

(A) Systems receive the Cryptosporidium treatment credit listed in the table referenced at 40 C.F.R. 141.720(b)(1) by meeting the corresponding chlorine dioxide CT value for the applicable water temperature, as described in paragraph (1).

(B) Systems receive the Cryptosporidium treatment credit listed in the table referenced at 40 C.F.R. 141.720(b)(2) by meeting the corresponding ozone CT values for the applicable water temperature, as described in paragraph (1).

(3) Site-specific study. The State may approve alternative chlorine dioxide or ozone CT values to those listed in paragraph (2) on a site-specific basis. The State must base this approval on a site-specific study a system conducts that follows a state-approved protocol.

(4) Ultraviolet light. Systems receive Cryptosporidium, Giardia lamblia, and virus treatment credits for ultraviolet (UV) light reactors by achieving the corresponding UV dose values shown in subparagraph (A). Systems must validate and monitor UV reactors as described in subparagraphs (B) and (C) to demonstrate that they are achieving a particular UV dose value for treatment credit.

(A) UV dose table. The treatment credits listed in the table referenced at 40 C.F.R. 141.720(d)(1) are for UV light at a wavelength of 254 nm as produced by a low pressure mercury vapor lamp. To receive treatment credit for other lamp types, systems must demonstrate an equivalent germicidal dose through reactor validation

testing, as described in subparagraph (B). The UV dose values in this table are applicable only to post-filter applications of UV in filtered systems and to unfiltered systems.

(B) Reactor validation testing. Systems must use UV reactors that have undergone validation testing to determine the operating conditions under which the reactor delivers the UV dose required in subparagraph (A) (i.e., validated operating conditions). These operating conditions must include flow rate, UV intensity as measured by a UV sensor, and UV lamp status.

(i) When determining validated operating conditions, systems must account for the following factors: UV absorbance of the water; lamp fouling and aging; measurement uncertainty of on-line sensors; UV dose distributions arising from the velocity profiles through the reactor; failure of UV lamps or other critical system components; and inlet and outlet piping or channel configurations of the UV reactor.

(ii) Validation testing must include the following: Full scale testing of a reactor that conforms uniformly to the UV reactors used by the system and inactivation of a test microorganism whose dose response characteristics have been quantified with a low pressure mercury vapor lamp.

(iii) The State may approve an alternative approach to validation testing.

(C) Reactor monitoring.

(i) Systems must monitor their UV reactors to determine if the reactors are operating within validated conditions, as determined under subparagraph (B). This monitoring must include UV intensity as measured by a UV sensor,

flow rate, lamp status, and other parameters the State designates based on UV reactor operation. Systems must verify the calibration of UV sensors and must recalibrate sensors in accordance with a protocol the State approves.

(ii) To receive treatment credit for UV light, systems must treat at least 95 percent of the water delivered to the public during each month by UV reactors operating within validated conditions for the required UV dose, as described in subparagraphs (A) and (B). Systems must demonstrate compliance with this condition by the monitoring required under subparagraph (C)(i).

(v) Reporting requirements.

(1) Systems must report sampling schedules under subsection (c) and source water monitoring results under subsection (g) unless they notify the State that they will not conduct source water monitoring due to meeting the criteria of subsection (b)(4).

(2) Systems must report the use of uncovered finished water storage facilities to the State as described in subsection (o).

(3) Filtered systems must report their Cryptosporidium bin classification as described in subsection (k).

(4) Unfiltered systems must report their mean source water Cryptosporidium level as described in subsection (m).

(5) Systems must report disinfection profiles and benchmarks to the State as described in subsection (i) through (j) prior to making a significant change in disinfection practice.

(6) Systems must report to the State in accordance with the table referenced at 40 C.F.R. 141.721(f) for any microbial toolbox options used to comply with treatment requirements under subsection (l) or (m). Alternatively, the State

may approve a system to certify operation within required parameters for treatment credit rather than reporting monthly operational data for toolbox options.

(w) Recordkeeping requirements.

(1) Systems must keep results from the initial round of source water monitoring under subsection (b)(1) and the second round of source water monitoring under subsection (b)(2) until 3 years after bin classification under subsection (k) for filtered systems or determination of the mean Cryptosporidium level under subsection (k) for unfiltered systems for the particular round of monitoring.

(2) Systems must keep any notification to the State that they will not conduct source water monitoring due to meeting the criteria of subsection (b)(4) for 3 years.

(3) Systems must keep the results of treatment monitoring associated with microbial toolbox options under subsection (q) through (u) and with uncovered finished water reservoirs under subsection (o), as applicable, for 3 years.

(x) Requirements to respond to significant deficiencies identified in sanitary surveys performed by EPA.

(1) A sanitary survey is an onsite review of the water source (identifying sources of contamination by using results of source water assessments where available), facilities, equipment, operation, maintenance, and monitoring compliance of a PWS to evaluate the adequacy of the PWS, its sources and operations, and the distribution of safe drinking water.

(2) For the purposes of this section, a significant deficiency includes a defect in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that EPA determines to be causing, or has the potential for causing the introduction of contamination into the water delivered to consumers.

(3) For sanitary surveys performed by EPA, systems must respond in writing to significant deficiencies identified in sanitary survey reports no later than 45 days after receipt of the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey.

(4) Systems must correct significant deficiencies identified in sanitary survey reports according to the schedule approved by EPA, or if there is no approved schedule, according to the schedule reported under paragraph (3) if such deficiencies are within the control of the system. [Eff and comp 11/28/11; comp 5/2/14; am and comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2,340E-9; 42 U.S.C. §§300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, 300j-11; 40 C.F.R. §141.700 through §141.723)

§11-20-47 Treatment techniques for acrylamide and epichlorohydrin. Each public water system must certify annually in writing to the director (using third party or manufacturer's certification) that when acrylamide and epichlorohydrin are used in drinking water systems, the combination (or product) of dose and monomer level does not exceed the levels specified as follows:

Acrylamide	=	0.05 per cent dosed at 1 ppm (or equivalent);
Epichlorohydrin	=	0.01 per cent dosed at 20 ppm (or equivalent).

Certifications can rely on manufacturers or third parties, as approved by the director. [Eff and comp 1/2/93; am and comp 12/15/94; comp 10/13/97; comp 9/7/99; comp 11/30/02; comp 12/16/05; comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9)(Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2; 40 C.F.R. Parts 141 and 142,

§§141.111)

§11-20-48 Adoption of the national primary drinking water regulations for lead and copper. The national primary drinking water regulations for lead and copper, adopted under the Safe Drinking Water Act, and appearing at 40 C.F.R. Part 141, Subpart I, §§141.43, 141.80, 141.81, 141.82, 141.83, 141.84, 141.85, 141.86, 141.87, 141.88, 141.89, 141.90, and 141.91 are made a part of this chapter. For this chapter, "State" as used in these federal regulations means "State" or "director" as used in this chapter. [Eff and comp 12/15/94; am and comp 10/13/97; am and comp 9/7/99; am and comp 11/30/02; comp 12/16/05; am and comp 11/28/11; am and comp 5/2/14; am and comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2; 40 C.F.R. Parts 141 and 142, §§141.80, 141.81, 141.82, 141.83, 141.84, 141.85, 141.86, 141.87, 141.88, 141.89, 141.90, and 141.91)

§11-20-48.5 Consumer confidence reports. (a) The national primary drinking water regulations for consumer confidence reports, adopted under the Safe Drinking Water Act, and appearing at 40 C.F.R. Part 141, Subpart O; Subpart O, Appendix A; §§141.151(a) through (d), (f); 141.152(b) through (d), 141.153, 141.154, and 141.155(a) through (f), (h), are made a part of this chapter. For this chapter, "State" as used in these federal regulations means "State" or "director" as used in this chapter.

(b) In accordance with 40 C.F.R. §141.155(g), the governor may waive the mailing requirement of 40 C.F.R. §141.155(a), and if the governor does so, the requirements of 40 C.F.R. §141.155(g)(1) or (2) apply as appropriate. [Eff and comp 9/7/99; am and comp 11/30/02; am and comp 12/16/05; comp 11/28/11; comp 5/2/14; am and comp DEC 28 2017] (Auth: HRS §§340E-6, 340E-9) (Imp: HRS §§340E-6, 340E-9; 42 U.S.C. §§300g-3(c)(4); 40 C.F.R. Part 141, §§141.151,

141.152, 141.153, 141.154, and 141.155)

§11-20-49 REPEALED [R 11/28/11]

§11-20-50 Ground Water Rule. (a) General requirements and applicability.

(1) Scope of this section. The requirements of this section constitute National Primary Drinking Water Regulations.

(2) Applicability. This section applies to all public water systems that use ground water except that it does not apply to public water systems that combine all of their ground water with surface water or with ground water under the direct influence of surface water prior to treatment under section 11-20-46. For the purposes of this section, "ground water system" is defined as any public water system meeting this applicability statement, including consecutive systems receiving finished ground water.

(3) General requirements. Systems subject to this section must comply with the following requirements:

(A) Sanitary survey information requirements for all ground water systems as described in subsection (b).

(B) Microbial source water monitoring requirements for ground water systems that do not treat all of their ground water to at least 99.99 percent (4-log) treatment of viruses (using inactivation, removal, or a state-approved combination of 4-log virus inactivation and removal) before or at the first customer as described in subsection (c).

(C) Treatment technique requirements, described in subsection (d), that apply

to ground water systems that have fecally contaminated source waters, as determined by source water monitoring conducted under subsection (c), or that have significant deficiencies that are identified by the State or that are identified by EPA under SDWA section 1445. A ground water system with fecally contaminated source water or with significant deficiencies subject to the treatment technique requirements of this section must implement one or more of the following corrective action options: correct all significant deficiencies; provide an alternative source of water; eliminate the source of contamination; or provide treatment that reliably achieves at least 4-log treatment of viruses (using inactivation, removal, or a state-approved combination of 4-log virus inactivation and removal) before or at the first customer.

(D) Ground water systems that provide at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer are required to conduct compliance monitoring to demonstrate treatment effectiveness, as described in subsection (d)(2).

(E) If requested by the State, ground water systems must provide the State with any existing information that will enable the State to perform a hydrogeologic sensitivity assessment. For the purposes of this section, "hydrogeologic sensitivity assessment" is a determination of whether ground water systems obtain water from hydrogeologically sensitive settings.

(4) Compliance date. Ground water systems must comply, unless otherwise noted, with the requirements of this section beginning December 1, 2009.

(b) Sanitary surveys for ground water systems.

(1) Ground water systems must provide the State, at the State's request, any existing information that will enable the State to conduct a sanitary survey.

(2) For the purposes of this section, a "sanitary survey," as conducted by the State, includes but is not limited to, an onsite review of the water source(s) (identifying sources of contamination by using results of source water assessments or other relevant information where available), facilities, equipment, operation, maintenance, and monitoring compliance of a public water system to evaluate the adequacy of the system, its sources and operations and the distribution of safe drinking water.

(3) The sanitary survey must include an evaluation of the following applicable components:

(A) Source,
(B) Treatment,
(C) Distribution system,
(D) Finished water storage,
(E) Pumps, pump facilities, and controls,
(F) Monitoring, reporting, and data verification,
(G) System management and operation, and
(H) Operator compliance with chapter 11-25.

(c) Ground water source microbial monitoring and analytical methods.

(1) Triggered source water monitoring.

(A) General requirements. A ground water system must conduct triggered source water monitoring if the following conditions are identified and exist:

(i) The system does not provide at least 4-log treatment of viruses

(using inactivation, removal, or a state-approved combination of inactivation and removal) before or at the first customer for each ground water source; and

(ii) The system is notified that a sample collected under section 11-20-9.1(d) is total coliform-positive and the sample is not invalidated under section 11-20-9.1(c)(3) beginning April 1, 2016.

(B) Sampling requirements. A ground water system must collect, within 24 hours of notification of the total coliform-positive sample, at least one ground water source sample from each ground water source in use at the time the total coliform-positive sample was collected under section 11-20-9.1(d) beginning April 1, 2016, except as provided in clause (ii).

(i) The State may extend the 24-hour time limit on a case-by-case basis if the system cannot collect the ground water source water sample within 24 hours due to circumstances beyond its control. In the case of an extension, the State must specify how much time the system has to collect the sample.

(ii) If approved by the State, systems with more than one ground water source may meet the requirements of this subparagraph by sampling a representative ground water source or sources. If directed by the State, systems must submit for State approval a triggered source water monitoring plan that identifies one or more ground water sources that are

representative of each monitoring site in the system's sample siting plan under section 11-20-9.1(c) beginning April 1, 2016, and that the system intends to use for representative sampling under this paragraph.

(iii) Beginning April 1, 2016, a ground water system serving 1,000 people or fewer may use a repeat sample collected from a ground water source to meet both the requirements of section 11-20-9.1 and to satisfy the monitoring requirements of this subparagraph for that ground water source. If the repeat sample collected from the ground water source is *E. coli* positive, the system must comply with paragraph (1)(C).

(C) Additional requirements. If the State does not require corrective action under subsection (d)(1)(B) for an *E. coli*-positive source water sample collected under subparagraph (B) that is not invalidated under paragraph (4), the system must collect five additional source water samples from the same source within 24 hours of being notified of the *E. coli*-positive sample.

(D) Consecutive and Wholesale Systems.

(i) In addition to the other requirements of this paragraph, a consecutive ground water system that has a total coliform-positive sample collected under section 11-20-9.1(d) beginning April 1, 2016, must notify the wholesale system(s) within 24 hours of being notified of the total coliform-positive sample.

(ii) In addition to the other requirements of this paragraph, a wholesale ground water system that receives notice from a consecutive system it serves that a sample collected under section 11-20-9.1(d) beginning April 1, 2016, is total coliform-positive must, within 24 hours of being notified, collect a sample from its ground water source(s) under subparagraph (B) and analyze it for *E. coli* under paragraph (3). If the collected source water sample is *E. coli*-positive, the wholesale ground water system must notify all consecutive systems served by that ground water source of the *E. coli* source water positive within 24 hours of being notified of the ground water source sampling monitoring result and must meet the requirements of subparagraph (C).

(E) Exceptions to the Triggered Source Water Monitoring Requirements. A ground water system is not required to comply with the source water monitoring requirements of paragraph (1) if either of the following conditions exists:

(i) The State determines, and documents in writing, that the total coliform-positive sample collected under section 11-20-9.1(d) beginning April 1, 2016, is caused by a distribution system deficiency; or

(ii) The total coliform-positive sample collected under section 11-20-9.1(d) beginning April 1, 2016, is collected at a location that meets State criteria for distribution

system conditions that will cause total coliform-positive samples.

(2) Assessment Source Water Monitoring. If directed by the State, ground water systems must conduct assessment source water monitoring that meets state-determined requirements for such monitoring. A ground water system conducting assessment source water monitoring may use a triggered source water sample collected under paragraph (1)(B) to meet the requirements of this paragraph. State-determined assessment source water monitoring requirements may include:

(A) Collection of a total of 12 ground water source samples that represent each month the system provides ground water to the public,

(B) Collection of samples from each well unless the system obtains written state approval to conduct monitoring at one or more wells within the ground water system that are representative of multiple wells used by that system and that draw water from the same hydrogeologic setting,

(C) Collection of a standard sample volume of at least 100 mL for *E. coli* analysis regardless of the analytical method used,

(D) Analysis of all ground water source samples using one of the analytical methods listed in paragraph (3)(B) for the presence of *E. coli*,

(E) Collection of ground water source samples at a location prior to any treatment of the ground water source unless the State approves a sampling location after treatment, and

(F) Collection of ground water source samples at the well itself unless the system's configuration does not allow

for sampling at the well itself and the State approves an alternative sampling location that is representative of the water quality of that well.

(3) Analytical methods.

(A) A ground water system subject to the source water monitoring requirements of paragraph (1) must collect a standard sample volume of at least 100 mL for *E. coli* analysis regardless of the analytical method used.

(B) A ground water system must analyze all ground water source samples collected under paragraph (1) using one of the analytical methods listed in the following table for the presence of *E. coli* or one of the alternative methods listed in Appendix A to Subpart C, 40 C.F.R. Part 141:

Analytical Methods for Source Water Monitoring

Fecal indicator[1]	Methodology	Method citation
E. coli	Colilert[3]	9223 B.[2]
	Colisure[3]	9223 B.[2]
	Membrane Filter Method with MI Agar	EPA Method 1604.[4]
	m-ColiBlue24 Test[5]	
	E*Colite Test[6]	
	EC-MUG[7]	
	NA-MUG[7]	9221 F.[2]
		9221 G.[2]

Analyses must be conducted in accordance with the documents listed below. The Director of the Federal Register approves the incorporation by reference of the documents listed in footnotes 2-7 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Copies may be inspected at EPA's Drinking Water Docket, EPA West, 1301 Constitution Avenue, NW., EPA West, Room B102, Washington DC 20460 (Telephone:

202-566-2426); or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

[1] The time from sample collection to initiation of analysis may not exceed 30 hours. The ground water system is encouraged but is not required to hold samples below 10°C during transit.

[2] Methods are described in Standard Methods for the Examination of Water and Wastewater 20th edition (1998) and copies may be obtained from the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005-2605.

[3] Medium is available through IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, Maine 04092.

[4] EPA Method 1604: Total Coliforms and *Escherichia coli* in Water by Membrane Filtration Using a Simultaneous Detection Technique (MI Medium); September 2002, EPA 821-R-02-024. Method is available at *http://www.epa.gov/nerlcwww/1604sp02.pdf* or from EPA's Water Resource Center (RC-4100T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

[5] A description of the m-ColiBlue24 Test, "Total Coliforms and *E. coli* Membrane Filtration Method with m-ColiBlue24® Broth," Method No. 10029 Revision 2, August 17, 1999, is available from Hach Company, 100 Dayton Ave., Ames, IA 50010 or from EPA's Water Resource Center (RC-4100T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

[6] A description of the E*Colite Test, "Charm E*Colite Presence/Absence Test for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Drinking Water, January 9, 1998, is available from Charm Sciences, Inc., 659 Andover St., Lawrence, MA 01843-1032 or from EPA's Water Resource Center (RC-4100T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

[7] EC-MUG (Method 9221F) or NA-MUG (Method 9222G) can be used for *E. coli* testing step as described in section 11-20-9(h)(6)(A) or section 11-20-9(h)(6)(B)

after use of Standard Methods 9221 B, 9221 D, 9222 B or 9222 C.

(4) Invalidation of an *E. coli*-positive ground water source sample.

(A) A ground water system may obtain State invalidation of an *E. coli*-positive ground water source sample collected under paragraph (1) only under the following conditions:

(i) The system provides the State with written notice from the laboratory that improper sample analysis occurred; or

(ii) The State determines and documents in writing that there is substantial evidence that an *E. coli*-positive ground water source sample is not related to source water quality.

(B) If the State invalidates an *E. coli*-positive ground water source sample, the ground water system must collect another source water sample under paragraph (1) within 24 hours of being notified by the State of its invalidation decision and have it analyzed for the *E. coli* using the analytical methods in paragraph (3). The State may extend the 24-hour time limit on a case-by-case basis if the system cannot collect the source water sample within 24 hours due to circumstances beyond its control. In the case of an extension, the State must specify how much time the system has to collect the sample.

(5) Sampling location.

(A) Any ground water source sample required under paragraph (1) must be collected at a location prior to any treatment of the ground water source unless the

State approves a sampling location after treatment.

(B) If the system's configuration does not allow for sampling at the well itself, the system may collect a sample at a state-approved location to meet the requirements of paragraph (1) if the sample is representative of the water quality of that well.

(6) New Sources. If directed by the State, a ground water system that places a new ground water source into service after November 30, 2009, must conduct assessment source water monitoring under paragraph (2). If directed by the State, the system must begin monitoring before the ground water source is used to provide water to the public.

(7) Public Notification. A ground water system with a ground water source sample collected under paragraph (1) or paragraph (2) that is *E. coli*-positive and that is not invalidated under paragraph (4), including consecutive systems served by the ground water source, must conduct public notification under section 11-20-18(b).

(8) Monitoring Violations. Failure to meet the requirements of paragraphs (1) through (6) is a monitoring violation and requires the ground water system to provide public notification under section 11-20-18(d).

(d) Treatment technique requirements for ground water systems.

(1) Ground water systems with significant deficiencies or source water fecal contamination.

(A) The treatment technique requirements of this section must be met by ground water systems when a significant deficiency is identified or when a ground water source sample collected under subsection (c)(1)(C) is *E. coli*-positive.

(B) If directed by the State, a ground water system with a ground water source sample collected under subsections (c)(1)(B), (c)(1)(D), or (c)(2) that is *E. coli*-positive must comply with the treatment technique requirements of this section.

(C) When a significant deficiency is identified at a system regulated under section 11-20-46 that uses both ground water and surface water or ground water under the direct influence of surface water, the system must comply with provisions of this subsection except in cases where the State determines that the significant deficiency is in a portion of the distribution system that is served solely by surface water or ground water under the direct influence of surface water.

(D) Unless the State directs the ground water system to implement a specific corrective action, the ground water system must consult with the State regarding the appropriate corrective action within 30 days of receiving written notice from the State of a significant deficiency, written notice from a laboratory that a ground water source sample collected under subsection (c)(1)(C) was found to be *E. coli*-positive, or direction from the State that an *E. coli*-positive sample collected under subsections (c)(1)(B), (c)(1)(D), or (c)(2) requires corrective action. For the purposes of this section, significant deficiencies include, but are not limited to, defects in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage or distribution system that the

State determines to be causing, or have potential for causing, the introduction of contamination into the water delivered to consumers.

(E) Within 120 days (or earlier if directed by the State) of receiving written notification from the State of a significant deficiency, written notice from a laboratory that a ground water source sample collected under subsection (c)(1)(C) was found to be *E. coli*-positive, or direction from the State that an *E. coli*-positive sample collected under subsections (c)(1)(B), (c)(1)(D), or (c)(2) requires corrective action, the ground water system must either:

(i) Have completed corrective action in accordance with applicable State plan review processes or other State guidance or direction, if any, including state-specified interim measures; or

(ii) Be in compliance with a state-approved corrective action plan and schedule subject to the following conditions: Any subsequent modifications to a state-approved corrective action plan and schedule must also be approved by the State; and if the State specifies interim measures for protection of the public health pending State approval of the corrective action plan and schedule or pending completion of the correction action plan, the system must comply with these interim measures as well as with any schedule specified by the State.

(F) Corrective Action Alternatives. Ground water systems that meet the conditions of subparagraphs (A) or (B) must implement one or more of the following corrective action alternatives:
(i) Correct all significant deficiencies;
(ii) Provide an alternate source of water;
(iii) Eliminate the source of contamination; or
(iv) Provide treatment that reliably achieves at least 4-log treatment of viruses (using inactivation, removal, or a state-approved combination of 4-log virus inactivation and removal) before or at the first customer for the ground water source.

(G) Special notice to the public of significant deficiencies or source water fecal contamination.
(i) In addition to the applicable public notification requirements of section 11-20-18(b), a community ground water system that receives notice from the State of a significant deficiency or notification of an *E. coli*-positive ground water source sample that is not invalidated by the State under subsection (c)(4) must inform the public served by the water system under section 11-20-48.5 of the *E. coli*-positive source sample or of any significant deficiency that has not been corrected. The system must continue to inform the public annually until the significant deficiency is corrected or the fecal

contamination in the ground water source is determined by the State to be corrected under subparagraph (E).

(ii) In addition to the applicable public notification requirements of section 11-20-18(b), a non-community ground water system that receives notice from the State of a significant deficiency must inform the public served by the water system in a manner approved by the State of any significant deficiency that has not been corrected within 12 months of being notified by the State, or earlier if directed by the State. The system must continue to inform the public annually until the significant deficiency is corrected. The information must include: The nature of the significant deficiency and the date the significant deficiency was identified by the State; the state-approved plan and schedule for correction of the significant deficiency, including interim measures, progress to date, and any interim measures completed; and for systems with a large proportion of non-English speaking consumers, as determined by the State, information in the appropriate language(s) regarding the importance of the notice or a telephone number or address where consumers may contact the system to obtain a translated copy of the notice or assistance in the appropriate language.

(iii) If directed by the State, a non-community water system with significant deficiencies that have been corrected must inform its customers of the significant deficiencies, how the deficiencies were corrected, and the dates of correction under clause (ii).

(2) Compliance monitoring.

(A) Existing ground water sources. A ground water system that is not required to meet the source water monitoring requirements of this subpart for any ground water source because it provides at least 4-log treatment of viruses (using inactivation, removal, or a state-approved combination of 4-log virus inactivation and removal) before or at the first customer for any ground water source before December 1, 2009, must notify the State in writing that it provides at least 4-log treatment of viruses (using inactivation, removal, or a state-approved combination of 4-log virus inactivation and removal) before or at the first customer for the specified ground water source and begin compliance monitoring in accordance with subparagraph (C) by December 1, 2009. Notification to the State must include engineering, operational, or other information that the State requests to evaluate the submission. If the system subsequently discontinues 4-log treatment of viruses (using inactivation, removal, or a state-approved combination of 4-log virus inactivation and removal) before or at the first customer for a ground water source, the system must conduct ground

water source monitoring as required under subsection (c).

(B) New ground water sources. A ground water system that places a ground water source in service after November 30, 2009, that is not required to meet the source water monitoring requirements of this subpart because the system provides at least 4-log treatment of viruses (using inactivation, removal, or a state-approved combination of 4-log virus inactivation and removal) before or at the first customer for the ground water source must comply with the following requirements:

(i) The system must notify the State in writing that it provides at least 4-log treatment of viruses (using inactivation, removal, or a state-approved combination of 4-log virus inactivation and removal) before or at the first customer for the ground water source. Notification to the State must include engineering, operational, or other information that the State requests to evaluate the submission.

(ii) The system must conduct compliance monitoring as required under subparagraph (C) within 30 days of placing the source in service.

(iii) The system must conduct ground water source monitoring under subsection (c) if the system subsequently discontinues 4-log treatment of viruses (using inactivation, removal, or a state-approved combination of 4-log virus inactivation and removal) before or at the first

customer for the ground water source.

(C) Monitoring requirements. A ground water system subject to the requirements of paragraph (1), subparagraphs (A) or (B) must monitor the effectiveness and reliability of treatment for that ground water source before or at the first customer as follows:

(i) Chemical disinfection. *Ground water systems serving greater than 3,300 people.* A ground water system that serves greater than 3,300 people must continuously monitor the residual disinfectant concentration using analytical methods specified in section 11-20-46(d)(1)(B) at a location approved by the State and must record the lowest residual disinfectant concentration each day that water from the ground water source is served to the public. The ground water system must maintain the state-determined residual disinfectant concentration every day the ground water system serves water from the ground water source to the public. If there is a failure in the continuous monitoring equipment, the ground water system must conduct grab sampling every four hours until the continuous monitoring equipment is returned to service. The system must resume continuous residual disinfectant monitoring within 14 days. *Ground water systems serving 3,300 or fewer people.* A ground water system that serves 3,300 or

fewer people must monitor the residual disinfectant concentration using analytical methods specified in section 11-20-46(d)(1)(B) at a location approved by the State and record the residual disinfection concentration each day that water from the ground water source is served to the public. The ground water system must maintain the state-determined residual disinfectant concentration every day the ground water system serves water from the ground water source to the public. The ground water system must take a daily grab sample during the hour of peak flow or at another time specified by the State. If any daily grab sample measurement falls below the state-determined residual disinfectant concentration, the ground water system must take follow-up samples every four hours until the residual disinfectant concentration is restored to the state-determined level. Alternatively, a ground water system that serves 3,300 or fewer people may monitor continuously and meet the requirements of ground water systems serving greater than 3,300 people of this clause.

(ii) Membrane filtration. A ground water system that uses membrane filtration to meet the requirements of this section must monitor the membrane filtration process in accordance with all state-specified monitoring

requirements and must operate the membrane filtration in accordance with all state-specified compliance requirements. A ground water system that uses membrane filtration is in compliance with the requirement to achieve at least 4-log removal of viruses when: The membrane has an absolute molecular weight cut-off (MWCO), or an alternate parameter that describes the exclusion characteristics of the membrane, that can reliably achieve at least 4-log removal of viruses; the membrane process is operated in accordance with state-specified compliance requirements; and the integrity of the membrane is intact.

(iii) Alternative treatment. A ground water system that uses a State-approved alternative treatment to meet the requirements of this subpart by providing at least 4-log treatment of viruses (using inactivation, removal, or a state-approved combination of 4-log virus inactivation and removal) before or at the first customer must: Monitor the alternative treatment in accordance with all state-specified monitoring requirements; and operate the alternative treatment in accordance with all compliance requirements that the State determines to be necessary to achieve at least 4-log treatment of viruses.

(3) Discontinuing treatment. A ground water system may discontinue 4-log treatment of

viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer for a ground water source if the State determines and documents in writing that 4-log treatment of viruses is no longer necessary for that ground water source. A system that discontinues 4-log treatment of viruses is subject to the source water monitoring and analytical methods requirements of subsection (c).

(4) Failure to meet the monitoring requirements of subsection (d)(2) is a monitoring violation and requires the ground water system to provide public notification under section 11-20-18(d).

(e) Treatment technique violations for ground water systems.

(1) A ground water system with a significant deficiency is in violation of the treatment technique requirement if, within 120 days (or earlier if directed by the State) of receiving written notice from the State of the significant deficiency, the system:

(A) Does not complete corrective action in accordance with any applicable state plan review processes or other state guidance and direction, including state-specified interim actions and measures, or

(B) Is not in compliance with a state-approved corrective action plan and schedule.

(2) Unless the State invalidates an *E. coli*-positive ground water source sample under subsection (c)(4), a ground water system is in violation of the treatment technique requirement if, within 120 days (or earlier if directed by the State) of meeting the conditions of subsections (d)(1)(A) or (d)(1)(B), the system:

(A) Does not complete corrective action in accordance with any applicable state plan review processes or other state guidance and direction, including state-specified interim measures, or

(B) Is not in compliance with a State-approved corrective action plan and schedule.

(3) A ground water system subject to the requirements of subsection (d)(2)(C) that fails to maintain at least 4-log treatment of viruses (using inactivation, removal, or a state-approved combination of 4-log virus inactivation and removal) before or at the first customer for a ground water source is in violation of the treatment technique requirement if the failure is not corrected within four hours of determining the system is not maintaining at least 4-log treatment of viruses before or at the first customer.

(4) A ground water system must give public notification under section 11-20-18(c) for the treatment technique violations specified in paragraphs (1), (2) and (3).

(f) Reporting and recordkeeping for ground water systems.

(1) Reporting. In addition to the requirements of section 11-20-17, a ground water system regulated under this section must provide the following information to the State:

(A) A ground water system conducting compliance monitoring under subsection (d)(2) must notify the State any time the system fails to meet any state-specified requirements including, but not limited to, minimum residual disinfectant concentration, membrane operating criteria or membrane integrity, and alternative treatment operating criteria, if operation in accordance with the criteria or requirements is not restored within

four hours. The ground water system must notify the State as soon as possible, but in no case later than the end of the next business day.

(B) After completing any corrective action under subsection (d)(1), a ground water system must notify the State within 30 days of completion of the corrective action.

(C) If a ground water system subject to the requirements of subsection (c)(1) does not conduct source water monitoring under subsection (c)(1)(E)(ii), the system must provide documentation to the State within 30 days of the total coliform positive sample that it met the State criteria.

(2) Recordkeeping. In addition to the requirements of section 11-20-19, a ground water system regulated under this subpart must maintain the following information in its records:

(A) Documentation of corrective actions. Documentation shall be kept for a period of not less than ten years.

(B) Documentation of notice to the public as required under subsection (d)(1)(G). Documentation shall be kept for a period of not less than three years.

(C) Records of decisions under subsection (c)(1)(E)(ii) and records of invalidation of *E.coli*-positive ground water samples under subsection (c)(4). Documentation shall be kept for a period of not less than five years.

(D) For consecutive systems, documentation of notification to the wholesale system(s) of total-coliform positive samples that are not invalidated under section 11-20-9.1(c) beginning April 1, 2016. Documentation shall be kept for a period of not less than five years.

(E) For systems, including wholesale systems, that are required to perform compliance monitoring under subsection (d)(2):

(i) Records of the state-specified minimum disinfectant residual. Documentation shall be kept for a period of not less than ten years.

(ii) Records of the lowest daily residual disinfectant concentration and records of the date and duration of any failure to maintain the state-prescribed minimum residual disinfectant concentration for a period of more than four hours. Documentation shall be kept for a period of not less than five years.

(iii) Records of state-specified compliance requirements for membrane filtration and of parameters specified by the State for state-approved alternative treatment and records of the date and duration of any failure to meet the membrane operating, membrane integrity, or alternative treatment operating requirements for more than four hours. Documentation shall be kept for a period of not less than five years. [Eff and comp 5/2/14; am and comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C.

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§§300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, 300j-11; 40 C.F.R. Part 141, §§141.400, 141.401, 141.402, 141.403, 141.404, and 141.405)

§11-20-51 to §11-20-99 (Reserved)

§11-20-100 Severability clause. If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions of applications 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 and comp 11/28/11; comp 5/2/14; comp DEC 28 2017] (Auth: HRS §§340E-2, 340E-9) (Imp: HRS §§340E-2, 340E-9; 42 U.S.C. §§300g-1, 300g-2; 40 C.F.R. Parts 141, 142, 142.10)

Amendments to and compilation of chapter 20 title 11, Hawaii Administrative Rules, on the Summary Page dated DEC 28 2017 were adopted on DEC 28 2017 following a public hearing held on March 15, 2017, after public notice was given statewide in the Honolulu Star Advertiser, The Maui News, the Hawaii Tribune-Herald, West Hawaii Today and The Garden Island on February 6, 2017.

These amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.

VIRGINIA PRESSLER, M.D.
Director of Health

DAVID Y. IGE
Governor
State of Hawaii

Dated: 12-15-2017

APPROVED AS TO FORM:

Deputy Attorney General

Filed

20-353

APPENDIX A
STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION (FEBRUARY 13, 2013)

Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
National Primary Drinking Water Regulations (NPDWR) A. Microbiological Contaminants			
1a. Total Coliform †	Zero	See footnote[3]	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.
1b. Fecal Coliform/*E. coli* †	Zero	Zero	Fecal coliforms and *E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems
1c. Fecal indicator (GWR)	Zero	TT	Fecal indicators are microbes whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
i. *E. coli*	None	TT	

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STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION (FEBRUARY 13, 2013)

Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
1d. Ground Water Rule (GWR) TT violations	None	TT	Inadequately treated or inadequately protected water may contain disease-causing organisms. These organisms can cause symptoms such as diarrhea, nausea, cramps, and associated headaches.
1e. Subpart Y Coliform Assessment and/or Corrective Action Violations ‡	N/A	TT	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, waterborne pathogens may be present or that a potential pathway exists through which contamination may enter the drinking water distribution system. We found coliforms indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessments to identify problems and to correct any problems that are found. [THE SYSTEM MUST USE THE FOLLOWING APPICABLE SENTENCES.] We failed to conduct the required assessment. We failed to correct all identified sanitary defects that were found during the assessment(s).
1f. Subpart Y *E. coli* Assessment and/or Corrective Actions Violations ‡	N/A	TT	*E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea,

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APPENDIX A
STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION (FEBRUARY 13, 2013)

Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
			cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems. We violated the standard for *E. coli*, indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct a detailed assessment to identify problems and to correct any problems that are found. [THE SYSTEM MUST USE THE FOLLOWING APPLICABLE SENTENCES.] We failed to conduct the required assessment. We failed to correct all identified sanitary defects that were found during the assessment that we conducted.
1g. E. coli ‡	Zero	In compliance unless one of the following conditions occurs: (1) The system has an E.coli-positive repeat sample following a total coliform-po	*E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems.

Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
		sitive routine sample. (2) The system has a total coliform-positive repeat sample following an E. coli-positive routine sample. (3) The system fails to take all require repeat samples following an E. coli-positive routine sample. (4) The system fails to test for E. coli when any repeat sample tests positive for	

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APPENDIX A
STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION (FEBRUARY 13, 2013)

Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
		total coliform.	
2a. Turbidity (MCL)[4]	None	1 NTU[5]/5 NTU	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.
2b. Turbidity (SWTR TT)[6]	None	TT[7]	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.
2c. Turbidity (IESWTR TT and LT1ESWTR)[8]	None	TT	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.

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Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
B. Surface Water Treatment Rule (SWTR), Interim Enhanced Surface Water Treatment Rule (IESWTR) and Filter Backwash Recycling Rule (FBRR) violations			
3. Giardia Lamblia (SWTR/IESWTR/LT1ESWTR) 4. Viruses (SWTR/IESWTR/LT1ESWTR) 5. Heterotrophic plate count (HPC) bacteria[9] (SWTR/IESWTR/LT1ESWTR) 6. Legionella (SWTR/IESWTR/LT1ESWTR) 7. Cryptosporidium (IESWTR/FBRR/LT1ESWTR)	Zero	TT[10]	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

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Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
C. Inorganic Chemicals (IOCs)			
8. Antimony	0.006	0.006	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
9. Arsenic[11]	None	0.010	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
10. Asbestos (10Φm)	7 MFL[12]	7 MFL	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
11. Barium	2	2	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.
12. Beryllium	0.004	0.004	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.
13. Cadmium	0.005	0.005	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.
14. Chromium (total)	0.1	0.1	Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.

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Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
15. Cyanide	0.2	0.2	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.
16. Fluoride	4.0	4.0	Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.
17. Mercury (inorganic)	0.002	0.002	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.
18. Nitrate	10	10	Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
19. Nitrite	1	1	Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
20. Total Nitrate and	10	10	Infants below the age of six months who

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Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
Nitrite			drink water containing nitrate and nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
21. Selenium	0.05	0.05	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.
22. Thallium	0.0005	0.002	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.

Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
D. Lead and Copper Rule			
23. Lead	Zero	TT[13]	Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.
24. Copper	1.3	TT[14]	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.

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Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
E. Synthetic Organic Chemicals (SOCs)			
25. 2,4-D	0.07	0.07	Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
26. 2,4,5-TP (Silvex)	0.05	0.05	Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.
27. Alachlor	Zero	0.002	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.
28. Atrazine	0.003	0.003	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.
29. Benzo(a)pyrene (PAHs)	Zero	0.0002	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
30. Carbofuran	0.04	0.04	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.

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Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
31. Chlordane	Zero	0.002	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.
32. Dalapon	0.2	0.2	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.
33. Di (2-ethylhexyl) adipate	0.4	0.4	Some people who drink water containing di(2-ethylhexyl)adipate well in excess of the MCL over many years could experience general toxic effects or reproductive difficulties.
34. Di (2-ethylhexyl) phthalate	Zero	0.006	Some people who drink water containing di (2-ethylhexyl) phthalate in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
35. Dibromochloropropane (DBCP)	Zero	0.00004	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
36. Dinoseb	0.007	0.007	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
37. Dioxin (2,3,7,8-TCDD)	Zero	3×10^{-8}	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive

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Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
			difficulties and may have an increased risk of getting cancer.
38. Diquat	0.02	0.02	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.
39. Endothall	0.1	0.1	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
40. Endrin	0.002	0.002	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
41. Ethylene dibromide	Zero	0.00004	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.
42. Glyphosate	0.7	0.7	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.
43. Heptachlor	Zero	0.0004	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.
44. Heptachlor epoxide	Zero	0.0002	Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of

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Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
			getting cancer.
45. Hexachlorobenzene	Zero	0.001	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.
46. Hexachlorocyclo -pentadiene	0.05	0.05	Some people who drink water containing hexachlorocyclo-pentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.
47. Lindane	0.0002	0.0002	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
48. Methoxychlor	0.04	0.04	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.
49. Oxamyl (Vydate)	0.2	0.2	Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.
50. Pentachlorophenol	Zero	0.001	Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.

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Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
51. Picloram	0.5	0.5	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
52. Polychlorinated biphenyls (PCBs)	Zero	0.0005	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
53. Simazine	0.004	0.004	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
54. Toxaphene	Zero	0.003	Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, and may have an increased risk of getting cancer.
55. 1,2,3-Trichloro propane		0.0006	Some people who drink water containing TCP in excess of the MCL over many years could experience problems with their nervous system, respiratory system, reproductive system, liver and may have an increased risk of getting cancer.

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Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
F. Volatile Organic Chemicals (VOCs)			
56. Benzene	Zero	0.005	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.
57. Carbon tetrachloride	Zero	0.005	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
58. Chlorobenzene (monochloro-benzene)	0.1	0.1	Some people who drink water containing Chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
59. *o*-Dichlorobenzene	0.6	0.6	Some people who drink water containing *o*-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.
60. *p*-Dichlorobenzene	0.075	0.075	Some people who drink water containing *p*-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.
61. 1,2-Dichloroethane	Zero	0.005	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.

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Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
62. 1,1-Dichloro ethylene	0.007	0.007	Some people who drink water containing 1-1 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
63. *cis*-1,2-Dichloro ethylene	0.07	0.07	Some people who drink water containing *cis*-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
64. *trans*-1,2-Dichloro ethylene	0.1	0.1	Some people who drink water containing *trans*-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
65. Dichloromethane	Zero	0.005	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
66. 1,2-Dichloro propane	Zero	0.005	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
67. Ethylbenzene	0.7	0.7	Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.
68. Styrene	0.1	0.1	Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.

Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
69. Tetrachloro ethylene	Zero	0.005	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.
70. Toluene	1	1	Some people who drink water containing toluene in excess of the MCL over many years could have problems with their nervous system, kidneys or liver.
71. 1,2,4-Trichloro benzene	0.07	0.07	Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
72. 1,1,1-Trichloro ethane	0.2	0.2	Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
73. 1,1,2-Trichloro ethane	0.003	0.005	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.
74. Trichloroethylene	Zero	0.005	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
75. Vinyl chloride	Zero	0.002	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of

Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
76. Xylenes (total)	10	10	getting cancer. Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.
G. Radioactive Contaminants			
77. Beta/photon emitters	Zero	4 mrem/yr[15]	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.
78. Alpha emitters	Zero	15 pCi/L[16]	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
79. Combined radium (226 & 228)	Zero	5 pCi/L	Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased

Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
80. Uranium[17]	Zero	30 µg/L	risk of getting cancer. Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.
H. Disinfection Byproducts (DBPs), Byproduct Precursors, and Disifectant Residuals: Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). EPA sets standards for controlling the levels of disinfectants and DBPs in drinking water, including trihalomethanes (THMs) and haloacetic acids (HAAs)[18]			
81. Total trihalomethanes (TTHMs)	N/A	0.080[19, 20]	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system, and may have an increased risk of getting cancer.
82. Haloacetic Acids (HAA)	N/A	0.060[21]	Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.
83. Bromate	Zero	0.010	Some people who drink water containing bromate in excess of the MCL over many

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Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
			years may have an increased risk of getting cancer.
84. Chlorite	0.08	1.0	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
85. Chlorine	4 (MRDLG)[22]	4.0 (MRDL)[23]	Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.
86. Chloramines	4 (MRDLG)	4.0 (MRDL)	Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
87a. Chlorine dioxide, where any 2 consecutive daily samples taken at the entrance to the distribution system are above the MRDL.	0.8 (MRDLG)	0.8 (MRDL)	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. *Add for public notification only:* the

Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
			chlorine dioxide violations reported today are the result of exceedances at the treatment facility only, not within the distribution system which delivers water to consumers. Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to consumers.
87b. Chlorine dioxide, where one or more distribution system samples are above the MRDL.	0.8 (MRDLG)	0.8 (MRDL)	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. *Add for public notification only:* The chlorine dioxide violations reported today include exceedances of the EPA standard within the distribution system which delivers water to consumers. Violations of the chlorine dioxide standard within the distribution system may harm human health based on short-term exposures. Certain groups, including fetuses, infants, and young children, may be especially susceptible to nervous system effects from excessive chlorine dioxide exposure
88. Control of DBP	None	TT	Total organic carbon (TOC) has no health

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Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard Health Effects Language for Public Notification
precursors (TOC)			effects. However, total organic carbon provides a medium for the formation of disinfection byproducts. These byproducts include trihalomethanes (THMs) and haloacetic acids (HAAs). Drinking water containing these byproducts in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.
I. Other Treatment Techniques			
89. Acrylamide	Zero	TT	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.
90. Epichlorohydrin	Zero	TT	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.

Footnotes to Appendix A
† Until March 31, 2016.
‡ Beginning April 1, 2016.
1. MCLG - Maximum contaminant level goal.
2. MCL - Maximum contaminant level.
3. For water systems analyzing at least 40 samples per month, no more than 5.0 percent of the monthly samples may be positive for total coliforms. For systems analyzing fewer than 40 samples per month,

no more than one sample per month may be positive for total coliforms.

4. There are various regulations that set turbidity standards for different types of systems, including 40 C.F.R. 141.13, and the 1989 Surface Treatment Rule, the 1998 Interim Enhanced Surface Water Treatment Rule and the 2002 Long Term 1 Enhanced Surface Water Treatment Rule. The MCL for the monthly turbidity average is 1 NTU; the MCL for the 2-day average is 5 NTU for systems that are required to filter but have not yet installed filtration (40 C.F.R. 141.13).
5. NTU - Nephelometric turbidity unit.
6. There are various regulations that set turbidity standards for different types of systems, including 40 C.F.R. 141.13, the 1989 Surface Water Treatment Rule, the 1998 Interim Enhanced Surface Water Treatment Rule, and the 2002 Long Term 1 Enhanced Surface Water Treatment Rule. Systems subject to the Surface Water Treatment Rule (both filtered and unfiltered) may not exceed 5 NTU. In addition, in filtered systems, 95 percent of samples each month must not exceed 0.5 NTU in systems using conventional or direct filtration and must not exceed 1 NTU in systems using slow sand or diatomaceous earth filtration or other filtration technologies approved by the state.
7. TT - Treatment technique.
8. There are various regulations that set turbidity standards for different types of systems, including 40 C.F.R. 141.13, the 1989 Surface Water Treatment Rule (SWTR), the 1998 Interim Enhanced Surface Water Treatment Rule (IESWTR), and the 2002 Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR). For systems subject to the IESWTR (systems serving at least 10,000 people, using surface water or ground water under the direct influence of surface water), that use conventional filtration or direct filtration, after January 1, 2002, the turbidity level of a system's combined filter effluent may not exceed 0.3 NTU in at least 95 percent of monthly measurements, and the turbidity level of a systems's combined filter effluent must not exceed 1 NTU at any time. Systems subject to the IESWTR using technologies other than conventional, direct, slow sand, or diatomaceous earth filtration must meet turbidity limits set by the state. For systems subject to the LT1ESWTR (systems serving fewer than 10,000 people, using surface water or ground water under the direct influence of surface water) that use conventional filtration or direct filtration, after January 14, 2005 the turbidity level of a system's combined filter effluent may not exceed 0.3 NTU in at least 95 percent of the monthly measurements, and the turbidity level of a system's combined filter effluent must not exceed 1 NTU at any time. Systems subject to the LT1ESWTR using technologies other than conventional, direct, slow sand, or diatomaceous earth filtration must meet turbidity limits set by the State.
9. The bacteria detected by heterotrophic plate count (HPC) are not necessarily harmful. HPC is simply an alternative method of determining disinfectant residual levels. The number of such bacteria is an indicator of whether there is enough disinfectant in the distribution system.
10. SWTR, IESWTR, and LT1ESWTR treatment technique violations that involve turbidity exceedances may use the health effects language for turbidity instead.

11. These arsenic values are effective January 23, 2006. Until then, the MCL is 0.05 mg/L and there is no MCLG
12. Millions fibers per liter.
13. Action Level = 0.015 mg/L.
14. Action Level = 1.3 mg/L.
15. Millirems per years.
16. Picocuries per liter.
17. The uranium MCL is effective December 8, 2003 for all community water systems.
18. Surface water systems and ground water systems under the direct influence of surface water are regulated under Subpart H of 40 C.F.R. 141. Subpart H community and non-transient non-community systems serving $\geq$ 10,000 must comply with section 11-20-45.1 DBP MCLs and disinfectant maximum residual disinfectant levels (MRDLs) beginning January 1, 2002. All other community and non-transient non-community systems must comply with section 11-20-45.1 DBP MCLs and disinfectant MRDLs beginning January 1, 2004. Subpart H transient non-community systems serving 10,000 or more persons that use chlorine dioxide as a disinfectant or oxidant must comply with the chlorine dioxide MRDL beginning January 1, 2002. Subpart H transient non-community systems serving fewer than 10,000 persons and systems using only ground water not under the direct influence of surface water that use chlorine dioxide as a disinfectant or oxidant must comply with the chlorine dioxide MRDL beginning January 1, 2004.
19. Community and non-transient non-community systems must comply with Stage 2 Disinfection Byproduct TTHM and HAA5 MCLs of 0.080 mg/L and 0.060 mg/L, respectively (with compliance calculated as a locational running annual average) on the schedule in section 11-20-45.3(a)(3).
20. The MCL for total trihalomethanes is the sum of the concentrations of the individual trihalomethanes.
21. The MCL for haloacetic acids is the sum of the concentrations of the individual haloacetic acids.
22. MRDLG - Maximum residual disinfectant level goal.
23. MRDL - Maximum residual disinfectant level.

APPENDIX B
ROUTINE MONITORING FREQUENCY FOR TTHM AND HAA5 (HAR §11-20-45.1(c)(2)(A))

Type of System	Minimum Monitoring Frequency	Sample Location in the distribution system
Subpart H system serving at least 10,000 persons.	Four water samples per quarter per treatment plant.	At least 25 per-cent of all samples collected each quarter at locations representing maximum residence time. Remaining samples taken at locations representative of at least average residence time in the distribution system and representing the entire distribution system, taking into account number of persons served, different sources of water, and different treatment methods[1].
Subpart H system serving from 500 to 9,999 persons.	One water sample per quarter per treatment plant.	Locations representing maximum residence time[1].

APPENDIX B
ROUTINE MONITORING FREQUENCY FOR TTHM AND HAA5 (HAR §11-20-45.1(c)(2)(A))

Type of System	Minimum Monitoring Frequency	Sample Location in the distribution system
Subpart H system serving fewer than 500 persons.	One sample per year per treatment plant during month of warmest water temperature.	Locations representing maximum residence time[1]. If the sample (or average of annual samples, if more than one sample is taken) exceeds MCL, system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets reduced monitoring criteria in HAR §11-20-45.1(c)(2)(A)(iv).
System using only ground water not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons.	One water sample per quarter per treatment plant[2].	Locations representing maximum residence time[1].

APPENDIX B
ROUTINE MONITORING FREQUENCY FOR TTHM AND HAA5 (HAR §11-20-45.1(c)(2)(A))

Type of System	Minimum Monitoring Frequency	Sample Location in the distribution system
System using only ground water not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons.	One sample per year per treatment plant[2] during month of warmest water temperature	Locations representing maximum residence time[1]. If the sample (or average of annual samples, if more than one sample is taken) exceeds MCL, system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets criteria in HAR §11-20-45.1(c)(2)(A)(iv).

[1]If a system elects to sample more frequently than the minimum required, at least 25 percent of all samples collected each quarter (including those taken in excess of the required frequency) must be taken at locations that represent the maximum residence time of the water in the distribution system. The remaining samples must be taken at locations representative of at least average residence time in the distribution system.

[2]Multiple wells drawing water from a single aquifer may be considered one treatment plant for determining the minimum number of samples required, with State approval in accordance with criteria developed under HAR §11-20-45.1(c)(1)(B).

APPENDIX C
REDUCED MONITORING FREQUENCY FOR TTHM AND HAA5 (HAR §11-20-45.1(c)(2)(A))

If you are a...	You may reduce monitoring if you have monitored at least one year and your...	To this level
Subpart H system serving at least 10,000 persons which has a source water annual average TOC level, before any treatment, of <4.0 mg/L.	TTHM annual average <0.040 mg/L and HAA5 annual average <0.030 mg/L.	One sample per treatment plant per quarter at distribution system location reflecting maximum residence time.
Subpart H system serving from 500 to 9,999 persons which has a source water annual average TOC level, before any treatment, of <4.0 mg/L.	TTHM annual average <0.040 mg/L and HAA5 annual average <0.030 mg/L.	One sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature. NOTE: Any Subpart H system serving fewer than 500 persons may not reduce its monitoring to less than one sample per treatment plant per year.

APPENDIX C
REDUCED MONITORING FREQUENCY FOR TTHM AND HAA5 (HAR §11-20-45.1(c)(2)(A))

If you are a...	You may reduce monitoring if you have monitored at least one year and your...	To this level
System using only groundwater not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons.	TTHM annual average <0.040 mg/L and HAA5 annual average <0.030 mg/L.	One sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature.
System using only ground water not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons.	TTHM annual average <0.040 mg/L and HAA5 annual average <0.030 mg/L for two consecutive years OR TTHM annual average <0.020 mg/L and HAA5 annual average <0.015 mg/L for one year.	One sample per treatment plant per three year monitoring cycle at distribution system location reflecting maximum residence time during month of warmest water temperature, with the three-year cycle beginning on January 1 following quarter in which system qualifies for reduced monitoring.

APPENDIX D

REPORTING REQUIREMENTS FOR DISINFECTION BYPRODUCTS (HAR §11-20-45.1(e)(2))

If you are a ...	You must report...[1]
1. System monitoring for TTHM and HAA5 under the requirements of §11-20-45.1(c)(2) on a quarterly or more frequent basis.	I. The number of samples taken during the last quarter. II. The location, date and result of each sample taken during the last quarter. III. The arithmetic average of all samples taken in the last quarter. IV. The annual arithmetic average of the quarterly arithmetic averages of this section for the last four quarters. V. Whether, based on HAR §11-20-45.1(d)(2)(A), the MCL was violated.
2. System monitoring for TTHM and HAA5 under the requirements of §11-20-45.1(c)(2) less frequently than quarterly (but at least annually).	I. The number of samples taken during the last year. II. The location, date and result of each sample taken during the last monitoring period. III. The arithmetic average of all samples taken over the last year. IV. Whether, based on HAR §11-20-45.1(d)(2)(A), the MCL was exceeded.

APPENDIX D
REPORTING REQUIREMENTS FOR DISINFECTION BYPRODUCTS (HAR §11-20-45.1(e)(2))

3. System monitoring for TTHM and HAA5 under the requirements of §11-20-45.1(c)(2) less frequently than annually.	I. The location, date and result of the last sample taken. II. Whether, based on HAR §11-20-45.1(d)(2)(A), the MCL was violated.
4. System monitoring for chlorite under the requirements of §11-20-45.1(c)(2).	I. The number of entry point samples taken each month for the last 3 months. II. The location, date and result of each sample (both entry point and distribution system) taken during the last quarter. III. For each month in the reporting period, the arithmetic average of all samples taken in each 3-samples set taken in the distribution system. IV. Whether, based on HAR §11-20-45.1(d)(2)(C), the MCL was violated, and how many times it was violated each month.

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APPENDIX D

REPORTING REQUIREMENTS FOR DISINFECTION BYPRODUCTS (HAR §11-20-45.1(e)(2))

5.	System monitoring for bromate under the requirements of §11-20-45.1(c)(2).	I. The number of samples taken during the last quarter. II. The location, date and result of each sample taken during the last quarter. III. The arithmetic average of the monthly arithmetic averages of all samples taken in the last year. IV. Whether, based on HAR §11-20-45.1(d)(2)(B) the MCL was violated.

[1]The State may choose to perform calculations and determine whether the MCL was exceeded, in lieu of having the system report that information.

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APPENDIX E
REPORTING REQUIREMENTS FOR DISINFECTANT RESIDUALS (HAR §11-20-45.1(e)(3))

If you are a ...	You must report...[1]
1. System monitoring for chlorine or chloramines under the requirements of §11-20-45.1(c)(3).	I. The number of samples taken during each month of the last quarter. II. The monthly arithmetic average of all samples taken in each month for the last 12 months. III. The arithmetic average of the monthly averages for the last 12 months. IV. Whether, based on §11-20-45.1(d)(3)(A), the MRDL was violated.
2. System monitoring for chlorine dioxide under the requirements of §11-20-45.1(c)(3).	I. The dates, result, and locations of samples taken during the last quarter. II. Whether, based on §11-20-45.1(d)(3)(B), the MRDL was violated. III. Whether the MRDL was exceeded in any two consecutive daily samples and whether the resulting violation was acute or nonacute.

[1]The State may choose to perform calculations and determine whether the MRDL was exceeded, in lieu of having the system report that information.

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APPENDIX F
REPORTING REQUIREMENTS FOR DISINFECTION BYPRODUCT PRECURSORS AND ENHANCED COAGULATION OR ENHANCED SOFTENING (HAR §11-20-45.1(e)(4))

If you are a ...	You must report...[1]
1. System monitoring monthly or quarterly for TOC under the requirements of §11-20-45.1(c)(4) and required to meet the enhanced coagulation or enhanced softening requirements in §11-20-45.1(f)(2)(B) or (C).	I. The number of paired (source water and treated water) samples taken during the last quarter. II. The location, date and results of each paired sample and associated alkalinity taken during the last quarter. III. For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal. IV. Calculations for determining compliance with the TOC percent removal requirements, as provided in §11-20-45.1(f)(3)(A). V. Whether the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements in §11-20-45.1(f)(2) for the last four quarters.

APPENDIX F
REPORTING REQUIREMENTS FOR DISINFECTION BYPRODUCT PRECURSORS AND ENHANCED COAGULATION OR ENHANCED SOFTENING (HAR §11-20-45.1(e)(4))

2. System monitoring monthly or quarterly for TOC under the requirements of §11-20-45.1(c)(4) and meeting one or more of the alternative compliance criteria in §11-20-45.1(f)(1)(B) or (C).	I. The alternative compliance criterion that the system is using. II. The number of paired samples taken during the last quarter. III. The location, date and result of each paired sample and associated alkalinity taken during the last quarter. IV. The running annual arithmetic average based on monthly averages (or quarterly samples) of source water TOC for systems meeting a criterion in §11-20-45.1(f)(1)(B)(i) or (iii) or of treated water TOC for systems meeting the criterion in §11-20-45.1(f)(1)(B)(ii). V. The running annual arithmetic average based on monthly averages (or quarterly samples) of source water SUVA for systems meeting the criterion in §11-20-45.1(f)(1)(B)(v) or of treated water SUVA for systems meeting the criterion in §11-20-45.1(f)(1)(B)(vi).

APPENDIX F
REPORTING REQUIREMENTS FOR DISINFECTION BYPRODUCT PRECURSORS AND ENHANCED COAGULATION OR ENHANCED SOFTENING (HAR §11-20-45.1(e)(4))

	VI. The running annual average of source water alkalinity for systems meeting the criterion in §11-20-45.1(f)(1)(B)(iii) and of treated water alkalinity for systems meeting the criterion in §11-20-45.1(f)(1)(C)(i). VII. The running annual average for both TTHM and HAA5 for systems meeting the criterion in §11-20-45.1(f)(1)(B)(iii) or (iv). VIII. The running annual average of the amount of magnesium hardness removal (as $CaCo_3$ in mg/L) for systems meeting the criterion in §11-20-45.1(f)(1)(C)(ii). IX. Whether the system is in compliance with the particular alternative compliance criterion in §11-20-45.1(f)(1)(B) or (C).

[1]The State may choose to perform calculations and determine whether the treatment technique was met, in lieu of having the system report that information.

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APPENDIX G

NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE (FEBRUARY 13, 2013)[1]

Contaminant	MCL/MRDL/TT Violations[2]		Monitoring & Testing Procedure Violations	
	Tier of Public Notice Required	Citation	Tier of Public Notice Required	Citation
I. Violations of National Primary Drinking Water Regulations (NPDWR)[3]				
A. Microbiological Contaminants				
1.a Total coliform bacteria †	2	141.63(a)	3	141.21 (a)-(e)
1.b Total coliform (Monitoring or TT violations resulting from failure to perform assessments or corrective actions) ‡	2	141.860(b)	3	141.860(c)
2.a Fecal coliform/ E. coli †	1	141.63(b)	- [4]1, 3	141.21(e)
2.b E. coli ‡	1	141.860(a)	3	141.860(c) 141.860(d)(2)
2.c E. coli (TT violations resulting from failure to perform level 2 Assessments or corrective action)	2	141.860(b)	.....	.....
3. Turbidity MCL	2	141.13(a)	3	141.22
4. Turbidity MCL (average of 2 days= samples >5NTU	[5]2, 1	141.13(b)	3	141.22
5. Turbidity (for TT violations resulting from a single exceedance of maximum allowable turbidity	[6]2, 1	141.71(a)(2), 141.71(c)(2)(i), 141.73(a)(2), 141.73(b)(2), 141.73(c)(2),	3	141.74(a)(1), 141.74(b)(2), 141.74(c)(1), 141.174 141.560(a)-(c)

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NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE (FEBRUARY 13, 2013)[1]

Contaminant	MCL/MRDL/TT Violations[2]		Monitoring & Testing Procedure Violations	
	Tier of Public Notice Required	Citation	Tier of Public Notice Required	Citation
level)		141.73(d), 141.173(a)(2), 141.173(b) 141.551(b)		141.561
6. Surface Water Treatment Rule violations, other than violations resulting from single exceedance of max. allowable turbidity level (TT)	2	141.70-141.73	3	141.74
7. Interim Enhanced Surface Water Treatment Rule violations, other than violations resulting from single exceedance of max. turbidity level (TT)	2	[7]141.170-141.173 141.500-141.553	3	141.172, 141.174 141.530-141.544 141.560-141.564
8. Filter Backwash Recycling Rule violations	2	141.76(c)	3	141.76(b),(d)
9. Long Term 1 Enhanced Surface Water Treatment Rule violations	2	141.500-141.553	3	141.530-141.544, 141.560-141.564
10. LT2ESWTR violations	2	141.710-141.720	[22]2,3	141.701-141.705 and 141.708-141.709
11. Ground Water Rule violations	2	141.404	3	141.402(h), 141.403(d)

APPENDIX G

NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE (FEBRUARY 13, 2013)[1]

Contaminant	MCL/MRDL/TT Violations[2]		Monitoring & Testing Procedure Violations	
	Tier of Public Notice Required	Citation	Tier of Public Notice Required	Citation
B. Inorganic Chemicals (IOCs)				
1. Antimony	2	141.62(b)	3	141.23(a), (c)
2. Arsenic	2	[8]141.11(b)	3	[11]141.23(a), (c)
3. Asbestos (fibers >10 µm)	2	141.62(b)	3	141.23(a)-(b)
4. Barium	2	141.62(b)	3	141.23(a), (c)
5. Beryllium	2	141.62(b)	3	141.23(a), (c)
6. Cadmium	2	141.62(b)	3	141.23(a), (c)
7. Chromium (total)	2	141.62(b)	3	141.23(a), (c)
8. Cyanide	2	141.62(b)	3	141.23(a), (c)
9. Fluoride	2	141.62(b)	3	141.23(a), (c)
10. Mercury (inorganic)	2	141.62(b)	3	141.23(a), (c)
11. Nitrate	1	141.62(b)	[12]1, 3	141.23(a), (d), 141.23(f)(2)
12. Nitrite	1	141.62(b)	[12]1, 3	141.23(a), (e), 141.23(f)(2)
13. Total Nitrate and Nitrite	1	141.62(b)	3	141.23(a)
14. Selenium	2	141.62(b)	3	141.23(a), (c)
15. Thallium	2	141.62(b)	3	141.23(a), (c)
C. Lead and Copper Rule (Action Level for lead is 0.015 mg/L, for copper is 1.3 mg/L)				
1. Lead and Copper Rule (TT)	2	141.80-141.85	3	141.86-141.89
D. Synthetic Organic Chemicals (SOCs)				
1. 2,4-D	2	141.61(c)	3	141.24(h)
2. 2,4,5-TP (Silvex)	2	141.61(c)	3	141.24(h)
3. Alachlor	2	141.61(c)	3	141.24(h)

APPENDIX G

NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE (FEBRUARY 13, 2013)[1]

Contaminant	MCL/MRDL/TT Violations[2]		Monitoring & Testing Procedure Violations	
	Tier of Public Notice Required	Citation	Tier of Public Notice Required	Citation
4. Atrazine	2	141.61(c)	3	141.24(h)
5. Benzo(a)pyrene (PAHs)	2	141.61(c)	3	141.24(h)
6. Carbofuran	2	141.61(c)	3	141.24(h)
7. Chlordane	2	141.61(c)	3	141.24(h)
8. Dalapon	2	141.61(c)	3	141.24(h)
9. Di (2-ethylhexyl) adipate	2	141.61(c)	3	141.24(h)
10. Di (2-ethylhexyl) phthalate	2	141.61(c)	3	141.24(h)
11. Dibromochloropropane	2	141.61(c)	3	141.24(h)
12. Dinoseb	2	141.61(c)	3	141.24(h)
13. Dioxin (2,3,7,8-TCDD)	2	141.61(c)	3	141.24(h)
14. Diquat	2	141.61(c)	3	141.24(h)
15. Endothall	2	141.61(c)	3	141.24(h)
16. Endrin	2	141.61(c)	3	141.24(h)
17. Ethylene dibromide	2	141.61(c)	3	141.24(h)
18. Glyphosate	2	141.61(c)	3	141.24(h)
19. Heptachlor	2	141.61(c)	3	141.24(h)
20. Heptachlor epoxide	2	141.61(c)	3	141.24(h)
21. Hexachlorobenzene	2	141.61(c)	3	141.24(h)
22. Hexachlorocyclo-pentadiene	2	141.61(c)	3	141.24(h)
23. Lindane	2	141.61(c)	3	141.24(h)
24. Methoxychlor	2	141.61(c)	3	141.24(h)
25. Oxamyl (Vydate)	2	141.61(c)	3	141.24(h)
26. Pentachlorophenol	2	141.61(c)	3	141.24(h)
27. Picloram	2	141.61(c)	3	141.24(h)
28. Polychlorinated biphenyls (PCBs)	2	141.61(c)	3	141.24(h)
29. Simazine	2	141.61(c)	3	141.24(h)
30. Toxaphene	2	141.61(c)	3	141.24(h)

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NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE (FEBRUARY 13, 2013)[1]

Contaminant	MCL/MRDL/TT Violations[2]		Monitoring & Testing Procedure Violations	
	Tier of Public Notice Required	Citation	Tier of Public Notice Required	Citation
31. 1,2,3-Trichloropropane	2	11-20-4(d)	3	11-20-12(e)
E. Volatile Organic Chemicals (VOCs)				
1. Benzene	2	141.61(a)	3	141.24(f)
2. Carbon tetrachloride	2	141.61(a)	3	141.24(f)
3. Chlorobenzene (monochlorobenzene)	2	141.61(a)	3	141.24(f)
4. o-Dichlorobenzene	2	141.61(a)	3	141.24(f)
5. p-Dichlorobenzene	2	141.61(a)	3	141.24(f)
6. 1,2-Dichloroethane	2	141.61(a)	3	141.24(f)
7. 1,1-Dichloroethylene	2	141.61(a)	3	141.24(f)
8. cis-1,2-Dichloroethylene	2	141.61(a)	3	141.24(f)
9. trans-1,2-Dichloroethylene	2	141.61(a)	3	141.24(f)
10. Dichloromethane	2	141.61(a)	3	141.24(f)
11. 1,2-Dichloropropane	2	141.61(a)	3	141.24(f)
12. Ethylbenzene	2	141.61(a)	3	141.24(f)
13. Styrene	2	141.61(a)	3	141.24(f)
14. Tetrachloroethylene	2	141.61(a)	3	141.24(f)
15. Toluene	2	141.61(a)	3	141.24(f)
16. 1,2,4-Trichlorobenzene	2	141.61(a)	3	141.24(f)
17. 1,1,1-Trichloroethane	2	141.61(a)	3	141.24(f)
18. 1,1,2-Trichloroethane	2	141.61(a)	3	141.24(f)
19. Trichloroethylene	2	141.61(a)	3	141.24(f)
20. Vinyl chloride	2	141.61(a)	3	141.24(f)
21. Xylenes (total)	2	141.61(a)	3	141.24(f)

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NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE (FEBRUARY 13, 2013)[1]

Contaminant	MCL/MRDL/TT Violations[2]		Monitoring & Testing Procedure Violations	
	Tier of Public Notice Required	Citation	Tier of Public Notice Required	Citation
F. Radioactive Contaminants				
1. Beta/photon emitters	2	141.66(d)	3	141.25(a), 141.26(b)
2. Alpha emitters	2	141.66(c)	3	141.25(a), 141.26(a)
3. Combined radium (226 & 228)	2	141.66(b)	3	141.25(a), 141.26(a)
4. Uranium	[9]2	141.66(e)	[10]3	141.25(a), 141.26(a)
G. Disinfection Byproducts (DBPs), Byproduct Precursors, Disinfectant Residuals. Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). EPA sets standards for controlling the levels of disinfectants and DBPs in drinking water, including trihalomethanes (THMs) and haloacetic acids (HAAs).[13]				
1. Total trihalomethanes (TTHMs)	2	[14]141.64(b)	3	141.132(a)-(b) 141.600-141.605, 141.620-141.629
2. Haloacetic Acids (HAA5)	2	141.64(b)	3	141.132(a)-(b) 141.600-141.605,

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NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE (FEBRUARY 13, 2013)[1]

Contaminant	MCL/MRDL/TT Violations[2]		Monitoring & Testing Procedure Violations	
	Tier of Public Notice Required	Citation	Tier of Public Notice Required	Citation
				141.620-141.629
3. Bromate	2	141.64(a)	3	141.132(a)-(b)
4. Chlorite	2	141.64(a)	3	141.132(a)-(b)
5. Chlorine (MRDL)	2	141.65(a)	3	141.132.(a),(c)
6. Chloramine (MRDL)	2	141.65(a)	3	141.132(a),(c)
7. Chlorine dioxide (MRDL), where any 2 consecutive daily samples at entrance to distribution system only are above MRDL	2	141.65(a) 141.133(c)(3)	[15]2, 3	141.132(a), (c), 141.133(c)(2)
8. Chlorine dioxide (MRDL), where samples(s) in distribution system the next day are also above MRDL	[16]1	141.65(a), 141.133(c)(3)	1	141.132(a), (c), 141.133(c)(2)
9. Control of DBP precursors- TOC (TT)	2	141.135(a)-(b)	3	141.132(a), (d)
10. Bench marking and disinfection profiling	N/A	N/A	3	141.172 141.530-141.544
11. Development of monitoring plan	N/A	N/A	3	141.132(f)
H. Other Treatment Techniques				
1. Acrylamide (TT)	2	141.111	N/A	N/A
2. Epichlorohydrin (TT)	2	141.111	N/A	N/A
II. Unregulated Contaminant Monitoring[17]:				
A. Unregulated contaminants	N/A	N/A	3	141.40
B. Nickel	N/A	N/A	3	141.23(c), (k)

APPENDIX G

NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE (FEBRUARY 13, 2013)[1]

Contaminant	MCL/MRDL/TT Violations[2]		Monitoring & Testing Procedure Violations	
	Tier of Public Notice Required	Citation	Tier of Public Notice Required	Citation
III. Public Notification for Variances and Exemptions:				
A. Operation under a variance or exemption	3	[18]1415, 1416	N/A	N/A
B. Violation of conditions of a variance or exemption	2	1415, 1416, [19]142.307	N/A	N/A
IV. Other Situations Requiring Public Notification:				
A. Fluoride secondary maximum contaminant level (SMCL) exceedance	3	143.3	N/A	N/A
B. Exceedance of nitrate MCL for non-community systems, as allowed by State	1	141.11(d)	N/A	N/A
C. Availability of unregulated contaminant monitoring data	3	141.40	N/A	N/A
D. Waterborne disease outbreak	1	141.2, 141.71(c)(2)(ii)	N/A	N/A
E. Other waterborne emergency[20]	1	N/A	N/A	N/A
F. Source Water Sample Positive for GWR Fecal indicators: *E. coli*, enterococci, or coliphage	1	141.402(g)	N/A	N/A
G. Other situations as determined by the State	[21]1, 2, 3	N/A	N/A	N/A

APPENDIX G - FOOTNOTES

† Until March 31, 2016.

‡ Beginning April 1, 2016.

1. Violations and other situations not listed in this table (e.g. failure to prepare Consumer Confidence Reports), do not require notice, unless otherwise determined by the state. States may, at their option, also require a more stringent public notice tier (e.g. Tier 1 instead of Tier 2 or Tier 2 instead of Tier 3) for specific violations and situations listed in this Appendix, as authorized under §141.202(a) and §141.203(a).
2. MCL-Maximum contaminant level, MRDL-Maximum residual disinfectant level, TT-Treatment technique.
3. The term Violations of National Primary Drinking Water Regulations (NPDWR) is used here to include violations of MCL, MRDL, treatment technique, monitoring, and testing procedure requirements.
4. Failure to test for fecal coliform or E. coli is a Tier 1 violation if testing is not done after any repeat sample tests positive for coliform. All other total coliform monitoring and testing procedure violations are Tier 3.
5. Systems that violate the turbidity MCL of 5 NTU based on an average of measurements over two consecutive days must consult with the state within 24 hours after learning of the violation. Based on this consultation, the state may subsequently decide to elevate the violation to Tier 1. If a system is unable to make contact with the state in the 24-hour period, the violation is automatically elevated to Tier 1.
6. Systems with treatment technique violations involving a single exceedance of a maximum turbidity limit under the Surface Water Treatment Rule (SWTR), the Interim Enhanced Surface Water Treatment rule (IESWTR) or the Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR) are required to consult with the state within 24 hours after learning of the violation. Based on this consultation, the state may subsequently decide to elevate the violation to Tier 1. If a system is unable to make contact with the state in the 24-hour period, the violation is automatically elevated to Tier 1.
7. Most of the requirements of the Interim Enhanced Surface Water Treatment Rule (63FR69477) (40C.F.R. §§141.170-141.171, 141.173-141.174) become effective January 1, 2002 for Subpart H systems (surface water systems and ground water systems under the direct influence of surface water) serving at least 10,000 persons. However, 40C.F.R. §141.172 has some requirements that become effective as early as April 16, 1999. The Surface Water Treatment Rule remains in effect for systems serving at least 10,000 persons even after 2002; the Interim Enhanced Surface Water Treatment Rule adds additional requirements and does not in many cases supercede the SWTR.
8. The arsenic MCL citations are effective January 23, 2006. Until then, the citations are §141.11 (b) and §141.23 (n).
9. The uranium MCL Tier 2 violation citations are effective December 8, 2003 for all community water systems.
10. The uranium Tier 3 violation citations are effective December 8, 2000 for all community water systems.

11. The arsenic Tier 3 violation MCL citations are effective January 23, 2006. Until then, the citations are §141.23(a), (1).
12. Failure to take a confirmation sample within 24 hours for nitrate or nitrite after an initial sample exceeds the MCL is a Tier 1 violation. Other monitoring violations for nitrate are Tier 3.
13. Subpart H community and non-transient non-community systems serving > 10,000 must comply with new DBP MCLs, disinfectant MRDLs, and related monitoring requirements beginning January 1, 2002. All other community and non-transient non-community systems must meet the MCLs and MRDLs beginning January 1, 2004. Subpart H transient non-community systems serving 10,000 or more persons and using chlorine dioxide as a disinfectant or oxidant must comply with the chlorine dioxide MRDL beginning January 1, 2002. Subpart H transient non-community systems serving fewer than 10,000 persons and using only ground water not under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant must comply with the chlorine dioxide MRDL beginning January 1, 2004.
14. §141.64(b)(1) and §141.132(a)-(b) apply until §§141.620-141.630 take effect under the schedule in §141.620(c).
15. Failure to monitor for chlorine dioxide at the entrance to the distribution system the day after exceeding the MRDL at the entrance to the distribution system is a Tier 2 violation.
16. If any daily sample taken at the entrance to the distribution system exceeds the MRDL for chlorine dioxide and one or more samples taken in the distribution system the next day exceed the MRDL, Tier 1 notification is required. Failure to take the required samples in the distribution system after the MRDL is exceeded at the entry point also triggers Tier 1 notification.
17. Some water systems must monitor for certain unregulated contaminants listed in 40 C.F.R. §141.40.
18. This citation refers to §§1415 and 1416 of the Safe Drinking Water Act. §§1415 and 1416 require that "a schedule prescribed...for a public water system granted a variance (or exemption) shall require compliance by the system..."
19. In addition to §§1415 and 1416 of the Safe Drinking Water Act, 40 C.F.R. 142.307 specifies the items and schedule milestones that must be included in a variance for small systems.
20. Other waterborne emergencies require a Tier 1 public notice under §141.202(a) for situations that do not meet the definition of a waterborne disease outbreak given in 40 C.F.R. 141.2 but that still have the potential to have serious adverse effects on health as a result of short-term exposure. These could include outbreaks not related to treatment deficiencies, as well as situations that have the potential to cause outbreaks, such as failures or significant interruption in water treatment processes, natural disasters that disrupt the water supply or distribution system, chemical spills, or unexpected loading of possible pathogens into the source water.
21. States may place other situations in any tier they believe appropriate, based on threat to public health.
22. Failure to collect three or more samples for *Cryptosporidium* analysis is a Tier 2 violation requiring special notice as specified in §141.211. All other monitoring and testing procedure violations are

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a Tier 3.

APPENDIX H

LIST OF ACRONYMS USED IN PUBLIC NOTIFICATION REGULATION

CCR	Consumer Confidence Report
CWS	Community Water System
DBP	Disinfection Byproduct
EPA	Environmental Protection Agency
GWR	Ground Water Rule
HPC	Heterotrophic Plate Count
IESWTR	Interim Enhanced Surface Water Treatment Rule
IOC	Inorganic Chemical
LCR	Lead and Copper Rule
LT1ESWTR	Long Term 1 Enhanced Surface Water Treatment Rule
MCL	Maximum Contaminant Level
MCLG	Maximum Contaminant Level Goal
MRDL	Maximum Residual Disinfectant Level
MRDLG	Maximum Residual Disinfectant Level Goal
NCWS	Non-Community Water System
NPDWR	National Primary Drinking Water Regulation
NTNCWS	Non-Transient Non-Community Water System
NTU	Nephelometric Turbidity Unit
OGWDW	Office of Ground Water and Drinking Water
OW	Office of Water
PN	Public Notification
PWS	Public Water System
SDWA	Safe Drinking Water Act
SMCL	Secondary Maximum Contaminant Level
SOC	Synthetic Organic Chemical
SWTR	Surface Water Treatment Rule
TCR	Total Coliform Rule
TT	Treatment Technique
TWS	Transient Non-Community Water System
VOC	Volatile Organic Chemical

APPENDIX I

Table C - List of Small Systems Compliance Technologies for Radionuclides And Limitations to Use

Unit technologies	Limitations (see footnotes)	Operator skill level required[1]	Raw water quality range and considerations[1]
1. Ion exchange (IE)	(a)	Intermediate	All ground waters
2. Point of Use (POU)[2] (IE)	(b)	Basic	All ground waters
3. Reverse osmosis (RO)	(c)	Advanced	Surface waters usually require prefiltration
4. POU[2] (RO)	(b)	Basic	Surface waters usually require prefiltration
5. Lime softening	(d)	Advanced	All waters
6. Green sand filtration	(e)	Basic	
7. Co-precipitation with Barium sulfate	(f)	Intermediate to Advanced	Ground water with suitable water quality
8. Electroidalysis/electrodialysis reversal		Basic to intermediate	All ground waters
9. Pre-formed hydrous Manganese oxide filtration	(g)	Intermediate	All ground waters
10. Activated alumina	(a),(h)	Advanced	All ground waters, competing anion concentrations may affect regeneration frequency
11. Enhanced coagulation/filtration	(i)	Advanced	Can treat a wide range of water qualities

1. National Research Council (NRC), Safe Water from Every Tap: Improving Water Service to Small Communities. National Academy Press, Washington, D.C. 1997
2. A POU, or "point-of-use" technology is a treatment device installed at a single tap used for the purpose of reducing contaminants in drinking water at that one tap. POU devices are typically installed at the kitchen tap. See the April 21, 2000 NODA for more details.

Limitations Footnotes: Technologies for Radionuclides

a The regeneration solution contains high concentrations of the contaminant ions. Disposal options should be carefully considered before choosing this technology.
b When POU devices are used for compliance, programs for long-term operation, maintenance, and monitoring must be provided by water utility to ensure proper performance.
c Reject water disposal options should be carefully considered before choosing the technology. See other RO limitations described in the SWTR Compliance Technologies Table.
d The combination of variable source water quality and the complexity of the water chemistry involved may make this technology too complex for small surface water systems.
e Removal efficiencies can vary depending on water quality.
f The technology may be very limited in application to small systems. Since the process requires static mixing, detention basins, and filtration, it is most applicable to systems with sufficiently high sulfate levels that already have a suitable filtration treatment train in place.
g This technology is most applicable to small systems that already have filtration in place.
h Handling of chemicals required during regeneration and pH adjustment may be too difficult for small systems without an adequately trained operator.
i Assumes modification to a coagulation/filtration process already in place.

APPENDIX J

Table D - Compliance Technologies by System Size Category for Radionuclide NPDWR's

Contaminant	Compliance technologies[1] for system size categories (population served)		3,300 - 10,000
	25 - 500	501 - 3,300	
1. Combined radium-226 and radium-228	1,2,3,4,5,6,7,8,9	1,2,3,4,5,6,7,8,9	1,2,3,4,5,6,7,8,9
2. Gross alpha particle activity	3,4	3,4	3,4
3. Beta particle activity and photon activity	1,2,3,4	1,2,3,4	1,2,3,4
4. Uranium	1,2,4,10, 11	1,2,3,4,5,10,11	1,2,3,4,5,10,11

Note: [1]Numbers correspond to those technologies found listed in the table C of Appendix I.

APPENDIX K - ANALYTICAL METHODS FOR CONDUCTING TOTAL COLIFORM AND E. COLI ANALYSES
(HAR §11-20-9.1(b))

Organism	Methodology Category	Method [1]	Citation [1]
Total Coliforms			
	Lactose Fermentation Methods	Standard Total Coliform Fermentation Technique	Standard Methods 9221 B.1, B.2 (20th ed.; 21st ed.) [2, 3] Standard Methods Online 9221 B.1, B.2-99 [2, 3]
		Presence-Absence (P-A) Coliform Test	Standard Methods 9221 D.1, D.2 (20th ed.; 21st ed.) [2, 7] Standard Methods Online 9221 D.1, D.2-99 [2, 7]
	Membrane Filtration Methods	Standard Total Coliform Membrane Filter Procedure	Standard Methods 9222 B, C (20th ed.; 21st ed.) [2, 4] Standard Methods Online 9222 B-97 [2, 4], 9222 C-97 [2, 4]
		Membrane Filtration using MI medium	EPA Method 1604 [2]
		m-ColiBlue24® Test [2, 4]	
		Chromocult [2, 4]	
	Enzyme Substrate Methods	Colilert®	Standard Methods 9223 B (20th ed.; 21st ed.) [2, 5] Standard Methods Online 9223 B-97 [2, 5]

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APPENDIX K - ANALYTICAL METHODS FOR CONDUCTING TOTAL COLIFORM AND E. COLI ANALYSES
(HAR §11-20-9.1(b))

Organism	Methodology Category	Method [1]	Citation [1]
		Colisure®	Standard Methods 9223 B (20th ed.; 21st ed.) [2, 5, 6] Standard Methods Online 9223 B-97 [2, 5, 6]
		E*Colite® Test [2]	
		Readycult® Test [2]	
		modified Colitag® Test [2]	
Escherichia coli			
	Escherichia coli Procedure (following Lactose Fermentation Methods)	EC-MUG medium	Standard Methods 9221 F.1 (20th ed.; 21st ed.) [2]
	Escherichia coli Partition Method	EC broth with MUG (EC-MUG)	Standard Methods 9222 G.1c(2) (20th ed.; 21st ed.) [2, 8]
		NA-MUG medium	Standard Methods 9222 G.1c(1) (20th ed.; 21st ed.) [2]
	Membrane Filtration Methods	Membrane Filtration using MI medium	EPA Method 1604 [2]
		m-ColiBlue24® Test [2, 4]	
		Chromocult [2, 4]	

APPENDIX K - ANALYTICAL METHODS FOR CONDUCTING TOTAL COLIFORM AND E. COLI ANALYSES
(HAR §11-20-9.1(b))

Organism	Methodology Category	Method [1]	Citation [1]
	Enzyme Substrate Methods	Colilert®	Standard Methods 9223 B (20th ed.; 21st ed.) [2, 5] Standard Methods Online 9223 B-97 [2, 5, 6]
		Colisure®	Standard Methods 9223 B (20th ed.; 21st ed.) [2, 5, 6] Standard Methods Online 9223 B-97 [2, 5, 6]
		E*Colite® Test [2]	
		Readycult® Test [2]	
		modified Colitag® Test [2]	

(a) Footnotes to Appendix K

[1] The procedures must be done in accordance with the documents listed in subsection (b) of this Appendix. For Standard Methods, either editions, 20th (1998) or 21st (2005), may be used. For the Standard Methods Online, the year in which each method was approved by the Standard Methods Committee is designated by the last two digits following the hyphen in the method number. The methods listed are the only online versions that may be used. For vendor methods, the date of the method listed in subsection (b) of this Appendix is the date/version of the approved method. The methods listed are the only versions that may be used for compliance with this rule. Laboratories should be careful to use only the approved versions of the methods, as product package inserts may not be the same as the approved versions of the methods.

[2] Incorporated by reference. See subsection (b) of this Appendix.

[3] Lactose broth, as commercially available, may be used in lieu of lauryl tryptose broth, if the system conducts at least 25 parallel tests between lactose broth and lauryl tryptose broth using the water normally tested, and if the findings from this comparison demonstrate that the false-positive rate and false-negative rate for total coliforms, using lactose broth, is less than 10 percent.

[4] All filtration series must begin with membrane filtration equipment that has been sterilized by autoclaving. Exposure of filtration equipment to UV light is not adequate to ensure sterilization. Subsequent to the initial autoclaving, exposure of the filtration equipment to UV light may be used to sanitize the funnels between filtrations within a filtration series. Alternatively, membrane filtration equipment that is pre-sterilized by the manufacturer (i.e., disposable funnel units) may be used.

[5] Multiple-tube and multi-well enumerative formats for this method are approved for use in presence-absence determination under this regulation.

[6] Colisure® results may be read after an incubation time of 24 hours.

[7] A multiple tube enumerative format, as described in *Standard Methods for the Examination of Water and Wastewater* 9221, is approved for this method for use in presence-absence determination under this regulation.

[8] The following changes must be made to the EC broth with MUG (EC-MUG) formulation: Potassium dihydrogen phosphate, KH_2PO_4, must be 1.5g, and 4-methylumbelliferyl-Beta-D-glucuronide must be 0.05 g.

b) Incorporation by reference. The standards required in §11-20-9.1 are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, EPA must publish notice of change in the *Federal Register* and the material must be available to the public. All approved material is available for inspection either electronically at *www.regulations.gov*, in hard copy at the Water Docket, or from the sources indicated below. The Docket ID is EPA-HQ-OW-2008-0878. Hard copies of these documents may be viewed at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 1-202-566-1744, and the telephone number for the Water Docket is 1-202-566-2426. Copyrighted materials are only available for viewing in hard copy. These documents are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call **1-202-741-6030 or go** to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(1) American Public Health Association, 800 I Street, NW, Washington, DC 20001
(i) "Standard Methods for the Examination of Water and Wastewater," 20th edition (1998):

(A) Standard Methods 9221, "Multiple-Tube Fermentation Technique for Members of the Coliform Group," B.1, B.2, "Standard Total Coliform Fermentation Technique."
(B) Standard Methods 9221, "Multiple-Tube Fermentation Technique for Members of the Coliform Group," D.1, D.2, "Presence-Absence (P-A) Coliform Test."
(C) Standard Methods 9222, "Membrane Filter Technique for Members of the Coliform Group," B, "Standard Total Coliform Membrane Filter Procedure."
(D) Standard Methods 9222, "Membrane Filter Technique for Members of the Coliform Group," C, "Delayed-Incubation Total Coliform Procedure."
(E) Standard Methods 9223, "Enzyme Substrate Coliform Test," B, "Enzyme Substrate Test," Colilert® and Colisure®.
(F) Standard Methods 9221, "Multiple Tube Fermentation Technique for Members of the Coliform Group," F.1, "*Escherichia coli* Procedure: EC-MUG medium."
(G) Standard Methods 9222, "Membrane Filter Technique for Members of the Coliform Group," G.1.*c*(2), "*Escherichia coli* Partition Method: EC broth with MUG (EC-MUG)."
(H) Standard Methods 9222, "Membrane Filter Technique for Members of the Coliform Group," G.1.*c*(1), "*Escherichia coli* Partition Method: NA-MUG medium."

(ii) "Standard Methods for the Examination of Water and Wastewater," 21st edition (2005):
(A) Standard Methods 9221, "Multiple-Tube Fermentation Technique for Members of the Coliform Group," B.1, B.2, "Standard Total Coliform Fermentation Technique."
(B) Standard Methods 9221, "Multiple-Tube Fermentation Technique for Members of the Coliform Group," D.1, D.2, "Presence-Absence (P-A) Coliform Test."
(C) Standard Methods 9222, "Membrane Filter Technique for Members of the Coliform Group," B, "Standard Total Coliform Membrane Filter Procedure."
(D) Standard Methods 9222, "Membrane Filter Technique for Members of the Coliform Group," C, "Delayed-Incubation Total Coliform Procedure."
(E) Standard Methods 9223, "Enzyme Substrate Coliform Test," B, "Enzyme Substrate Test," Colilert® and Colisure®.
(F) Standard Methods 9221, "Multiple Tube Fermentation Technique for Members of the Coliform Group," F.1, "*Escherichia coli* Procedure: EC-MUG medium."
(G) Standard Methods 9222, "Membrane Filter Technique for Members of the Coliform Group," G.1.*c*(2), "*Escherichia coli* Partition Method: EC broth with MUG (EC-MUG)."
(H) Standard Methods 9222, "Membrane Filter Technique for Members of the Coliform Group," G.1.*c*(1), "*Escherichia coli* Partition Method: NA-MUG medium."

(iii) "Standard Methods Online" available at *http://www.standardmethods.org*:
(A) Standard Methods Online 9221, "Multiple-Tube Fermentation Technique for Members of the Coliform Group" (1999), B.1, B.2-99, "Standard Total Coliform Fermentation Technique."
(B) Standard Methods Online 9221, "Multiple-Tube Fermentation Technique for Members of the Coliform Group" (1999), D.1, D.2-99, "Presence-Absence (P-A) Coliform Test."

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(C) Standard Methods Online 9222, "Membrane Filter Technique for Members of the Coliform Group" (1997), B-97, "Standard Total Coliform Membrane Filter Procedure."

(D) Standard Methods Online 9222, "Membrane Filter Technique for Members of the Coliform Group" (1997), C-97, "Delayed-Incubation Total Coliform Procedure."

(E) Standard Methods Online 9223, "Enzyme Substrate Coliform Test" (1997), B-97, "Enzyme Substrate Test", Colilert® and Colisure®.

(2) Charm Sciences, Inc., 659 Andover Street, Lawrence, MA 01843-1032, telephone 1-800-343-2170:

(i) *Colite® - "Charm E*Colite™ Presence/Absence Test for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Drinking Water," January 9, 1998.

(ii) [Reserved]

(3) CPI International, Inc., 5580 Skylane Blvd., Santa Rosa, CA, 95403, telephone 1-800-878-7654:

(i) modified Colitag®, ATP D05-0035 - "Modified Colitag™ Test Method for the Simultaneous Detection of *E. coli* and other Total Coliforms in Water," August 28, 2009.

(ii) [Reserved]

(4) EMD Millipore (a division of Merck KGaA, Darmstadt Germany), 290 Concord Road, Billerica, MA 01821, telephone 1-800-645-5476:

(i) Chromocult - "Chromocult® Coliform Agar Presence/Absence Membrane Filter Test Method for Detection and Identification of Coliform Bacteria and *Escherichia coli* for Finished Waters," November 2000, Version 1.0.

(ii) Readycult® - "Readycult® Coliforms 100 Presence/Absence Test for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Finished Waters," January 2007, Version 1.1.

(5) EPA's Water Resource Center (MC-4100T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, telephone 1-202-566-1729:

(i) EPA Method 1604, EPA 821-R-02-024 - "EPA Method 1604: Total Coliforms and *Escherichia coli* in Water by Membrane Filtration Using a Simultaneous Detection Technique (MI Medium)," September 2002, *http://www.epa.gov/nerlcwww/1604sp02.pdf.*

(ii) [Reserved]

(6) Hach Company, P.O. Box 389, Loveland, CO 80539, telephone 1-800-604-3493:

(i) m-ColiBlue24® - "Membrane Filtration Method m-ColiBlue24® Broth," Revision 2, August 17, 1999.

(ii) [Reserved]

Added

4) HAR Chapter 11-260.1, as amended
Relating to: **Hazardous Waste Management: General Provisions**

5) HAR Chapter 11-261.1, as amended
Relating to: **Hazardous Waste Management: Identification and Listing of Hazardous Waste**

6) HAR Chapter 11-262.1, as amended
Relating to: **Hazardous Waste Management: Standards Applicable to Generators of Hazardous Waste**

7) HAR Chapter 11-263.1, as amended
Relating to: **Hazardous Waste Management: Standards Applicable to Transporters of Hazardous Waste**

8) HAR Chapter 11-264.1, as amended
Relating to: **Hazardous Waste Management: Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities**

9) HAR Chapter 11-265.1, as amended
Relating to: **Hazardous Waste Management: Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities**

10) HAR Chapter 11-266.1, as amended
Relating to: **Hazardous Waste Management: Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities**

11) HAR Chapter 11-268.1, as amended
Relating to: **Hazardous Waste Management: Land Disposal Restrictions**

12) HAR Chapter 11-270.1, as amended
Relating to: **Hazardous Waste Management: The Hazardous Waste Permit Program**

13) HAR Chapter 11-271.1, as amended
Relating to: **Hazardous Waste Management: Permit Procedures**

14) HAR Chapter 11-273.1, as amended
Relating to: **Hazardous Waste Management: Standards for Universal Waste Management**

15) HAR Chapter 11-279.1, as amended
Relating to: **Hazardous Waste Management: Standards for the Management of Used Oil**

DEPARTMENT OF HEALTH

Repeal of Chapter 11-260 and
Adoption of Chapter 11-260.1
Hawaii Administrative Rules

May 5, 2017

SUMMARY

1. Chapter 11-260, Hawaii Administrative Rules, is repealed.

2. Chapter 11-260.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: General Provisions", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-260.1

HAZARDOUS WASTE MANAGEMENT: GENERAL PROVISIONS

Historical note: This chapter is based substantially upon chapter 11-260. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R JUL 17 2017]

§11-260.1-1 Incorporation of 40 C.F.R. part 260. Title 40, part 260 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2016, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-260.1-2 to 11-260.1-5. [Eff JUL 17 2017] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

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DEPARTMENT OF HEALTH

The repeal of chapter 11-260 and adoption of chapter 11-260.1, Hawaii Administrative Rules, on the Summary Page dated May 5, 2017, occurred on May 5, 2017 following a public hearing held on December 13, 2016, after public notice was given in The Maui News on November 4, 2016 and in the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on November 7, 2016, and a public hearing held on April 24, 2017, after public notice was given in The Maui News, the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on March 24, 2017.

The foregoing rulemaking actions shall take effect ten days after filing with the Office of the Lieutenant Governor.

LIEUTENANT GOVERNOR'S OFFICE

'17 JUL -7 P2:26

VIRGINIA PRESSLER, M.D.
Director of Health

DAVID Y. IGE
Governor of Hawaii

Dated: 7/7/17

APPROVED AS TO FORM:

Wade H. Hargrove III
Deputy Attorney General

Filed

3232

DEPARTMENT OF HEALTH

Repeal of Chapter 11-261 and
Adoption of Chapter 11-261.1
Hawaii Administrative Rules

May 5, 2017

SUMMARY

1. Chapter 11-261, Hawaii Administrative Rules, is repealed.

2. Chapter 11-261.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Identification and Listing of Hazardous Waste", is adopted.

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DEPARTMENT OF HEALTH

The repeal of chapter 11-261 and adoption of chapter 11-261.1, Hawaii Administrative Rules, on the Summary Page dated May 5, 2017, occurred on May 5, 2017 following a public hearing held on December 13, 2016, after public notice was given in The Maui News on November 4, 2016 and in the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on November 7, 2016, and a public hearing held on April 24, 2017, after public notice was given in The Maui News, the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on March 24, 2017.

The foregoing rulemaking actions shall take effect ten days after filing with the Office of the Lieutenant Governor.

LIEUTENANT GOVERNOR'S OFFICE

'17 JUL -7 P2:26

Virginia Pressler

VIRGINIA PRESSLER, M.D.
Director of Health

David Y. Ige

DAVID Y. IGE
Governor of Hawaii

Dated: 7/7/17

APPROVED AS TO FORM:

Wade H. Hargrove III
Deputy Attorney General

Filed

3232

DEPARTMENT OF HEALTH

Repeal of Chapter 11-262 and
Adoption of Chapter 11-262.1
Hawaii Administrative Rules

May 5, 2017

SUMMARY

1. Chapter 11-262, Hawaii Administrative Rules, is repealed.

2. Chapter 11-262.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Standards Applicable to Generators of Hazardous Waste", is adopted.

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HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-262.1

HAZARDOUS WASTE MANAGEMENT: STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

Historical note: This chapter is based substantially upon chapter 11-262. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R JUL 17 2017]

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DEPARTMENT OF HEALTH

The repeal of chapter 11-262 and adoption of chapter 11-262.1, Hawaii Administrative Rules, on the Summary Page dated May 5, 2017, occurred on May 5, 2017 following a public hearing held on December 13, 2016, after public notice was given in The Maui News on November 4, 2016 and in the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on November 7, 2016, and a public hearing held on April 24, 2017, after public notice was given in The Maui News, the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on March 24, 2017.

The foregoing rulemaking actions shall take effect ten days after filing with the Office of the Lieutenant Governor.

LIEUTENANT GOVERNOR'S OFFICE

'17 JUL -7 P2:26

VIRGINIA PRESSLER, M.D.
Director of Health

DAVID Y. IGE
Governor of Hawaii

Dated: 7/7/17

APPROVED AS TO FORM:

Wade H. Hargrove III
Deputy Attorney General

Filed

3232

DEPARTMENT OF HEALTH

Repeal of Chapter 11-263 and
Adoption of Chapter 11-263.1
Hawaii Administrative Rules

May 5, 2017

SUMMARY

1. Chapter 11-263, Hawaii Administrative Rules, is repealed.

2. Chapter 11-263.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Standards Applicable to Transporters of Hazardous Waste", is adopted.

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HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-263.1

HAZARDOUS WASTE MANAGEMENT: STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

Historical note: This chapter is based substantially upon chapter 11-263. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R JUL 17 2017]

§11-263.1-1 Incorporation by reference of 40 C.F.R. part 263. Title 40, part 263 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2016, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-263.1-2 to 11-263.1-5. [Eff JUL 17 2017] (Auth: HRS §§342J-4, 342J-31, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-33, 342J-35)

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DEPARTMENT OF HEALTH

The repeal of chapter 11-263 and adoption of chapter 11-263.1, Hawaii Administrative Rules, on the Summary Page dated May 5, 2017, occurred on May 5, 2017 following a public hearing held on December 13, 2016, after public notice was given in The Maui News on November 4, 2016 and in the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on November 7, 2016, and a public hearing held on April 24, 2017, after public notice was given in The Maui News, the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on March 24, 2017.

The foregoing rulemaking actions shall take effect ten days after filing with the Office of the Lieutenant Governor.

LIEUTENANT GOVERNOR'S OFFICE

'17 JUL -7 P2:27

Virginia Pressler

VIRGINIA PRESSLER, M.D.
Director of Health

David Y. Ige

DAVID Y. IGE
Governor of Hawaii

Dated: 7/7/17

APPROVED AS TO FORM:

Wade H. Hargrove III
Deputy Attorney General

Filed

3232

DEPARTMENT OF HEALTH

Repeal of Chapter 11-264 and
Adoption of Chapter 11-264.1
Hawaii Administrative Rules

May 5, 2017

SUMMARY

1. Chapter 11-264, Hawaii Administrative Rules, is repealed.

2. Chapter 11-264.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities", is adopted.

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HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-264.1

HAZARDOUS WASTE MANAGEMENT: STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

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Historical note: This chapter is based substantially upon chapter 11-264. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R JUL 17 2017]

§11-264.1-1 Incorporation of 40 C.F.R. part 264. Title 40, part 264 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2016, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-264.1-2 to 11-264.1-24. [Eff JUL 17 2017] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 264, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and

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DEPARTMENT OF HEALTH

The repeal of chapter 11-264 and adoption of chapter 11-264.1, Hawaii Administrative Rules, on the Summary Page dated May 5, 2017, occurred on May 5, 2017 following a public hearing held on December 13, 2016, after public notice was given in The Maui News on November 4, 2016 and in the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on November 7, 2016, and a public hearing held on April 24, 2017, after public notice was given in The Maui News, the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on March 24, 2017.

The foregoing rulemaking actions shall take effect ten days after filing with the Office of the Lieutenant Governor.

LIEUTENANT GOVERNOR'S OFFICE

'17 JUL -7 P2:27

Virginia Pressler

VIRGINIA PRESSLER, M.D.
Director of Health

David Y. Ige

DAVID Y. IGE
Governor of Hawaii

Dated: 7/7/17

APPROVED AS TO FORM:

Wade H. Haygrove III
Deputy Attorney General

Filed

3232

DEPARTMENT OF HEALTH

Repeal of Chapter 11-265 and
Adoption of Chapter 11-265.1
Hawaii Administrative Rules

May 5, 2017

SUMMARY

1. Chapter 11-265, Hawaii Administrative Rules, is repealed.

2. Chapter 11-265.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities", is adopted.

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HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-265.1

HAZARDOUS WASTE MANAGEMENT: INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

Historical note: This chapter is based substantially upon chapter 11-265. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R JUL 17 2017]

§11-265.1-1 Incorporation of 40 C.F.R. part 265. Title 40, part 265 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2016, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-265.1-2 to 11-265.1-25. [Eff JUL 17 2017] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 265, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Administrator", "applicable EPA Regional Administrator", "Assistant Administrator",

DEPARTMENT OF HEALTH

The repeal of chapter 11-265 and adoption of chapter 11-265.1, Hawaii Administrative Rules, on the Summary Page dated May 5, 2017, occurred on May 5, 2017 following a public hearing held on December 13, 2016, after public notice was given in The Maui News on November 4, 2016 and in the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on November 7, 2016, and a public hearing held on April 24, 2017, after public notice was given in The Maui News, the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on March 24, 2017.

The foregoing rulemaking actions shall take effect ten days after filing with the Office of the Lieutenant Governor.

LIEUTENANT GOVERNOR'S OFFICE

'17 JUL -7 P2:27

VIRGINIA PRESSLER, M.D.
Director of Health

DAVID Y. IGE
Governor of Hawaii

Dated: 7/7/17

APPROVED AS TO FORM:

Wade H. Hargrove III
Deputy Attorney General

Filed

DEPARTMENT OF HEALTH

Repeal of Chapter 11-266 and
Adoption of Chapter 11-266.1
Hawaii Administrative Rules

May 5, 2017

SUMMARY

1. Chapter 11-266, Hawaii Administrative Rules, is repealed.

2. Chapter 11-266.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities", is adopted.

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HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-266.1

HAZARDOUS WASTE MANAGEMENT: STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

Historical note: This chapter is based substantially upon chapter 11-266. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R JUL 17 2017]

§11-266.1-1 Incorporation of 40 C.F.R. part 266. Title 40, part 266 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal

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DEPARTMENT OF HEALTH

The repeal of chapter 11-266 and adoption of chapter 11-266.1, Hawaii Administrative Rules, on the Summary Page dated May 5, 2017, occurred on May 5, 2017 following a public hearing held on December 13, 2016, after public notice was given in The Maui News on November 4, 2016 and in the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on November 7, 2016, and a public hearing held on April 24, 2017, after public notice was given in The Maui News, the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on March 24, 2017.

The foregoing rulemaking actions shall take effect ten days after filing with the Office of the Lieutenant Governor.

LIEUTENANT GOVERNOR'S OFFICE

'17 JUL -7 P2:27

VIRGINIA PRESSLER, M.D.
Director of Health

DAVID Y. IGE
Governor of Hawaii

Dated: 7/7/17

APPROVED AS TO FORM:

Wade H. Hargrove III
Deputy Attorney General

Filed

3232

DEPARTMENT OF HEALTH

Repeal of Chapter 11-268 and
Adoption of Chapter 11-268.1
Hawaii Administrative Rules

May 5, 2017

SUMMARY

1. Chapter 11-268, Hawaii Administrative Rules, is repealed.

2. Chapter 11-268.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Land Disposal Restrictions", is adopted.

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HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-268.1

HAZARDOUS WASTE MANAGEMENT: LAND DISPOSAL RESTRICTIONS

Historical note: This chapter is based substantially upon chapter 11-268. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R [JUL 17 2017]

§11-268.1-1 Incorporation of 40 C.F.R. part 268. Title 40, part 268 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2016, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-268.1-2 to 11-268.1-6. [Eff JUL 17 2017] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

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DEPARTMENT OF HEALTH

The repeal of chapter 11-268 and adoption of chapter 11-268.1, Hawaii Administrative Rules, on the Summary Page dated May 5, 2017, occurred on May 5, 2017 following a public hearing held on December 13, 2016, after public notice was given in The Maui News on November 4, 2016 and in the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on November 7, 2016, and a public hearing held on April 24, 2017, after public notice was given in The Maui News, the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on March 24, 2017.

The foregoing rulemaking actions shall take effect ten days after filing with the Office of the Lieutenant Governor.

LIEUTENANT GOVERNOR'S OFFICE

'17 JUL -7 P2:28

VIRGINIA PRESSLER, M.D.
Director of Health

DAVID Y. IGE
Governor of Hawaii

Dated: 7/7/17

APPROVED AS TO FORM:

Wade H. Hargrove III
Deputy Attorney General

Filed

3232

DEPARTMENT OF HEALTH

Repeal of Chapter 11-270 and
Adoption of Chapter 11-270.1
Hawaii Administrative Rules

May 5, 2017

SUMMARY

1. Chapter 11-270, Hawaii Administrative Rules, is repealed.

2. Chapter 11-270.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: The Hazardous Waste Permit Program", is adopted.

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HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-270.1

HAZARDOUS WASTE MANAGEMENT: THE HAZARDOUS WASTE PERMIT PROGRAM

Historical note: This chapter is based substantially upon chapter 11-270. [Eff 6/18/94; am

DEPARTMENT OF HEALTH

The repeal of chapter 11-270 and adoption of chapter 11-270.1, Hawaii Administrative Rules, on the Summary Page dated May 5, 2017, occurred on May 5, 2017 following a public hearing held on December 13, 2016, after public notice was given in The Maui News on November 4, 2016 and in the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on November 7, 2016, and a public hearing held on April 24, 2017, after public notice was given in The Maui News, the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on March 24, 2017.

The foregoing rulemaking actions shall take effect ten days after filing with the Office of the Lieutenant Governor.

LIEUTENANT GOVERNOR'S OFFICE

'17 JUL -7 P2:28

VIRGINIA PRESSLER, M.D.
Director of Health

DAVID Y. IGE
Governor of Hawaii

Dated: 7/7/17

APPROVED AS TO FORM:

Wade H. Hargrove III
Deputy Attorney General

Filed

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DEPARTMENT OF HEALTH

Repeal of Chapter 11-271 and
Adoption of Chapter 11-271.1
Hawaii Administrative Rules

May 5, 2017

SUMMARY

1. Chapter 11-271, Hawaii Administrative Rules, is repealed.

2. Chapter 11-271.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Permit Procedures", is adopted.

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HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-271.1

HAZARDOUS WASTE MANAGEMENT: PERMIT PROCEDURES

Historical note: This chapter is based substantially upon chapter 11-271, subchapter A. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R JUL 17 2017]

§11-271.1-1 Incorporation of 40 C.F.R. part 124, subparts A and B. Title 40, part 124, subparts A and B of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2016, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-271.1-2 to 11-271.1-4. [Eff JUL 17 2017] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

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DEPARTMENT OF HEALTH

The repeal of chapter 11-271 and adoption of chapter 11-271.1, Hawaii Administrative Rules, on the Summary Page dated May 5, 2017, occurred on May 5, 2017 following a public hearing held on December 13, 2016, after public notice was given in The Maui News on November 4, 2016 and in the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on November 7, 2016, and a public hearing held on April 24, 2017, after public notice was given in The Maui News, the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on March 24, 2017.

The foregoing rulemaking actions shall take effect ten days after filing with the Office of the Lieutenant Governor.

LIEUTENANT GOVERNOR'S OFFICE
'17 JUL -7 P2:28

Virginia Pressler

VIRGINIA PRESSLER, M.D.
Director of Health

David Y. Ige

DAVID Y. IGE
Governor of Hawaii

Dated: 7/7/17

APPROVED AS TO FORM:

Wade H. Hargrove III
Deputy Attorney General

Filed

3232

DEPARTMENT OF HEALTH

Repeal of Chapter 11-273 and
Adoption of Chapter 11-273.1
Hawaii Administrative Rules

May 5, 2017

SUMMARY

1. Chapter 11-273, Hawaii Administrative Rules, is repealed.

2. Chapter 11-273.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Standards for Universal Waste Management", is adopted.

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HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-273.1

HAZARDOUS WASTE MANAGEMENT: STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

Historical note: This chapter is based substantially upon chapter 11-273. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R JUL 17 2017]

§11-273.1-1 Incorporation of 40 C.F.R. part 273. Title 40, part 273 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2016, is made a

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DEPARTMENT OF HEALTH

The repeal of chapter 11-273 and adoption of chapter 11-273.1, Hawaii Administrative Rules, on the Summary Page dated May 5, 2017, occurred on May 5, 2017 following a public hearing held on December 13, 2016, after public notice was given in The Maui News on November 4, 2016 and in the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on November 7, 2016, and a public hearing held on April 24, 2017, after public notice was given in The Maui News, the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on March 24, 2017.

The foregoing rulemaking actions shall take effect ten days after filing with the Office of the Lieutenant Governor.

LIEUTENANT GOVERNOR'S OFFICE

'17 JUL -7 P2:28

Virginia Pressler

VIRGINIA PRESSLER, M.D.
Director of Health

David Y. Ige

DAVID Y. IGE
Governor of Hawaii

Dated: 7/7/17

APPROVED AS TO FORM:

Wade H. Hargrove III
Deputy Attorney General

Filed

B232

DEPARTMENT OF HEALTH

Repeal of Chapter 11-279 and
Adoption of Chapter 11-279.1
Hawaii Administrative Rules

May 5, 2017

SUMMARY

1. Chapter 11-279, Hawaii Administrative Rules, is repealed.

2. Chapter 11-279.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Standards for the Management of Used Oil", is adopted.

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HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-279.1

HAZARDOUS WASTE MANAGEMENT:
STANDARDS FOR THE MANAGEMENT OF USED OIL

Historical note: This chapter is based substantially upon chapter 11-279. [Eff 3/13/99; R JUL 17 2017]

§11-279.1-1 Incorporation of 40 C.F.R. part 279. Title 40, part 279 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2016, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-279.1-2 to 11-279.1-11. [Eff JUL 17 2017] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 279, as incorporated and amended in this chapter:

(1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", and "State Director" shall be replaced with "director".

(2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except in references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".

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DEPARTMENT OF HEALTH

The repeal of chapter 11-279 and adoption of chapter 11-279.1, Hawaii Administrative Rules, on the Summary Page dated May 5, 2017, occurred on May 5, 2017 following a public hearing held on December 13, 2016, after public notice was given in The Maui News on November 4, 2016 and in the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on November 7, 2016, and a public hearing held on April 24, 2017, after public notice was given in The Maui News, the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on March 24, 2017.

The foregoing rulemaking actions shall take effect ten days after filing with the Office of the Lieutenant Governor.

LIEUTENANT GOVERNOR'S OFFICE

'17 JUL -7 P2:28

VIRGINIA PRESSLER, M.D.
Director of Health

DAVID Y. IGE
Governor of Hawaii

Dated: 7/7/17

APPROVED AS TO FORM:

Wade H. Hargrove III
Deputy Attorney General

Filed

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapters 11-260.1, 11-261.1, 11-262.1, 11-263.1, 11-264.1, 11-265.1, 11-266.1, 11-268.1, 11-270.1, 11-271.1, 11-273.1, and 11-279.1
Hawaii Administrative Rules

March 1, 2018

1. Chapter 11-260.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: General Provisions", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-260.1

HAZARDOUS WASTE MANAGEMENT:
GENERAL PROVISIONS

Historical note: This chapter is based substantially upon chapter 11-260. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-260.1-1 Incorporation of 40 C.F.R. part 260. Title 40, part 260 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, [~~2016,~~] 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-260.1-2 to 11-260.1-5. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-260.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 260, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", "Regional Administrator or State Director", and "State Director" shall be replaced with "director".

(2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except in references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)",

"EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 260, as incorporated and amended in this chapter:

(1) 40 C.F.R. section 260.10 definitions of "Administrator", "AES filing compliance date", "Electronic import-export reporting compliance date", "Electronic manifest", "Electronic Manifest System", "EPA hazardous waste number", "EPA identification number", "EPA region", "Equivalent method", "Hazardous waste constituent", and "Regional Administrator", "Replacement unit", and "User of the electronic manifest system".

(2) 40 C.F.R. sections 260.2(c)(2), 260.11, and 260.34(a)(2) and (3).

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 260, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1, except as listed in subsection (d). The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

(d) The following references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 260, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations: the references in the definitions "Designated facility" and "Equivalent method" in 40 C.F.R. section 260.10. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-260.1-3 Amendments to the incorporation of 40 C.F.R. part 260, subpart A. (a) The incorporation by reference of 40 C.F.R. section 260.1 is amended as follows: 40 C.F.R. section [~~260.1(a)(5)~~] 260.1(b)(5) and (6) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 260.2 is amended as follows:

(1) In 40 C.F.R. section 260.2(a), replace "the Freedom of Information Act, 5 U.S.C. section 552, section 3007(b) of RCRA and EPA regulations implementing the Freedom of Information Act and section 3007(b), part 2 of this chapter, as applicable" with "sections 342J-14 and 342J-14.5, HRS, and any applicable provisions of chapter 92F, HRS, and of chapter 2-71".

(2) In 40 C.F.R. section 260.2(b), delete "by following the procedures set forth in §2.203(b) of this chapter" and replace "part 2, subpart B, of this chapter" with "sections 342J-14 and 342J-14.5, HRS, and any applicable provisions of chapter 92F, HRS, and of chapter 2-71".

(3) In 40 C.F.R. section 260.2(c)(1), replace "August 6, 2014" with "the effective date of this chapter". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-260.1-4 Amendments to the incorporation of 40 C.F.R. part 260, subpart B. (a) The incorporation by reference of 40 C.F.R. section 260.10 is amended as follows:

(1) The following definitions [~~in 40 C.F.R. section 260.10~~] are excluded from incorporation: "Carbon dioxide stream", "Cathode ray tube or CRT", "CRT collector", "CRT exporter", "CRT glass manufacturer", "CRT processing", [~~"Performance Track member facility",~~] and "State".

(2) The following definitions [~~in 40 C.F.R. section 260.10~~] are amended as follows:

"Active portion" definition. Replace "the effective date of part 261 of this chapter" with "November 19, 1980".

"AES filing compliance date" definition. Delete "and exporters of cathode ray tubes for recycling".

"Central accumulation area" definition. Delete "A central accumulation area at an eligible academic entity that chooses to operate under 40 CFR part 262 subpart K is also subject to §262.211 when accumulating unwanted material and/or hazardous waste."

"Designated facility" definition. Add "or corresponding regulations of any authorized state" after "part 266 of this chapter", after "§262.20", and after "§265.72(f) of this chapter".

"Destination facility" definition. Delete "paragraphs (a) and (c) of".

"EPA hazardous waste number" definition. Insert "or the State" after "by EPA".

"EPA identification number" definition. Insert "or the State" after "by EPA".

"Equivalent method" definition. Add "and approved by the director" at the end of the sentence.

"Existing hazardous waste management (HWM) facility or existing facility" definition. Replace "on or before November 19, 1980" with "on or before:

(1) November 19, 1980; [~~or~~]

(2) The effective date of statutory or regulatory changes made under RCRA prior to June 18, 1994 that made the facility subject to the requirement to have an RCRA permit; or

(3) The effective date of statutory or regulatory changes made under chapter 342J, HRS, after June 18, 1994 that made the facility subject to the requirement to have a permit under section 342J-30(a), HRS".

"Existing tank system or existing component" definition. Replace "on or prior to July 14, 1986" with "on or prior to July 14, 1986 for HSWA tanks and June 18, 1994 for non-HSWA tanks".

"Facility" definition. Delete "or 267.101" and replace "RCRA Section 3008(h)" with "42 U.S.C. section 6928(h) or section 342J-36, HRS".

"Inactive portion" definition. Replace "the effective date of part 261 of this chapter" with "November 19, 1980".

"New hazardous waste management facility" definition. Replace in its entirety to read: "New hazardous waste management facility or new facility means a hazardous waste management facility which is not included in the definition of an existing hazardous waste management facility."

"New tank system or new tank component" definition. Replace both occurrences of

"July 14, 1986" with "July 14, 1986 for HSWA tanks and June 18, 1994 for non-HSWA tanks".

"Person" definition. Replace in its entirety to read: "Person means any individual, partnership, firm, joint stock company, association, public or private corporation, federal agency, the State or any of its political subdivisions, any state and any of its political subdivisions, trust, estate, interstate body, or any other legal entity."

"Remediation waste management site" definition. Add "or section 342J-36, HRS" after "40 CFR 264.101".

"Universal waste" definition. Replace "(3) Mercury-containing equipment as described in §273.4 of this chapter; and (4) Lamps as described in §273.5 of this chapter" with "(3) Mercury-containing equipment as described in 40 C.F.R. section 273.4, as incorporated and amended in section 11-273.1-1; (4) Lamps as described in 40 C.F.R. section 273.5, as incorporated and amended in section 11-273.1-1; and (5) Electronic items as described in 40 C.F.R. section 273.6, as incorporated and amended in section 11-273.1-1".

"Universal waste handler" definition. Delete both instances of "(a) or (c)".

(3) [~~40 C.F.R. section 260.10 is amended to add the~~] Add the following additional definitions in alphabetical order:

"Any state" means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other U.S. territory.

"CWA" means the federal Clean Water Act, 33 U.S.C. section 1251 et seq.

[~~"Director,"~~] "Director", or "director of [~~health,"~~] health", means the director of

the State of Hawaii department of health or the director's authorized agent.

"Electronic [~~item,"~~] item", also referred to as "universal waste electronic [~~item,"~~] item", means a device containing a circuit board, or other complex circuitry, or a video display. Indicators that a device likely contains a circuit board include the presence of a keypad, touch screen, any type of video or digital display, or common electronic ports or connectors, such as serial, parallel, Rj45 ("network"), or USB. Examples of common universal waste electronic items include, but are not limited to: computer central processing unit; computer monitor; portable computer (including notebook, laptop, and tablet computer); devices designed for use with computers (also known as computer peripherals) such as keyboard, mouse, desktop printer, scanner, and external storage drive; server; television; digital video disc (DVD) recorder or player; videocassette recorder or player (VCR); eBook reader; digital picture frame; fax machine; video game equipment; cellular telephone; answering machine; digital camera; portable music or video player; wireless paging device; remote control; and smoke detector. Electronic item does not include a device that is physically a part of, connected to, or integrated within a large piece of equipment that is not meant to be hand-carried by one person (for example, an automobile, large medical equipment, or white goods as defined in chapter 11-58.1). A device is considered physically a part of, connected to, or integrated within a large piece of equipment if the device cannot be easily disconnected from the large equipment by a layperson without specialized training. When a device

containing a circuit board or a video display is removed, separated, or separate from the large piece of equipment that it is meant to be a part of, it is a universal waste electronic item.

"HRS" means the Hawaii Revised Statutes.

"HSWA" means Hazardous and Solid Waste Amendments.

"HSWA Drip Pad" means a drip pad handling F032 waste, as defined in 40 C.F.R. section 261.31, as incorporated and amended in section 11-261.1-1.

"HSWA Tank" means a tank owned or operated by a generator of less than one thousand kilograms of hazardous waste in any single calendar month; or, a new underground tank; or, an existing underground tank that cannot be entered for inspection.

"Land disposal" means placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or placement in a concrete vault, or bunker intended for disposal purposes.

"Non-HSWA Drip Pad" means a drip pad handling F034 and F035 wastes, as defined in 40 C.F.R. section 261.31, as incorporated and amended in section 11-261.1-1.

"Non-HSWA Tank" means all tanks except HSWA tanks as defined in this section.

(b) The incorporation by reference of 40 C.F.R. section 260.11 is amended as follows:

(1) In 40 C.F.R. section 260.11(a), delete "and 278".

(2) In 40 C.F.R. section 260.11(c)(3)(xxvii), delete "267.190(a),".

(3) In 40 C.F.R. section 260.11(d)(1), delete

", 267.202(b)". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-260.1-5 Amendments to the incorporation of 40 C.F.R. part 260, subpart C. (a) The incorporation by reference of 40 C.F.R. section 260.20 is amended as follows:

(1) In 40 C.F.R. section 260.20(a), delete "Section 260.21 sets forth additional requirements for petitions to add a testing or analytical method to part 261, 264 or 265 of this chapter. Section 260.22 sets forth additional requirements for petitions to exclude a waste or waste-derived material at a particular facility from §261.3 of this chapter or the lists of hazardous wastes in subpart D of part 261 of this chapter."

(2) In 40 C.F.R. section 260.20(c) and [~~260.20(e),~~] (e), delete "in the Federal Register".

(b) 40 C.F.R. sections 260.21 and 260.22 are excluded from incorporation.

(c) The incorporation by reference of 40 C.F.R. section 260.34 is amended as follows: in 40 C.F.R. section 260.34(a), replace "also" with "only"." [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

2. Chapter 11-261.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Identification and Listing of Hazardous Waste", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-261.1

HAZARDOUS WASTE MANAGEMENT:
IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Historical note: This chapter is based substantially upon chapter 11-261. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-261.1-1 Incorporation of 40 C.F.R. part 261. Title 40, part 261 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, [~~2016,~~] 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-261.1-2 to 11-261.1-32. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 261, as incorporated and amended in this chapter:

(1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", "Regional Administrator or State Director", and "State Director" shall be replaced with "director".

(2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental

Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except for all references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(3) "Section 3010 of RCRA" and "section 3010 of the Act" shall be replaced with "section 342J-6.5, HRS".

(b) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 261, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1, except as listed in subsection (c). The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

(c) The following references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 261, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations: the references in 40 C.F.R.

sections 261.4(a)(24)(v)(B), 261.4(a)(24)(vi)(G), [~~261.4(b)(18)(vi), 261.6(a)(5),~~] 261.4(b)(18)(vi)(A) and (B), 261.1033(n)(1)(i), 261.1033(n)(2)(i), and 261.1033(n)(3)(i). [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-3 Amendments to the incorporation of 40 C.F.R. part 261, subpart A. (a) The incorporation by reference of 40 C.F.R. section 261.1 is amended as follows:

(1) In [~~the introductory paragraph of~~] 40 C.F.R. section 261.1(a), delete "271,".

(2) In 40 C.F.R. section 261.1(b)(2), replace "sections 3007, 3013, and 7003 of RCRA" with "chapter 342J, HRS" and replace "these sections" with "sections 342J-6, 342J-7, 342J-8, 342J-9(a), 342J-9(b), 342J-10, and 342J-11, HRS,".

(3) Replace 40 C.F.R. section 261.1(b)(2)(i) in its entirety to read: "(i) In the case of sections 342J-6, 342J-7, 342J-9(a), 342J-9(b), 342J-10, and 342J-11, HRS, the department has reason to believe that the material may be a solid waste as the term is defined in section 342J-2, HRS, and a hazardous waste as the term is defined in section 342J-2, HRS; or".

(4) In 40 C.F.R. section 261.1(b)(2)(ii), replace "7003" with "342J-8, HRS".

(5) In 40 C.F.R. section 261.1(c)(1), insert ", spilled, or otherwise contaminated" after "used".

(b) The incorporation by reference of 40 C.F.R. section 261.2 is amended as follows: in 40 C.F.R. section 261.2(c)(2)(ii), delete "listed in §261.33".

(c) The incorporation by reference of 40 C.F.R. section 261.3 is amended as follows:

(1) In 40 C.F.R section 261.3(a)(2)(ii), delete "under §§260.20 and 260.22 of this chapter".

(2) In 40 C.F.R. section 261.3(a)(2)(iv), delete "under §§260.20 and 260.22".

(3) In 40 C.F.R. section 261.3(a)(2)(iv)(A) to (G), replace all instances of "Regional Administrator, or State Director, as the context requires, or an authorized representative ("Director" as defined in 40 CFR 270.2)" with "director".

(4) In 40 C.F.R. section 261.3(c)(2)(ii)(C)(1), replace "subtitle D units" with "solid waste management units under chapter 342H, HRS".

(5) In 40 C.F.R. section 261.3(c)(2)(ii)(C)(2), replace each instance of "EPA region or authorized state" with "state department of health". Replace each instance of "subtitle D unit(s)" with "solid waste management units under chapter 342H, HRS".

(6) In 40 C.F.R. section 261.3(d)(2), delete "under §§260.20 and 260.22 of this chapter".

(d) The incorporation by reference of 40 C.F.R. section 261.4 is amended as follows:

(1) In 40 C.F.R. section 261.4(a)(9)(iii)(E), delete "appropriate Regional Administrator or state" and "Regional Administrator or state".

(2) 40 C.F.R. section 261.4(a)(22) is excluded from incorporation.

(3) In 40 C.F.R. section 261.4(a)(24)(v)(B), after each instance of "§260.31(d)", insert "or equivalent state regulations".

(4) In 40 C.F.R. section 261.4(a)(24)(vi)(E), replace "40 CFR parts 260 through 272" with "chapters 11-260.1 to 11-270.1".

(5) In 40 C.F.R. section 261.4(a)(24)(vi)(G), after "§260.31(d)", insert "or equivalent state regulations".

(6) In 40 C.F.R. section 261.4(a)(26)(i), insert "with the accumulation start date and" after "labeled".

(7) In 40 C.F.R. section 261.4(a)(27)(vi)(A), replace "EPA or the State Director, if the

state is authorized for the program" with "the director".

(8) 40 C.F.R. section 261.4(b)(4)(ii) and 261.4(b)(5) is excluded from incorporation.

(9) In 40 C.F.R. section 261.4(b)(10), insert ", chapter 342L, HRS, or rules adopted pursuant to chapter 342L, HRS" after "under part 280 of this chapter".

(10) 40 C.F.R. section 261.4(b)(11) and 261.4(b)(17) is excluded from incorporation.

(11) In 40 C.F.R. section 261.4(b)(18)(i), insert "with the accumulation start date and" after "labeled".

(12) In 40 C.F.R. section 261.4(b)(18)(vi)(A), insert ", or equivalent state regulations" after "40 CFR parts 264 or 265".

(13) In 40 C.F.R. section 261.4(b)(18)(vi)(B), insert ", or equivalent state regulations" after "40 CFR parts 264, 265, or 266 subpart H".

(14) In 40 C.F.R. section 261.4(c), delete "271".

(15) In 40 C.F.R. section 261.4(e)(1), replace "40 CFR 261.5 and 262.34(d)" with "40 C.F.R. section 262.13, as incorporated and amended in section 11-262.1-1".

[~~(15)~~] (16) In 40 C.F.R. section 261.4(e)(2)(iv), insert "hazardous waste management permit issued by any state, a" before "RCRA permit".

[~~(16)~~] (17) In 40 C.F.R. section 261.4(e)(3)(iii), replace "Regional Administrator in the Region where the sample is collected" with "director".

[~~(17)~~] (18) In 40 C.F.R. section 261.4(f)(1), (9), and (11), replace "Regional Administrator, or State Director (if located in an authorized State)," with "director".

[~~(18)~~] (19) 40 C.F.R. section 261.4(h) is excluded from incorporation.

~~[(c) The incorporation by reference of 40 C.F.R. section 261.5 is amended as follows:~~

~~(1) 40 C.F.R. section 261.5(e)(7) is excluded from incorporation.~~

~~(2) In 40 C.F.R. section 261.5(f)(3)(i), insert "or subtitle C of RCRA" after "part 270 of this chapter".~~

~~(3) In 40 C.F.R. section 261.5(f)(3)(ii), insert "or subtitle C of RCRA" after "parts 270 and 265 of this chapter".~~

~~(4) In 40 C.F.R. section 261.5(f)(3)(iv), replace "a State" with "the State or any state" and insert "or state rules that are the equivalent of 40 C.F.R. part 258" after "part 258 of this chapter".~~

~~(5) In 40 C.F.R. section 261.5(f)(3)(v), replace "a State" with "the State or any state" and insert "or state rules that are the equivalent of 40 C.F.R. sections 257.5 through 257.30" after "SS 257.5 through 257.30 of this chapter".~~

~~(6) In 40 C.F.R. section 261.5(g)(3)(i), insert "or subtitle C of RCRA" after "part 270 of this chapter".~~

~~(7) In 40 C.F.R. section 261.5(g)(3)(ii), insert "or subtitle C of RCRA" after "parts 270 and 265 of this chapter".~~

~~(8) In 40 C.F.R. section 261.5(g)(3)(iv), replace "a State" with "the State or any state" and insert "or state rules that are the equivalent of 40 C.F.R. part 258" after "part 258 of this chapter".~~

~~(9) In 40 C.F.R. section 261.5(g)(3)(v), replace "a State" with "the State or any state" and insert "or state rules that are the equivalent of 40 C.F.R. sections 257.5 through 257.30" after "SS 257.5 through 257.30 of this chapter".~~

~~(f)~~](e) The incorporation by reference of 40 C.F.R. section 261.6 is amended as follows:

(1) In 40 C.F.R. section 261.6(c)(1), delete "267,".

(2) In 40 C.F.R. section 261.6(d), replace "RCRA permitting" with "hazardous waste management permitting". Replace the comma between "264" and "265" with "or" and delete "or 267".

[~~(g)~~] (f) The incorporation by reference of 40 C.F.R. section 261.9 is amended as follows:

(1) In 40 C.F.R. section 261.9(c), delete "and".

(2) In 40 C.F.R. section 261.9(d), replace the period at the end with "; and".

(3) In 40 C.F.R. section 261.9, add a subsection (e) to read "(e) Electronic items as described in 40 C.F.R. section 273.6, as incorporated and amended in section 11-273.1-1." [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-4 Amendments to the incorporation of 40 C.F.R. part 261, subpart B. The incorporation by reference of 40 C.F.R. section 261.11 is amended as follows: [~~in~~]

(1) In 40 C.F.R. section 261.11(b), replace "section 1004(5) of the Act" with "section 342J-2, HRS".

(2) In 40 C.F.R. section 261.11(c), replace "§261.5(c)" with "40 C.F.R. section 262.13, as incorporated and amended in section 11-262.1-1". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-5 (Reserved.)

§11-261.1-6 Amendments to the incorporation of 40 C.F.R. part 261, subpart D. (a) The incorporation by reference of 40 C.F.R. section 261.30 is amended as follows:

(1) In 40 C.F.R. section 261.30(a), delete "under §§260.20 and 260.22".

(2) In 40 C.F.R. section 261.30(c), delete "267,".

(3) In 40 C.F.R. section 261.30(d), replace "§261.5" with "40 C.F.R. section 262.13, as incorporated and amended in section 11-262.1-1".

(b) The incorporation by reference of 40 C.F.R. section 261.31 is amended as follows:

(1) In 40 C.F.R. section 261.31(a), delete "under §§260.20 and 260.22".

(2) In 40 C.F.R. section 261.31(b)(2)(i), replace "the units employ" with "the unit employs".

(3) In 40 C.F.R. section 261.31(b)(4)(ii), replace "Regional Administrator or the state regulatory authority" with "Regional Administrator or director".

(c) The incorporation by reference of 40 C.F.R. section 261.32 is amended as follows: in 40 C.F.R. section 261.32(a), delete "under §§260.20 and 260.22". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-7 Amendments to the incorporation of 40 C.F.R. part 261, subpart E. 40 C.F.R. part 261, subpart E is excluded from the incorporation by reference of 40 C.F.R. part 261. [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§§11-261.1-8 to 11-261.1-9 (Reserved).

§11-261.1-10 [~~Amendment~~] Amendments to the incorporation of 40 C.F.R. part 261, subpart H. (a) The incorporation by reference of 40 C.F.R. section 261.142 is amended as follows: in 40 C.F.R. section 261.142(a)(3) and (4), replace "§265.5113(d) of this chapter" with "40 C.F.R. section 265.113(d), as incorporated and amended in section 11-265.1-1".

(b) The incorporation by reference of 40 C.F.R. section 261.143 is amended as follows: in 40 C.F.R. section 261.143(g), replace "Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions" with "state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state".

(c) The incorporation by reference of 40 C.F.R. section 261.147 is amended as follows: in 40 C.F.R. section 261.147(a)(1)(i) and (b)(1)(i), replace ", or Regional Administrators if the facilities are located in more than one Region" with ". If the facilities are located in more than one state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state". Replace "a Regional Administrator" with "the director".

(d) 40 C.F.R. sections 261.149 and 261.150 are excluded from the incorporation by reference of 40 C.F.R. part 261.

(e) The incorporation by reference of 40 C.F.R. section 261.151 is amended as follows: replace 40 C.F.R. section 261.151 in its entirety to read: "§261.151 Wording of the instruments.

(a) (1) A trust agreement for a trust fund, as specified in 40 [~~CFR~~] C.F.R. section 261.143(a), as incorporated and amended in this chapter, must be worded as follows, except that instructions in

brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of _____" or "a national bank"], the "Trustee."

Whereas, the Department of Health, State of Hawaii, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a facility regulated under chapter 11-264.1 or 11-265.1, Hawaii Administrative Rules, or satisfying the conditions of the exclusion under the incorporated version of 40 [~~CFR~~] C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules, shall provide assurance that funds will be available if needed for care of the facility under the incorporated version of subpart G of 40 [~~CFR~~] C.F.R. parts 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "department" means the Department of Health, State of Hawaii.

(d) The term "director" means the director of the Department of Health, State of Hawaii.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number (if available), name, address, and the current cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the department in the event that the hazardous secondary materials of the grantor no longer meet the conditions of the exclusion under the incorporated version of 40 [~~CFR~~] C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the department.

Section 4. Payments from the Fund. The Trustee shall make payments from the Fund as the director shall direct, in writing, to provide for the payment

of the costs of the performance of activities required under the incorporated version of subpart G of 40 [~~CFR~~] C.F.R. parts 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, for the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the director from the Fund for expenditures for such activities in such amounts as the beneficiary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the

Grantor and to the director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the director shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred

by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the director to the Trustee shall be in writing, signed by the director, or the director's designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the department, except as provided for herein.

Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the director, or by the Trustee and the director if the Grantor ceases to exist.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 15, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the director, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 17. Immunity and Indemnification. The Trustee shall not incur personal liability of any

nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 18. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii.

Section 19. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 261.151(a)(1), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in 40 [~~CFR~~] C.F.R. section 261.143(a), as incorporated and amended in this chapter.

State of _____
County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(b) A surety bond guaranteeing payment into a trust fund, as specified in 40 [~~CFR~~] C.F.R. section 261.143(b), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

FINANCIAL GUARANTEE BOND

Date bond executed:
Effective date:
Principal: [legal name and business address of owner or operator]
Type of Organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation:
Surety(ies): [name(s) and business address(es)]
EPA Identification Number, name, address and amount(s) for each facility guaranteed by this bond:
Total penal sum of bond: $
Surety's bond number:

As used in this instrument:

(a) The term "department" means the Department of Health, State of Hawaii.

(b) The term "director" means the director of the Department of Health, State of Hawaii.

Know All Persons By These Presents, That we, the Principal and Surety(ies) are firmly bound to the Department of Health, State of Hawaii, in the event that the hazardous secondary materials at the reclamation or intermediate facility listed below no longer meet the conditions of the exclusion under the incorporated version of 40 [~~CFR~~] C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under chapter [~~342J of the~~] 342J, Hawaii Revised Statutes, to have a permit or interim status in order to own or operate each facility identified above, or to meet conditions under the incorporated version of 40 [~~CFR~~] C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules, and

Whereas said Principal is required to provide financial assurance as a condition of permit or interim status or as a condition of an exclusion under the incorporated version of 40 [~~CFR~~] C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall satisfy all the conditions established for exclusion of hazardous secondary materials from coverage as solid waste under the incorporated version of 40 [~~CFR~~] C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure is issued by the director or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules, as applicable, and obtain the director's written approval of such assurance, within 90 days after the date notice of cancellation is received by the Principal, the director, and the EPA Regional Administrator from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the director that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the director.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the

bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, to the director, and to the EPA Regional Administrator, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, the director, and the EPA Regional Administrator, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the director.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the director.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 261.151(b), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date this bond was executed.

Principal
[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]
Corporate Surety(ies)

[Name and address]
State of incorporation:
Liability limit: $
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $

(c) A letter of credit, as specified in 40 [~~CFR~~] C.F.R. section 261.143(c), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Director of Health
Department of Health
State of Hawaii

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No.____ in your favor, in the event that the hazardous secondary materials at the covered reclamation or intermediary facility(ies) no longer meet the conditions of the exclusion under the incorporated version of 40 [~~CFR~~] C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars $____, available upon presentation of

(1) your sight draft, bearing reference to this letter of credit No.__, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of chapter [~~342J of the~~] 342J, Hawaii Revised Statutes."

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but

such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the EPA Regional Administrator, and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by you, the EPA Regional Administrator, and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 261.151(c), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution] [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(d) A certificate of insurance, as specified in 40 [~~CFR~~] C.F.R. section 261.143(d), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATE OF INSURANCE

Name and Address of Insurer (herein called the "Insurer"):

Name and Address of Insured (herein called the "Insured"):

Facilities Covered: [List for each facility: The EPA Identification Number (if any issued), name, address, and the amount of insurance for all facilities covered, which must total the face amount shown below.

Face Amount:

Policy Number:

Effective Date:

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance so that in accordance with applicable regulations all hazardous secondary materials can be removed from the facility or any unit at the facility and the facility or any unit at the facility can be decontaminated at the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of the incorporated version of 40 [~~CFR~~] C.F.R. section 261.143(d), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the director of health, State of Hawaii, the Insurer agrees to furnish to the director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. 261.151(d), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Authorized signature for Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:
[Date]

(e) A letter from the chief financial officer, as specified in 40 [~~CFR~~] C.F.R. section 261.143(e), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

[Address to director].

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

[Fill out the following nine paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number (if any issued), name, address, and current cost estimates.]

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in subpart H of 40 [~~CFR~~] C.F.R. part 261. The current cost estimates covered by the test are shown for each facility: ____.

2. This firm guarantees, through the guarantee specified in subpart H of 40 [~~CFR~~] C.F.R. part 261, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility: ____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator,

and receiving the following value in consideration of this guarantee____, or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In States where EPA is not administering the financial requirements of subpart H of 40 [~~CFR~~] C.F.R. part 261, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 [~~CFR~~] C.F.R. part 261. The current cost estimates covered by such a test are shown for each facility:____.

4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 [~~CFR~~] C.F.R. part 261 or equivalent or substantially equivalent State mechanisms. The current cost estimates not covered by such financial assurance are shown for each facility:____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 [~~CFR~~] C.F.R. part 144. The current closure cost estimates as required by 40 [~~CFR~~] C.F.R. section 144.62 are shown for each facility:____.

6. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in subpart H of 40 [~~CFR~~] C.F.R. parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: ____ .

7. This firm guarantees, through the guarantee specified in subpart H of 40 [~~CFR~~] C.F.R. parts 264

and 265, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: ____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ___; or (3) engaged in the following substantial business relationship with the owner or operator __, and receiving the following value in consideration of this guarantee __]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

8. In [~~States~~] states where EPA is not administering the financial requirements of subpart H of 40 [~~CFR~~] C.F.R. part 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 [~~CFR~~] C.F.R. parts 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: __.

9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 [~~CFR~~] C.F.R. parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: __.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of the incorporated version of 40 [~~CFR~~] C.F.R. section 261.143(e)(1)(i), as amended, in section 11-261.1-1, Hawaii Administrative Rules, are used. Fill in Alternative II if the criteria of the incorporated version of 40 [~~CFR~~] C.F.R. section 261.143(e)(1)(ii), as amended, in section 11-261.1-1, Hawaii Administrative Rules, are used.]

Alternative I

1. Sum of current cost estimates [total of all cost estimates shown in the nine paragraphs above] $__

*2. Total liabilities [if any portion of the cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4] $__

*3. Tangible net worth $____

*4. Net worth $____

*5. Current assets $____

*6. Current liabilities $____

7. Net working capital [line 5 minus line 6] $____

*8. The sum of net income plus depreciation, depletion, and amortization $____

*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $____

10. Is line 3 at least $10 million? (Yes/No) ____

11. Is line 3 at least 6 times line 1? (Yes/No) ____

12. Is line 7 at least 6 times line 1? (Yes/No) ____

*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14 (Yes/No) ____

14. Is line 9 at least 6 times line 1? (Yes/No) ____

15. Is line 2 divided by line 4 less than 2.0? (Yes/No) ____

16. Is line 8 divided by line 2 greater than 0.1? (Yes/No) ____

17. Is line 5 divided by line 6 greater than 1.5? (Yes/No) ____

Alternative II

1. Sum of current cost estimates [total of all cost estimates shown in the eight paragraphs above] $____

2. Current bond rating of most recent issuance of this firm and name of rating service ____

3. Date of issuance of bond ____

4. Date of maturity of bond ____

*5. Tangible net worth [if any portion of the cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] $____

*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $____

7. Is line 5 at least $10 million? (Yes/No) ____

8. Is line 5 at least 6 times line 1? (Yes/No) ____

*9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10 (Yes/No) ____

10. Is line 6 at least 6 times line 1? (Yes/No) ____

I hereby certify that the wording of this letter is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 261.151(e), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

(f) A letter from the chief financial officer, as specified in 40 [~~CFR~~] C.F.R. section 261.147(f), as

incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

[Address to director].

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage under the incorporated version of 40 [~~CFR~~] C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules [insert "and costs assured under the incorporated version of 40 [~~CFR~~] C.F.R. section 261.143(e), as amended, in section 11-261.1-1, Hawaii Administrative Rules" if applicable] as specified in the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number (if any issued), name, and address].

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules: ____

The firm identified above guarantees, through the guarantee specified in the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the

following: ____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ____; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee ____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules:____

The firm identified above guarantees, through the guarantee specified in the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: __. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee __; or (3) engaged in the following substantial business relationship with the owner or operator __, and receiving the following value in consideration of this guarantee __]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and costs assured under the incorporated version of 40 [~~CFR~~] C.F.R. section 261.143(e), as amended, in section 11-261.1-1, Hawaii Administrative Rules, or closure or post-closure care costs under the incorporated version of 40 [~~CFR~~] C.F.R. section 264.143 or 264.145, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 [~~CFR~~] C.F.R. section 265.143 or 265.145, as amended, in section 11-265.1-1, Hawaii Administrative Rules, fill in the following nine paragraphs regarding facilities and associated cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA identification number (if any issued), name, address, and current cost estimates.]

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in subpart H of 40 [~~CFR~~] C.F.R. 261. The current cost estimates covered by the test are shown for each facility:____.

2. This firm guarantees, through the guarantee specified in subpart H of 40 [~~CFR~~] C.F.R. part 261, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility:____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee____, or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In States where EPA is not administering the financial requirements of subpart H of 40 [~~CFR~~] C.F.R.

part 261, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 [~~CFR~~] C.F.R. part 261. The current cost estimates covered by such a test are shown for each facility:____.

4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 [~~CFR~~] C.F.R. part 261 or equivalent or substantially equivalent State mechanisms. The current cost estimates not covered by such financial assurance are shown for each facility:____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 [~~CFR~~] C.F.R. part 144. The current closure cost estimates as required by 40 [~~CFR~~] C.F.R. section 144.62 are shown for each facility:____.

6. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in subpart H of 40 [~~CFR~~] C.F.R. parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: ____.

7. This firm guarantees, through the guarantee specified in subpart H of 40 [~~CFR~~] C.F.R. parts 264 and 265, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: ____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee

____; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee ____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

8. In States where EPA is not administering the financial requirements of subpart H of 40 [~~CFR~~] C.F.R. part 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 [~~CFR~~] C.F.R. parts 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: ____.

9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 [~~CFR~~] C.F.R. parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: ____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of 40 [~~CFR~~] C.F.R. section 261.147(f)(1)(i), as incorporated and amended in this chapter, are used. Fill in

Alternative II if the criteria of 40 [~~CFR~~] C.F.R. section 261.147(f)(1)(ii), as incorporated and amended in this chapter, are used.]

Alternative I

1. Amount of annual aggregate liability coverage to be demonstrated $____.

*2. Current assets $____.

*3. Current liabilities $____.

4. Net working capital (line 2 minus line 3) $____.

*5. Tangible net worth $____.

*6. If less than 90% of assets are located in the U.S., give total U.S. assets $____.

7. Is line 5 at least $10 million? (Yes/No) ____.

8. Is line 4 at least 6 times line 1? (Yes/No) ____.

9. Is line 5 at least 6 times line 1? (Yes/No) ____.

*10. Are at least 90% of assets located in the U.S.? (Yes/No) ____. If not, complete line 11.

11. Is line 6 at least 6 times line 1? (Yes/No) ____.

Alternative II

1. Amount of annual aggregate liability coverage to be demonstrated $____.

2. Current bond rating of most recent issuance and name of rating service _____.

3. Date of issuance of bond _____.

4. Date of maturity of bond _____.

*5. Tangible net worth $____.

*6. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $____.

7. Is line 5 at least $10 million? (Yes/No) ____.

8. Is line 5 at least 6 times line 1? ____.

9. Are at least 90% of assets located in the U.S.? If not, complete line 10. (Yes/No) __.

10. Is line 6 at least 6 times line 1? ____.

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and costs assured under 40 [~~CFR~~] C.F.R.

section 261.143(e), as incorporated and amended in this chapter, or closure or post-closure care costs under 40 [~~CFR~~] C.F.R. sections 264.143, 264.145, 265.143, or 265.145, as incorporated and amended in sections 11-264.1-1 and 11-265.1-1.]

Part B. Facility Care and Liability Coverage

[Fill in Alternative I if the criteria of 40 [~~CFR~~] C.F.R. sections 261.143(e)(1)(i) and 261.147(f)(1)(i), as incorporated and amended in this chapter, are used. Fill in Alternative II if the criteria of 40 [~~CFR~~] C.F.R. sections 261.143(e)(1)(ii) and 261.147(f)(1)(ii), as incorporated and amended in this chapter, are used.]

Alternative I

1. Sum of current cost estimates (total of all cost estimates listed above) $____

2. Amount of annual aggregate liability coverage to be demonstrated $____

3. Sum of lines 1 and 2 $____

*4. Total liabilities (if any portion of your cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) $____

*5. Tangible net worth $____

*6. Net worth $____

*7. Current assets $____

*8. Current liabilities $____

9. Net working capital (line 7 minus line 8) $____

*10. The sum of net income plus depreciation, depletion, and amortization $____

*11. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $____

12. Is line 5 at least $10 million? (Yes/No)

13. Is line 5 at least 6 times line 3? (Yes/No)

14. Is line 9 at least 6 times line 3? (Yes/No)

*15. Are at least 90% of assets located in the U.S.? (Yes/No) If not, complete line 16.

16. Is line 11 at least 6 times line 3? (Yes/No)

17. Is line 4 divided by line 6 less than 2.0? (Yes/No)

18. Is line 10 divided by line 4 greater than 0.1? (Yes/No)

19. Is line 7 divided by line 8 greater than 1.5? (Yes/No)

Alternative II

1. Sum of current cost estimates (total of all cost estimates listed above) $____

2. Amount of annual aggregate liability coverage to be demonstrated $____

3. Sum of lines 1 and 2 $____

4. Current bond rating of most recent issuance and name of rating service _____

5. Date of issuance of bond _____

6. Date of maturity of bond _____

*7. Tangible net worth (if any portion of the cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line) $____

*8. Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.) $____

9. Is line 7 at least $10 million? (Yes/No)

10. Is line 7 at least 6 times line 3? (Yes/No)

*11. Are at least 90% of assets located in the U.S.? (Yes/No) If not complete line 12.

12. Is line 8 at least 6 times line 3? (Yes/No)

I hereby certify that the wording of this letter is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 261.151(f), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(g) (1) A corporate guarantee, as specified in 40 [~~CFR~~] C.F.R. section 261.143(e), as incorporated and amended in this chapter, must be worded as follows,

except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CORPORATE GUARANTEE FOR FACILITY CARE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in the incorporated version of 40 [~~CFR~~] C.F.R. sections 264.141(h) and 265.141(h), as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules,"] to the Department of Health, State of Hawaii.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 261.143(e), as amended, in section 11-261.1-1, Hawaii Administrative Rules.

2. [Owner or operator] owns or operates the following facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number (if any issued), name, and address.]

3. "Closure plans" as used below refer to the plans maintained as required by the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules, for the care of facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees that in the event of a determination by the director of health, State of Hawaii (hereinafter, director), that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the

conditions of the exclusion under the incorporated version of 40 [~~CFR~~] C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules, the guarantor will dispose of any hazardous secondary material as hazardous waste, and close the facility in accordance with closure requirements found in chapters 11-264.1 and 11-265.1, Hawaii Administrative Rules, as applicable, or establish a trust fund as specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 261.143(a), as amended, in section 11-261.1-1, Hawaii Administrative Rules, in the name of the owner or operator in the amount of the current cost estimate.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator] that he intends to provide alternate financial assurance as specified in the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the director and EPA Regional Administrator by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate financial assurance as specified in chapter 11-264.1 or 11-265.1, Hawaii Administrative Rules, or in the

incorporated version of subpart H of 40 [~~CFR~~] C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure plan, the extension or reduction of the time of performance, or any other modification or alteration of an obligation of the owner or operator pursuant to chapter 11-264.1 or 11-265.1, Hawaii Administrative Rules, or in the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

9. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator] must comply with the applicable financial assurance requirements of chapters 11-264.1 and 11-265.1, Hawaii Administrative Rules, or the financial assurance condition of the incorporated version of 40 [~~CFR~~] C.F.R. section 261.4(a)(24)(vi)(F), as amended, in section 11-261.1-1, Hawaii Administrative Rules, for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]: Guarantor may terminate this guarantee by sending notice by certified mail to the director, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the director approves, alternate coverage complying with the incorporated version of 40 [~~CFR~~] C.F.R. section 261.143, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator] Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the director, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and by [the owner or operator].

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in chapter 11-264.1 or 11-265.1, Hawaii Administrative Rules, or the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules, as applicable, and obtain written approval of such assurance from the director within 90 days after a notice of cancellation by the guarantor is received from guarantor by the director, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department of Health, State of Hawaii, or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the applicable requirements of chapters 11-264.1 or 11-265.1, Hawaii Administrative Rules, or the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

I hereby certify that the wording of this guarantee is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 261.151(g)(1), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

Effective date:

[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

(2) A guarantee, as specified in 40 [~~CFR~~] C.F.R. section 261.147(g), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

GUARANTEE FOR LIABILITY COVERAGE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the State of ____" and insert name of State; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is [one of the following: "our subsidiary;" "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in the incorporated version of 40 [~~CFR~~] C.F.R. section [either 264.141(h) or 265.141(h)], as amended, in section [either 11-264.1-1 or 11-265.1-1], Hawaii Administrative [~~Rules",~~] Rules,"] to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting

requirements for guarantors as specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 261.147(g), as amended, in section 11-261.1-1, Hawaii Administrative Rules.

2. [Owner or operator] owns or operates the following facility(ies) covered by this guarantee: [List for each facility: EPA identification number (if any issued), name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each State.] This corporate guarantee satisfies RCRA third-party liability requirements for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be

obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator];

(2) Premises that are sold, given away or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator];

(4) Personal property in the care, custody or control of [insert owner or operator];

(5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or

operator] are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director of health, State of Hawaii (hereinafter, director), the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator] that he intends to provide alternate liability coverage as specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the director and EPA Regional Administrator by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules, in the name of [owner or operator], unless [owner or operator] has done so.

8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by the incorporated version of 40 [~~CFR~~] C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules, provided that such modification shall become effective only if the director does not

disapprove the modification within 30 days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of the incorporated version of 40 [~~CFR~~] C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules, for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the director, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the director approves, alternate liability coverage complying with the incorporated version of 40 [~~CFR~~] C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]:

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the director, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and by [the owner or operator].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other

responsibility or liability of the guarantor with respect to the covered facilities.

13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] facility should be paid in the amount of $.

[Signatures]

Principal

(Notary) Date

[Signatures]

Claimant(s)

(Notary) Date

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. 261.151(g)(2), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

Effective date:

[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

(h) A hazardous waste facility liability endorsement as required 40 [~~CFR~~] C.F.R. section 261.147, as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS SECONDARY MATERIAL RECLAMATION/INTERMEDIATE FACILITY LIABILITY ENDORSEMENT

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under the incorporated version of 40 [~~CFR~~] C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules. The coverage applies at [list EPA Identification Number (if any issued), name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections

(a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 261.147(f), as amended, in section 11-261.1-1, Hawaii Administrative Rules.

(c) Whenever requested by the director of health, State of Hawaii (hereinafter, director), the Insurer agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the director, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located.

(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the director, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste

in all states where facilities covered by the guarantee are located.

Attached to and forming part of policy No. __ issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this _____ day of _____, 20__. The effective date of said policy is _____ day of _____, 20__.

I hereby certify that the wording of this endorsement is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 261.151(h), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of Authorized Representative of Insurer]
[Type name]
[Title], Authorized Representative of [name of Insurer]
[Address of Representative]

(i) A certificate of liability insurance as required in 40 [~~CFR~~] C.F.R. section 261.147, as incorporated and amended in this chapter, must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS SECONDARY MATERIAL RECLAMATION/INTERMEDIATE FACILITY CERTIFICATE OF LIABILITY INSURANCE

1. [Name of Insurer], (the "Insurer"), of [address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured], (the "insured"), of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under chapters 11-264.1 and 11-265.1, Hawaii Administrative Rules, and the financial

assurance condition of the incorporated version of 40 [~~CFR~~] C.F.R. section 261.4(a)(24)(vi)(F), as amended, in section 11-261.1-1, Hawaii Administrative Rules. The coverage applies at [list EPA Identification Number (if any issued), name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number, issued on [date]. The effective date of said policy is [date].

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

(c) Whenever requested by the director of health, State of Hawaii (hereinafter, director), the Insurer agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary,

or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the director, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the director, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located.

I hereby certify that the wording of this instrument is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 261.151(i), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of authorized representative of Insurer]
[Type name]
[Title], Authorized Representative of [name of Insurer]
[Address of Representative]

(j) A letter of credit, as specified in 40 [~~CFR~~] C.F.R. section 261.147(h), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Name and Address of Issuing Institution

Director of Health
Department of Health
State of Hawaii

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. ____ in the favor of ["any and all third-party liability claimants" or insert name of trustee of the standby trust fund], at the request and for the account of [owner or operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars $____ per occurrence and the annual aggregate amount of [in words] U.S. dollars $____, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars $____ per occurrence, and the annual aggregate amount of [in words] U.S. dollars $____, for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. ____, and

[insert the following language if the letter of credit is being used without a standby trust fund:

(1) a signed certificate reading as follows:

Certificate of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal's] facility should be paid in the amount of $[ ]. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal]. This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

[Signatures]

Grantor

[Signatures]

Claimant(s)

or (2) a valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.]

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the director of health, State of Hawaii, the EPA Regional Administrator, and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

[Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess" coverage]."]

We certify that the wording of this letter of credit is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 261.151(j), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution] [Date].

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(k) A surety bond, as specified in 40 [~~CFR~~] C.F.R. section 261.147(i), as incorporated and amended in this chapter, must be worded as follows, except that

instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PAYMENT BOND

Surety Bond No. [Insert number]

Parties [Insert name and address of owner or operator], Principal, incorporated in [Insert State of incorporation] of [Insert city and State of principal place of business] and [Insert name and address of surety company(ies)], Surety Company(ies), of [Insert surety(ies) place of business].

EPA Identification Number (if any issued), name, and address for each facility guaranteed by this bond:

—

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its(their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

(1) Chapter 342J, Hawaii Revised Statutes.

(2) Administrative Rules of the Hawaii State Department of Health, particularly chapters 11-264.1 and 11-265.1, Hawaii Administrative Rules, and the incorporated version of [~~Subpart~~] subpart H of 40 [~~CFR~~] C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules (if applicable).

Conditions:

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of

facilities. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert Principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

(1) An employee of [insert Principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Principal]. This exclusion applies:

(A) Whether [insert Principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Principal];

(2) Premises that are sold, given away or abandoned by [insert Principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Principal];

(4) Personal property in the care, custody or control of [insert Principal];

(5) That particular part of real property on which [insert Principal] or any contractors or

subcontractors working directly or indirectly on behalf of [insert Principal] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

(4) The Surety(ies) shall satisfy a third party liability claim only upon the receipt of one of the following documents:

(a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert name of Principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] facility should be paid in the amount of $[ ].

[Signature]

Principal

[Notary] Date

[Signature(s)]

Claimant(s)

[Notary] Date

or (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond

will be considered [insert "primary" or "excess"] coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the director of health, State of Hawaii (hereinafter, director) forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, the director, and the EPA Regional Administrator, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, the director, and the EPA Regional Administrator, as evidenced by the return receipts.

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the director, the EPA Regional Administrator, and the state agency and EPA Regional Adminsitrator regulating hazardous waste in all states where facilities covered by the guarantee are located.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies)

and that the wording of this surety bond is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 261.151(k), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date this bond was executed.
PRINCIPAL
[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate Seal]
CORPORATE [~~SURETY[IES]~~] SURETY(IES)
[Name and address]
State of incorporation:
Liability Limit: $
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: $

(l) (1) A trust agreement, as specified in 40 [~~CFR~~] C.F.R. section 261.147(j), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of ____" or "a national bank"], the "trustee."

Whereas, the Department of Health, State of Hawaii, has established certain regulations applicable to the Grantor, requiring that an owner or operator must demonstrate financial responsibility for bodily

injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "department" means the Department of Health, State of Hawaii.

(d) The term "director" means the director of health, State of Hawaii.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number (if any issued), name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of ____[up to $1 million] per occurrence and [up to $2 million] annual aggregate for sudden accidental occurrences and ____ [up to $3

million] per occurrence and ____[up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor]. This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the Fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the department.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents;

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] facility or group of facilities should be paid in the amount of $[ ].

[Signatures]
Grantor
[Signatures]
Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested

for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common commingled, or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange

for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the director shall

constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or

such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the director to the Trustee shall be in writing, signed by the director, or the director's designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the department, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the director.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the director, or by the Trustee and the director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the director, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor. The director will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the

wording of this Agreement is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 261.151(l), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.
[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in 40 [~~CFR~~] C.F.R. section 261.147(j), as incorporated and amended in this chapter.

State of
County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/ his name thereto by like order.
[Signature of Notary Public]

(m) (1) A standby trust agreement, as specified in 40 [~~CFR~~] C.F.R. section 261.147(h), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be

replaced with the relevant information and the brackets deleted:

STANDBY TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of a State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of _____" or "a national bank"], the "trustee."

Whereas, the Department of Health, State of Hawaii, has established certain regulations applicable to the Grantor, requiring that an owner or operator must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term Grantor means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term Trustee means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "department" means the Department of Health, State of Hawaii.

(d) The term "director" means the director of health, State of Hawaii.

Section 2. Identification of Facilities. This Agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number (if any issued), name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund, hereafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of ____[up to $1 million] per occurrence and ____[up to $2 million] annual aggregate for sudden accidental occurrences and ____[up to $3 million] per occurrence and ____[up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor]. This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned by [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the Fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the department.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] facility should be paid in the amount of $[ ]

[Signature]

Grantor

[Signatures]

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of the incorporated version of 40 [~~CFR~~] C.F.R. section 261.151(k), as amended, in section 11-261.1-1, Hawaii Administrative Rules, and Section 4 of this Agreement.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In

investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee,

to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the

date on which it assumes administration of the trust in a writing sent to the Grantor, the director and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the department, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the director, or by the Trustee and the director if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the director, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor. The director will agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 261.147, as

amended, in section 11-261.1-1, Hawaii Administrative Rules.

Section 16. Immunity and [~~indemnification.~~] Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 261.151(m), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:

[Title]
[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a standby trust fund as specified in 40 [~~CFR~~] C.F.R. section 261.147(h), as incorporated and amended in this chapter.

State of
County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/ his name thereto by like order.

[Signature of Notary Public]" [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-11 (Reserved).

§11-261.1-12 [~~Amendment~~] Amendments to the incorporation of 40 C.F.R. part 261, subpart J. The incorporation by reference of 40 C.F.R. section 261.196 is amended as follows: in the first note to 40 C.F.R. section 261.196, replace "RCRA section 7003(a)" with "section 342J-8, HRS". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§§11-261.1-13 to 11-261.1-14 (Reserved.)

§11-261.1-15 [~~Amendment~~] Amendments to the incorporation of 40 C.F.R. part 261, subpart M. (a) The incorporation by reference of 40 C.F.R. section 261.411 is amended as follows: in 40 C.F.R. section 261.411(d)(3), insert "the government official designated as the on-scene coordinator from the Hawaii department of health's Hazard Evaluation and Emergency Response Office via the State Hospital at (808) 247-2191 after business hours or directly at (808) 586-4249 during business hours and" before "the National Response Center".

(b) The incorporation by reference of 40 C.F.R. section 261.420 is amended as follows:

[~~(1) In~~] in 40 C.F.R. section 261.420(f)(4)(ii), replace "either the government official designated as the on-scene coordinator for that geographical area, or" with "the government official designated as the on-scene coordinator from the Hawaii department of health's Hazard Evaluation and Emergency Response Office via the State Hospital at (808) 247-2191 after business hours or directly at (808) 586-4249 during business hours and".

[~~(2) Add a new subsection (g) to read: "(g) Personnel training. All employees must be thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies."~~] [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§§11-261.1-16 to 11-261.1-28 (Reserved.)

§11-261.1-29 [~~Amendment~~] Amendments to the incorporation of 40 C.F.R. part 261, subpart AA. The incorporation by reference of 40 C.F.R. section 261.1033 is amended as follows:

(1) In 40 C.F.R. section 264.1033(n)(1)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart X, as incorporated and amended in section 11-264.1-1" before "; or".

(2) In 40 C.F.R. section 264.1033(n)(2)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart O, as incorporated and amended in section 11-264.1-1" before "; or".

(3) In 40 C.F.R. section 264.1033(n)(3)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 266, subpart H, as incorporated and amended in section 11-266.1-1" before "; or". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§§11-261.1-30 to 11-261.1-31 (Reserved.)

§11-261.1-32 [~~Amendment~~] Amendments to the incorporation of 40 C.F.R. part 261 appendices. 40 C.F.R. part 261 appendix IX is excluded from the incorporation by reference of 40 C.F.R. part 261." [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

3. Chapter 11-262.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Standards Applicable to Generators of Hazardous Waste", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-262.1

HAZARDOUS WASTE MANAGEMENT:
STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

Historical note: This chapter is based substantially upon chapter 11-262. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-262.1-1 Incorporation of 40 C.F.R. part 262. Title 40, part 262 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, [~~2016,~~] 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-262.1-2 to 11-262.1-15. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 262, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", and "State Director" shall be replaced with "director".

(2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA",

"EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except in references to "EPA Acknowledgment of Consent", "EPA AOC", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(3) "Section 3010 of RCRA" shall be replaced with "section 342J-6.5, HRS".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 262, as incorporated and amended in this chapter:

(1) 40 C.F.R. [~~sections 262.11 and 262.32,~~] section 262.32.

(2) 40 C.F.R. part 262, subparts [~~B, E, F, and H, and the~~] B and H.

(3) The appendix to 40 C.F.R. part 262.

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 262, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1, except as listed in subsection (d). The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1

268	268.1
270	270.1
273	273.1
279	279.1

(d) The following references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 262, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations:

[~~(1) The references in the second sentence of 40 C.F.R. section 262.10(d) and the third sentence of 40 C.F.R. section 262.58(a).~~

~~(2) The reference to 40 C.F.R. section 260.21 in 40 C.F.R. section 262.11.~~]

(1) References to 40 C.F.R. section 260.2.

[~~(3)~~] (2) [~~The references~~] References to the July 1, 2004 edition of 40 C.F.R. parts 260 to 265 in 40 C.F.R. section 262.20(a)(2).

[~~(4)~~] (3) [~~The reference~~] References in the definition [~~"Primary Exporter"~~] "Exporter" in 40 C.F.R. section [~~262.51.~~] 262.81.

[~~(5)~~] (4) The [~~references~~] reference in 40 C.F.R. [~~sections 262.24(g), 262.53(c), 262.80(a)(1) and (2), 262.85(g), and 262.89(a).~~] section 262.24(g).

(5) References to 40 C.F.R. part 273, 40 C.F.R. part 266, subpart G, and 40 C.F.R. 261.6(a)(3)(i) in 40 C.F.R. sections 262.83(b)(1)(xi) and 262.84(b)(1)(xi). [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-3 Amendments to the incorporation of 40 C.F.R. part 262, subpart A. (a) The incorporation by reference of 40 C.F.R. section 262.1 is amended as follows: the following definitions are amended as follows:

"Condition of exemption" definition. Delete "subpart K or".

"Independent requirement" definition. Delete "subpart K or".

[~~(a)~~] (b) The incorporation by reference of 40 C.F.R. section 262.10 is amended as follows:

(1) In 40 C.F.R. section 262.10(a)(2), replace "267" with "266".

[~~(1)~~] (2) In 40 C.F.R. section 262.10(f), delete "267,".

[~~(2)~~] (3) In 40 C.F.R. section [~~262.10(g),~~] 262.10(g)(1) and (2), add "and sections 342J-7 and 342J-9, HRS" after each instance of "section 3008 of [~~the Act".~~] RCRA".

(4) In 40 C.F.R. section 262.10(g)(2), replace "267" with "266".

[~~(3)~~] (5) 40 C.F.R. section [~~262.10(j)~~] 262.10(k) to (l) is excluded from incorporation.

[~~(b)~~] (c) The incorporation by reference of 40 C.F.R. section 262.11 is amended as follows:

[~~(1) In 40 C.F.R. section 262.11(b), delete the entire Note.~~

~~(2) In 40 C.F.R. section 262.11(c)(1), replace "; or" with "and approved by the director; or".~~]

(1) In 40 C.F.R. section 262.11(c), delete "If the waste is listed, the person may file a delisting petition under 40 CFR 260.20 and 260.22 to demonstrate to the Administrator that the waste from this particular site or operation is not a hazardous waste."

(2) In 40 C.F.R. section 262.11(d)(1) and (2), replace "approved by the Administrator under 40 CFR 260.21" with "approved by the Administrator under 40 C.F.R. 260.21 and approved by the director".

(3) In 40 C.F.R. section [~~262.11(d)~~] 262.11(e), delete "267,".

(d) The incorporation by reference of 40 C.F.R. section 262.13 is amended as follows:

(1) In 40 C.F.R. section 262.13(a)(3), delete "for the hazardous waste generated".

(2) In 40 C.F.R. section 262.13(b)(4), replace "more stringent" with "larger".

(3) In 40 C.F.R. section 262.13(c)(6), insert "or" after the semicolon.

(4) 40 C.F.R. section 262.13(c)(7) is excluded from incorporation.

(e) The incorporation by reference of 40 C.F.R. section 262.14 is amended as follows:

(1) In 40 C.F.R. section 262.14(a)(5)(i) and (ii), insert "or subtitle C of RCRA" after "of this chapter".

(2) In 40 C.F.R. section 262.14(a)(5)(iv), replace "a state" with "the State or any state" and insert "or state rules that correspond to 40 C.F.R. part 258" after "of this chapter".

(3) In 40 C.F.R. section 262.14(a)(5)(v), replace "a state" with "the State or any state" and insert "or state rules that correspond to 40 C.F.R. sections 257.5 to 257.30" after "of this chapter".

(4) In 40 C.F.R. section 262.14(a)(5)(vii), replace the second instance of "part 273 of this chapter" with "40 C.F.R. part 273 or state rules that correspond to 40 C.F.R. part 273".

(f) The incorporation by reference of 40 C.F.R. section 262.15 is amended as follows: in 40 C.F.R. section 262.15(a), replace "267" with "266".

(g) The incorporation by reference of 40 C.F.R. section 262.16 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 262.16, replace "267" with "266".

(2) In 40 C.F.R. section 262.16(b), replace "(d) and (e)" with "(c) and (d)".

(3) In 40 C.F.R. section 262.16(b)(2)(iv), insert "The owner or operator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of

the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions." at the end of the section.

(4) In 40 C.F.R. section 262.16(b)(9)(ii), replace "or" with "and".

(5) In 40 C.F.R. section 262.16(b)(9)(iv)(C), insert "and the Hawaii department of health's Hazard Evaluation and Emergency Response Office via the State Hospital at (808) 247-2191 after business hours or directly at (808) 586-4249 during business hours" at the end of the first sentence.

(6) In 40 C.F.R. section 262.16(d), delete "267,".

(h) The incorporation by reference of 40 C.F.R. section 262.17 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 262.17, replace "267" with "266".

(2) In 40 C.F.R. section 262.17(a)(1)(v), insert "The owner or operator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions." at the end of the section.

(3) In 40 C.F.R. section 262.17(a)(6), replace "complies" with "must comply".

(4) In 40 C.F.R. section 262.17(c) and (d), replace "267" with "266".

(5) In 40 C.F.R. section 262.17(e), delete "267,". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-4 (Reserved.)

§11-262.1-5 Amendments to the incorporation of 40 C.F.R. part 262, subpart C. [~~The incorporation by reference of 40 C.F.R. section 262.34 is amended as follows:~~

~~(1) In 40 C.F.R. section 262.34(b), replace "40 CFR parts 264, 265, and 267" with "chapters 11-264.1 and 11-265.1".~~

~~(2) In 40 C.F.R. section 262.34(d)(5)(ii), replace "telephone" with "nearest telephone and clearly visible from the storage area".~~

~~(3) In 40 C.F.R. section 262.34(d)(5)(iv)(C), add "and the Hawaii Department of Health's Hazard Evaluation and Emergency Response Office via the State Hospital at (808) 247-2191 after business hours or directly at (808) 586-4249 during business hours" at the end of the first sentence.~~

~~(4) In 40 C.F.R. section 262.34(f), replace "40 CFR parts 264, 265 and 267" with "chapters 11-264.1 and 11-265.1".~~

~~(5) In 40 C.F.R. section 262.34(i), replace "40 CFR parts 264, 265 and 267" with "chapters 11-264.1 and 11-265.1".~~

~~40 C.F.R. section 262.34(j) to 262.34(l) is excluded from incorporation.~~] Reserved for amendments to 40 C.F.R. part 262, subpart C. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-6 Amendments to the incorporation of 40 C.F.R. part 262, subpart D. (a) The incorporation by reference of 40 C.F.R. section 262.41 is amended as follows: in 40 C.F.R. section 262.41(b), [~~replace "40 CFR parts 270, 264, 265, 266, and 267" with "chapters 11-264.1 to 11-266.1 and 11-270.1".~~] delete "267".

(b) The incorporation by reference of 40 C.F.R. section 262.42 is amended as follows: in 40 C.F.R. section 262.42(a)(2) and 262.42(b), delete "for the Region in which the generator is located".

(c) The incorporation by reference of 40 C.F.R. section 262.43 is amended as follows: replace "sections 2002(a) and [~~3002(6)~~] 3002(a)(6) of the Act" with "section 342J-6, HRS". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-7 Amendments to the incorporation of 40 C.F.R. part 262, subpart E. [~~The incorporation by reference of 40 C.F.R. section 262.57 is amended as follows: in 40 C.F.R. section 262.57(b), add "or director" after "the Administrator".~~] Reserved for amendments to 40 C.F.R. part 262, subpart E. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§§11-262.1-8 to 11-262.1-9 (Reserved.)

§11-262.1-10 Amendments to the incorporation of 40 C.F.R. part 262, subpart H. (a) The incorporation by reference of 40 C.F.R. section [~~262.87~~] 262.83 is amended as follows: in 40 C.F.R. section [~~262.87(e)(2),~~] 262.83(i)(3), add "or director" after "the Administrator".

(b) The incorporation by reference of 40 C.F.R. section 262.84 is amended as follows: in 40 C.F.R. section 262.84(h)(4), add "or director" after "the Administrator". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31,

342J-32, 342J-35)

§11-262.1-11 Amendments to the incorporation of 40 C.F.R. part 262, subpart I. [~~40 C.F.R. part 262, subpart I is excluded from the incorporation by reference of 40 C.F.R. part 262.~~] Reserved for amendments to 40 C.F.R. part 262, subpart I. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-12 Amendments to the incorporation of 40 C.F.R. part 262, [~~subparts~~] subpart J. [~~40 C.F.R. part 262, subpart J is excluded from the incorporation by reference of 40 C.F.R. part 262.~~] Reserved for amendments to 40 C.F.R. part 262, subpart J. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-13 Amendments to the incorporation of 40 C.F.R. part 262, subpart K. 40 C.F.R. part 262, subpart K is excluded from the incorporation by reference of 40 C.F.R. part 262. [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-14 Amendments to the incorporation of 40 C.F.R. part 262, subpart L. The incorporation by reference of 40 C.F.R. section 262.232 is amended as follows: in 40 C.F.R. section 262.232(a), delete "for hazardous waste generated". [Eff and comp] (Auth: HRS §§342J-4, 342J-31,

342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-15 Amendments to the incorporation of 40 C.F.R. part 262, subpart M. (a) The incorporation by reference of 40 C.F.R. section 262.262 is amended as follows: in 40 C.F.R. section 262.262(b), replace "May 30, 2017" with "the effective date of these rules".

(b) The incorporation by reference of 40 C.F.R. section 262.265 is amended as follows: in 40 C.F.R. section 262.265(d)(2), replace "either the government official designated as the on-scene coordinator for that geographical area, or" with "the government official designated as the on-scene coordinator from the Hawaii department of health's Hazard Evaluation and Emergency Response Office via the State Hospital at (808) 247-2191 after business hours or directly at (808) 586-4249 during business hours and". [Eff and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-16 Imports of hazardous waste. (a) In addition to the requirements of 40 C.F.R. section 262.60(a) to 262.60(e), as incorporated and amended in this chapter, any person who imports hazardous waste from a foreign country into the State must submit the following information in writing to the director within thirty days after the waste has arrived in the State:

(1) The date the waste arrived in the State; and

(2) The disposition of the waste, i.e., storage, treatment, recycling, or disposal.

(b) Any person who imports hazardous waste from any state into the State must comply with the requirements of 40 C.F.R. section 262.20, as incorporated and amended in this chapter, and submit

the following information in writing to the director within thirty days after the waste has arrived in the State:

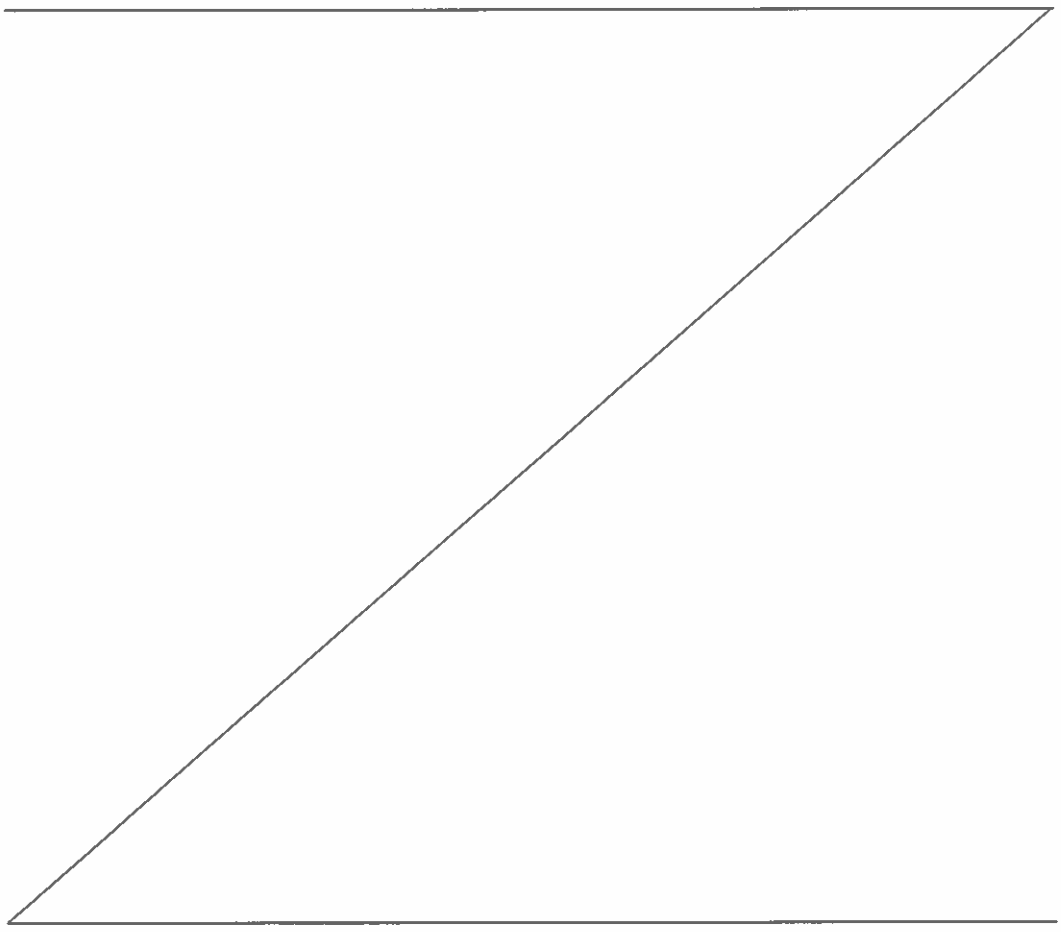
(1) The date the waste arrived in the State; and

(2) The disposition of the waste, i.e., storage, treatment, recycling, or disposal.

(c) The requirements of subsections (a) and (b) shall not apply if:

(1) The waste does not stay in the State for more than ten days; and

(2) A generator with an EPA identification number does not assume the generator status for the waste." [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)



4. Chapter 11-263.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Standards Applicable to Transporters of Hazardous Waste", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-263.1

HAZARDOUS WASTE MANAGEMENT:
STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

Historical note: This chapter is based substantially upon chapter 11-263. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-263.1-1 Incorporation by reference of 40 C.F.R. part 263. Title 40, part 263 of the Code of Federal Regulations (C.F.R.), published by the Office

of the Federal Register, as amended as of July 1, [~~2016,~~] 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-263.1-2 to 11-263.1-5. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-33, 342J-35)

§11-263.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 263, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", and "State Director" shall be replaced with "director".

(2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except in references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 263, as incorporated and amended in this chapter:

[~~(1) The reference to EPA and DOT working together to develop standards in 40 C.F.R. section 263.10.~~

~~(2)~~] 40 C.F.R. section 263.20.

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 263, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1, except as listed in subsection (d). The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

(d) The following references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 263, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations:

[~~(1) The first references to 40 C.F.R. part 262 and the references to 40 C.F.R. part 273 in 40 C.F.R. sections 263.10(d).~~

~~(2) The~~] references to the July 1, 2004 edition of 40 C.F.R. parts 260 to 265 in 40 C.F.R. section 263.20(a)(3). [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-33, 342J-35)

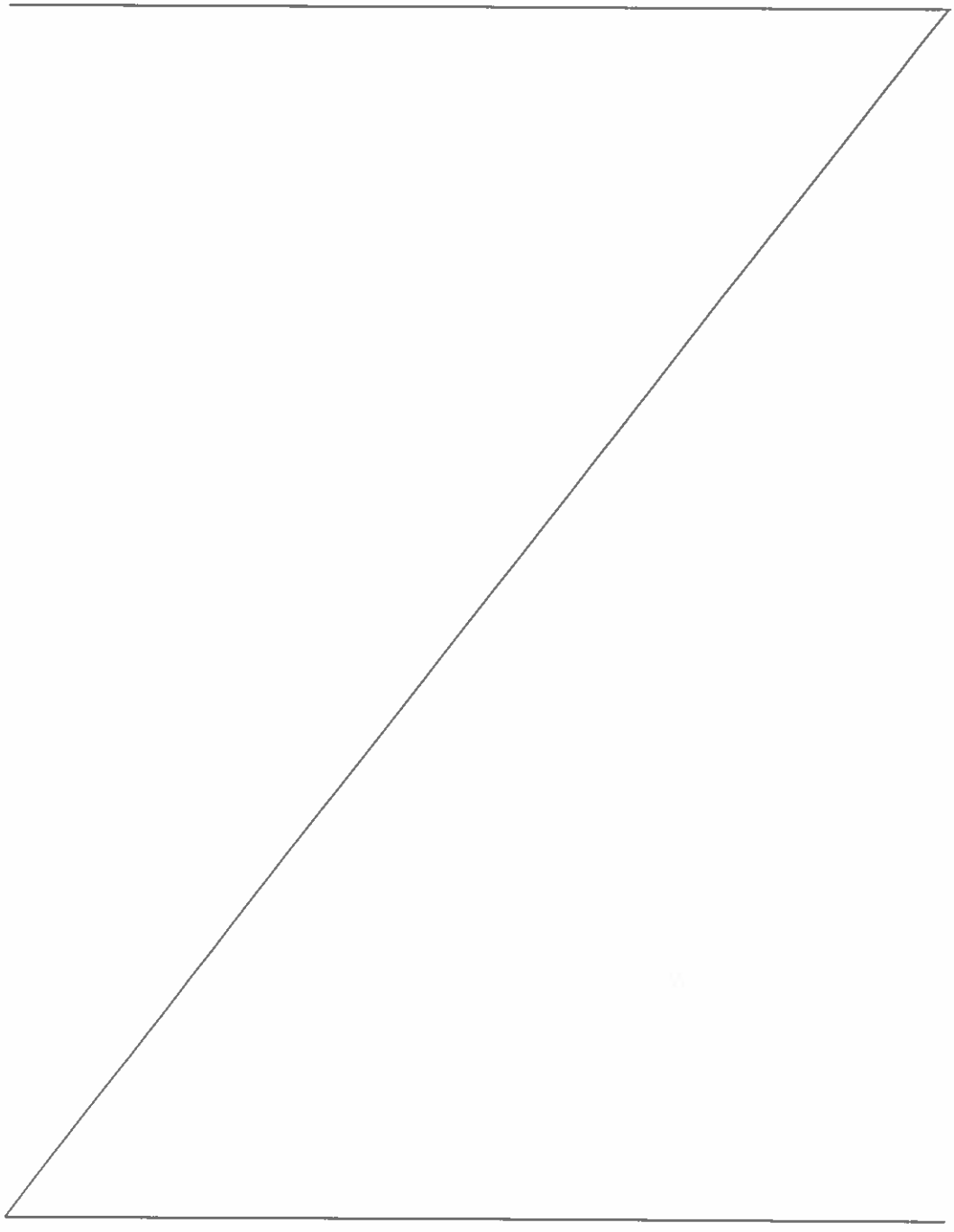
§11-263.1-3 Amendments to the incorporation of 40 C.F.R. part 263, subpart A. (a) The incorporation by reference of 40 C.F.R. section 263.10 is amended as follows: in the note to 40 C.F.R. section 263.10(a), replace "enforceable by EPA" with "enforceable by EPA and the state department of health".

(b) The incorporation by reference of 40 C.F.R. section 263.12 is amended as follows: in 40 C.F.R. section 263.12(a), delete "267,". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-33, 342J-35)

§11-263.1-4 Amendments to the incorporation of 40 C.F.R. part 263, subpart B. The incorporation by reference of 40 C.F.R. section 263.20 is amended as follows: in 40 C.F.R. section 263.20(b), add a new sentence at the end of the section to read: "Before transporting the hazardous waste, a transporter who receives hazardous waste from a previous transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the previous transporter. The new transporter must return a signed copy to the previous transporter before leaving the site where possession of the waste is transferred." [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-33, 342J-35)

§11-263.1-5 Amendments to the incorporation of 40 C.F.R. part 263, subpart C. The incorporation by reference of 40 C.F.R. section 263.30 is amended as follows: in 40 C.F.R. section 263.30(c)(1), add "and to the State [~~Department~~] department of [~~Health,~~] health, Hazard Evaluation and Emergency Response Office via the State Hospital [~~(808-247-2191)~~] at (808) 247-2191 after business hours or directly at (808) 586-4249 during business hours" before the

semicolon." [Eff 7/17/17; am and comp
] (Auth: HRS §§342J-4, 342J-31,
342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31,
342J-33, 342J-35)



5. Chapter 11-264.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-264.1

HAZARDOUS WASTE MANAGEMENT:
STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

Historical note: This chapter is based substantially upon chapter 11-264. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-264.1-1 Incorporation of 40 C.F.R. part 264. Title 40, part 264 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, [~~2016,~~] 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-264.1-2 to 11-264.1-24. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all

provisions of 40 C.F.R. part 264, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", "Regional Administrator or State Director", and "State Director" shall be replaced with "director".

(2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except in references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(3) "Section 3008 of RCRA" shall be replaced with "42 U.S.C. section 6928 or section 342J-7, HRS".

(4) "RCRA Section 3008(h)" and "RCRA 3008(h)" shall be replaced with "42 U.S.C. section 6928(h) or section 342J-36, HRS".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 264, as incorporated and amended in this chapter:

(1) 40 C.F.R. sections 264.12 and 264.71.

(2) The second occurrence of "EPA" in 40 C.F.R. section 264.1082(c)(4)(ii).

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 264, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1, except as

listed in subsection (d). The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

(d) The following references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 264, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations:

(1) The references to the July 1, 2004 edition of 40 C.F.R. parts 260 to 265 in 40 C.F.R. section 264.70(b).

(2) The references in 40 C.F.R. sections 264.1033(n)(1)(i), 264.1033(n)(2)(i), 264.1033(n)(3)(i), 264.1082(c)(2)(vii)(A), 264.1082(c)(2)(viii)(A), and 264.1087(c)(5)(i)(D).

(3) References to 40 C.F.R. sections 268.5, 268.6, and 268.42(b). [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-3 Amendments to the incorporation of 40 C.F.R. part 264, subpart A. (a) The incorporation

by reference of 40 C.F.R. section 264.1 is amended as follows:

(1) In 40 C.F.R. section 264.1(a), replace "national standards" with [~~"State~~] "state standards".

(2) Replace 40 C.F.R. section 264.1(d) in its entirety to read: "(d) Underground injection of hazardous waste is prohibited in the State of Hawaii."

(3) 40 C.F.R. section 264.1(f) is excluded from incorporation.

(4) In 40 C.F.R. section 264.1(g)(1), replace "a State" with "the State".

(5) In 40 C.F.R. section 264.1(g)(8)(iii), replace "parts 122 through 124 of this chapter" with "chapter 11-55".

(6) In 40 C.F.R. section 264.1(g)(11)(iii), [~~remove~~] delete "and".

(7) In 40 C.F.R. section 264.1(g)(11)(iv), replace the period at the end with "; and".

(8) In 40 C.F.R. section 264.1(g)(11), add a subparagraph (v) to read "(v) Electronic items as described in 40 C.F.R. section 273.6, as incorporated and amended in section 11-273.1-1."

(9) 40 C.F.R. section 264.1(g)(12) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 264.4 is amended as follows: insert "or section 342J-8, HRS" after "RCRA". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-4 Amendments to the incorporation of 40 C.F.R. part 264, subpart B. (a) The incorporation by reference of 40 C.F.R. section 264.12 is amended as follows:

[~~(1) Add~~] add a new subsection (d) to read: "(d) Any person who imports hazardous waste into

the State from a foreign country or from any state must comply with section [~~11-262.1-16(a).~~"

~~(2) Add a new subsection (c) to read: "(c) Any person who imports hazardous waste into the State from any state must comply with section 11-262.1-16(b).~~"] 11-262.1-16."

(b) The incorporation by reference of 40 C.F.R. section 264.13 is amended as follows:

(1) In 40 C.F.R. section 264.13(b)(3), delete the entire Comment.

(2) In 40 C.F.R. section 264.13(b)(7)(iii), delete "under §260.22 of this chapter".

(c) The incorporation by reference of 40 C.F.R. section 264.15 is amended as follows:

[~~(1) In 40 C.F.R. section 264.15(b)(4), delete ", except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section".~~

~~(2)~~] 40 C.F.R. section 264.15(b)(5) is excluded from incorporation.

(d) The incorporation by reference of 40 C.F.R. section 264.18 is amended as follows: in 40 C.F.R. section 264.18(c), delete ", except for the Department of Energy Waste Isolation Pilot Project in New Mexico". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-5 (Reserved.)

§11-264.1-6 Amendments to the incorporation of 40 C.F.R. part 264, subpart D. The incorporation by reference of 40 C.F.R. section 264.56 is amended as follows: in 40 C.F.R. section 264.56(d)(2), replace "either the government official designated as the on-

scene coordinator for that geographical area, or" with "the government official designated as the on-scene coordinator from the Hawaii department of health's Hazard Evaluation and Emergency Response Office via the State Hospital at (808) 247-2191 after business hours or directly at (808) 586-4249 during business hours and". [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-7 Amendments to the incorporation of 40 C.F.R. part 264, subpart E. (a) The incorporation by reference of 40 C.F.R. section 264.73 is amended as follows:

(1) In 40 C.F.R. section 264.73(b)(10), replace ", a petition" with "or a petition" and delete "or a certification under §268.8 of this chapter,".

(2) In 40 C.F.R. section 264.73(b)(11) and 264.73(b)(12) delete ", and the certification and demonstration, if applicable," and "or §268.8".

(3) In 40 C.F.R. section 264.73(b)(13), delete ", and the certification and demonstration if applicable,", one § symbol, and "and 268.8, whichever is applicable".

(4) In 40 C.F.R. section 264.73(b)(14), delete ", and the certification and demonstration if applicable, required under §268.8, whichever is applicable".

(5) In 40 C.F.R. section 264.73(b)(15) and 264.73(b)(16), delete ", and the certification and demonstration if applicable," and "or §268.8".

(b) The incorporation by reference of 40 C.F.R. section 264.75 is amended as follows: replace [~~"8700-13B" with "8700-13A/B".~~] "the following" with "each". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-8 (Reserved.)

§11-264.1-9 Amendments to the incorporation of 40 C.F.R. part 264, subpart G. (a) The incorporation by reference of 40 C.F.R. section 264.113 is amended as follows: 40 C.F.R. section 264.113(e)(7)(v) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 264.116 is amended as follows: replace "local zoning authority" with "county and local zoning authority" in both instances. [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-10 Amendments to the incorporation of 40 C.F.R. part 264, subpart H. (a) The incorporation by reference of 40 C.F.R. section 264.143 is amended as follows: in 40 C.F.R. section 264.143(h), replace "Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions" with "state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state".

(b) The incorporation by reference of 40 C.F.R. section 264.145 is amended as follows: in C.F.R. section 264.145(h), replace "Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions" with "state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous

waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state".

(c) The incorporation by reference of 40 C.F.R. section 264.147 is amended as follows:

(1) In 40 C.F.R. section 264.147(a)(1)(i) and (b)(1)(i), replace ", or Regional Administrators if the facilities are located in more than one Region" with ". If the facilities are located in more than one state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state". Replace "a Regional Administrator" with "the director".

(2) In 40 C.F.R. section 264.147(g)(2)(i) and (ii), replace "each State in which a facility covered by the guarantee is located" with "the State of Hawaii" and replace "in that State" with "in their respective states".

(3) In 40 C.F.R. section 264.147(i)(4), replace "each state in which a facility covered by the surety bond is located" with "the State of Hawaii" and replace "in that State" with "in their respective states".

(d) 40 C.F.R. sections 264.149 and 264.150 are excluded from the incorporation by reference of 40 C.F.R. part 264.

(e) The incorporation by reference of 40 C.F.R. section 264.151 is amended as follows: replace [~~the entire~~] 40 C.F.R. section 264.151 in its entirety to read [~~as follows:~~] :

"§264.151 Wording of the instruments.

(a) (1) A trust agreement for a trust fund, as specified in 40 [~~CFR~~] C.F.R. section 264.143(a) or 264.145(a), as incorporated and amended in this chapter, or 40 [~~CFR~~] C.F.R. section 265.143(a) or 265.145(a), as incorporated and amended in section

11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of _____" or "a national bank"], the "Trustee."

Whereas, the Department of Health, State of Hawaii, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "department" means the Department of Health, State of Hawaii.

(d) The term "director" means the director of the Department of Health, State of Hawaii.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities

and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number, name, address, and the current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the department. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the department.

Section 4. Payment for Closure and Post-Closure Care. The Trustee shall make payments from the Fund as the director shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the director from the Fund for closure and post-closure expenditures in such amounts as the director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee

shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the director shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be

fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the director to the Trustee shall be in writing, signed by the director or the director's designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and

instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or department, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the director, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the director, or by the Trustee and the director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the director, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in

its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 264.151(a)(1), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in 40 [~~CFR sections~~] C.F.R. section 264.143(a) or 264.145(a), as incorporated and amended in this chapter, or 40 [~~CFR sections~~] C.F.R. section 265.143(a) or 265.145(a), as incorporated and amended in section 11-265.1-1.

State of _____

County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(b) A surety bond guaranteeing payment into a trust fund, as specified in 40 [~~CFR~~] C.F.R. section 264.143(b) or 264.145(b), as incorporated and amended in this chapter, or 40 [~~CFR~~] C.F.R. section 265.143(b) or 265.145(b), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

FINANCIAL GUARANTEE BOND

Date bond executed:

Effective date:

Principal: [legal name and business address of owner or operator]

Type of Organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: _____

Surety(ies): [name(s) and business address(es)]

EPA Identification Number, name, address and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]: _____

Total penal sum of bond: $ _____

Surety's bond number: _____

As used in this instrument:

(a) The term "department" means the Department of Health, State of Hawaii.

(b) The term "director" means the director of the Department of Health, State of Hawaii.

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the state department of health, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under chapter [~~342J of the~~] 342J, Hawaii Revised Statutes, to have a permit or interim status in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit or interim status, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure is issued by the director or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in the incorporated

version of subpart H of 40 [~~CFR~~] C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable, and obtain the director's written approval of such assurance, within 90 days after the date notice of cancellation is received by both Principal, the director, and the EPA Regional Administrator from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the director that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the director.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, to the director, and to the EPA Regional Administrator, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, the director, and the EPA Regional [~~Administarter,~~] Administrator, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the director.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees

a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the director.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 264.151(b), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)] _____

[Name(s)] _____

[Title(s)] _____

[Corporate seal] _____

Corporate Surety(ies)

[Name and address]

State of incorporation: _____

Liability limit: $ _____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $ _____

(c) A surety bond guaranteeing performance of closure and/or post-closure care, as specified in 40 [~~CFR~~] C.F.R. section 264.143(c) or 264.145(c), as incorporated and amended in this chapter, must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed: _____
Effective date: _____
Principal: [legal name and business address of owner or operator]
Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation: _____
Surety(ies): [name(s) and business address(es)]

_____
EPA Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]: _____
Total penal sum of bond: $ _____
Surety's bond number: _____

As used in this instrument:

(a) The term "department" means the Department of Health, State of Hawaii.

(b) The term "director" means the director of the Department of Health, State of Hawaii.

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Department of health, State of Hawaii, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under chapter [~~342J of the~~] 342J, Hawaii Revised Statutes, to have a permit in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

And, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the post-closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance as specified in the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. part 264, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and obtain the director's written approval of such assurance, within 90 days after the date notice of cancellation is received by the Principal, the director, and the EPA Regional Administrator from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the director that the Principal has been found in violation of the closure requirements of the incorporated version of 40 [~~CFR~~] C.F.R. part 264, as amended, in section 11-264.1-1, Hawaii Administrative Rules, for a facility for which

this bond guarantees performance of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the director.

Upon notification by the director that the Principal has been found in violation of the post-closure requirements of the incorporated version of 40 [~~CFR~~] C.F.R. part 264, as amended, in section 11-264.1-1, Hawaii Administrative Rules, for a facility for which this bond guarantees performance of post-closure care, the Surety(ies) shall either perform post-closure care in accordance with the post-closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the director.

Upon notification by the director that the Principal has failed to provide alternate financial assurance as specified in the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. part 264, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and obtain written approval of such assurance from the director during the 90 days following receipt by the Principal, the director, and the EPA Regional Administrator of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the director.

The surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator, to the director, and to the EPA Regional Administrator, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, the director, and the Regional Administrator, as evidenced by the return receipts.

The principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the director.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the director.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 264.151(c), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulation was constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address]

State of incorporation: _____

Liability limit: $ _____
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: $ _____

(d) A letter of credit, as specified in 40 [~~CFR~~] C.F.R. section 264.143(d) or 264.145(d), as incorporated and amended in this chapter, or 40 [~~CFR~~] C.F.R. section 265.143(c) or 265.145(c), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Director of Health
Department of Health
State of Hawaii

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. ___ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars $___, available upon presentation of

(1) your sight draft, bearing reference to this letter of credit No. ___, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of chapter [~~342J of the~~] 342J, Hawaii Revised Statutes."

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify

you, the EPA Regional Administrator, and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by you, the EPA Regional Administrator, and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 264.151(d), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below. [Signature(s) and title(s) of official(s) of issuing institution] [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(e) A certificate of insurance, as specified in 40 [~~CFR~~] C.F.R. section 264.143(e) or 264.145(e), as incorporated and amended in this chapter, or 40 [~~CFR~~] C.F.R. section 265.143(d) or [~~§265.145(d),~~] 265.145(d), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATE OF INSURANCE FOR CLOSURE OR POST-CLOSURE CARE

Name and Address of Insurer (herein called the "Insurer"):
Name and Address of Insured (herein called the "Insured"):
Facilities Covered: [List for each facility: The EPA Identification Number, name, address, and the amount of insurance for closure and/or the amount for post-closure care (these amounts for all facilities covered must total the face amount shown below).]
Face Amount:
Policy Number:
Effective Date:

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and post-closure care" or "post-closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of the incorporated version of 40 [~~CFR~~] C.F.R. sections 264.143(e), 264.145(e), 265.143(d), and 265.145(d), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the director of the state department of health, the Insurer agrees to furnish to the directors a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 264.151(e), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.
[Authorized signature for Insurer]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:
[Date]

(f) A letter from the chief financial officer, as specified in 40 [~~CFR~~] C.F.R. section 264.143(f) or 264.145(f), as incorporated and amended in this chapter, or 40 [~~CFR~~] C.F.R. section 265.143(e) or 265.145(e), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

[Address to director].

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure and/or post-closure costs, as specified in the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. parts 264 and 265, as amended, in [~~section~~] sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules.

[Fill out the following five paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care].

1. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in subpart H of 40 [~~CFR~~] C.F.R. parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: ____.

2. This firm guarantees, through the guarantee specified in subpart H of 40 [~~CFR~~] C.F.R. parts 264 and 265, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown

for each facility: ____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ____; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee ____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In States where EPA is not administering the financial requirements of subpart H of 40 [~~CFR~~] C.F.R. part 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 [~~CFR~~] C.F.R. parts 264 and 265. The current closure and/or [~~postclosure~~] post-closure cost estimates covered by such a test are shown for each facility: _____.

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 [~~CFR~~] C.F.R. parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: ____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 [~~CFR~~] C.F.R. part 144. The current closure cost estimates as required by 40 [~~CFR~~] C.F.R. section 144.62 are shown for each facility: ____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of 40 [~~CFR~~] C.F.R. section 264.143(f)(1)(i) or 264.145(f)(1)(i), as incorporated and amended in this chapter, or of section 40 [~~CFR~~] C.F.R. section 265.143(e)(1)(i) or 265.145(e)(1)(i), as incorporated and amended in section 11-265.1-1, are used. Fill in Alternative II if the criteria of of 40 [~~CFR~~] C.F.R. section 264.143(f)(1)(ii) or 264.145(f)(1)(ii), as incorporated and amended in this chapter, or of 40 [~~CFR~~] C.F.R. section 265.143(e)(1)(ii) or 265.145(e)(1)(ii), as incorporated and amended in section 11-265.1-1, are used.]

Alternative I

1. Sum of current closure and post-closure cost estimate [total of all cost estimates shown in the five paragraphs above] $____

*2. Total liabilities [if any portion of the closure or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4] $____

*3. Tangible net worth $____

*4. Net worth $____

*5. Current assets $____

*6. Current liabilities $____

7. Net working capital [line 5 minus line 6] $____

*8. The sum of net income plus depreciation, depletion, and amortization $____

*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $____

10. Is line 3 at least $10 million? (Yes/No) ____

11. Is line 3 at least 6 times line 1? (Yes/No) ____

12. Is line 7 at least 6 times line 1? (Yes/No) ____

*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14 (Yes/No) ____
14. Is line 9 at least 6 times line 1? (Yes/No) ____
15. Is line 2 divided by line 4 less than 2.0? (Yes/No) ____
16. Is line 8 divided by line 2 greater than 0.1? (Yes/No) ____
17. Is line 5 divided by line 6 greater than 1.5? (Yes/No) ____

Alternative II

1. Sum of current closure and post-closure cost estimates [total of all cost estimates shown in the five paragraphs above] $____
2. Current bond rating of most recent issuance of this firm and name of rating service ____
3. Date of issuance of bond ____
4. Date of maturity of bond ____
*5. Tangible net worth [if any portion of the closure and post-closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] $____
*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $____
7. Is line 5 at least $10 million? (Yes/No) ____
8. Is line 5 at least 6 times line 1? (Yes/No) ____
*9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10 (Yes/No) ____
10. Is line 6 at least 6 times line 1? (Yes/No) ____

I hereby certify that the wording of this letter is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 264.151(f), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

(g) A letter from the chief financial officer, as specified in 40 [~~CFR~~] C.F.R. section 264.147(f), as

incorporated and amended in this chapter, or 40 [~~CFR~~] C.F.R. section 265.147(f), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

LETTER FROM CHIEF FINANCIAL OFFICER

[Address to director].

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post-closure care" if applicable] as specified in the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. parts 264 and 265, as amended, in [~~section~~] sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, and address].

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. parts 264 and 265, as amended, in [~~section~~] sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules:____

The firm identified above guarantees, through the guarantee specified in the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. parts 264 and 265, as amended, in [~~section~~] sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the

following: ____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ____; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee ____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]
[If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following five paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA identification number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or post-closure care or liability coverage is demonstrated through the financial test specified in subpart H of 40 [~~CFR~~] C.F.R. parts 264 and 265. The current closure and/or post-closure cost estimate covered by the test are shown for each facility: ____.

2. The firm identified above guarantees, through the guarantee specified in subpart H of 40 [~~CFR~~] C.F.R. parts 264 and 265, the closure and post-closure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for closure or post-closure care so guaranteed are shown for each facility: ____.

3. In States where EPA is not administering the financial requirements of subpart H of 40 [~~CFR~~] C.F.R. parts 264 and 265, this firm is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a

test equivalent or substantially equivalent to the financial test specified in subpart H or 40 [~~CFR~~] C.F.R. parts 264 and 265. The current closure or post-closure cost estimates covered by such a test are shown for each facility: ____.

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanisms specified in subpart H of 40 [~~CFR~~] C.F.R. parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: ____.

5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 [~~CFR~~] C.F.R. part 144 and is assured through a financial test. The current closure cost estimates as required by 40 [~~CFR~~] C.F.R. section 144.62 are shown for each facility:____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of 40 [~~CFR~~] C.F.R. section 264.147(f)(1)(i), as incorporated and amended in this chapter, or 40 [~~CFR~~] C.F.R. section 265.147(f)(1)(i), as incorporated and amended in section 11-265.1-1, are used. Fill in Alternative II if the criteria of paragraph of 40 [~~CFR~~] C.F.R. section 264.147(f)(1)(ii), as incorporated and amended in this chapter, or 40 [~~CFR~~] C.F.R. section

265.147(f)(1)(ii), as incorporated and amended in section 11-265.1-1, are used.]

Alternative I

1. Amount of annual aggregate liability coverage to be demonstrated $____.
*2. Current assets $____.
*3. Current liabilities $____.
4. Net working capital (line 2 minus line 3) $____.
*5. Tangible net worth $____.
*6. If less than 90% of assets are located in the U.S., give total U.S. assets $____.
7. Is line 5 at least $10 million? (Yes/No) ____.
8. Is line 4 at least 6 times line 1? (Yes/No) ____.
9. Is line 5 at least 6 times line 1? (Yes/No) ____.
*10. Are at least 90% of assets located in the U.S.? (Yes/No) ____. If not, complete line 11.
11. Is line 6 at least 6 times line 1? (Yes/No) ____.

Alternative II

1. Amount of annual aggregate liability coverage to be demonstrated $____.
2. Current bond rating of most recent issuance and name of rating service ____ ____.
3. Date of issuance of bond _____.
4. Date of maturity of bond _____.
*5. Tangible net worth $____.
*6. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $____.
7. Is line 5 at least $10 million? (Yes/No) ____.
8. Is line 5 at least 6 times line 1? ____.
9. Are at least 90% of assets located in the U.S.? If not, complete line 10. (Yes/No) ____.
10. Is line 6 at least 6 times line 1? ____.

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or post-closure care.]

Part B. Closure or Post-Closure Care and Liability Coverage

[Fill in Alternative I if the criteria of 40 [~~CFR~~] C.F.R. section 264.143(f)(1)(i) or

264.145(f)(1)(i) and 264.147(f)(1)(i), as incorporated and amended in this chapter, are used or if the criteria of 40 [~~CFR~~] C.F.R. section 265.143(e)(1)(i) or 265.145(e)(1)(i) and 265.147(f)(1)(i), as incorporated and amended in section 11-265.1-1, are used. Fill in Alternative II if the criteria of 40 [~~CFR~~] C.F.R. section 264.143(f)(1)(ii) or 264.145(f)(1)(ii) and 264.147(f)(1)(ii), as incorporated and amended in this chapter, are used or if the criteria of 40 [~~CFR~~] C.F.R. section 265.143(e)(1)(i) 265.145(e)(1)(i) and 265.147(f)(1)(ii), as incorporated and amended in section 11-265.1-1, are used.]

Alternative I

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) $____
2. Amount of annual aggregate liability coverage to be demonstrated $____
3. Sum of lines 1 and 2 $____
*4. Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) $____
*5. Tangible net worth $____
*6. Net worth $____
*7. Current assets $____
*8. Current liabilities $____
9. Net working capital (line 7 minus line 8) $____
*10. The sum of net income plus depreciation, depletion, and amortization $____
*11. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $____
12. Is line 5 at least $10 million? (Yes/No)
13. Is line 5 at least 6 times line 3? (Yes/No)
14. Is line 9 at least 6 times line 3? (Yes/No)
*15. Are at least 90% of assets located in the U.S.? (Yes/No) If not, complete line 16.
16. Is line 11 at least 6 times line 3? (Yes/No)
17. Is line 4 divided by line 6 less than 2.0? (Yes/No)

18. Is line 10 divided by line 4 greater than 0.1? (Yes/No)
19. Is line 7 divided by line 8 greater than 1.5? (Yes/No)

Alternative II

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) $____
2. Amount of annual aggregate liability coverage to be demonstrated $____
3. Sum of lines 1 and 2 $____
4. Current bond rating of most recent issuance and name of rating service ____ ____
5. Date of issuance of bond _____
6. Date of maturity of bond _____
*7. Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line) $____
*8. Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.) $____
9. Is line 7 at least $10 million? (Yes/No)
10. Is line 7 at least 6 times line 3? (Yes/No)
*11. Are at least 90% of assets located in the U.S.? (Yes/No) If not complete line 12.
12. Is line 8 at least 6 times line 3? (Yes/No)

I hereby certify that the wording of this letter is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 264.151(g), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

(h) (1) A corporate guarantee, as specified in 40 [~~CFR~~] C.F.R. section 264.143(f) or 264.145(f), as incorporated and amended in this chapter, or 40 [~~CFR~~] C.F.R. section 265.143(e) or 265.145(e), as

incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CORPORATE GUARANTEE FOR CLOSURE OR POST-CLOSURE CARE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in the incorporated version of 40 [~~CFR~~] C.F.R. section [either 264.141(h) or 265.141(h)], as amended, in section [either 11-264.1-1 or 11-265.1-1], Hawaii Administrative [~~Rules"~~] Rules,"] to the Department of Health, State of Hawaii.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in the incorporated version of 40 [~~CFR~~] C.F.R. sections 264.143(f), 264.145(f), 265.143(e), and 265.145(e), as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules.

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, or both.]

3. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by the incorporated version of subpart G of 40 [~~CFR~~] C.F.R. parts 264 and 265, as amended, in sections

11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules for the closure and post-closure care of facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees to the Department of Health, State of Hawaii that in the event that [owner or operator] fails to perform [insert "closure," "post-closure care" or "closure and post-closure care"] of the above facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator] in the amount of the current closure or post-closure cost estimates as specified in the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director of health, State of Hawaii, the EPA Regional Administrator, to the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator] that he intends to provide alternate financial assurance as specified in the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the director of health, State of Hawaii, and EPA Regional

Administrator by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of health, State of Hawaii, of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to the incorporated version of 40 [~~CFR~~] C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules.

9. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator] must comply with the applicable financial assurance requirements of the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the director of health, State of Hawaii, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating

hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the director of health, State of Hawaii, approves, alternate closure and/or post-closure care coverage complying with the incorporated version of 40 [~~CFR~~] C.F.R. sections 264.143, 264.145, 265.143, and/or 265.145, as amended, in section 11-264.1-1 and/or 11-265.1-1, Hawaii Administrative Rules.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with its owner or operator] Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the director, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and by [the owner or operator].

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in the incorporated version of subpart H of 40 [~~CFR~~] C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable, and obtain written approval of such assurance from the director of health, State of Hawaii, within 90 days after a notice of cancellation by the guarantor is received from guarantor by the director, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

12. Guarantor expressly waives notice of acceptance of this guarantee by the Hawaii department of health or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 264.151(h), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.
Effective date:
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

(2) A guarantee, as specified in 40 [~~CFR~~] C.F.R. section 264.147(g), as incorporated and amended in this chapter, or 40 [~~CFR~~] C.F.R. section 265.147(g), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

GUARANTEE FOR LIABILITY COVERAGE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the State of ____" and insert name of State; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is [one of the following: "our subsidiary;" "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in the incorporated version of 40 [~~CFR~~] C.F.R. section [either 264.141(h) or 265.141(h)], as amended, in section [either 11-264.1-1 or 11-265.1-1], Hawaii

Administrative [~~Rules",~~] Rules,"] to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 264.147(g), as amended, in section 11-264.1-1, Hawaii Administrative Rules, and the incorporated version of 40 [~~CFR~~] C.F.R. section 265.147(g), as amended, in section 11-265.1-1, Hawaii Administrative Rules.

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA identification number, name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each State.] This corporate guarantee satisfies RCRA third-party liability requirements for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or

alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator];

(2) Premises that are sold, given away or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator];

(4) Personal property in the care, custody or control of [insert owner or operator];

(5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director of health, State of Hawaii, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator] that he intends to provide alternate liability coverage as specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and the incorporated version of 40 [~~CFR~~] C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the director of health, State of Hawaii, by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of health, State of Hawaii, of a determination that guarantor no longer

meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 [~~CFR~~] C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules, in the name of [owner or operator], unless [owner or operator] has done so.

8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by the incorporated version of 40 [~~CFR~~] C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and the incorporated version of 40 [~~CFR~~] C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules, provided that such modification shall become effective only if the director of health, State of Hawaii, does not disapprove the modification within 30 days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of the incorporated version of 40 [~~CFR~~] C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and the incorporated version of 40 [~~CFR~~] C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules, for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the director of Health, State of Hawaii, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or

operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the director of Health, State of Hawaii, approves, alternate liability coverage complying with the incorporated version of 40 [~~CFR~~] C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and/or the incorporated version of 40 [~~CFR~~] C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]:

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the director of Health, State of Hawaii, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and by [the owner or operator].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] hazardous

waste treatment, storage, or disposal facility should be paid in the amount of $.

[Signatures]
Principal
(Notary) Date
[Signatures]
Claimant(s)
(Notary) Date

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 264.151(h)(2), as amended, in section 11-265.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

Effective date:
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

(i) A hazardous waste facility liability endorsement as required in 40 [~~CFR~~] C.F.R. section 264.147, as incorporated and amended in this chapter, or 40 [~~CFR~~] C.F.R. section 265.147, as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS WASTE FACILITY LIABILITY ENDORSEMENT

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under the incorporated version of 40 [~~CFR~~] C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 [~~CFR~~] C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules. The coverage applies at [list EPA Identification Number, name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 264.147(f), as amended, in section 11-264.1-1, Hawaii

Administrative Rules, or the incorporated version of 40 [~~CFR~~] C.F.R. section 265.147(f), as amended, in section 11-265.1-1, Hawaii Administrative Rules.

(c) Whenever requested by the director of health, State of Hawaii, the Insurer agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the director of health, State of Hawaii, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the policy are located.

(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the director of health, State of Hawaii, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the policy are located.

Attached to and forming part of policy No. ___ issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this _____ day of _____, 20__. The effective date of said policy is _____ day of _____, 20__.

I hereby certify that the wording of this endorsement is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 264.151(i), as ameded, in section 11-264.1-1, Hawaii Administrative Rules, as such regulation was

constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.
[Signature of Authorized Representative of Insurer]
[Type name]
[Title], Authorized Representative of [name of Insurer]
[Address of Representative]

(j) A certificate of liability insurance as required in 40 [~~CFR~~] C.F.R. section 264.147, as incorporated and amended in this chapter, or 40 [~~CFR~~] C.F.R. section 265.147, as incorporated and amended in section 11-265.1-1, must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS WASTE FACILITY CERTIFICATE OF LIABILITY INSURANCE

1. [Name of Insurer], (the "Insurer"), of [address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured], (the "insured"), of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under the incorporated version of 40 [~~CFR~~] C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 [~~CFR~~] C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules. The coverage applies at [list EPA Identification Number, name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are

insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number ___, issued on [date]. The effective date of said policy is [date].

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 264.147(f), as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 [~~CFR~~] C.F.R. section 265.147(f), as amended, in section 11-265.1-1, Hawaii Administrative Rules.

(c) Whenever requested by the director of health, State of Hawaii, the Insurer agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the director of health, State of Hawaii, the EPA Regional Administrator, and the

state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the policy are located.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the director of health, State of Hawaii, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the policy are located.

I hereby certify that the wording of this instrument is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 264.151(j), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of Representative]

(k) A letter of credit, as specified in 40 [~~CFR~~] C.F.R. section 264.147(h), as incorporated and amended in this chapter, or 40 [~~CFR~~] C.F.R. section 265.147(h), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Name and Address of Issuing Institution
Director of Health
State of Hawaii

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in the favor of ["any and all third-party liability claimants" or insert name of trustee of the standby trust fund], at the request and for the account of [owner or operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars $_____ per occurrence and the annual aggregate amount of [in words] U.S. dollars $_____, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars $_____ per occurrence, and the annual aggregate amount of [in words] U.S. dollars $_____, for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. _____, and [insert the following language if the letter of credit is being used without a standby trust fund:

(1) a signed certificate reading as follows:

Certificate of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ]. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal]. This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

[Signatures]
Grantor
[Signatures]
Claimant(s)

or (2) a valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.]

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the director of health, State of Hawaii, the EPA Regional Administrator, and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us. [Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess" coverage]."]

We certify that the wording of this letter of credit is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 264.151(k), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below. [Signature(s) and title(s) of official(s) of issuing institution] [Date].

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(l) A surety bond, as specified in 40 [~~CFR~~] C.F.R. section 264.147(i), as incorporated and amended in this chapter, or 40 [~~CFR~~] C.F.R. section 265.147(i), as incorporated and amended in section 11-265.1-1, must be worded as follows: except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PAYMENT BOND

Surety Bond No. [Insert number]

Parties [Insert name and address of owner or operator], Principal, incorporated in [Insert State of incorporation] of [Insert city and State of principal place of business] and [Insert name and address of surety company(ies)], Surety Company(ies), of [Insert surety(ies) place of business].

EPA Identification Number, name, and address for each facility guaranteed by this bond: ____

	Sudden accidental occurrences	Nonsudden accidental occurrences
Penal Sum Per Occurrence.	[insert amount]	[insert amount]
Annual Aggregate	[insert amount]	[insert amount]

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

(1) Chapter 342J, Hawaii Revised Statutes.

(2) Administrative Rules of the Hawaii State Department of Health, particularly the incorporated version of ["40 [~~CFR~~] C.F.R. section 264.147, as amended, in section 11-264.1-1" or "40 [~~CFR~~] C.F.R. section 265.147, as amended, in section 11-265.1-1"], Hawaii Administrative Rules (if applicable).

Conditions:

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by

["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal]. This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

(4) The Surety(ies) shall satisfy a third party liability claim only upon the receipt of one of the following documents:

(a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert name of Principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signature]
Principal
[Notary] Date
[Signature(s)]
Claimant(s)
[Notary] Date

or

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation

of the Principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the director of health, State of Hawaii, forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, the director of health, State of Hawaii, and the EPA Regional Administrator, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, the director of health, State of Hawaii, and the EPA Regional Administrator, as evidenced by the return receipts.

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the director of health, State of Hawaii, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the bond are located.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. 264.151(l), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate Seal]

CORPORATE SURETY[~~[IES]~~](IES)

[Name and address]
State of incorporation:
Liability Limit: $
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $

(m)(1) A trust agreement, as specified in 40 [~~CFR~~] C.F.R. section 264.147(j), as incorporated and amended in this chapter, or 40 [~~CFR~~] C.F.R. section 265.147(j), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of State] [insert "corporation,"

"partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of ____" or "a national bank"], the "trustee."

Whereas, the Department of Health, State of Hawaii, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "department" means the Department of Health, State of Hawaii.

(d) The term "director" means the director of health, State of Hawaii.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ [up to $1 million] per occurrence and _____ [up to $2 million] annual aggregate for sudden accidental occurrences and _____ [up to $3 million] per occurrence and _____ [up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor]. This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the department.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents;

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signatures]

Grantor

[Signatures]

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held unless they are securities or

other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common commingled, or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that

may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the director shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust

in a writing sent to the Grantor, the director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the director to the Trustee shall be in writing, signed by the director, or the director's designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the department, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the

Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the director.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the director, or by the Trustee and the director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the director, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor. The director will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 [~~CFR~~] C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 264.151(m), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in 40 [~~CFR~~] C.F.R. section 264.147(j), as incorporated and amended in this chapter, or 40 [~~CFR~~] C.F.R. section 265.147(j), as incorporated and amended in section 11-265.1-1.

State of
County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn,

did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.
[Signature of Notary Public]

(n)(1) A standby trust agreement, as specified in 40 [~~CFR~~] C.F.R. section 264.147(h), as incorporated and amended in this chapter, or 40 [~~CFR~~] C.F.R. section 265.147(h), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

STANDBY TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of a State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of _____" or "a national bank"], the "trustee."

Whereas the Department of Health, State of Hawaii, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term Grantor means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term Trustee means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "department" means the Department of Health, State of Hawaii.

(d) The term "director" means the director of health, State of Hawaii.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund, hereafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ [up to $1 million] per occurrence and _____ [up to $2 million] annual aggregate for sudden accidental occurrences and _____ [up to $3 million] per occurrence and _____ [up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability

in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor]. This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned by [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the department.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signature]
Grantor
[Signatures]
Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of the incorporated version of 40 [~~CFR~~] C.F.R. section 264.151(k), as amended, in section 11-264.1-1, Hawaii Administrative Rules, and Section 4 of this Agreement.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested

for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange

for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its

services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the director and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or department, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the director, or by the Trustee and the director if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the director, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor. The director will agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 [~~CFR~~] C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules.

Section 16. Immunity and [~~indemnification.~~] Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this

Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in the incorporated version of 40 [~~CFR~~] C.F.R. section 264.151(n), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a standby trust fund as specified in 40 [~~CFR~~] C.F.R. section 264.147(h), as incorporated and amended in this chapter, or 40 [~~CFR~~] C.F.R. section 265.147(h), as incorporated and amended in section 11-265.1-1.

State of
County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation,

and that she/he signed her/his name thereto by like order.
[Signature of Notary Public]" [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-11 Amendments to the incorporation of 40 C.F.R. part 264, subpart I. [~~40 C.F.R. section 264.174 is replaced in its entirety to read: "§264.174 Inspections. At least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors. The owner or operator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions."~~] Reserved for amendments to 40 C.F.R. part 264, subpart I. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-12 Amendments to the incorporation of 40 C.F.R. part 264, subpart J. [~~(a)~~] The incorporation by reference of 40 C.F.R. section 264.191 is amended as follows:

(1) In 40 C.F.R. section 264.191(a), replace "January 12, 1988" with "January 12, 1988 for HSWA tanks and June 18, 1995 for non-HSWA tanks".

(2) In 40 C.F.R. section 264.191(c), replace "Tank systems" with "HSWA tank systems" and

add the following second sentence: "Non-HSWA tank systems that store or treat materials that become hazardous wastes subsequent to June 18, 1994 must conduct this assessment within twelve months after the date that the waste becomes a hazardous waste."

[~~(b) The incorporation by reference of 40 C.F.R. section 264.195 is amended as follows: 40 C.F.R. section 264.195(e) is excluded from incorporation.~~] [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-13 Amendments to the incorporation of 40 C.F.R. part 264, subpart K. The incorporation by reference of 40 C.F.R. section 264.221 is amended as follows: in 40 C.F.R. section 264.221(e)(2)(i)(C), replace "RCRA section 3005(c)" with "section 342J-5, HRS". [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§§11-264.1-14 to 11-264.1-15 (Reserved.)

§11-264.1-16 Amendments to the incorporation of 40 C.F.R. part 264, subpart N. The incorporation by reference of 40 C.F.R. section 264.301 is amended as follows:

(1) In 40 C.F.R. section 264.301(e)(2)(i)(C), replace "RCRA 3005(c)" with "section 342J-5, HRS".

(2) 40 C.F.R. section 264.301(l) is excluded from incorporation. [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§§11-264.1-17 to 11-264.1-18 (Reserved.)

§11-264.1-19 Amendments to the incorporation of 40 C.F.R. part 264, subpart W. (a) The incorporation by reference of 40 C.F.R. section 264.570 is amended as follows: in 40 C.F.R. 264.570(a), replace "December 6, 1990" with "December 6, 1990 for HSWA drip pads and June 18, 1994 for non-HSWA drip pads". Replace "December 24, 1992" with "December 24, 1992 for HSWA drip pads and June 18, 1994 for non-HSWA drip pads".

(b) The incorporation by reference of 40 C.F.R. section 264.573 is amended as follows: in 40 C.F.R. section 264.573(i), replace "section 3010 of RCRA" with "section 342J-6.5, HRS". [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-20 (Reserved.)

§11-264.1-21 Amendments to the incorporation of 40 C.F.R. part 264, subpart AA. (a) The incorporation by reference of 40 C.F.R. section 264.1030 is amended as follows:

(1) In 40 C.F.R. section 264.1030(b)(3), replace "262.34(a)" with "262.17".

[~~(1)~~](2) In 40 C.F.R. section 264.1030(c), replace "when the permit is reissued" with "when a state hazardous waste management permit is issued under chapter 11-270.1 or the EPA-issued RCRA permit is reissued".

[~~(2)~~](3) 40 C.F.R. section 264.1030(d) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 264.1033 is amended as follows:

(1) In 40 C.F.R. section 264.1033(a)(2)(iii), delete "EPA".

(2) In 40 C.F.R. section 264.1033(n)(1)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart X, as incorporated and amended in this chapter" before "; or".

(3) In 40 C.F.R. section 264.1033(n)(2)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart O, as incorporated and amended in this chapter" before "; or".

(4) In 40 C.F.R. section 264.1033(n)(3)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 266, subpart H, as incorporated and amended in section 11-266.1-1" before "; or". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-22 Amendments to the incorporation of 40 C.F.R. part 264, subpart BB. (a) The incorporation by reference of 40 C.F.R. section 264.1050 is amended as follows:

(1) In 40 C.F.R. section 264.1050(b)(2), replace "262.34(a)" with "262.17".

[~~(1)~~] (2) In 40 C.F.R. section 264.1050(c), replace "when the permit is reissued" with "when a state hazardous waste management permit is issued under chapter 11-270.1 or the EPA-issued RCRA permit is reissued".

[~~(2)~~] (3) 40 C.F.R section 264.1050(g) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 264.1060 is amended as follows: in 40 C.F.R. section 264.1060(b)(3), delete "EPA". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-23 Amendments to the incorporation of 40 C.F.R. part 264, subpart CC. (a) The incorporation by reference of 40 C.F.R. section 264.1080 is amended as follows:

(1) In 40 C.F.R. section 264.1080(b)(5), insert "section 342J-36, HRS;" after "CERCLA authorities;".

(2) In 40 C.F.R. section 264.1080(c), replace "when the permit is reissued" with "when a state hazardous waste management permit is issued under chapter 11-270.1 or the EPA-issued RCRA permit is reissued" in both instances.

(3) 40 C.F.R. section 264.1080(e) to 264.1080(g) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 264.1082 is amended as follows:

(1) In 40 C.F.R. 264.1082(c)(2)(vii)(A), insert "or a state hazardous waste management permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart O, as incorporated and amended in section 11-264.1-1" before "; or".

(2) In 40 C.F.R. 264.1082(c)(2)(viii)(A), replace ", or" with "or a state hazardous waste management permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 266, subpart H, as incorporated and amended in section 11-266.1-1; or".

(3) In 40 C.F.R. section 264.1082(c)(4)(ii), insert "and approved by the director" at the end of the sentence.

(c) The incorporation by reference of 40 C.F.R. section 264.1087 is amended as follows: in 40 C.F.R. section 264.1087(c)(5)(i)(D), insert "; or a boiler or industrial furnace burning hazardous waste for which the owner or operator has been issued a state hazardous waste management permit under chapter 11-270.1 and has designed and operates the unit in accordance with the requirements of 40 C.F.R. part 266, subpart H, as incorporated and amended in section 11-266.1-1" before "; or". [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-24 Amendments to the incorporation of 40 C.F.R. part 264, subpart DD. [~~(a)~~] The incorporation by reference of 40 C.F.R. section 264.1100 is amended as follows: in the introductory paragraph, replace "RCRA section 3004(k)" with "40 C.F.R. 268.2(c), as incorporated and amended in section 11-268.1-1".

[~~(b) The incorporation by reference of 40 C.F.R. section 264.1101 is amended as follows: replace 40 C.F.R. section 264.1101(c)(4) in its entirety to read: "(4) Inspect and record, at least once every seven days, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste."~~]" [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

6. Chapter 11-265.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-265.1

HAZARDOUS WASTE MANAGEMENT:
INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

Historical note: This chapter is based substantially upon chapter 11-265. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-265.1-1 Incorporation of 40 C.F.R. part 265. Title 40, part 265 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, [~~2016,~~] 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-265.1-2 to 11-265.1-25. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 265, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Administrator", "applicable EPA Regional Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", "Regional Administrator or State Director", and "State Director" shall be replaced with "director".

(2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except in references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(3) "Section 3008 of RCRA" shall be replaced with "42 U.S.C. section 6928 or section 342J-7, HRS".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 265, as incorporated and amended in this chapter:

(1) 40 C.F.R. sections 265.12 and 265.71.

(2) The second occurrence of "EPA" in 40 C.F.R. section 265.1083(c)(4)(ii).

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 265, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and

amended in chapters 11-260.1 to 11-279.1, except as listed in subsection (d). The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

(d) The following references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 265, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations:

(1) The references to the July 1, 2004 edition of 40 C.F.R. parts 260 to 265 in 40 C.F.R. section 265.70(b).

(2) The references in 40 C.F.R. sections 265.1033(m)(1)(i), 265.1033(m)(2)(i), 265.1033(m)(3)(i), 265.1083(c)(2)(vii)(A), 265.1083(c)(2)(viii)(A), and 265.1088(c)(5)(i)(D).

(3) References to 40 C.F.R. sections 268.5, 268.6, and 268.42(b). [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-3 Amendments to the incorporation of 40 C.F.R. part 265, subpart A. (a) The incorporation

by reference of 40 C.F.R. section 265.1 is amended as follows:

(1) In 40 C.F.R. section 265.1(a), replace "national standards" with "state standards".

(2) In 40 C.F.R. section 265.1(b), replace "section 3005 RCRA" with "section 342J-5, HRS,". Replace "facilities in existence on November 19, 1980" with "existing HWM facilities, as defined in 40 C.F.R. section 260.10, as incorporated and amended in section 11-260.1-1,". Replace "section 3010(a) of RCRA" with "42 U.S.C. section 6925(a) or section 342J-6.5, HRS".

(3) 40 C.F.R. section 265.1(c)(4) is excluded from incorporation.

(4) In 40 C.F.R. section 265.1(c)(5) replace "a State" with "the [~~state".~~] State".

(5) In 40 C.F.R. section 261.(c)(7), replace "subparts K and L" with "subpart L".

[~~(5)~~] (6) In 40 C.F.R. section 265.1(c)(11)(iii), replace "parts 122 through 124 of this chapter" with "chapter 11-55".

[~~(6)~~] (7) In 40 C.F.R. section 265.1(c)(14)(iii), [~~remove~~] delete "and".

[~~(7)~~] (8) In 40 C.F.R. section 265.1(c)(14)(iv) replace the period at the end with "; and".

[~~(8)~~] (9) In 40 C.F.R. section 265.1(c)(14), add a subparagraph (v) to read: "(v) Electronic items as described in 40 C.F.R. section 273.6, as incorporated and amended in section 11-273.1-1."

[~~(9)~~] (10) 40 C.F.R. section 265.1(c)(15) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 265.4 is amended as follows: insert "or section 342J-8, HRS" after "RCRA". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-4 Amendments to the incorporation of 40 C.F.R. part 265, subpart B. (a) The incorporation by reference of 40 C.F.R. section 265.11 is amended as follows: replace "in accordance with the EPA notification procedures (45 FR 12746)" with "using EPA form 8700-12".

(b) The incorporation by reference of 40 C.F.R. section 265.12 is amended as follows:

[~~(1) Add~~] add a new subsection (c) to read: "(c) Any person who imports hazardous waste into the State from a foreign country or from any state must comply with section [~~11-262.1-16(a).~~"

~~(2) Add a new subsection (d) to read: "(d) Any person who imports hazardous waste into the State from any state must comply with section 11-262.1-16(b).~~"] 11-262.1-16."

(c) The incorporation by reference of 40 C.F.R. section 265.13 is amended as follows:

(1) In 40 C.F.R. section 265.13(b)(3), delete the entire Comment.

(2) In 40 C.F.R. section 265.13(b)(7)(iii), delete "under §260.22 of this chapter".

(d) The incorporation by reference of 40 C.F.R. section 265.14 is amended as follows: in 40 C.F.R. section 265.14(a), insert "he can demonstrate to the director that" after "unless".

~~[(e) The incorporation by reference of 40 C.F.R. section 265.15 is amended as follows:~~

~~(1) In 40 C.F.R. section 265.15(b)(4), delete ", except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section".~~

~~(2) 40 C.F.R. section 265.15(b)(5) is excluded from incorporation.~~

~~(f)~~](e) The incorporation by reference of 40 C.F.R. section 265.18 is amended as follows: Delete ", except for the Department of Energy Waste Isolation Pilot Project in New Mexico". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31,

342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-5 (Reserved.)

§11-265.1-6 Amendments to the incorporation of 40 C.F.R. part 265, subpart D. The incorporation by reference of 40 C.F.R. section 265.56 is amended as follows: in 40 C.F.R. section 265.56(d)(2), replace "either the government official designated as the on-scene coordinator for that geographical area, or" with "the government official designated as the on-scene coordinator from the Hawaii department of health's Hazard Evaluation and Emergency Response Office via the State Hospital at (808) 247-2191 after business hours or directly at (808) 586-4249 during business hours and". [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-7 Amendments to the incorporation of 40 C.F.R. part 265, subpart E. (a) The incorporation by reference of 40 C.F.R. section 265.73 is amended as follows:

(1) In 40 C.F.R. section 265.73(b)(8), replace "monitoring" with "or monitoring" and delete "or a certification under §268.8 of this chapter,".

(2) In 40 C.F.R. section 265.73(b)(9), (10), (11), (12), (13), and (14), delete ", and the certification and demonstration if applicable," and "or §268.8".

(b) The incorporation by reference of 40 C.F.R. section 265.75 is amended as follows: replace [~~"EPA Form 8700-13B" with "EPA form 8700-13A/B".~~] "the

following" with "each". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-8 Amendments to the incorporation of 40 C.F.R. part 265, subpart F. The incorporation by reference of 40 C.F.R. section 265.90 is amended as follows: in section 40 C.F.R. section 265.90(d)(1), replace "develop" with "submit to the director". [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-9 Amendments to the incorporation of 40 C.F.R. part 265, subpart G. [~~(a) The incorporation by reference of 40 C.F.R. section 265.112 is amended as follows: in 40 C.F.R. section 265.112(d)(3)(ii), add "or section 342J-7, HRS" after "RCRA".~~

~~(b)~~] (a) The incorporation by reference of 40 C.F.R. section 265.113 is amended as follows: 40 C.F.R. section 265.113(e)(7)(v) is excluded from incorporation.

[~~(c)~~] (b) The incorporation by reference of 40 C.F.R. section 265.116 is amended as follows: replace "local zoning authority" with "county and local zoning authority" in both instances.

[~~(d) The incorporation by reference of 40 C.F.R. section 265.118 is amended as follows: in 40 C.F.R. section 265.118(c)(2), add "or section 342J-7, HRS" after "RCRA".~~] [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-10 Amendments to the incorporation of 40 C.F.R. part 265, subpart H. (a) The incorporation by reference of 40 C.F.R. section 265.143 is amended as follows:

[~~(1) In 40 C.F.R. section 265.143(e)(8), add "or section 342J-7, HRS" after "RCRA".~~

~~(2) In~~] in 40 C.F.R. section 265.143(g), replace "Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions" with "state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state".

(b) The incorporation by reference of 40 C.F.R. section 265.145 is amended as follows:

[~~(1) In 40 C.F.R. section 265.145(e)(9), add "or section 342J-7, HRS" after "RCRA".~~

~~(2) In~~] in 40 C.F.R. section 265.145(g), replace "Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions" with "state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state".

(c) The incorporation by reference of 40 C.F.R. section 265.147 is amended as follows:

(1) In 40 C.F.R. section 265.147(a)(1)(i) and (b)(1)(i), replace ", or Regional Administrators if the facilities are located in more than one Region" with ". If the facilities are located in more than one state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating

hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state". Replace "a Regional Administrator" with "the director".

(2) In 40 C.F.R. section 265.147(g)(2)(i) and (ii), replace "each State in which a facility covered by the guarantee is located" with "the State of Hawaii" and replace "in that State" with "in their respective states".

(3) In 40 C.F.R. section 265.147(i)(4)(ii), replace "each state in which a facility covered by the surety bond is located" with "the State of Hawaii" and replace "in that State" with "in their respective states".

(d) 40 C.F.R. sections 265.149 and 265.150 are excluded from the incorporation by reference of 40 C.F.R. part 265. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-11 Amendments to the incorporation of 40 C.F.R. part 265, subpart I. [~~The incorporation by reference of 40 C.F.R. part 265, subpart I is amended as follows: replace 40 C.F.R. section 265.174 in its entirety to read: "§265.174 Inspections. At least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors. The owner or operator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions."~~] Reserved for amendments to 40

C.F.R. part 265, subpart I. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-12 Amendments to the incorporation of 40 C.F.R. part 265, subpart J. [~~(a)~~] The incorporation by reference of 40 C.F.R. section 265.191 is amended as follows:

(1) In 40 C.F.R. section 265.191(a), replace "January 12, 1988" with "January 12, 1988 for HSWA tanks and June 18, 1995 for non-HSWA tanks".

(2) In 40 C.F.R. section 265.191(c), replace "Tank systems" with "HSWA tank systems" and add the following second sentence: "Non-HSWA tank systems that store or treat materials that become hazardous wastes subsequent to June 18, 1994 must conduct this assessment within twelve months after the date that the waste becomes a hazardous waste."

[~~(b) The incorporation by reference of 40 C.F.R. section 265.195 is amended as follows: 40 C.F.R. section 265.195(d) is excluded from incorporation.~~

~~(c) The incorporation by reference of 40 C.F.R. section 265.201 is amended as follows: 40 C.F.R. section 265.201(c) is excluded from incorporation.~~] [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-13 Amendments to the incorporation of 40 C.F.R. part 265, subpart K. The incorporation by reference of 40 C.F.R. section 265.221 is amended as follows: in 40 C.F.R. section 265.221(d)(2)(i)(C), replace "RCRA section 3005(c)" with "section 342J-5, HRS". [Eff 7/17/17; comp] (Auth: HRS

§§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§§11-265.1-14 to 11-265.1-15 (Reserved.)

§11-265.1-16 Amendments to the incorporation of 40 C.F.R. part 265, subpart N. The incorporation by reference of 40 C.F.R. section 265.301 is amended as follows: in 40 C.F.R. section 265.301(d)(2)(i)(C), replace "RCRA 3005(c)" with "section 342J-5, HRS". [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§§11-265.1-17 to 11-265.1-19 (Reserved.)

§11-265.1-20 Amendments to the incorporation of 40 C.F.R. part 265, subpart R. The incorporation by reference of 40 C.F.R. part 265, subpart R is amended as follows: replace 40 C.F.R. section 265.430 in its entirety to read:
"§265.430 Applicability
Underground injection of hazardous waste is prohibited in the State of Hawaii." [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-21 Amendments to the incorporation of 40 C.F.R. part 265, subpart W. The incorporation by reference of 40 C.F.R. section 265.440 is amended as follows: in 40 C.F.R. section 265.440(a), replace

"December 6, 1990" with "December 6, 1990 for HSWA drip pads and June 18, 1994 for non-HSWA drip pads". Replace "December 24, 1992" with "December 24, 1992 for HSWA drip pads and June 18, 1994 for non-HSWA drip pads". [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-22 Amendments to the incorporation of 40 C.F.R. part 265, subpart AA. (a) The incorporation by reference of 40 C.F.R. section 265.1030 is amended as follows: 40 C.F.R. section 265.1030(c) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 265.1033 is amended as follows:

(1) In 40 C.F.R. section 265.1033(a)(2)(iii), delete "EPA".

(2) In 40 C.F.R. section 265.1033(m)(1)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart X, as incorporated and amended in section 11-264.1-1" before "; or".

(3) In 40 C.F.R. section 265.1033(m)(2)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart O, as incorporated and amended in section 11-264.1-1" before "; or".

(4) In 40 C.F.R. section 265.1033(m)(3)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 266, subpart H, as incorporated and amended in section 11-266.1-1" before "; or". [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-23 Amendments to the incorporation of 40 C.F.R. part 265, subpart BB. (a) The incorporation by reference of 40 C.F.R. section 265.1050 is amended as follows: 40 C.F.R. section 265.1050(f) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 265.1060 is amended as follows: in 40 C.F.R. section 265.1060(b)(3), delete "EPA". [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-24 Amendments to the incorporation of 40 C.F.R. part 265, subpart CC. (a) The incorporation by reference of 40 C.F.R. section 265.1080 is amended as follows:

(1) In 40 C.F.R. section 265.1080(b)(5), insert "section 342J-36, HRS;" after "CERCLA authorities;".

(2) In 40 C.F.R. section 265.1080(c)(1) and (2), replace "when the permit is reissued" with "when a state hazardous waste management permit is issued under chapter 11-270.1 or the EPA-issued RCRA permit is reissued".

(3) 40 C.F.R. section 265.1080(e) to (g) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 265.1082 is amended as follows: in 40 C.F.R. section 265.1082(c) and 265.1082(d), replace "December 8, 1997" with "March 13, 1999".

(c) The incorporation by reference of 40 C.F.R. section 265.1083 is amended as follows:

(1) In 40 C.F.R. section 265.1083(c)(2)(vii)(A), insert "or a state hazardous waste management permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart O, as incorporated and amended in section 11-264.1-1" before "; or".

(2) In 40 C.F.R. section 265.1083(c)(2)(viii)(A), replace ", or" with "or a state hazardous waste management permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 266, subpart H, as incorporated and amended in section 11-266.1-1; or".

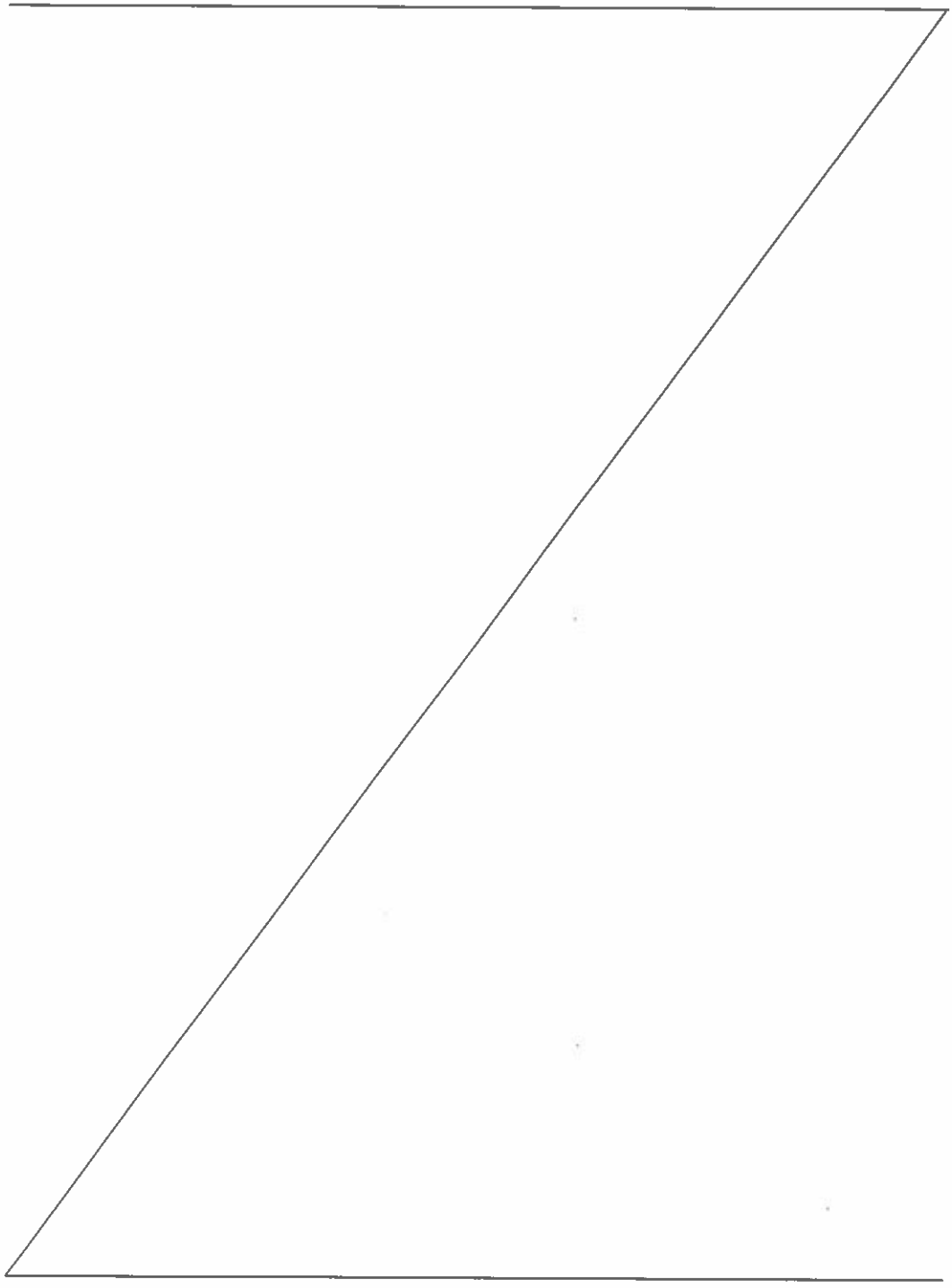
(3) In 40 C.F.R. section 265.1083(c)(4)(ii), insert "and approved by the director" at the end of the sentence.

(d) The incorporation by reference of 40 C.F.R. section 265.1088 is amended as follows: in 40 C.F.R. section 265.1088(c)(5)(i)(D), insert "; or a boiler or industrial furnace burning hazardous waste for which the owner or operator has been issued a state hazardous waste management permit under chapter 11-270.1 and has designed and operates the unit in accordance with the requirements of 40 C.F.R. part 266, subpart H, as incorporated and amended in section 11-266.1-1" before "; or". [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-25 Amendments to the incorporation of 40 C.F.R. part 265, subpart DD. [~~(a)~~] The incorporation by reference of 40 C.F.R. section 265.1100 is amended as follows: in the introductory paragraph, replace "RCRA section 3004(k)" with "40 C.F.R. 268.2(c), as incorporated and amended in section 11-268.1-1".

[~~(b) The incorporation by reference of 40 C.F.R. section 265.1101 is amended as follows: replace 40 C.F.R. section 265.1101(c)(4) in its entirety to read: "(4) Inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste."~~] " [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4,

342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)



7. Chapter 11-266.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-266.1

HAZARDOUS WASTE MANAGEMENT:
STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

Historical note: This chapter is based substantially upon chapter 11-266. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-266.1-1 Incorporation of 40 C.F.R. part 266. Title 40, part 266 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, [~~2016,~~] 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-266.1-2 to 11-266.1-15. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)

§11-266.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 266, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", and "State Director" shall be replaced with "director".

(2) "Agency", "applicable EPA regional office", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except in references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance",

"EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(3) "Section 3010 of RCRA" shall be replaced with "section 342J-6.5, HRS".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 266, as incorporated and amended in this chapter:

(1) 40 C.F.R. section 266.100(b)(1).

(2) Appendices to 40 C.F.R. part 266.

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 266, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1. The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

[Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)

§§11-266.1-3 to 11-266.1-4 (Reserved.)

§11-266.1-5 Amendments to the incorporation of 40 C.F.R. part 266, subpart C. (a) The incorporation by reference of 40 C.F.R. section 266.22 is amended as follows: replace the comma between "264" and "265" with "and" and delete "and 267,".

(b) The incorporation by reference of 40 C.F.R. section 266.23 is amended as follows: in 40 C.F.R. section 266.23(a), delete "subparts A through N of". [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)

§§11-266.1-6 to 11-266.1-7 (Reserved.)

§11-266.1-8 Amendments to the incorporation of 40 C.F.R. part 266, subpart F. The incorporation by reference of 40 C.F.R. section 266.70 is amended as follows: in 40 C.F.R. section 266.70(d), delete "267,". [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)

§11-266.1-9 Amendments to the incorporation of 40 C.F.R. part 266, subpart G. The incorporation by reference of 40 C.F.R. part 266, subpart G is amended by replacing 40 C.F.R. section 266.80 in its entirety to read:

"§266.80 Applicability and requirements.

The rules of this section apply to persons who handle spent lead-acid batteries that are recyclable materials ("spent batteries").

(a) Persons who generate, transport, collect, or store spent batteries that will be reclaimed (other than through regeneration) but do not reclaim them are subject to regulation under chapter 11-273.1. (Note: Batteries that will be regenerated are not a solid waste and thus are not a regulated hazardous waste.)

(b) Owners or operators of facilities that reclaim spent lead-acid batteries on-site (other than through regeneration) are subject to the following requirements:

(1) Chapter 11-261.1;

[~~(1)~~] (2) 40 C.F.R. [~~section~~] sections 262.11[~~,~~] and 262.18, as incorporated and amended in section 11-262.1-1;

[~~(2) Notification requirements under 40 C.F.R. section 262.12, as incorporated and amended in section 11-262.1-1;~~]

(3) For permitted facilities, all applicable provisions in 40 C.F.R. part 264, subparts A to L, as incorporated and amended in chapter 11-264.1, except 40 C.F.R. sections 264.13, 264.71, and 264.72;

(4) For interim status facilities, all applicable provisions in 40 C.F.R. part 265, subparts A to L, as incorporated and amended in chapter 11-265.1, except 40 C.F.R. sections 265.13, 265.71, and 265.72; and

(5) All applicable provisions in chapters 11-268.1 to 11-271.1.

(c) Persons who export spent lead-acid batteries for reclamation (including regeneration) in a foreign country [~~must comply with 40 C.F.R. section 262.11, as incorporated and amended in section 11-262.1-1 and must:~~

~~(1) Comply with 40 C.F.R. part 262, subpart H if shipping to one of the OECD countries specified in 40 C.F.R. section 262.58(a)(1); or~~

~~(2) Do all of the following:~~

~~(i) Comply with the exporter requirements in 40 C.F.R. sections 262.53, 262.56(a)(1) to 262.56(a)(4), 262.56(a)(6), 262.56(b), and 262.57;~~

~~(ii) Export batteries only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent, as defined in 40 C.F.R. part 262, subpart E; and~~

~~(iii) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.~~]

are subject to the following requirements:

(1) Chapter 11-261.1; and

(2) 40 C.F.R. sections 262.11 and 262.18 and 40 C.F.R. part 262, subpart H, as incorporated and amended in section 11-262.1-1.

(d) Persons who transport spent lead-acid batteries in the U.S. to export them for reclamation (including regeneration) in a foreign country [~~must:~~

~~(1) Comply with 40 C.F.R. part 262, subpart H if shipping to one of the OECD countries specified in 40 C.F.R. section 262.58(a)(1); or~~

~~(2) Do all of the following:~~

~~(i) Refuse a shipment if you know the shipment does not conform to the EPA Acknowledgment of Consent;~~

~~(ii) Ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment; and~~

~~(iii) Ensure that the shipment is delivered to the facility designated by the person initiating the shipment.~~"]

are subject to the requirements of 40 C.F.R. part 262, subpart H, as incorporated and amended in section 11-262.1-1.

(e) Persons who import spent lead-acid batteries from a foreign country for reclamation (other than through regeneration) and store and/or reclaim these batteries are subject to the following requirements:

(1) Chapter 11-261.1;
(2) 40 C.F.R. sections 262.11 and 262.18 and 40 C.F.R. part 262, subpart H, as incorporated and amended in section 11-262.1-1; and
(3) Applicable provisions of chapter 11-268.1."
[Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)

§11-266.1-10 Amendments to the incorporation of 40 C.F.R. part 266, subpart H. (a) The incorporation by reference of 40 C.F.R. section 266.101 is amended as follows: In 40 C.F.R. sections 266.101(c)(1) and 266.101(c)(2), delete "267".

(b) The incorporation by reference of 40 C.F.R. section 266.103 is amended as follows:

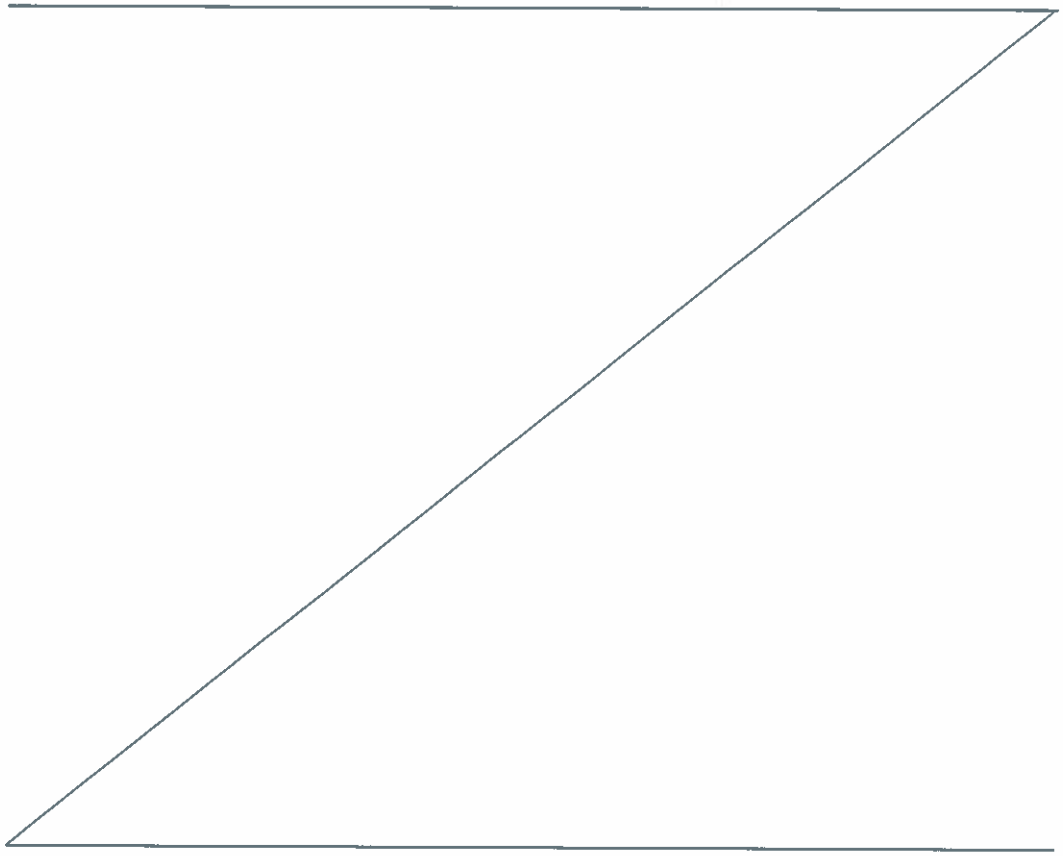
(1) In 40 C.F.R. section 266.103(a)(1)(i), replace "national standards" with "state standards".
(2) In 40 C.F.R. section 266.103(c), replace "on or before August 21, 1992" with "by June 18, 1994".

(c) The incorporation by reference of 40 C.F.R. section 266.111 is amended as follows:

(1) In 40 C.F.R. section 266.111(e)(1)(ii), replace "within 2 years after August 21, 1991" with "by June 18, 1994".
(2) In 40 section C.F.R. 266.111(e)(2)(i), replace "August 21, 1992" with "June 18, 1994". [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)

§§11-266.1-11 to 11-266.1-14 (Reserved.)

§11-266.1-15 Amendments to the incorporation of 40 C.F.R. part 266, subpart M. The incorporation by reference of 40 C.F.R. section 266.202 is amended as follows: in 40 C.F.R. section 266.202(d), replace "RCRA section 1004(27)" with "section 342J-2, HRS" and delete "RCRA" before "corrective action". Replace "sections 3004(u) and (v), and 3008(h)" with "RCRA section 3008(h) and section 342J-36, HRS" and replace "section 7003" with "RCRA section 7003 and section 342J-8, HRS"." [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)



8. Chapter 11-268.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Land Disposal Restrictions", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-268.1

HAZARDOUS WASTE MANAGEMENT:
LAND DISPOSAL RESTRICTIONS

Historical note: This chapter is based substantially upon chapter 11-268. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-268.1-1 Incorporation of 40 C.F.R. part 268. Title 40, part 268 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, [~~2016,~~] 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections

11-268.1-2 to 11-268.1-6. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-268.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 268, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", and "State Director" shall be replaced with "director".

(2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except in references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 268, as incorporated and amended in this chapter: 40 C.F.R. sections 268.1(e)(3), 268.2(j), 268.7(e), 268.13, and 268.40(b) and the appendices to 40 C.F.R. part 268.

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 268, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and

amended in chapters 11-260.1 to 11-279.1, except as listed in subsection (d). The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

(d) The following references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 268, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations: references to 40 C.F.R. sections 268.5, 268.6, 268.42(b), and 268.44. [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-268.1-3 Amendments to the incorporation of 40 C.F.R. part 268, subpart A. (a) The incorporation by reference of 40 C.F.R. section 268.1 is amended as follows:

(1) In 40 C.F.R. section 268.1(f)(3), delete "and".

(2) In 40 C.F.R. section 268.1(f)(4), replace the period at the end with "; and".

(3) In 40 C.F.R. section 268.1(f), add a new paragraph (5) to read: "(5) Electronic items

as described in 40 C.F.R. section 273.6, as incorporated and amended in section 11-273.1-1."

(b) The incorporation by reference of 40 C.F.R. section 268.4 is amended as follows: in 40 C.F.R. section 268.4(a)(2)(ii), delete "under §260.22 of this chapter".

(c) 40 C.F.R. sections 268.5 and 268.6 are excluded from the incorporation by reference of 40 C.F.R. part 268.

(d) The incorporation by reference of 40 C.F.R. section 268.7 is amended as follows:

(1) In 40 C.F.R. section 268.7(a)(9)(iii), replace "(D001-D043)" with "(D001-D043, excluding D009)".

(2) In 40 C.F.R. section 268.7(d), replace "EPA Regional Administrator (or his designated representative) or State authorized to implement part 268 requirements" with "director".

(3) In 40 C.F.R. section 268.7(d)(1), replace "EPA Regional hazardous waste division director (or his designated representative) or State authorized to implement part 268 requirements" with "director". [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§§11-268.1-4 to 11-268.1-5 (Reserved.)

§11-268.1-6 Amendments to the incorporation of 40 C.F.R. part 268, subpart D. 40 C.F.R. sections 268.42(b) and 268.44 are excluded from the incorporation by reference of 40 C.F.R. part 268." [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

9. Chapter 11-270.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: The Hazardous Waste Permit Program", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-270.1

HAZARDOUS WASTE MANAGEMENT:
THE HAZARDOUS WASTE PERMIT PROGRAM

§11-270.1-12 Amendments to the incorporation of 40 C.F.R. part 270, subpart J

Historical note: This chapter is based substantially upon chapter 11-270. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-270.1-1 Incorporation of 40 C.F.R. part 270. Title 40, part 270 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, [~~2016,~~] 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-270.1-2 to 11-270.1-12. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 270, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "Environmental Appeals Board", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", and "State Director" shall be replaced with "director".

(2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States

Environmental Protection Agency" shall be replaced with "state department of health" except for all references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(3) "The Act" shall be replaced with "chapter 342J, HRS".

(4) "The Act and regulations" shall be replaced with "chapter 342J, HRS, and chapters 11-260.1 to 11-279.1".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 270, as incorporated and amended in this chapter:

(1) The second instance of EPA in 40 C.F.R. section 270.1(c)(7).

(2) 40 C.F.R. section 270.2 definitions of "Administrator", "Approved program or approved state", "Environmental Protection Agency", "EPA", "Regional Administrator", and "State/EPA agreement".

(3) 40 C.F.R. sections 270.5, 270.6, 270.10(e)(1)(iii), 270.10(e)(3), 270.10(f)(3), 270.11(a)(3), 270.42(k)(2)(i), 270.51(d), 270.72(a)(5), 270.72(b)(5), 270.225, and 270.235.

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 270, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1, except as listed in subsection (d). The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1

260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

(d) The following references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 270, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations: references to 40 C.F.R. sections 268.5 and 268.6. [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-3 Amendments to the incorporation of 40 C.F.R. part 270, subpart A. (a) The incorporation by reference of 40 C.F.R. section 270.1 is amended as follows:

(1) Replace 40 C.F.R. section 270.1(a)(1) in its entirety to read: "(1) These permit regulations establish provisions for the Hazardous Waste Permit Program under chapter 342J, HRS."

(2) Replace 40 C.F.R. section 270.1(a)(2) in its entirety to read: "(2) The regulations in this part cover basic state department of health permitting requirements, such as application requirements, standard permit conditions, and monitoring and reporting requirements. These regulations are part of a regulatory scheme implementing chapter 342J, HRS, set forth in chapters 11-260.1 to

11-279.1."

(3) In 40 C.F.R. section 270.1(a)(3), [~~replace "40 CFR parts 264, 266, and 267" with "chapters 11-264.1, 11-266.1, and 11-268.1".~~] delete "267,".

(4) In 40 C.F.R section 270.1(b), replace "90 days" with "45 days". Replace both instances of "section 3010" with "section 342J-6.5, HRS". Delete "Treatment, storage, and disposal facilities (TSDs) that are otherwise subject to permitting under RCRA and that meet the criteria in paragraph (b)(1), or paragraph (b)(2) of this section, may be eligible for a standardized permit under subpart J of this part." Replace "EPA or a State with interim authorization for Phase II or final authorization under part 271" with "the state department of health". Delete "or with the analogous provisions of a State program which has received interim or final authorization under part 271".

(5) 40 C.F.R. section 270.1(b)(1) and 270.1(b)(2) is excluded from incorporation.

(6) 40 C.F.R. section 270.1(c)(1)(i) is excluded from incorporation. The State of Hawaii prohibits the underground injection of hazardous waste.

(7) In 40 C.F.R. section 270.1(c)(2)(viii)(C), delete "and".

(8) In 40 C.F.R. section 270.1(c)(2)(viii)(D), replace the period at the end with "; and".

(9) In 40 C.F.R. section 270.1(c)(2)(viii), add a new subparagraph (E) to read: "(E) Electronic items as described in 40 C.F.R. section 273.6, as incorporated and amended in section 11-273.1-1."

(10) 40 C.F.R. section 270.1(c)(2)(ix) is excluded from incorporation.

(11) In 40 C.F.R. section 270.1(c)(7), replace "EPA or by an authorized State" with "EPA or the state department of health".

(b) The incorporation by reference of 40 C.F.R. section 270.2 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 270.2, replace "parts 270, 271, and 124" with "this chapter and chapter 11-271.1".

(2) The definitions "Final authorization", "Interim authorization", "Standardized permit", "State", and "State director" [~~in 40 C.F.R. section 270.2~~] are excluded from incorporation.

(3) The following definitions [~~in 40 C.F.R. section 270.2~~] are amended as follows:

"Application" definition. Replace in its entirety to read: "Application means the current EPA standard national forms for applying for a permit. Application also includes the information required by the director under 40 C.F.R. sections 270.14 [~~through~~] to 270.29, as incorporated and amended in this chapter."

"Director" definition. Replace in its entirety to read: "Director means the director of the Hawaii department of health."

"Existing hazardous waste management (HWM) facility or existing facility" definition. Replace "on or before November 19, 1980" with "on or before:

(1) November 19, 1980; or

(2) The effective date of statutory or regulatory changes made under RCRA prior to June 18, 1994 that made the facility subject to the requirement to have an RCRA permit; or

(3) The effective date of statutory or regulatory changes made under chapter 342J, HRS, after June 18, 1994 that made the facility subject to the requirement to have a permit under section 342J-30(a), HRS".

"Facility or activity" definition. Replace "the RCRA program" with "chapter 342J, HRS, and chapters 11-260.1 to 11-279.1".

"Federal, State and local approvals or permits necessary to begin physical construction" definition. Replace the second instance of "local" with "county".

"Major facility" definition. Replace in its entirety to read: "Major facility means any "facility or activity" classified as such by the Regional Administrator in conjunction with the director."

"New HWM facility" definition. Replace in its entirety to read: "New hazardous waste management (HWM) facility means a hazardous waste management facility which is not included in the definition of an existing hazardous waste management facility."

"Permit" definition. Replace in its entirety to read: "Permit means an authorization, license, or equivalent control document issued by EPA to implement the requirements of 40 C.F.R. parts 124, 270, and 271 or by the State to implement the requirements of chapters 11-270.1 and 11-271.1. Permit includes permit by rule (40 C.F.R. 270.60) and emergency permit (40 C.F.R. 270.61). Permit does not include hazardous waste management interim status (40 C.F.R. part 270, subpart G), or any permit which has not yet been the subject of final EPA or department action, such as a draft permit or a proposed permit."

"Person" definition. Replace in its entirety to read: "Person means any individual, partnership, firm, joint stock company, association, public or private corporation, federal agency, the State or any of its political subdivisions, any state and any of its political subdivisions,

trust, estate, interstate body, or any other legal entity."

"Remedial Action Plan (RAP)" definition. Replace "RCRA permit" with "state hazardous waste permit or EPA-issued RCRA permit".

(c) 40 C.F.R. section 270.3 is excluded from the incorporation by reference of 40 C.F.R. part 270. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-4 Amendments to the incorporation of 40 C.F.R. part 270, subpart B. (a) The incorporation by reference of 40 C.F.R. section 270.10 is amended as follows:

(1) 40 C.F.R. section 270.10(a)(6) is excluded from incorporation.

(2) In 40 C.F.R. section 270.10(e)(1)(iii), replace "March 24, 1987" with "June 18, 1994".

(3) 40 C.F.R. section 270.10(e)(2) is excluded from incorporation.

(4) In 40 C.F.R. section 270.10(e)(3), insert ", or the director may by compliance order issued under section 342J-7, HRS," after "section 3008 of RCRA".

(5) In 40 C.F.R. section 270.10(e)(4), delete "The State Director may require submission of part B (or equivalent completion of the State RCRA application process) if the State in which the facility is located has received interim or final authorization; if not, the Regional Administrator may require submission of Part B."[.] Replace "this Act" with "chapter 342J, HRS".

(6) In 40 C.F.R. section 270.10(f)(2), replace "The application shall be filed with the Regional Administrator if at the time of

application the State in which the new hazardous waste management facility is proposed to be located has not received interim or final authorization for permitting such activity; otherwise it shall be filed with the State Director" with "The application shall be filed with the director".

(7) 40 C.F.R. section 270.10(g)(1)(i) is excluded from incorporation.

(8) Replace 40 C.F.R. section 270.10(g)(1)(ii) in its entirety to read: "(ii) With the director, no later than the effective date of amendments to provisions in chapter 11-261.1 listing or designating wastes as hazardous, if the facility is treating, storing, or disposing of any of those newly listed or designated wastes; or".

(9) Replace 40 C.F.R. section 270.10(g)(1)(iii) in its entirety to read: "(iii) As necessary to comply with provisions of 40 C.F.R. section 270.72, as incorporated and amended in this chapter, for changes during interim status. These revised Part A applications shall be filed with the director."

(10) Replace section 40 C.F.R. section 270.10(h) in its entirety to read: "(h) Reapplying for a permit. If you have an effective permit and you want to reapply for a new one, you must submit a new application at least 180 days before the expiration date of the effective permit, unless the director allows a later date."

(b) The incorporation by reference of 40 C.F.R. section 270.12 is amended as follows: in 40 C.F.R. section 270.12(a), replace "40 CFR part 2" and "40 CFR part 2 (Public Information)" with "sections 342J-14 and 342J-14.5, HRS, and any applicable provisions of chapter 2-71 and chapter 92F, HRS".

(c) The incorporation by reference of 40 C.F.R. section 270.14 is amended as follows:

(1) In 40 C.F.R. section 270.14(a), replace "§§0.14 through 270.29" with "40 C.F.R. sections 270.14 to 270.29, as incorporated and amended in this chapter,".

(2) In 40 C.F.R. section 270.14(b)(11)(iv)(C)(2), delete "271,".

(3) 40 C.F.R. section 270.14(b)(18) is excluded from incorporation.

(4) Replace 40 C.F.R. section 270.14(b)(20) in its entirety to read: "(20) Applicants may be required to submit such information as may be necessary to enable the director to carry out his duties under other state laws or applicable federal laws." [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-5 Amendments to the incorporation of 40 C.F.R. part 270, subpart C. (a) The incorporation by reference of 40 C.F.R. section 270.31 is amended as follows: in 40 C.F.R. section 270.31(c), replace "parts 264, 266 and 267" with "chapters 11-264.1 and 11-266.1".

(b) The incorporation by reference of 40 C.F.R. section 270.32 is amended as follows:

(1) In 40 C.F.R. section 270.32(a), delete ", and for EPA issued permits only, 270.33(b) (alternate schedules of compliance) and 270.3 (considerations under Federal law)".

(2) In 40 C.F.R. section 270.32(b)(2), replace "section 3005 of this act" with "section 342J-5, HRS," and replace "Administrator or State Director" with "director".

(3) In 40 C.F.R. section 270.32(b)(3), replace "Administrator or State Director" with "director".

(4) Replace 40 C.F.R. section 270.32(c) in its entirety to read: "(c) An applicable requirement is a state statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. 40 C.F.R. section 124.14, as incorporated and amended in section 11-271.1-1, provides a means for reopening permit proceedings at the discretion of the director where new requirements become effective during the permitting process and are of sufficient magnitude to make additional proceedings desirable. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in 40 C.F.R. 270.41, as incorporated and amended in this chapter." [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-6 Amendments to the incorporation of 40 C.F.R. part 270, subpart D. (a) The incorporation by reference of 40 C.F.R. section 270.40 is amended as follows:

(1) In 40 C.F.R. section 270.40(a), replace "the appropriate Act" with "chapter 342J, HRS, or chapters 11-260.1 to 11-279.1".

(2) In 40 C.F.R. section 270.40(b), delete "or as a routine change with prior approval under 40 CFR 124.213".

(b) The incorporation by reference of 40 C.F.R. section 270.41 is amended as follows:

(1) In 40 C.F.R. section 270.41, delete ", or §270.320 and 40 CFR part 124, subpart G". Replace "part 124 (or procedures of an

authorized State program)" with "chapter 11-271.1".

(2) 40 C.F.R. section 270.41(b)(3) is excluded from incorporation.

(c) The incorporation by reference of 40 C.F.R. section 270.42 is amended as follows:

(1) In 40 C.F.R. section 270.42(a)(1)(ii), replace "40 CFR 124.10(c)(viii)" with "40 C.F.R. section 124.10(c)(1)(ix), as incorporated and amended in section 11-271.1.-1" and replace "40 CFR 124.10(c)(ix)" with "40 C.F.R. section 124.10(c)(1)(x), as incorporated and amended in section 11-271.1-1".

(2) In 40 C.F.R. section 270.42(b)(2) and (c)(2) replace "40 CFR 124.10(c)(ix)" with "40 C.F.R. section 124.10(c)(1)(x), as incorporated and amended in section 11-271.1-1,".

(3) In 40 C.F.R. section 270.42(e)(2)(iii), replace "40 CFR 124.10(c)(ix)" with "40 C.F.R. section 124.10(c)(1)(x), as incorporated and amended in section 11-271.1-1".

(4) In 40 C.F.R. section 270.42(f)(2) and (3), replace "40 CFR 124.19" with "40 C.F.R. section 124.15, as incorporated and amended in section 11-271.1-1".

[~~(5) 40 C.F.R. section 270.42(l) is excluded from incorporation.~~

~~(6)~~] (5) In 40 C.F.R. section 270.42, Appendix I, Section A, delete Item 10 in its entirety.

[~~(7)~~] (6) In 40 C.F.R. section 270.42, Appendix I, Section F, Item 1c, delete "or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in §268.8(a)(2)(ii)".

[~~(8)~~] (7) In 40 C.F.R. section 270.42, Appendix I, Section F, Item 4a, delete ", or that are to be treated to satisfy (in whole or in part)

the standard of "use of practically available technology that yields the greatest environmental benefit" contained in §268.8(a)(2)(ii)".

[~~(9)~~] (8) In 40 C.F.R. section 270.42, Appendix I, Section G, Item 1e, delete "or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in §268.8(a)(2)(ii)".

[~~(10)~~] (9) In 40 C.F.R. section 270.42, Appendix I, Section G, Item 5c, delete "or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in §268.8(a)(2)(ii)".

[~~(11)~~] (10) In 40 C.F.R. section 270.42, Appendix I, Section J, Item 6c, delete "or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in §268.8(a)(2)(ii)".

(d) The incorporation by reference of 40 C.F.R. section 270.43 is amended as follows: in 40 C.F.R. section 270.43(b), replace "part 124 or part 22, as appropriate or State procedures" with "chapters 11-1 and 11-271.1". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-7 Amendments to the incorporation of 40 C.F.R. part 270, subpart E. (a) The incorporation by reference of 40 C.F.R. section 270.50 is amended as follows:

(1) In 40 C.F.R. section 270.50(a), replace "10 years" with "five years".

(2) In 40 C.F.R. section 270.50(d), replace "five years" with "three years".

(b) The incorporation by reference of 40 C.F.R. section 270.51 is amended as follows:

(1) Replace the introductory paragraph of 40 C.F.R. section 270.51(a) to read: "(a) The conditions of an expired permit continue in force until the effective date of a new permit (see 40 C.F.R. section 124.15, as incorporated and amended in section 11-271.1-1) if:".

(2) In 40 C.F.R. section 270.51(d), replace "In a State with a hazardous waste program authorized under 40 CFR part 271, if" with "If".

(3) 40 C.F.R. section 270.51(e) is excluded from incorporation. [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-8 Amendments to the incorporation of 40 C.F.R. part 270, subpart F. (a) 40 C.F.R. sections 270.60(b) and 270.64 are excluded from the incorporation by reference of 40 C.F.R. part 270. Hawaii prohibits the underground injection of hazardous waste.

(b) 40 C.F.R. section 270.67 is excluded from the incorporation by reference of 40 C.F.R. part 270. [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-9 Amendments to the incorporation of 40 C.F.R. part 270, subpart G. The incorporation by

reference of 40 C.F.R. section 270.70 is amended as follows:

(1) In 40 C.F.R. section 270.70(a)(1), add "or section 342J-6.5, HRS," after "RCRA".

(2) In 40 C.F.R. section 270.70(b), add "against the owner and/or operator of the facility, including, but not limited to, an enforcement action for operation of a facility without a permit or interim status" to the end of the last sentence. [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-10 Amendments to the incorporation of 40 C.F.R. part 270, subpart H. (a) The incorporation by reference of 40 C.F.R. section 270.80 is amended as follows: in 40 C.F.R. section 270.80(c), replace "RCRA Permit under RCRA section 3005(c)" with "State hazardous waste permit under section 342J-5, HRS".

(b) The incorporation by reference of 40 C.F.R. section 270.115 is amended as follows: replace "Part 2 (Public Information) of this chapter" with "Applicable provisions of chapter 2-71 and chapter 92F, HRS" and replace "part 2 of this chapter" with "applicable provisions of chapter 2-71 and chapter 92F, HRS".

(c) The incorporation by reference of 40 C.F.R. section 270.140 is amended as follows: in 40 C.F.R. section 270.140(b)(3), replace "issuing Regional Office" with "department".

(d) The incorporation by reference of 40 C.F.R. section 270.145 is amended as follows: in 40 C.F.R. section 270.145(a)(4), replace "local government" with "county government".

(e) The incorporation by reference of 40 C.F.R. section 270.150 is amended as follows:

(1) In 40 C.F.R. section 270.150(e), insert ", chapter 91, HRS, and section 342J-12, HRS" at the end of the sentence.

(2) In 40 C.F.R. section 270.150(f), replace "issuing Regional office" with "department".

(f) The incorporation by reference of 40 C.F.R. section 270.155 is amended as follows: replace 40 C.F.R. section 270.155 in its entirety to read: "§270.155 May the decision to approve or deny my RAP application be administratively appealed? Appeals of RAPs may be made to the same extent as for final permit decisions under 40 C.F.R. section 124.15, as incorporated and amended in section 11-271.1-1, or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under 40 C.F.R. section 270.29, as incorporated and amended in this chapter."

(g) The incorporation by reference of 40 C.F.R. section 270.160 is amended as follows: replace 40 C.F.R. section 270.160(b) in its entirety to read: "(b) You or another person has appealed your RAP under 40 C.F.R. section 270.155, as incorporated and amended in this chapter; or".

(h) The incorporation by reference of 40 C.F.R. section 270.175 is amended as follows: in 40 C.F.R. section 270.175(a), insert "After affording you an opportunity for a hearing in accordance with chapter 91, HRS," at the beginning of the section and insert "or reasons listed in section 342J-5, HRS," after "listed in this section".

(i) The incorporation by reference of 40 C.F.R. section 270.180 is amended as follows: in 40 C.F.R. section 270.180(a), insert "After affording you an opportunity for a hearing in accordance with chapter 91, HRS," at the beginning of the section and insert "and section 342J-5, HRS," after "through (8)".

(j) The incorporation by reference of 40 C.F.R. section 270.185 is amended as follows: insert "After affording you an opportunity for a hearing in accordance with chapter 91, HRS," at the beginning of the section and insert "and section 342J-5, HRS," after "through (7)".

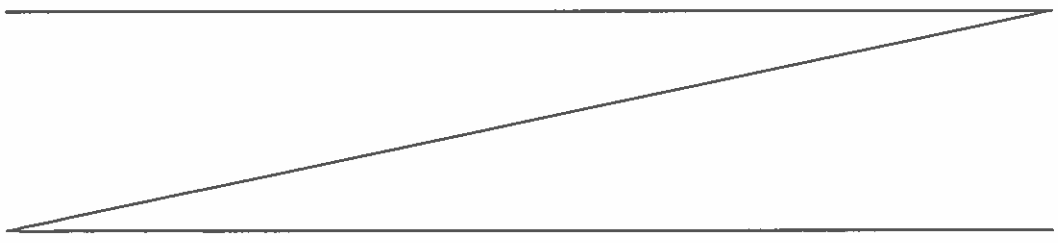
(k) The incorporation by reference of 40 C.F.R. section 270.190 is amended as follows: replace 40 C.F.R. section 270.190 in its entirety to read:

"§270.190 May the decision to approve or deny a modification, revocation and reissuance, or termination of my RAP be administratively appealed? Appeals of decisions to approve or deny a modification, revocation and reissuance, or termination of a RAP may be made to the same extent as for final permit decisions under 40 C.F.R. section 124.15, as incorporated and amended in section 11-271.1-1, or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under 40 C.F.R. section 270.29, as incorporated and amended in this chapter."

(1) The incorporation by reference of 40 C.F.R. section 270.195 is amended as follows: Replace "10 years" and "ten years" with "five years". Replace "RCRA sections 3004 and 3005" with "sections 342J-5 and 342J-34, HRS". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-11 (Reserved.)

§11-270.1-12 Amendments to the incorporation of 40 C.F.R. part 270, subpart J. 40 C.F.R. part 270, subpart J is excluded from the incorporation by reference of 40 C.F.R. part 270." [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)



10. Chapter 11-271.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Permit Procedures", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-271.1

HAZARDOUS WASTE MANAGEMENT:
PERMIT PROCEDURES

Historical note: This chapter is based substantially upon chapter 11-271, subchapter A. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-271.1-1 Incorporation of 40 C.F.R. part 124, subparts A and B. Title 40, part 124, subparts A and B of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, [~~2016,~~] 2017, is made a part of

this chapter subject to the substitutions and amendments set forth in sections 11-271.1-2 to 11-271.1-4. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-271.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 124, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Agency", "EPA", and "issuing Regional Office" shall be replaced with "state department of health".

(2) "Environmental Appeals Board", and "Regional Administrator" shall be replaced with "director".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 124, as incorporated and amended in this chapter: 40 C.F.R. section 124.10(c)(1)(ii).

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 124, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1. The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1

265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

[Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-271.1-3 Amendments to the incorporation of 40 C.F.R. part 124, subpart A. (a) The incorporation by reference of 40 C.F.R. section 124.1 is amended as follows:

(1) Replace 40 C.F.R. section 124.1(a) in its entirety to read: "(a) This part contains state department of health procedures for issuing, modifying, revoking and reissuing, or terminating all RCRA permits governed by chapter 11-270.1. The procedures of this part also apply to denial of a permit for the active life of a RCRA hazardous waste management facility or unit under 40 C.F.R. section 270.29, as incorporated and amended in section 11-270.1-1."

(2) Replace 40 C.F.R. section 124.1(b) in its entirety to read: "(b) Subpart A describes the steps the state department of health will follow in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment, and holding public hearings on draft permits. Subpart A also covers assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of the final permit decisions. Subpart B contains public

participation requirements applicable to all RCRA hazardous waste management facilities."

(3) 40 C.F.R. section 124.1(d) to (f) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 124.2 is amended as follows: replace 40 C.F.R. section 124.2 in its entirety to read:

"§124.2 Definitions.

Terms used in this chapter have the meanings given in 40 C.F.R. section 270.2, as incorporated and amended in section 11-270.1-1. Terms not defined have the meaning given by RCRA."

(c) The incorporation by reference of 40 C.F.R. section 124.3 is amended as follows:

(1) Replace 40 C.F.R. section 124.3(a) in its entirety to read:

"(a)(1) Any person who requires a permit under 40 C.F.R. section 270.1, as incorporated and amended in section 11-270.1-1, shall complete, sign, and submit to the director an application. Applications are not required for RCRA permits by rule (40 C.F.R. section 270.60, as incorporated and amended in section 11-270.1-1).

(2) The director shall not begin the processing of a permit until the application has fully complied with the application requirements. See 40 C.F.R. sections 270.10 and 270.13, as incorporated and amended in section 11-270.1-1.

(3) Permit applications must comply with the signature and certification requirements of 40 C.F.R. section 270.11, as incorporated and amended in section 11-270.1-1."

(2) In 40 C.F.R. section 124.3(c), replace each instance of "an EPA-issued permit" with "a permit". Delete ", a new UIC injection well, a major PSD stationary source or major PSD modification, or a NPDES new source or NPDES

new discharger", ", existing injection well or existing NPDES sources or sludge-only facility", and ", an existing UIC injection well or an existing NPDES source or "sludge-only facility"".

(3) In 40 C.F.R. section 124.3(d), replace ", SDWA sections 1423 and 1424, CAA section 167, and CWA sections 308, 309, 402(h), and 402(k)" with "and section 342J-7, HRS".

(4) In 40 C.F.R. section 124.3(g), delete "major new UIC injection well, major NPDES new source, major NPDES new discharger, or a permit to be issued under provisions of §122.28(c)," and "(This paragraph does not apply to PSD permits.)"

(d) 40 C.F.R. section 124.4 is excluded from the incorporation by reference of 40 C.F.R. part 124, subpart A.

(e) The incorporation by reference of 40 C.F.R. section 124.5 is amended as follows:

(1) Replace 40 C.F.R. section 124.5(a) in its entirety to read: "(a) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 40 C.F.R. sections 270.41 and 270.43, as incorporated and amended in section 11-270.1-1. All requests shall be in writing and shall contain facts or reasons supporting the request."

(2) In 40 C.F.R. section 124.5(b), delete "The Environmental Appeals Board may direct the Regional Administrator to begin modification, revocation and reissuance, or termination proceedings under paragraph (c) of this section." and "This informal appeal is, under 5 U.S.C. 704, a prerequisite to seeking judicial review of EPA action in

denying a request for modification, revocation and reissuance, or termination."

(3) In 40 C.F.R. section 124.5(c), delete "(Applicable to State Programs, see 40 CFR 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA))."

(4) Replace 40 C.F.R. section 124.5(c)(1) in its entirety to read: "(1) If the director tentatively decides to modify or revoke and reissue a permit under 40 C.F.R. section 270.41 or 270.42(c), as incorporated and amended in section 11-270.1-1, he or she shall prepare a draft permit under 40 C.F.R. section 124.6, as incorporated and amended in this chapter, incorporating the proposed changes. The director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the director shall require the submission of a new application."

(5) In 40 C.F.R. section 124.5(c)(3), delete ""Minor modifications" as defined in §§122.63 (NPDES), 144.41 (UIC), and 233.16 (404), and" and "(RCRA)".

(6) Replace 40 C.F.R. section 124.5(d) in its entirety to read: "(d) If the director tentatively decides to terminate a permit under 40 C.F.R. section 270.43, as incorporated and amended in section 11-270.1-1, where the permittee objects, the director shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under 40 C.F.R. section 124.6, as incorporated and amended in this chapter."

(7) 40 C.F.R. section 124.5(f) and (g) is excluded from incorporation.

(f) The incorporation by reference of 40 C.F.R. section 124.6 is amended as follows:

(1) Replace 40 C.F.R. section 124.6(a) in its entirety to read: "(a) Once an application is complete, the director shall tentatively decide whether to prepare a draft permit or to deny the application."

(2) 40 C.F.R. section 124.6(c) is excluded from incorporation.

(3) Replace 40 C.F.R. section 124.6(d) in its entirety to read: "(d) If the director decides to prepare a draft permit, he or she shall prepare a draft permit that contains the following information:

(1) All the conditions under 40 C.F.R. [~~section~~] sections 270.30 and 270.32, as incorporated and amended in section 11-270.1-1;

(2) All compliance schedules under 40 C.F.R. section 270.33, as incorporated and amended in section 11-270.1-1;

(3) All monitoring requirements under 40 C.F.R. section 270.31, as incorporated and amended in section 11-270.1-1; and

(4) Standards for treatment, storage, and/or disposal and other permit conditions under 40 C.F.R. section 270.30, as incorporated and amended in section 11-270.1-1."

(4) In 40 C.F.R. section 124.6(e), delete "(Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)". Replace "For RCRA, UIC or PSD permits, an appeal may be taken under §124.19 and, for NPDES permits, an appeal may be taken under §124.74. Draft permits prepared by a State shall be accompanied by a fact sheet if required under §124.8." with "A contested case hearing may be requested as provided in 40 C.F.R. section 124.15, as incorporated and amended in this chapter."

(g) The incorporation by reference of 40 C.F.R. section 124.8 is amended as follows:

(1) In 40 C.F.R. section 124.8, delete "(Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)"

(2) Replace 40 C.F.R. section 124.8(a) in its entirety to read: "(a) A fact sheet shall be prepared for every draft permit for a major HWM facility or activity and for every draft permit which the director finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The director shall send this fact sheet to the applicant and, on request, to any other person."

(3) 40 C.F.R. section 124.8(b)(3) is excluded from incorporation.

(4) In 40 C.F.R. section 124.8(b)(4), delete "(for EPA-issued permits)".

(5) 40 C.F.R. section 124.8(b)(8) and (9) is excluded from incorporation.

(h) The incorporation by reference of 40 C.F.R. section 124.9 is amended as follows:

(1) In the section heading [~~for~~] of 40 C.F.R. section 124.9, delete "when EPA is the permitting authority".

(2) 40 C.F.R. section 124.9(b)(6) is excluded from incorporation.

(i) The incorporation by reference of 40 C.F.R. section 124.10 is amended as follows:

(1) In 40 C.F.R. section 124.10(a)(1)(ii) and (iii), delete "(Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)"

(2) 40 C.F.R. section 124.10(a)(1)(iv) and (v) is excluded from incorporation.

(3) In 40 C.F.R. section 124.10(b), delete "(applicable to State programs, see §§123.25

(NPDES), 145.11 (UIC), 233.26 (404, and 271.14 (RCRA))".

(4) Replace 40 C.F.R. section 124.10(b)(1) in its entirety to read: "(1) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under 40 C.F.R. 124.10(a), as incorporated and amended in this chapter, shall allow at least 45 days for public comment."

(5) In 40 C.F.R. section 124.10(c), delete "(applicable to State programs, see 40 CFR 123.25 (NPDES), 145.11 (UIC), 233.23 (404), and 271.14 (RCRA))".

(6) Replace 40 C.F.R. section 124.10(c)(1)(i) in its entirety to read: "(i) The applicant;"

(7) In 40 C.F.R. section 124.10(c)(1)(iii), delete "(For purposes of this paragraph, and in the context of the Underground Injection Control Program only, the term State includes Indian Tribes treated as States.)"

(8) 40 C.F.R. section 124.10(c)(1)(iv) to (viii) and 124.10(c)(1)(xi) is excluded from incorporation.

(9) 40 C.F.R. section 124.10(c)(2)(i) is excluded from incorporation.

(10) In 40 C.F.R. section 124.10(c)(2)(ii), replace the period at the end of the sentence with "; and".

(11) 40 C.F.R. section 124.10(c)(3) is excluded from incorporation.

(12) In 40 C.F.R. section 124.10(d), delete "(applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA))—".

(13) In 40 C.F.R. section 124.10(d)(1)(ii), delete ", except in the case of NPDES and 404 draft general permits under §§122.28 and 233.37".

(14) In 40 C.F.R. section 124.10(d)(1)(iii), delete ", for NPDES or 404 general permits when there is no application".

(15) In 40 C.F.R. section 124.10(d)(1)(vi), replace "For EPA-issued permits, the" with "The".

(16) 40 C.F.R. section 124.10(d)(1)(vii) to (ix) is excluded from incorporation.

(17) In 40 C.F.R. section 124.10(d)(2)(ii), add "and" after the semicolon.

[~~(17)~~] (18) In 40 C.F.R. section 124.10(d)(2)(iii), replace "; and" with a period.

[~~(18)~~] (19) 40 C.F.R. section 124.10(d)(2)(iv) is excluded from incorporation.

[~~(19)~~] (20) In 40 C.F.R. section 124.10(e), delete "(Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)" and "(for EPA-issued permits)".

(j) The incorporation by reference of 40 C.F.R. section 124.11 is amended as follows: delete "(Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)" and "or the permit application for 404 permits when no draft permit is required (see §233.39)".

(k) The incorporation by reference of 40 C.F.R. section 124.12 is amended as follows:

(1) In 40 C.F.R. section 124.12(a), delete "(Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)"

(2) In 40 C.F.R. section 124.12(a)(3), delete "For RCRA permits only,".

(3) In 40 C.F.R. section 124.12(b), delete "and EPA is the permitting authority".

(4) In 40 C.F.R. section 124.12(c), replace "hearing officer" with "presiding officer".

(l) The incorporation by reference of 40 C.F.R. section 124.13 is amended as follows: replace "EPA documents" with "EPA or state department of health documents".

(m) The incorporation by reference of 40 C.F.R. section 124.15 is amended as follows:

(1) In the section [~~title~~] heading of 40 C.F.R. section 124.15, replace "permit." with "permit; appeal of permits."

(2) In 40 C.F.R. section 124.15(a), replace "This notice shall include reference to the procedures for appealing a decision on a RCRA, UIC, PSD, or NPDES permit under §124.19 of this part." with "The notice of final permit decision shall inform the persons authorized by 40 C.F.R. section 124.15(c), as incorporated and amended in this chapter, to request a contested case hearing of the procedures for requesting such a hearing. Chapter 11-1 procedures for contested case hearings apply to contested case hearings for permits."

(3) In 40 C.F.R. section 124.15(b)(1), delete "or".

[~~(3)~~] (4) Replace 40 C.F.R. section 124.15(b)(2) in its entirety to read: "(2) A written request for a contested case hearing is made within thirty days of the date of issuance of the final permit decision by a person authorized by 40 C.F.R. section 124.15(c), as incorporated and amended in this chapter, to request a contested case hearing; or".

[~~(4)~~] (5) Add a new subsection (c) to read: "(c) After the issuance of a final permit decision, a contested case hearing may be requested in writing by:

(1) The permittee whose permit has been modified, or revoked and reissued, or terminated;

(2) The person whose application for a permit has been denied; and

(3) Any person whose legal rights, duties, or privileges will be specially, personally, and adversely affected by the permit decision and who has participated as an adversary during the public comment period or public hearing in the manner provided by 40 C.F.R.

sections 124.11 to 124.14, as incorporated and amended in this chapter."

(n) 40 C.F.R. section 124.16 is excluded from the incorporation by reference of 40 C.F.R. part 124, subpart A.

(o) The incorporation by reference of 40 C.F.R. section 124.17 is amended as follows:

(1) Replace the introductory paragraph of 40 C.F.R. section 124.17(a) to read: "(a) At the time that any final permit decision is issued under 40 C.F.R. section 124.15, as incorporated and amended in this chapter, the director shall issue a response to comments. This response shall:"

(2) In 40 C.F.R. section 124.17(a)(2), delete "or the permit application (for section 404 permits only)".

(3) In 40 C.F.R. section 124.17(b), replace "For EPA-issued permits, any" with "Any".

(4) Replace 40 C.F.R. section 124.17(c) in its entirety to read: "(c) The response to comments shall be available to the public."

(p) The incorporation by reference of 40 C.F.R. section 124.18 is amended as follows:

(1) In the section heading [~~for~~] of 40 C.F.R. section 124.18, delete "when EPA is the permitting authority".

(2) 40 C.F.R. section [~~124.18(a)(5)~~] 124.18(b)(5) is excluded from incorporation.

(3) Replace 40 C.F.R. section 124.18(d) in its entirety to read: "(d) This section applies to all final permits when the draft permit was subject to the administrative record requirements of 40 C.F.R. section 124.9, as incorporated and amended in this chapter."

(q) 40 C.F.R. sections 124.19, 124.20, and 124.21 are excluded from the incorporation by reference of 40 C.F.R. part 124, subpart A. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-271.1-4 Amendments to the incorporation of 40 C.F.R. part 124, subpart B. (a) The incorporation by reference of 40 C.F.R. section 124.31 is amended as follows:

(1) Replace 40 C.F.R. section 124.31(a) in its entirety to read: "(a) Applicability. The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a class 3 permit modification under 40 C.F.R. section 270.42, as incorporated and amended in section 11-270.1-1. The requirements of this section do not apply to permit modifications under 40 C.F.R. 270.42, as incorporated and amended in section 11-270.1-1, or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility."

(2) In 40 C.F.R. section 124.31(b), delete ", or to the submission of a written Notice of Intent to be covered by a RCRA standardized permit (see 40 CFR part 270, subpart J),".

(3) In 40 C.F.R. section 124.31(c), delete ", or with the written Notice of Intent to be covered by a RCRA standardized permit (see 40 CFR part 270, subpart J)".

(b) The incorporation by reference of 40 C.F.R. section 124.32 is amended as follows: replace 40 C.F.R. section 124.32(a) in its entirety to read: "(a) Applicability. The requirements of this section shall

apply to all RCRA part B applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units under 40 C.F.R. section 270.51, as incorporated and amended in section 11-270.1-1. The requirements of this section do not apply to permit modifications under 40 C.F.R. 270.42, as incorporated and amended in section 11-270.1-1, or to permit applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility."

(c) The incorporation by reference of 40 C.F.R. section 124.33 is amended as follows: replace 40 C.F.R. section 124.33(a) in its entirety to read: "(a) Applicability. The requirements of this section apply to all applications seeking RCRA permits for hazardous waste management units."" [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

11. Chapter 11-273.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Standards for Universal Waste Management", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-273.1

HAZARDOUS WASTE MANAGEMENT:
STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

Historical note: This chapter is based substantially upon chapter 11-273. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-273.1-1 Incorporation of 40 C.F.R. part 273. Title 40, part 273 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, [~~2016,~~] 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-273.1-2 to 11-273.1-9. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

§11-273.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 273, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", and "State Director" shall be replaced with "director".

(2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except in references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 273, as incorporated and

amended in this chapter: 40 C.F.R. sections 273.32(a)(3) and 273.52(a).

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 273, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1, except as listed in subsection (d). The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

(d) The following references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 273, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations: references in 40 C.F.R. section 273.52. [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

§11-273.1-3 Amendments to the incorporation of 40 C.F.R. part 273, subpart A. (a) The incorporation by reference of 40 C.F.R. section 273.1 is amended as follows:

(1) In 40 C.F.R. section 273.1(a)(3), delete "and".

(2) In 40 C.F.R. section 273.1(a)(4), replace the period at the end with "; and".

(3) In 40 C.F.R. section 273.1(a), add a paragraph (5) to read: "(5) Electronic items as described in 40 C.F.R. section 273.6, as incorporated and amended in this chapter."

(4) In 40 C.F.R. section 273.1(b), replace "40 CFR parts 260 through 272" with "chapters 11-260.1 to 11-270.1".

(b) The incorporation by reference of 40 C.F.R. part 273 is amended by adding a new section, 40 C.F.R. section 273.6, to read:

"§273.6 Applicability—Electronic items.

(a) Electronic items covered under chapter 11-273.1. The requirements of this chapter apply to persons managing electronic items, as described in 40 C.F.R. section 273.9, as incorporated and amended in this chapter, except those listed in paragraph (b) of this section.

(b) Electronic items not covered under chapter 11-273.1. The requirements of this chapter do not apply to persons managing the following electronic items:

(1) Electronic items that are not yet wastes under chapter 11-261.1. A universal waste handler who claims that an electronic item is not a waste must manage that item as a product and bears the burden of demonstrating that there is a known market or disposition for its re-use as an electronic item.

(2) Electronic items that were previously identified as wastes under chapter 11-261.1 but are no longer identified as wastes (e.g., a discarded electronic item that is refurbished and is returned to service).

(3) Electronic items that do not exhibit a toxicity characteristic of a hazardous waste as set forth in chapter 11-261.1 and that

are not otherwise identified as hazardous waste pursuant to chapter 11-261.1. A universal waste handler who claims that a waste electronic item does not exhibit a toxicity characteristic bears the burden of demonstrating that the electronic item is not a hazardous waste. Assume all waste electronic items to be hazardous unless you evaluate and can document that they are non-hazardous (e.g., pass the Toxicity Characteristic Leaching Procedure [TCLP] test, as described in 40 C.F.R. sections 260.11 and 261.24 and incorporated by reference in chapters 11-260.1 and 11-261.1, and are not otherwise identified as hazardous waste pursuant to chapter 11-261.1)."

(c) The incorporation by reference of 40 C.F.R. section 273.9 is amended as follows:

(1) The following definitions are amended as follows:

"Destination facility" definition. Delete both instances of "(a) and (c)".

"Large Quantity Handler of Universal Waste" definition. Replace "or lamps" with "lamps, or electronic items".

"Small Quantity Handler of Universal Waste" definition. Replace "or lamps" with "lamps, or electronic items".

"Universal Waste" definition. Replace "§273.4; and (4) Lamps as described in §273.5" with "40 C.F.R. section 273.4, as incorporated and amended in this chapter; (4) Lamps as described in 40 C.F.R. section 273.5, as incorporated and amended in this chapter; and (5) Electronic items as described in 40 C.F.R. section 273.6, as incorporated and amended in this chapter".

"Universal Waste Handler" definition. Delete both instances of "(a) or (c)".

(2) Add the following additional definitions in alphabetical order:

"Circuit board" means the part of an electronic device that mechanically supports and electrically connects electronic components (such as capacitors, diodes, power sources, resistors, sensors, switches, transducers, transistors, etc.) using conductive tracks.

"Electronic [~~item,"~~] item", also referred to as "universal waste electronic [~~item,"~~] item", means a device containing a circuit board, or other complex circuitry, or a video display. Indicators that a device likely contains a circuit board include the presence of a keypad, touch screen, any type of video or digital display, or common electronic ports or connectors, such as serial, parallel, Rj45 ("network"), or USB. Examples of common universal waste electronic items include, but are not limited to: computer central processing unit; computer monitor; portable computer (including notebook, laptop, and tablet computer); devices designed for use with computers (also known as computer peripherals) such as keyboard, mouse, desktop printer, scanner, and external storage drive; server; television; digital video disc (DVD) recorder or player; videocassette recorder or player (VCR); eBook reader; digital picture frame; fax machine; video game equipment; cellular telephone; answering machine; digital camera; portable music or video player; wireless paging device; remote control; and smoke detector. Electronic item does not include a device that is physically a part of, connected to, or integrated within a large piece of equipment that is not meant to be hand-carried by one person (for example, an automobile, large medical equipment, or white goods as defined in chapter 11-58.1). A device is considered

physically a part of, connected to, or integrated within a large piece of equipment if the device cannot be easily disconnected from the large equipment by a layperson without specialized training. When a device containing a circuit board or a video display is removed, separated, or separate from the large piece of equipment that it is meant to be a part of, it is a universal waste electronic item.

"Video display" means the part of an electronic device capable of presenting images electronically on a screen viewable by the device user. A video display may use cathode ray tube, liquid crystal display (LCD), gas plasma, digital light processing, or other image projection technology. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

§11-273.1-4 Amendments to the incorporation of 40 C.F.R. part 273, subpart B. (a) The incorporation by reference of 40 C.F.R. section 273.13 is amended by adding a subsection (e) to read: "(e) Electronic items. A small quantity handler of universal waste must manage electronic items in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Electronic items shall be stored in

(i) A building, with a permanent roof and floor, that is constructed and maintained to minimize breakage of electronic items and to prevent exposure of the electronic items to precipitation; or

(ii) A closed and secure container that is constructed and maintained to minimize breakage of electronic items and to prevent

exposure of the electronic items to precipitation.

(2) All universal waste electronic items must be stored in a building or container meeting the requirements of paragraph (1) within 24 hours of being discarded.

(3) A small quantity handler of universal waste shall immediately clean up and place in a container any universal waste electronic item that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container shall be closed, structurally sound, and compatible with the contents of the electronic item, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(4) A small quantity handler of universal waste may conduct the following activities:

(i) Sorting electronic items by type;

(ii) Mixing electronic item types in one container;

(iii) Removal of discreet assemblies that are typically removed by consumers for replacement during the normal operation of an electronic item (e.g., battery packs, ink cartridges). A universal waste handler shall conduct the removal of the discrete assemblies in the manner that is prescribed in the operating manual for the electronic item, or in a manner that would otherwise reasonably be employed during the normal operation of the electronic item.

(iv) Removal of separable non-electronic pieces that are intended for assembly by retailers or consumers (e.g., monitor saucer, wall hanging bracket, cell phone case).

(5) A small quantity handler who generates other solid waste (e.g., battery packs, monitor saucers) as a result of the activities listed in paragraph (4) shall make a hazardous waste determination pursuant to 40 C.F.R. section

262.11, as incorporated and amended in section 11-262.1-1.

(i) If the waste exhibits a characteristic of hazardous waste, it is subject to all applicable requirements of chapters 11-260.1 to 11-270.1. If the waste is another type of universal waste (e.g., a battery), it may be alternatively managed under this chapter. The handler is considered the generator of the waste and is subject to chapter 11-262.1.

(ii) If the waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, and local solid waste regulations."

(b) The incorporation by reference of 40 C.F.R. section 273.14 is amended as follows:

(1) In 40 C.F.R. section 273.14(a), replace "Universal waste batteries (i.e., each battery), or a container in which the batteries are contained" with "Each battery, or container or pallet containing universal waste batteries".

(2) In 40 C.F.R. section 273.14, add a subsection (f) to read: "(f) Each electronic item, or container or pallet containing universal waste electronic items, must be labeled or marked clearly with one of the following phrases: "Universal Waste–electronic item(s)," or "Waste electronic item(s)," or "Used electronic item(s).""

[Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

§11-273.1-5 Amendments to the incorporation of 40 C.F.R. part 273, subpart C. (a) The incorporation by reference of 40 C.F.R. section 273.32 is amended as follows: replace 40 C.F.R. section 273.32(b) in its

entirety to read: "(b) This notification must include a completed EPA Form 8700-12. To obtain EPA Form 8700-12, call the department at (808) 586-4226."

(b) The incorporation by reference of 40 C.F.R. section 273.33 is amended by adding a paragraph (e) to read: "(e) Electronic items. A large quantity handler of universal waste must manage electronic items in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Electronic items shall be stored in:
    (i) A building, with a permanent roof and floor, that is constructed and maintained to minimize breakage of electronic items and to prevent exposure of the electronic items to precipitation; or
    (ii) A closed and secure container that is constructed and maintained to minimize breakage of electronic items and to prevent exposure of the electronic items to precipitation.

(2) All universal waste electronic items must be stored in a building or container meeting the requirements of paragraph (1) within 24 hours of being discarded.

(3) A large quantity handler of universal waste shall immediately clean up and place in a container any universal waste electronic item that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container shall be closed, structurally sound, and compatible with the contents of the electronic item, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(4) A large quantity handler of universal waste may conduct the following activities:
    (i) Sorting electronic items by type;
    (ii) Mixing electronic item types in one container;

(iii) Removal of discreet assemblies that are typically removed by consumers for replacement during the normal operation of an electronic item (e.g., battery packs, ink cartridges). A universal waste handler shall conduct the removal of the discrete assemblies in the manner that is prescribed in the operating manual for the electronic item, or in a manner that would otherwise reasonably be employed during the normal operation of the electronic item; and

(iv) Removal of separable non-electronic pieces that are intended for assembly by retailers or consumers (e.g., monitor saucer, wall hanging bracket, cell phone case).

(5) A large quantity handler who generates other solid waste (e.g., battery packs, monitor saucers) as a result of the activities listed in paragraph (4) shall make a hazardous waste determination pursuant to 40 C.F.R. section 262.11, as incorporated and amended in section 11-262.1-1.

(i) If the waste exhibits a characteristic of hazardous waste, it is subject to all applicable requirements of chapters 11-260.1 to 11-270.1. If the waste is another type of universal waste (e.g., a battery), it may be alternatively managed under this chapter. The handler is considered the generator of the waste and is subject to chapter 11-262.1.

(ii) If the waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, and local solid waste regulations."

(c) The incorporation by reference of 40 C.F.R. section 273.34 is amended as follows:

(1) In 40 C.F.R. section 273.34(a), replace "Universal waste batteries (i.e., each battery), or a container in which the batteries are contained" with "Each battery,

or container or pallet containing universal waste batteries".

(2) In 40 C.F.R. section 273.34, add a subsection (f) to read: "(f) Each electronic item, or container or pallet containing universal waste electronic items, must be labeled or marked clearly with one of the following phrases: "Universal Waste—electronic item(s)," or "Waste electronic item(s)," or "Used electronic item(s).""

(d) The incorporation by reference of 40 C.F.R. section 273.39 is amended as follows: in 40 C.F.R. section 273.39(a)(2) and 273.39(b)(2), replace "thermostats" with "mercury-containing equipment, lamps, electronic items". [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

§11-273.1-6 Amendments to the incorporation of 40 C.F.R. part 273, subpart D. The incorporation by reference of 40 C.F.R. part 273 is amended by adding a new section 273.57, to read:

"§273.57 Tracking universal waste shipments.

(a) Records of receipt of shipments. A transporter of universal waste must keep a record of each shipment of universal waste received by the transporter. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:

(1) The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;

(2) The quantity of each type of universal waste received (e.g., batteries, pesticides, mercury-containing equipment, lamps, electronic items); and

(3) The date of receipt of the shipment of universal waste.

(b) Records of delivery of shipments. A transporter of universal waste must keep a record of each shipment of universal waste delivered to other facilities. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each shipment of universal waste sent must include the following information:

(1) The name and address of the universal waste handler, destination facility, or foreign destination to which the universal waste was sent;

(2) The quantity of each type of universal waste sent (e.g., batteries, pesticides, mercury-containing equipment, lamps, electronic devices); and

(3) The date the shipment of universal waste was delivered to the receiving universal waste handler, destination facility, or foreign destination.

(c) Record retention.

(1) A transporter of universal waste must retain the records described in subsection (a) for at least three years from the date of receipt of a shipment of universal waste.

(2) A transporter of universal waste must retain the records described in subsection (b) for at least three years from the date of delivery of a shipment of universal waste." [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

§11-273.1-7 Amendments to the incorporation of 40 C.F.R. part 273, subpart E. (a) The incorporation by reference of 40 C.F.R. section 273.60 is amended as

follows: in 40 C.F.R. section 273.60(a), replace "section 3010 of RCRA" with "section 342J-6.5, HRS".

(b) The incorporation by reference of 40 C.F.R. section 273.62 is amended as follows: in 40 C.F.R. section 273.62(a)(2), replace "thermostats" with "mercury-containing equipment, lamps, electronic items". [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

§§11-273.1-8 to 11-27.1-9 (Reserved.)

§11-273.1-10 Imports of universal waste. (a) In addition to the requirements of 40 C.F.R. section 273.70, as incorporated and amended in this chapter, any person who imports universal waste from a foreign country into the State must submit the following information in writing to the director within thirty days after the waste has arrived in the State:

(1) The date the waste arrived in the State; and

(2) The disposition of the waste, i.e., storage, treatment, recycling, or disposal.

(b) Any person who imports universal waste from any state into the State must submit the following information in writing to the director within thirty days after the waste has arrived in the State:

(1) The date the waste arrived in the State; and

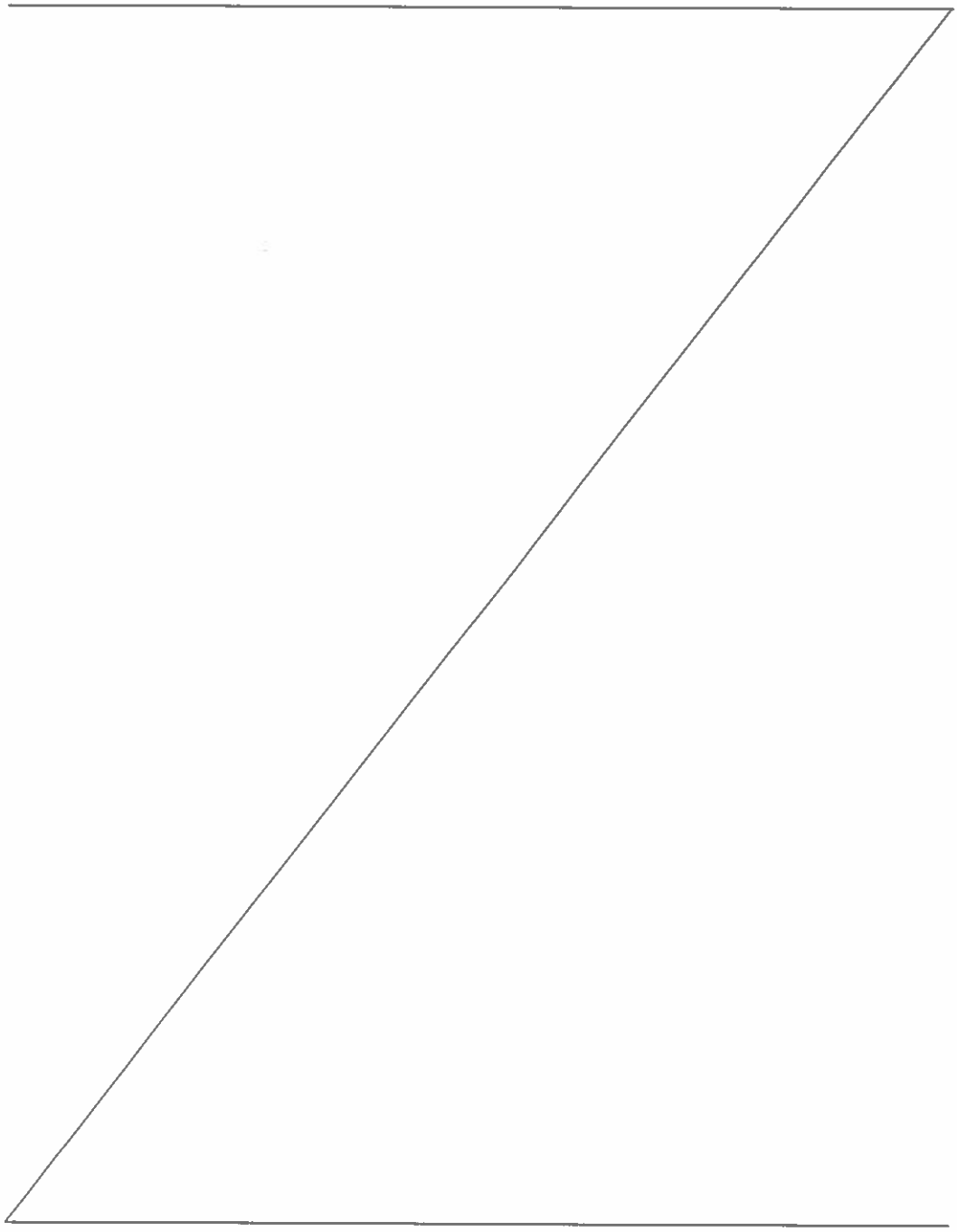
(2) The disposition of the waste, i.e., storage, treatment, recycling, or disposal.

(c) The requirements of subsections (a) and (b) shall not apply if:

(1) The waste does not stay in the State for more than ten days; and

(2) A generator with an EPA identification number does not assume the generator status for the waste." [Eff 7/17/17; comp] (Auth: HRS §§342J-4,

342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)



12. Chapter 11-279.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Standards for the Management of Used Oil", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-279.1

HAZARDOUS WASTE MANAGEMENT:
STANDARDS FOR THE MANAGEMENT OF USED OIL

Historical note: This chapter is based substantially upon chapter 11-279. [Eff 3/13/99; R 7/17/17]

§11-279.1-1 Incorporation of 40 C.F.R. part 279. Title 40, part 279 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, [~~2016,~~] 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-279.1-2 to 11-279.1-11. [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 279, as incorporated and amended in this chapter:

(1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", and "State Director" shall be replaced with "director".

(2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental

Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except in references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(3) "RCRA section 3010" shall be replaced with "section 342J-6.5, HRS".

(b) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 279, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1, except as listed in subsection (c). The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

(c) The following references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 279, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations: the references in 40 C.F.R. section 279.55(a)(2)(i)(B) and (b)(2)(i)(B). [Eff

7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-3 Amendments to the incorporation of 40 C.F.R. part 279, subpart A. The incorporation by reference of 40 C.F.R. section 279.1 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 279.1, replace the comma between "260.10" and "261.1" with the word "and" and delete ", and 280.12".

(2) The following definitions [~~in 40 C.F.R. section 279.1~~] are amended as follows:

"Aboveground tank" definition. Replace "§280.12 of this chapter" with "section 342L-1, HRS".

"Existing tank" definition. Replace "the effective date of the authorized used oil program for the State in which the tank is located" with "November 13, 2001".

"New tank" definition. Replace "the effective date of the authorized used oil program for the State in which the tank is located" with "November 13, 2001".

"Used oil collection center" definition. Delete "is registered/licensed/permitted/recognized by a state/county/municipal government to manage used oil and". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-4 Amendments to the incorporation of 40 C.F.R. part 279, subpart B. (a) The incorporation by reference of 40 C.F.R. section 279.10 is amended as follows:

(1) In 40 C.F.R. section 279.10(a), insert at the end of the paragraph: "For used oil sent for disposal, a hazardous waste determination shall be made in accordance with 40 C.F.R. section 262.11, as incorporated and amended in section 11-262.1-1."

(2) In 40 C.F.R. section 279.10(b)(2), add "of 40 C.F.R. part 261, as incorporated and amended in section 11-261.1-1," after "subpart D" and after the second instance of "subpart C".

[~~(2)~~] (3) In 40 C.F.R. section 279.10, add a new subsection (j) to read: "(j) Oily water. Oily water, any water that is contaminated with more than de minimis quantities of used oil, is subject to regulation as used oil under this part."

(b) The incorporation by reference of 40 C.F.R. section 279.12 is amended as follows: in 40 C.F.R. section 279.12(b), delete ", except when such activity takes place in one of the states listed in §279.82(c)". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-5 Amendments to the incorporation of 40 C.F.R. part 279, subpart C. (a) The incorporation by reference of 40 C.F.R. section 279.20 is amended as follows:

(1) In 40 C.F.R. section 279.20(b), replace "(b)(1) through (5)" with "(b)(1) [~~through~~] to (6)".

(2) In 40 C.F.R. section 279.20(b)(5), delete ", including the use of used oil as a dust suppressant,".

(3) In 40 C.F.R. section 279.20(b), add a new paragraph (6) to read: "(6) Used oil

generators shall also comply with the requirements of section 11-279.1-12."

(b) The incorporation by reference of 40 C.F.R. section 279.22 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 279.22, replace "the Underground Storage Tank (40 CFR part 280) standards" with "the State's underground storage tank standards and any applicable federal standards".

(2) In 40 C.F.R. section 279.22(b)(1), delete "and".

(3) In 40 C.F.R. section 279.22(b)(2), replace the period at the end with "; and".

(4) In 40 C.F.R. section 279.22(b), add a new paragraph (3) to read: "(3) Closed."

(5) Replace the introductory paragraph of 40 C.F.R. section 279.22(d) in its entirety to read: "(d) Response to releases. Upon detection of a release of used oil to the environment, a generator shall perform the following cleanup steps:"

(c) The incorporation by reference of 40 C.F.R. section 279.24 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 279.24, replace "EPA identification numbers" with "a State permit pursuant to section 11-279.1-14".

(2) In 40 C.F.R. section 279.24(a)(3), replace "is registered, licensed, permitted, or recognized by a state/county/municipal government" with "has obtained a state permit under section 11-279.1-14". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-6 Amendments to the incorporation of 40 C.F.R. part 279, subpart D. The incorporation by

reference of 40 C.F.R. section 279.31 is amended as follows: replace 40 C.F.R. section 279.31(b)(2) in its entirety to read: "(2) Obtain a permit under section 11-279.1-14." [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-7 Amendments to the incorporation of 40 C.F.R. part 279, subpart E. (a) The incorporation by reference of 40 C.F.R. section 279.40 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 279.40(d), replace "(d)(1) through (5)" with "(d)(1) [~~through~~] to (6)".

(2) In 40 C.F.R. section 279.40(d)(4) delete "and" [~~at the end of the subparagraph.~~] .

(3) In 40 C.F.R. section 279.40(d)(5), delete ", including the use of used oil as a dust suppressant," and replace the period at the end with "; and".

(4) In 40 C.F.R. section 279.40(d), add a new paragraph (6) to read: "(6) Used oil transporters are also subject to the requirements of sections 11-279.1-13 and 11-279.1-14."

(b) The incorporation by reference of 40 C.F.R. section 279.42 is amended as follows: replace 40 C.F.R. section 279.42(b) in its entirety to read: "(b) Mechanics of notification. A used oil transporter who has not received an EPA identification number may obtain one by notifying the department of their used oil activity by submitting a completed EPA Form 8700-12. To obtain EPA Form 8700-12, call the department at (808) 586-4226."

(c) The incorporation by reference of 40 C.F.R. section 279.43 is amended as follows:

(1) In 40 C.F.R. section 279.43(a)(1) and (2), replace "an EPA identification number" with "a permit under section 11-279.1-14".

(2) In 40 C.F.R. section 279.43(a)(3), replace "an EPA identification number" with "a permit pursuant to chapter 11-60.1 subchapter 4 or 5 that allows the burning of used oil".

(3) In 40 C.F.R. section 279.43(a)(4), add "who has obtained a permit pursuant to chapter 11-60.1 subchapter 4 or 5 that allows the burning of used oil" at the end of the sentence.

(4) In 40 C.F.R. section 279.43(c)(3)(i), insert "to the Hawaii department of health's Hazard Evaluation and Emergency Response Office via the State Hospital at (808) 247-2191 after business hours or directly at (808) 586-4249 during business hours and" after "Give notice".

(5) In 40 C.F.R. section 279.43, add a new subsection (d) to read: "(d) Acceptable materials. Only used oil and used oil fuel shall be accepted during any pickup or delivery. The transporter shall not deliver any oil to any person with the knowledge that the oil will be improperly used or disposed of."

(d) The incorporation by reference of 40 C.F.R. section 279.44 is amended as follows: replace 40 C.F.R. section 279.44(b) in its entirety to read: "(b) The transporter must make this determination by testing the used oil by analytical or field test."

(e) The incorporation by reference of 40 C.F.R. section 279.45 is amended as follows:

(1) In 40 C.F.R. section 279.45, replace "the Underground Storage Tank (40 CFR part 280) standards" with "the State's underground storage tank standards and any applicable federal standards".

(2) In 40 C.F.R. section 279.45(c)(1), delete "and".

(3) In 40 C.F.R. section 279.45(c)(2), replace the period at the end with "; and".

(4) In 40 C.F.R. section 279.45(c), add a new paragraph (3) to read: "(3) Closed."

(5) In 40 C.F.R. section 279.45(h), replace the introductory paragraph in its entirety to read: "(h) Response to releases. Upon detection of a release of used oil to the environment, the owner/operator shall perform the following cleanup steps:" [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-8 Amendments to the incorporation of 40 C.F.R. part 279, subpart F. (a) The incorporation by reference of 40 C.F.R. section 279.50 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 279.50(b), replace "(b)(1) through (b)(5)" with "(b)(1) [~~through~~] to (6)".

(2) In 40 C.F.R. section 279.50(b)(4), delete "and".

(3) In 40 C.F.R. section 279.50(b)(5), delete ", including the use of used oil as a dust suppressant," and replace the period at the end with "; and".

(4) In 40 C.F.R. section 279.50(b), Add a new paragraph (6) to read: "(6) Used oil processors/re-refiners are also subject to the requirements of sections 11-279.1-13 and 11-279.1-14."

(b) The incorporation by reference of 40 C.F.R. section 279.51 is amended as follows: replace 40 C.F.R. section 279.51(b) in its entirety to read: "(b) Mechanics of notification. A used oil processor/re-refiner who has not received an EPA identification number may obtain one by notifying the department of their used oil activity by submitting a completed EPA Form 8700-12. To obtain EPA Form 8700-12, call the department at (808) 586-4226."

(c) The incorporation by reference of 40 C.F.R. section 279.52 is amended as follows:

(1) Replace the introductory paragraph of 40 C.F.R. section 279.52(a)(2) in its entirety to read: "(2) Required equipment. All facilities shall be equipped with the following:"

(2) In 40 C.F.R. [~~sections~~] section 279.52(a)(4)(i) and [~~279.52(a)(4)(ii),~~] (ii), delete ", unless such a device is not required in paragraph (a)(2) of this section".

(3) In 40 C.F.R. section 279.52(a)(5), delete ", unless aisle space is not needed for any of these purposes".

(4) Replace the introductory paragraph of 40 C.F.R. section 279.52(b)(6)(iv)(B) in its entirety to read: "(B) He shall immediately notify the National Response Center (using their 24-hour toll free number 800/424-8802) and the Hawaii department of health's Hazard Evaluation and Emergency Response Office via the State Hospital at (808) 247-2191 after business hours or directly at (808) 586-4249 during business hours. The report shall include:"

(5) In 40 C.F.R. section 279.52(b)(6)(viii)(C), replace "Regional Administrator, and appropriate State and local authorities" with "director".

(d) The incorporation by reference of 40 C.F.R. section 279.53 is amended as follows: replace 40 C.F.R. section 279.53(b) in its entirety to read: "(b) The owner or operator must make this determination by testing the used oil by analytical or field test."

(e) The incorporation by reference of 40 C.F.R. section 279.54 is amended as follows:

(1) In 40 C.F.R. section 279.54, replace "the Underground Storage Tank (40 CFR part 280) standards" with "the State's underground storage tank standards and any applicable federal standards".

(2) In 40 C.F.R. section 279.54(b)(1), delete "and".

(3) In 40 C.F.R. section 279.54(b)(2), replace the period at the end with "; and".

(4) In 40 C.F.R. section 279.54(b), add a new paragraph (3) to read: "(3) Closed."

(5) Replace the introductory paragraph of 40 C.F.R. section 279.54(g) in its entirety to read: "(g) Response to releases. Upon detection of a release of used oil to the environment, an owner/operator shall perform the following cleanup steps:"

(6) In 40 C.F.R. section 279.54(h)(1)(i), replace "under this chapter" with "under chapters 11-260.1 to 11-279.1".

(f) The incorporation by reference of 40 C.F.R. section 279.55 is amended as follows:

(1) 40 C.F.R. section 279.55(a)(1) and the introductory paragraph of 40 C.F.R. section 279.55(a)(2) are excluded from incorporation.

(2) In 40 C.F.R. section 279.55(a)(2)(i)(B), insert "and approved by the director" before the semicolon at the end of the sentence.

(3) In 40 C.F.R. section 279.55(a)(2)(iii), replace "; and" with a period.

(4) 40 C.F.R. section 279.55(a)(3) is excluded from incorporation.

(5) 40 C.F.R. section 279.55(b)(1) and the introductory paragraph of 40 C.F.R. section 279.55(b)(2) are excluded from incorporation.

(6) In 40 C.F.R. section 279.55(b)(2)(i)(B), insert "and approved by the director" before the semicolon at the end of the sentence.

(7) In 40 C.F.R. section 279.55(b)(2)(iv), replace "; and" with a period.

(8) 40 C.F.R. section 279.55(b)(3) is excluded from incorporation.

(g) The incorporation by reference of 40 C.F.R. section 279.57 is amended as follows:

(1) In the [~~title~~] section heading of 40 C.F.R. section 279.57, delete "and reporting".

(2) In 40 C.F.R. section 279.57(a)(2)(i), delete "and" after the semicolon.

(3) In 40 C.F.R. section 279.57(a)(2)(ii), replace the period at the end with "; and".

(4) In 40 C.F.R. section 279.57(a)(2), add a new subparagragh (iii) to read: "(iii) Records of the equipment testing and maintenance required by 40 C.F.R. section 279.52(a)(3), as incorporated and amended in this chapter."

(5) 40 C.F.R. section 279.57(b) is excluded from incorporation.

(h) The incorporation by reference of 40 C.F.R. section 279.58 is amended as follows: replace "an EPA identification number" with "a State permit pursuant to section 11-279.1-14". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-9 Amendments to the incorporation of 40 C.F.R. part 279, subpart G. (a) The incorporation by reference of 40 C.F.R. section 279.60 is amended as follows:

(1) In 40 C.F.R. section 279.60(b)(4), delete "and".

(2) In 40 C.F.R. section 279.60(b)(5), delete ", including the use of used oil as a dust suppressant," and replace the period at the end with "; and".

(3) In 40 C.F.R. section 279.60(b), add a new paragraph (6) to read: "(6) Used oil burners are also subject to the clean air requirements of chapter 11-60.1."

(b) The incorporation by reference of 40 C.F.R. section 279.62 is amended as follows: replace 40 C.F.R. section 279.62(b) in its entirety to read: "(b) Mechanics of notification. A used oil burner who has

not received an EPA identification number may obtain one by notifying the department of their used oil activity by submitting a completed EPA Form 8700-12. To obtain EPA Form 8700-12, call the department at (808) 586-4226."

(c) The incorporation by reference of 40 C.F.R. section 279.63 is amended as follows:

(1) Replace 40 C.F.R. section 279.63(b)(1) in its entirety to read: "(1) Testing the used oil by analytical or field test; or".

(2) 40 C.F.R. section 279.63(b)(2) is excluded from incorporation.

(3) In 40 C.F.R. section 279.63(b)(3), replace "information" with "test results".

(d) The incorporation by reference of 40 C.F.R. section 279.64 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 279.64, replace "the Underground Storage Tank (40 CFR part 280) standards" with "the State's underground storage tank standards and any applicable federal standards".

(2) In 40 C.F.R. section 279.64(b)(1), delete "and".

(3) In 40 C.F.R. section 279.64(b)(2), replace the period at the end with "; and".

(4) In 40 C.F.R. section 279.64(b), add a new paragraph (3) to read: "(3) Closed."

(5) Replace the introductory paragraph of 40 C.F.R. section 279.64(g) in its entirety to read: "(g) Response to releases. Upon the detection of a release of used oil to the environment, a burner shall perform the following cleanup steps:" [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-10 Amendments to the incorporation of 40 C.F.R. part 279, subpart H. (a) The incorporation

by reference of 40 C.F.R. section 279.72 is amended as follows:

(1) In 40 C.F.R. section 279.72(a), delete "or other information".

(2) In 40 C.F.R. section 279.72(b), delete "(or other information used to make the determination)".

(b) The incorporation by reference of 40 C.F.R. section 279.73 is amended as follows: replace 40 C.F.R. section 279.73(b) in its entirety to read: "(b) A marketer who has not received an EPA identification number may obtain one by notifying the department of their used oil activity by submitting a completed EPA Form 8700-12. To obtain EPA Form 8700-12, call the department at (808) 586-4226." [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-11 Amendments to the incorporation of 40 C.F.R. part 279, subpart I. (a) The incorporation by reference of 40 C.F.R. section 279.80 is amended as follows: add a second sentence to read: "For used oil sent for disposal, a hazardous waste determination shall be made in accordance with 40 C.F.R. 262.11, as incorporated and amended in section 11-262.1-1."

(b) The incorporation by reference of 40 C.F.R. section 279.81 is amended as follows: in 40 C.F.R. section 279.81(b), replace "parts 257 and 258 of this chapter" with "40 C.F.R. part 257 and chapter 11-58.1".

(c) The incorporation by reference of 40 C.F.R. section 279.82 is amended as follows: replace 40 C.F.R. section 279.82 in its entirety to read: "§279.82 Use as a dust suppressant. The use of used oil as a dust suppressant is prohibited." [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-12 Recordkeeping requirement for used oil generators. Used oil generators shall keep a record of each shipment of used oil that is delivered to a used oil transporter, or to a used oil burner, processor/re-refiner, or disposal facility.

(1) Records of each delivery shall include:
    (A) The name and address of the receiving facility or transporter;
    (B) The EPA identification number of the receiving facility or transporter;
    (C) The quantity of used oil delivered;
    (D) The date of delivery; and
    (E) Except as provided in paragraph (2), the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

(2) Intermediate rail transporters are not required to sign the record of delivery.

(3) The records described in paragraph (1) shall be maintained for at least three years.

[Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-13 Annual reporting requirement for used oil transporters and processors/re-refiners. (a) Each used oil transporter shall submit an annual report for the twelve-month period ending June 30. The report shall be submitted to the director not later than July 31 of each year. The report shall be completed on forms furnished by the director and shall contain the following information concerning used oil activities:

(1) The EPA identification number, name, and address of the used oil transporter.

(2) The quantity of used oil picked up.

(3) The quantities of used oil delivered to:

(A) Another used oil transporter;
(B) A used oil processing/re-refining facility;
(C) An off-specification used oil burner;
(D) An on-specification used oil burner; and
(E) A disposal facility.

(b) Each used oil processor/re-refiner shall submit an annual report for the twelve-month period ending June 30. The report shall be submitted to the director not later than July 31 of each year. The report shall be completed on forms furnished by the director and shall contain the following information concerning used oil activities:

(1) The EPA identification number, name, and address of the used oil processor.
(2) The quantities of used oil accepted for processing/re-refining and the manner in which the used oil was processed/re-refined, including the specific processes employed.
(3) The quantities of used oil sent to:
(A) Another used oil processing/re-refining facility;
(B) An off-specification used oil burner;
(C) An on-specification used oil burner; and
(D) A disposal facility. [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-14 Used oil and used oil fuel permitting system. (a) No person shall own, operate, add, extend, or modify a used oil or used oil fuel transportation or processing/re-refining facility or used oil collection center without first obtaining a permit from the department, except as provided in subsection (b). A permit shall be issued in

accordance with this section and part IV of chapter 342J, HRS.

(b) Facilities exempted under section 40 C.F.R. 279.40(a)(1) to (4), as incorporated and amended in this chapter, are not required to obtain a permit under this section. Used oil collection centers that collect oil exclusively from household "do-it-yourselfer" generators exempted from regulation by 40 C.F.R. section 279.20(a)(1), as incorporated and amended in this chapter, are not required to obtain a permit under this section.

(c) General requirements.

(1) An application for a used oil or used oil fuel permit shall be completed on forms furnished by the director.

(2) The applicant shall be the owner or operator of the facility. Each application shall contain the original signature of the applicant and shall constitute an acknowledgment that the applicant will assume responsibility for complying with this chapter and part IV of chapter 342J, HRS, with respect to the construction and operation of the facility. The application shall be signed by one of the following:

(A) In the case of a corporation, by a principal executive officer of at least the level of vice president;

(B) In the case of a partnership, by a general partner;

(C) In the case of a sole proprietorship, by the proprietor; or

(D) In the case of a county, state, or federal entity, by either a principal executive officer, ranking elected official, or other duly authorized employee.

(3) All permit applicants shall pay a permit filing fee as required by subsection (d)(8).

(d) General conditions.

(1) The director may issue a permit that contains a requirement that the permittee complies with certain conditions.
(2) The director may add, delete, or modify any conditions on any permits.
(3) The director may grant a permit for any term, not exceeding five years, and upon application may renew a permit from time to time for a term not exceeding five years, if such is in the public interest.
(4) The permittee may request a modification of any permit condition provided that:
    (A) A justification is provided to the director with the request; and
    (B) No modification will be effective unless approved by the director.
(5) A permit shall not be transferred without a written application to the director by the new owner and without written approval by the director. A permit can be transferred only under the following conditions:
    (A) There is no change in the operations manual; and
    (B) There is a change in ownership only.
(6) Except for a court-ordered termination or termination by order of the department, all permittees shall notify the director in writing of the facility's termination of operation within ninety days of the permanent termination of the operation of a used oil facility.
(7) A person shall not willfully alter, forge, counterfeit, or falsify a permit.
(8) The permit filing fee shall be subject to the following requirements:
    (A) The permit filing fee for each initial application, renewal, and modification request to DOH shall be as follows:
        (i) Processor permit or collection center permit: $250.

(ii) Processor and transporter permit or collection center and transporter permit: $300.

(iii) Transporter permit: $50.

(B) There shall be no fee for permit modifications made at the director's initiative.

(C) The permit filing fee will not be refunded nor applied to any subsequent application.

(D) Fees shall be made payable to the State of Hawaii.

(e) Application for processors/re-refiners.

(1) All applications for a processing/re-refining permit shall comply with subsection (c).

(2) An application for processing/re-refining shall also include but is not limited to an operations manual. The manual shall include:

(A) A general description of the facility. This shall include, at a minimum, the name of the owner and operator, location, site information, and plot and site location plans;

(B) A description of the operations of the facility. This section shall include, at a minimum, a one-line process flow diagram, design parameters, operational units and procedures, and storage areas;

(C) A control plan for the facility. This shall describe access to the facility, drainage systems, and fire, vector, odor, and dust controls;

(D) A sampling and analysis plan for the facility. This shall include a procedure for analysis for constituents of specification fuel. The constituents and allowable levels are specified in 40 C.F.R. section 279.11, as

incorporated and amended in this chapter;

(E) A description of the reporting and recordkeeping procedures for the facility that meets the requirements of section 11-279.1-13; and

(F) A closure plan to ensure that closure will comply with 40 C.F.R. section 279.54(h), as incorporated and amended in this chapter.

(f) Application for transporters.

(1) All applications for a transportation permit shall comply with subsection (c).

(2) The following shall be submitted:

(A) A site plan of appropriate scale;

(B) An operations narrative describing the proposed activity;

(C) A plan describing suitable means to prevent and control fires, spills, releases, and stormwater runoff; and

(D) An emergency response plan.

(g) Application for collection centers.

(1) All applications for a collection center permit shall comply with subsection (c).

(2) The following shall be submitted:

(A) A site plan of appropriate scale;

(B) An operations narrative describing the proposed activity;

(C) A plan describing suitable means to prevent and control fires, spills, releases, and stormwater runoff; and

(D) An emergency response plan.

(h) Any person who violates any provision of this section shall be subject to the penalties provided in chapter 342J, HRS." [Eff 7/17/17; comp] (Auth: HRS §§342J-4, 342J-13, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-9, 342J-10, 342J-31, 342J-35, 342J-52, 342J-53, 342J-54)

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

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

15. The amendment and compilation of chapters 11-260.1, 11-261.1, 11-262.1, 11-263.1, 11-264.1, 11-265.1, 11-266.1, 11-268.1, 11-270.1, 11-271.1, 11-273.1, and 11-279.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of 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 March 1, 2018, and filed with the Office of the Lieutenant Governor.

VIRGINIA PRESSLER, M.D.
Director of Health

APPROVED AS TO FORM:

Wade H. Hargrove III
Deputy Attorney General

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapters 11-260.1, 11-261.1, 11-262.1, 11-263.1, 11-264.1, 11-265.1, 11-266.1, 11-268.1, 11-270.1, 11-271.1, 11-273.1, and 11-279.1
Hawaii Administrative Rules

March 1, 2018

SUMMARY

1. Chapter 11-260.1 is amended and compiled.

2. Chapter 11-261.1 is amended and compiled.

3. Chapter 11-262.1 is amended and compiled.

4. Chapter 11-263.1 is amended and compiled.

5. Chapter 11-264.1 is amended and compiled.

6. Chapter 11-265.1 is amended and compiled.

7. Chapter 11-266.1 is amended and compiled.

8. Chapter 11-268.1 is amended and compiled.

9. Chapter 11-270.1 is amended and compiled.

10. Chapter 11-271.1 is amended and compiled.

11. Chapter 11-273.1 is amended and compiled.

12. Chapter 11-279.1 is amended and compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-260.1

HAZARDOUS WASTE MANAGEMENT: GENERAL PROVISIONS

Historical note: This chapter is based substantially upon chapter 11-260. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-260.1-1 Incorporation of 40 C.F.R. part 260. Title 40, part 260 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-260.1-2 to 11-260.1-5. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-260.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 260, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", "Regional Administrator or State Director", and "State Director" shall be replaced with "director".

(2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except in references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 260, as incorporated and amended in this chapter:

(1) 40 C.F.R. section 260.10 definitions of "Administrator", "AES filing compliance date", "Electronic import-export reporting compliance date", "Electronic manifest", "Electronic Manifest System", "EPA hazardous waste number", "EPA identification number", "EPA region", "Equivalent method", "Hazardous waste constituent", and "Regional Administrator", "Replacement unit", and "User of the electronic manifest system".

(2) 40 C.F.R. sections 260.2(c)(2), 260.11, and 260.34(a)(2) and (3).

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 260, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1, except as listed in subsection (d). The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

(d) The following references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 260, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations: the references in the definitions "Designated facility" and "Equivalent method" in 40 C.F.R. section 260.10. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-260.1-3 Amendments to the incorporation of 40 C.F.R. part 260, subpart A. (a) The incorporation by reference of 40 C.F.R. section 260.1 is amended as follows: 40 C.F.R. section 260.1(b)(5) and (6) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 260.2 is amended as follows:

(1) In 40 C.F.R. section 260.2(a), replace "the Freedom of Information Act, 5 U.S.C. section 552, section 3007(b) of RCRA and EPA regulations implementing the Freedom of Information Act and section 3007(b), part 2 of this chapter, as applicable" with "sections 342J-14 and 342J-14.5, HRS, and any applicable provisions of chapter 92F, HRS, and of chapter 2-71".

(2) In 40 C.F.R. section 260.2(b), delete "by following the procedures set forth in §2.203(b) of this chapter" and replace "part 2, subpart B, of this chapter" with "sections 342J-14 and 342J-14.5, HRS, and any applicable provisions of chapter 92F, HRS, and of chapter 2-71".

(3) In 40 C.F.R. section 260.2(c)(1), replace "August 6, 2014" with "the effective date of this chapter". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-260.1-4 Amendments to the incorporation of 40 C.F.R. part 260, subpart B. (a) The incorporation by reference of 40 C.F.R. section 260.10 is amended as follows:

(1) The following definitions are excluded from incorporation: "Carbon dioxide stream", "Cathode ray tube or CRT", "CRT collector", "CRT exporter", "CRT glass manufacturer", "CRT processing", and "State".

(2) The following definitions are amended as follows:

"Active portion" definition. Replace "the effective date of part 261 of this chapter" with "November 19, 1980".

"AES filing compliance date" definition. Delete "and exporters of cathode ray tubes for recycling".

"Central accumulation area" definition. Delete "A central accumulation area at an eligible academic entity that chooses to operate under 40 CFR part 262 subpart K is also subject to §262.211 when accumulating unwanted material and/or hazardous waste."

"Designated facility" definition. Add "or corresponding regulations of any authorized state" after "part 266 of this chapter", after "§262.20", and after "§265.72(f) of this chapter".

"Destination facility" definition. Delete "paragraphs (a) and (c) of".

"EPA hazardous waste number" definition. Insert "or the State" after "by EPA".

"EPA identification number" definition. Insert "or the State" after "by EPA".

"Equivalent method" definition. Add "and approved by the director" at the end of the sentence.

"Existing hazardous waste management (HWM) facility or existing facility" definition. Replace "on or before November 19, 1980" with "on or before:

(1) November 19, 1980;

(2) The effective date of statutory or regulatory changes made under RCRA prior to June 18, 1994 that made the facility subject to the requirement to have an RCRA permit; or

(3) The effective date of statutory or regulatory changes made under chapter 342J, HRS, after June 18, 1994 that made the facility subject to the requirement to have a permit under section 342J-30(a), HRS".

"Existing tank system or existing component" definition. Replace "on or prior

to July 14, 1986" with "on or prior to July 14, 1986 for HSWA tanks and June 18, 1994 for non-HSWA tanks".

"Facility" definition. Delete "or 267.101" and replace "RCRA Section 3008(h)" with "42 U.S.C. section 6928(h) or section 342J-36, HRS".

"Inactive portion" definition. Replace "the effective date of part 261 of this chapter" with "November 19, 1980".

"New hazardous waste management facility" definition. Replace in its entirety to read: "New hazardous waste management facility or new facility means a hazardous waste management facility which is not included in the definition of an existing hazardous waste management facility."

"New tank system or new tank component" definition. Replace both occurrences of "July 14, 1986" with "July 14, 1986 for HSWA tanks and June 18, 1994 for non-HSWA tanks".

"Person" definition. Replace in its entirety to read: "Person means any individual, partnership, firm, joint stock company, association, public or private corporation, federal agency, the State or any of its political subdivisions, any state and any of its political subdivisions, trust, estate, interstate body, or any other legal entity."

"Remediation waste management site" definition. Add "or section 342J-36, HRS" after "40 CFR 264.101".

"Universal waste" definition. Replace "(3) Mercury-containing equipment as described in §273.4 of this chapter; and (4) Lamps as described in §273.5 of this chapter" with "(3) Mercury-containing equipment as described in 40 C.F.R. section 273.4, as incorporated and amended in section 11-273.1-1; (4) Lamps as described

in 40 C.F.R. section 273.5, as incorporated and amended in section 11-273.1-1; and (5) Electronic items as described in 40 C.F.R. section 273.6, as incorporated and amended in section 11-273.1-1".

"Universal waste handler" definition. Delete both instances of "(a) or (c)".

(3) Add the following additional definitions in alphabetical order:

"Any state" means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other U.S. territory.

"CWA" means the federal Clean Water Act, 33 U.S.C. section 1251 et seq.

"Director", or "director of health", means the director of the State of Hawaii department of health or the director's authorized agent.

"Electronic item", also referred to as "universal waste electronic item", means a device containing a circuit board, or other complex circuitry, or a video display. Indicators that a device likely contains a circuit board include the presence of a keypad, touch screen, any type of video or digital display, or common electronic ports or connectors, such as serial, parallel, Rj45 ("network"), or USB. Examples of common universal waste electronic items include, but are not limited to: computer central processing unit; computer monitor; portable computer (including notebook, laptop, and tablet computer); devices designed for use with computers (also known as computer peripherals) such as keyboard, mouse, desktop printer, scanner, and external storage drive; server; television; digital video disc (DVD) recorder or player; videocassette recorder or player (VCR);

eBook reader; digital picture frame; fax machine; video game equipment; cellular telephone; answering machine; digital camera; portable music or video player; wireless paging device; remote control; and smoke detector. Electronic item does not include a device that is physically a part of, connected to, or integrated within a large piece of equipment that is not meant to be hand-carried by one person (for example, an automobile, large medical equipment, or white goods as defined in chapter 11-58.1). A device is considered physically a part of, connected to, or integrated within a large piece of equipment if the device cannot be easily disconnected from the large equipment by a layperson without specialized training. When a device containing a circuit board or a video display is removed, separated, or separate from the large piece of equipment that it is meant to be a part of, it is a universal waste electronic item.

"HRS" means the Hawaii Revised Statutes.

"HSWA" means Hazardous and Solid Waste Amendments.

"HSWA Drip Pad" means a drip pad handling F032 waste, as defined in 40 C.F.R. section 261.31, as incorporated and amended in section 11-261.1-1.

"HSWA Tank" means a tank owned or operated by a generator of less than one thousand kilograms of hazardous waste in any single calendar month; or, a new underground tank; or, an existing underground tank that cannot be entered for inspection.

"Land disposal" means placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a landfill, surface impoundment, waste

pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or placement in a concrete vault, or bunker intended for disposal purposes.

"Non-HSWA Drip Pad" means a drip pad handling F034 and F035 wastes, as defined in 40 C.F.R. section 261.31, as incorporated and amended in section 11-261.1-1.

"Non-HSWA Tank" means all tanks except HSWA tanks as defined in this section.

(b) The incorporation by reference of 40 C.F.R. section 260.11 is amended as follows:

(1) In 40 C.F.R. section 260.11(a), delete "and 278".

(2) In 40 C.F.R. section 260.11(c)(3)(xxvii), delete "267.190(a),".

(3) In 40 C.F.R. section 260.11(d)(1), delete ", 267.202(b)". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-260.1-5 Amendments to the incorporation of 40 C.F.R. part 260, subpart C. (a) The incorporation by reference of 40 C.F.R. section 260.20 is amended as follows:

(1) In 40 C.F.R. section 260.20(a), delete "Section 260.21 sets forth additional requirements for petitions to add a testing or analytical method to part 261, 264 or 265 of this chapter. Section 260.22 sets forth additional requirements for petitions to exclude a waste or waste-derived material at a particular facility from §261.3 of this chapter or the lists of hazardous wastes in subpart D of part 261 of this chapter."

(2) In 40 C.F.R. section 260.20(c) and (e), delete "in the Federal Register".

(b) 40 C.F.R. sections 260.21 and 260.22 are excluded from incorporation.

(c) The incorporation by reference of 40 C.F.R. section 260.34 is amended as follows: in 40 C.F.R. section 260.34(a), replace "also" with "only". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-261.1

HAZARDOUS WASTE MANAGEMENT: IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Historical note: This chapter is based substantially upon chapter 11-261. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-261.1-1 Incorporation of 40 C.F.R. part 261. Title 40, part 261 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-261.1-2 to 11-261.1-32. [Eff 7/17/17; am and comp SEP 3 0 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 261, as incorporated and amended in this chapter:

(1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", "Regional Administrator or State Director", and "State Director" shall be replaced with "director".

(2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except for all references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA

identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(3) "Section 3010 of RCRA" and "section 3010 of the Act" shall be replaced with "section 342J-6.5, HRS".

(b) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 261, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1, except as listed in subsection (c). The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

(c) The following references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 261, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations: the references in 40 C.F.R. sections 261.4(a)(24)(v)(B), 261.4(a)(24)(vi)(G), 261.4(b)(18)(vi)(A) and (B), 261.1033(n)(1)(i), 261.1033(n)(2)(i), and 261.1033(n)(3)(i). [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-3 Amendments to the incorporation of 40 C.F.R. part 261, subpart A. (a) The incorporation by reference of 40 C.F.R. section 261.1 is amended as follows:

(1) In 40 C.F.R. section 261.1(a), delete "271,".

(2) In 40 C.F.R. section 261.1(b)(2), replace "sections 3007, 3013, and 7003 of RCRA" with "chapter 342J, HRS" and replace "these sections" with "sections 342J-6, 342J-7, 342J-8, 342J-9(a), 342J-9(b), 342J-10, and 342J-11, HRS,".

(3) Replace 40 C.F.R. section 261.1(b)(2)(i) in its entirety to read: "(i) In the case of sections 342J-6, 342J-7, 342J-9(a), 342J-9(b), 342J-10, and 342J-11, HRS, the department has reason to believe that the material may be a solid waste as the term is defined in section 342J-2, HRS, and a hazardous waste as the term is defined in section 342J-2, HRS; or".

(4) In 40 C.F.R. section 261.1(b)(2)(ii), replace "7003" with "342J-8, HRS".

(5) In 40 C.F.R. section 261.1(c)(1), insert ", spilled, or otherwise contaminated" after "used".

(b) The incorporation by reference of 40 C.F.R. section 261.2 is amended as follows: in 40 C.F.R. section 261.2(c)(2)(ii), delete "listed in §261.33".

(c) The incorporation by reference of 40 C.F.R. section 261.3 is amended as follows:

(1) In 40 C.F.R section 261.3(a)(2)(ii), delete "under §§260.20 and 260.22 of this chapter".

(2) In 40 C.F.R. section 261.3(a)(2)(iv), delete "under §§260.20 and 260.22".

(3) In 40 C.F.R. section 261.3(a)(2)(iv)(A) to (G), replace all instances of "Regional Administrator, or State Director, as the context requires, or an authorized

representative ("Director" as defined in 40 CFR 270.2)" with "director".

(4) In 40 C.F.R. section 261.3(c)(2)(ii)(C)(1), replace "subtitle D units" with "solid waste management units under chapter 342H, HRS".

(5) In 40 C.F.R. section 261.3(c)(2)(ii)(C)(2), replace each instance of "EPA region or authorized state" with "state department of health". Replace each instance of "subtitle D unit(s)" with "solid waste management units under chapter 342H, HRS".

(6) In 40 C.F.R. section 261.3(d)(2), delete "under §§260.20 and 260.22 of this chapter".

(d) The incorporation by reference of 40 C.F.R. section 261.4 is amended as follows:

(1) In 40 C.F.R. section 261.4(a)(9)(iii)(E), delete "appropriate Regional Administrator or state" and "Regional Administrator or state".

(2) 40 C.F.R. section 261.4(a)(22) is excluded from incorporation.

(3) In 40 C.F.R. section 261.4(a)(24)(v)(B), after each instance of "§260.31(d)", insert "or equivalent state regulations".

(4) In 40 C.F.R. section 261.4(a)(24)(vi)(E), replace "40 CFR parts 260 through 272" with "chapters 11-260.1 to 11-270.1".

(5) In 40 C.F.R. section 261.4(a)(24)(vi)(G), after "§260.31(d)", insert "or equivalent state regulations".

(6) In 40 C.F.R. section 261.4(a)(26)(i), insert "with the accumulation start date and" after "labeled".

(7) In 40 C.F.R. section 261.4(a)(27)(vi)(A), replace "EPA or the State Director, if the state is authorized for the program" with "the director".

(8) 40 C.F.R. section 261.4(b)(4)(ii) and 261.4(b)(5) is excluded from incorporation.

(9) In 40 C.F.R. section 261.4(b)(10), insert

", chapter 342L, HRS, or rules adopted pursuant to chapter 342L, HRS" after "under part 280 of this chapter".

(10) 40 C.F.R. section 261.4(b)(11) and 261.4(b)(17) is excluded from incorporation.

(11) In 40 C.F.R. section 261.4(b)(18)(i), insert "with the accumulation start date and" after "labeled".

(12) In 40 C.F.R. section 261.4(b)(18)(vi)(A), insert ", or equivalent state regulations" after "40 CFR parts 264 or 265".

(13) In 40 C.F.R. section 261.4(b)(18)(vi)(B), insert ", or equivalent state regulations" after "40 CFR parts 264, 265, or 266 subpart H".

(14) In 40 C.F.R. section 261.4(c), delete "271".

(15) In 40 C.F.R. section 261.4(e)(1), replace "40 CFR 261.5 and 262.34(d)" with "40 C.F.R. section 262.13, as incorporated and amended in section 11-262.1-1".

(16) In 40 C.F.R. section 261.4(e)(2)(iv), insert "hazardous waste management permit issued by any state, a" before "RCRA permit".

(17) In 40 C.F.R. section 261.4(e)(3)(iii), replace "Regional Administrator in the Region where the sample is collected" with "director".

(18) In 40 C.F.R. section 261.4(f)(1), (9), and (11), replace "Regional Administrator, or State Director (if located in an authorized State)," with "director".

(19) 40 C.F.R. section 261.4(h) is excluded from incorporation.

(e) The incorporation by reference of 40 C.F.R. section 261.6 is amended as follows:

(1) In 40 C.F.R. section 261.6(c)(1), delete "267,".

(2) In 40 C.F.R. section 261.6(d), replace "RCRA permitting" with "hazardous waste management permitting". Replace the comma between "264" and "265" with "or" and delete "or 267".

(f) The incorporation by reference of 40 C.F.R. section 261.9 is amended as follows:

(1) In 40 C.F.R. section 261.9(c), delete "and".

(2) In 40 C.F.R. section 261.9(d), replace the period at the end with "; and".

(3) In 40 C.F.R. section 261.9, add a subsection (e) to read "(e) Electronic items as described in 40 C.F.R. section 273.6, as incorporated and amended in section 11-273.1-1." [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-4 Amendments to the incorporation of 40 C.F.R. part 261, subpart B. The incorporation by reference of 40 C.F.R. section 261.11 is amended as follows:

(1) In 40 C.F.R. section 261.11(b), replace "section 1004(5) of the Act" with "section 342J-2, HRS".

(2) In 40 C.F.R. section 261.11(c), replace "§261.5(c)" with "40 C.F.R. section 262.13, as incorporated and amended in section 11-262.1-1". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-5 (Reserved.)

§11-261.1-6 Amendments to the incorporation of 40 C.F.R. part 261, subpart D. (a) The incorporation by reference of 40 C.F.R. section 261.30 is amended as follows:

(1) In 40 C.F.R. section 261.30(a), delete "under §§260.20 and 260.22".

(2) In 40 C.F.R. section 261.30(c), delete "267,".

(3) In 40 C.F.R. section 261.30(d), replace "§261.5" with "40 C.F.R. section 262.13, as incorporated and amended in section 11-262.1-1".

(b) The incorporation by reference of 40 C.F.R. section 261.31 is amended as follows:

(1) In 40 C.F.R. section 261.31(a), delete "under §§260.20 and 260.22".

(2) In 40 C.F.R. section 261.31(b)(2)(i), replace "the units employ" with "the unit employs".

(3) In 40 C.F.R. section 261.31(b)(4)(ii), replace "Regional Administrator or the state regulatory authority" with "Regional Administrator or director".

(c) The incorporation by reference of 40 C.F.R. section 261.32 is amended as follows: in 40 C.F.R. section 261.32(a), delete "under §§260.20 and 260.22". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-7 Amendments to the incorporation of 40 C.F.R. part 261, subpart E. 40 C.F.R. part 261, subpart E is excluded from the incorporation by reference of 40 C.F.R. part 261. [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§§11-261.1-8 to 11-261.1-9 (Reserved).

§11-261.1-10 Amendments to the incorporation of 40 C.F.R. part 261, subpart H. (a) The incorporation by reference of 40 C.F.R. section 261.142 is amended as follows: in 40 C.F.R. section 261.142(a)(3) and (4), replace "§265.5113(d) of this chapter" with "40 C.F.R. section 265.113(d), as incorporated and amended in section 11-265.1-1".

(b) The incorporation by reference of 40 C.F.R. section 261.143 is amended as follows: in 40 C.F.R. section 261.143(g), replace "Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions" with "state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state".

(c) The incorporation by reference of 40 C.F.R. section 261.147 is amended as follows: in 40 C.F.R. section 261.147(a)(1)(i) and (b)(1)(i), replace ", or Regional Administrators if the facilities are located in more than one Region" with ". If the facilities are located in more than one state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state". Replace "a Regional Administrator" with "the director".

(d) 40 C.F.R. sections 261.149 and 261.150 are excluded from the incorporation by reference of 40 C.F.R. part 261.

(e) The incorporation by reference of 40 C.F.R. section 261.151 is amended as follows: replace 40 C.F.R. section 261.151 in its entirety to read:

"§261.151 Wording of the instruments.

(a) (1) A trust agreement for a trust fund, as specified in 40 C.F.R. section 261.143(a), as incorporated and amended in this chapter, must be worded as follows, except that instructions in

brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of _____" or "a national bank"], the "Trustee."

Whereas, the Department of Health, State of Hawaii, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a facility regulated under chapter 11-264.1 or 11-265.1, Hawaii Administrative Rules, or satisfying the conditions of the exclusion under the incorporated version of 40 C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules, shall provide assurance that funds will be available if needed for care of the facility under the incorporated version of subpart G of 40 C.F.R. parts 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "department" means the Department of Health, State of Hawaii.

(d) The term "director" means the director of the Department of Health, State of Hawaii.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number (if available), name, address, and the current cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the department in the event that the hazardous secondary materials of the grantor no longer meet the conditions of the exclusion under the incorporated version of 40 C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the department.

Section 4. Payments from the Fund. The Trustee shall make payments from the Fund as the director shall direct, in writing, to provide for the payment

of the costs of the performance of activities required under the incorporated version of subpart G of 40 C.F.R. parts 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, for the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the director from the Fund for expenditures for such activities in such amounts as the beneficiary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the

Grantor and to the director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the director shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred

by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the director to the Trustee shall be in writing, signed by the director, or the director's designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the department, except as provided for herein.

Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the director, or by the Trustee and the director if the Grantor ceases to exist.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 15, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the director, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 17. Immunity and Indemnification. The Trustee shall not incur personal liability of any

nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 18. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii.

Section 19. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(a)(1), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in 40 C.F.R. section 261.143(a), as incorporated and amended in this chapter.

State of _____
County of _____
On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.
[Signature of Notary Public]

(b) A surety bond guaranteeing payment into a trust fund, as specified in 40 C.F.R. section 261.143(b), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

FINANCIAL GUARANTEE BOND

Date bond executed:
Effective date:
Principal: [legal name and business address of owner or operator]
Type of Organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation:
Surety(ies): [name(s) and business address(es)]
EPA Identification Number, name, address and amount(s) for each facility guaranteed by this bond:
Total penal sum of bond: $
Surety's bond number:

As used in this instrument:

(a) The term "department" means the Department of Health, State of Hawaii.

(b) The term "director" means the director of the Department of Health, State of Hawaii.

Know All Persons By These Presents, That we, the Principal and Surety(ies) are firmly bound to the Department of Health, State of Hawaii, in the event that the hazardous secondary materials at the reclamation or intermediate facility listed below no longer meet the conditions of the exclusion under the incorporated version of 40 C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under chapter 342J, Hawaii Revised Statutes, to have a permit or interim status in order to own or operate each facility identified above, or to meet conditions under the incorporated version of 40 C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules, and

Whereas said Principal is required to provide financial assurance as a condition of permit or interim status or as a condition of an exclusion under the incorporated version of 40 C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall satisfy all the conditions established for exclusion of hazardous secondary materials from coverage as solid waste under the incorporated version of 40 C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure is issued by the director or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in the incorporated version of subpart H of 40 C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules, as applicable, and obtain the director's written approval of such assurance, within 90 days after the date notice of cancellation is received by the Principal, the director, and the EPA Regional Administrator from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the director that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the director.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the

bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, to the director, and to the EPA Regional Administrator, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, the director, and the EPA Regional Administrator, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the director.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the director.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(b), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date this bond was executed.

Principal
[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]
Corporate Surety(ies)

[Name and address]
State of incorporation:
Liability limit: $
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $

(c) A letter of credit, as specified in 40 C.F.R. section 261.143(c), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Director of Health
Department of Health
State of Hawaii

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No.____ in your favor, in the event that the hazardous secondary materials at the covered reclamation or intermediary facility(ies) no longer meet the conditions of the exclusion under the incorporated version of 40 C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars $____, available upon presentation of

(1) your sight draft, bearing reference to this letter of credit No.__, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of chapter 342J, Hawaii Revised Statutes."

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but

such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the EPA Regional Administrator, and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by you, the EPA Regional Administrator, and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(c), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution] [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(d) A certificate of insurance, as specified in 40 C.F.R. section 261.143(d), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATE OF INSURANCE

Name and Address of Insurer (herein called the "Insurer"):

Name and Address of Insured (herein called the "Insured"):

Facilities Covered: [List for each facility: The EPA Identification Number (if any issued), name, address, and the amount of insurance for all facilities covered, which must total the face amount shown below.

Face Amount:

Policy Number:

Effective Date:

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance so that in accordance with applicable regulations all hazardous secondary materials can be removed from the facility or any unit at the facility and the facility or any unit at the facility can be decontaminated at the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of the incorporated version of 40 C.F.R. section 261.143(d), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the director of health, State of Hawaii, the Insurer agrees to furnish to the director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in the incorporated version of 40 C.F.R. 261.151(d), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Authorized signature for Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:
[Date]

(e) A letter from the chief financial officer, as specified in 40 C.F.R. section 261.143(e), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

[Address to director].

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in the incorporated version of subpart H of 40 C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

[Fill out the following nine paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number (if any issued), name, address, and current cost estimates.]

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in subpart H of 40 C.F.R. part 261. The current cost estimates covered by the test are shown for each facility: ____.

2. This firm guarantees, through the guarantee specified in subpart H of 40 C.F.R. part 261, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility: ____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator,

and receiving the following value in consideration of this guarantee____, or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In States where EPA is not administering the financial requirements of subpart H of 40 C.F.R. part 261, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 C.F.R. part 261. The current cost estimates covered by such a test are shown for each facility:____.

4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 C.F.R. part 261 or equivalent or substantially equivalent State mechanisms. The current cost estimates not covered by such financial assurance are shown for each facility:____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 C.F.R. part 144. The current closure cost estimates as required by 40 C.F.R. section 144.62 are shown for each facility:____.

6. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in subpart H of 40 C.F.R. parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: ____ .

7. This firm guarantees, through the guarantee specified in subpart H of 40 C.F.R. parts 264 and 265,

the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: ____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ___; or (3) engaged in the following substantial business relationship with the owner or operator __, and receiving the following value in consideration of this guarantee __]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

8. In states where EPA is not administering the financial requirements of subpart H of 40 C.F.R. part 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 C.F.R. parts 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: __.

9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 C.F.R. parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: __.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of the incorporated version of 40 C.F.R. section 261.143(e)(1)(i), as amended, in section 11-261.1-1, Hawaii Administrative Rules, are used. Fill in Alternative II if the criteria of the incorporated version of 40 C.F.R. section 261.143(e)(1)(ii), as amended, in section 11-261.1-1, Hawaii Administrative Rules, are used.]

Alternative I

1. Sum of current cost estimates [total of all cost estimates shown in the nine paragraphs above] $__

*2. Total liabilities [if any portion of the cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4] $__

*3. Tangible net worth $____

*4. Net worth $____

*5. Current assets $____

*6. Current liabilities $____

7. Net working capital [line 5 minus line 6] $____

*8. The sum of net income plus depreciation, depletion, and amortization $____

*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $____

10. Is line 3 at least $10 million? (Yes/No) ____

11. Is line 3 at least 6 times line 1? (Yes/No) ____

12. Is line 7 at least 6 times line 1? (Yes/No) ____

*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14 (Yes/No) ____

14. Is line 9 at least 6 times line 1? (Yes/No) ____

15. Is line 2 divided by line 4 less than 2.0? (Yes/No) _____

16. Is line 8 divided by line 2 greater than 0.1? (Yes/No) _____

17. Is line 5 divided by line 6 greater than 1.5? (Yes/No) _____

Alternative II

1. Sum of current cost estimates [total of all cost estimates shown in the eight paragraphs above] $_____

2. Current bond rating of most recent issuance of this firm and name of rating service _____

3. Date of issuance of bond _____

4. Date of maturity of bond _____

*5. Tangible net worth [if any portion of the cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] $_____

*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $_____

7. Is line 5 at least $10 million? (Yes/No) _____

8. Is line 5 at least 6 times line 1? (Yes/No) _____

*9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10 (Yes/No) _____

10. Is line 6 at least 6 times line 1? (Yes/No) _____

I hereby certify that the wording of this letter is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(e), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

(f) A letter from the chief financial officer, as specified in 40 C.F.R. section 261.147(f), as

incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

[Address to director].

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage under the incorporated version of 40 C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules [insert "and costs assured under the incorporated version of 40 C.F.R. section 261.143(e), as amended, in section 11-261.1-1, Hawaii Administrative Rules" if applicable] as specified in the incorporated version of subpart H of 40 C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number (if any issued), name, and address].

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in the incorporated version of subpart H of 40 C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules:____

The firm identified above guarantees, through the guarantee specified in the incorporated version of subpart H of 40 C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the

following: ____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ____; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee ____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in the incorporated version of subpart H of 40 C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules:____

The firm identified above guarantees, through the guarantee specified in the incorporated version of subpart H of 40 C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: __. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee __; or (3) engaged in the following substantial business relationship with the owner or operator __, and receiving the following value in consideration of this guarantee __]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and costs assured under the incorporated version of 40 C.F.R. section 261.143(e), as amended, in section 11-261.1-1, Hawaii Administrative Rules, or closure or post-closure care costs under the incorporated version of 40 C.F.R. section 264.143 or 264.145, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.143 or 265.145, as amended, in section 11-265.1-1, Hawaii Administrative Rules, fill in the following nine paragraphs regarding facilities and associated cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA identification number (if any issued), name, address, and current cost estimates.]

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in subpart H of 40 C.F.R. 261. The current cost estimates covered by the test are shown for each facility:____.

2. This firm guarantees, through the guarantee specified in subpart H of 40 C.F.R. part 261, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility:____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee____, or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In States where EPA is not administering the financial requirements of subpart H of 40 C.F.R. part 261, this firm, as owner or operator or guarantor, is

demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 C.F.R. part 261. The current cost estimates covered by such a test are shown for each facility:____.

4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 C.F.R. part 261 or equivalent or substantially equivalent State mechanisms. The current cost estimates not covered by such financial assurance are shown for each facility:____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 C.F.R. part 144. The current closure cost estimates as required by 40 C.F.R. section 144.62 are shown for each facility:____.

6. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in subpart H of 40 C.F.R. parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: ____.

7. This firm guarantees, through the guarantee specified in subpart H of 40 C.F.R. parts 264 and 265, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: ____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ____; or (3) engaged in the following substantial business

relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee ____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

8. In States where EPA is not administering the financial requirements of subpart H of 40 C.F.R. part 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 C.F.R. parts 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: ____.

9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 C.F.R. parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: ____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of 40 C.F.R. section 261.147(f)(1)(i), as incorporated and amended in this chapter, are used. Fill in Alternative II if the criteria of 40 C.F.R. section

261.147(f)(1)(ii), as incorporated and amended in this chapter, are used.]

Alternative I

1. Amount of annual aggregate liability coverage to be demonstrated $____.

*2. Current assets $____.

*3. Current liabilities $____.

4. Net working capital (line 2 minus line 3) $____.

*5. Tangible net worth $____.

*6. If less than 90% of assets are located in the U.S., give total U.S. assets $____.

7. Is line 5 at least $10 million? (Yes/No) ____.

8. Is line 4 at least 6 times line 1? (Yes/No) ____.

9. Is line 5 at least 6 times line 1? (Yes/No) ____.

*10. Are at least 90% of assets located in the U.S.? (Yes/No) ____. If not, complete line 11.

11. Is line 6 at least 6 times line 1? (Yes/No) ____.

Alternative II

1. Amount of annual aggregate liability coverage to be demonstrated $____.

2. Current bond rating of most recent issuance and name of rating service _____.

3. Date of issuance of bond _____.

4. Date of maturity of bond _____.

*5. Tangible net worth $____.

*6. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $____.

7. Is line 5 at least $10 million? (Yes/No) ____.

8. Is line 5 at least 6 times line 1? ____.

9. Are at least 90% of assets located in the U.S.? If not, complete line 10. (Yes/No) __.

10. Is line 6 at least 6 times line 1? ____.

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and costs assured under 40 C.F.R. section261.143(e), as incorporated and amended in this

chapter, or closure or post-closure care costs under 40 C.F.R. sections 264.143, 264.145, 265.143, or 265.145, as incorporated and amended in sections 11-264.1-1 and 11-265.1-1.]

Part B. Facility Care and Liability Coverage

[Fill in Alternative I if the criteria of 40 C.F.R. sections 261.143(e)(1)(i) and 261.147(f)(1)(i), as incorporated and amended in this chapter, are used. Fill in Alternative II if the criteria of 40 C.F.R. sections 261.143(e)(1)(ii) and 261.147(f)(1)(ii), as incorporated and amended in this chapter, are used.]

Alternative I

1. Sum of current cost estimates (total of all cost estimates listed above) $____

2. Amount of annual aggregate liability coverage to be demonstrated $____

3. Sum of lines 1 and 2 $____

*4. Total liabilities (if any portion of your cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) $____

*5. Tangible net worth $____

*6. Net worth $____

*7. Current assets $____

*8. Current liabilities $____

9. Net working capital (line 7 minus line 8) $____

*10. The sum of net income plus depreciation, depletion, and amortization $____

*11. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $____

12. Is line 5 at least $10 million? (Yes/No)

13. Is line 5 at least 6 times line 3? (Yes/No)

14. Is line 9 at least 6 times line 3? (Yes/No)

*15. Are at least 90% of assets located in the U.S.? (Yes/No) If not, complete line 16.

16. Is line 11 at least 6 times line 3? (Yes/No)

17. Is line 4 divided by line 6 less than 2.0? (Yes/No)

18. Is line 10 divided by line 4 greater than 0.1? (Yes/No)

19. Is line 7 divided by line 8 greater than 1.5? (Yes/No)

Alternative II

1. Sum of current cost estimates (total of all cost estimates listed above) $____

2. Amount of annual aggregate liability coverage to be demonstrated $____

3. Sum of lines 1 and 2 $____

4. Current bond rating of most recent issuance and name of rating service _____

5. Date of issuance of bond _____

6. Date of maturity of bond _____

*7. Tangible net worth (if any portion of the cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line) $____

*8. Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.) $____

9. Is line 7 at least $10 million? (Yes/No)

10. Is line 7 at least 6 times line 3? (Yes/No)

*11. Are at least 90% of assets located in the U.S.? (Yes/No) If not complete line 12.

12. Is line 8 at least 6 times line 3? (Yes/No)

I hereby certify that the wording of this letter is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(f), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(g) (1) A corporate guarantee, as specified in 40 C.F.R. section 261.143(e), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CORPORATE GUARANTEE FOR FACILITY CARE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in the incorporated version of 40 C.F.R. sections 264.141(h) and 265.141(h), as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules,"] to the Department of Health, State of Hawaii.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in the incorporated version of 40 C.F.R. section 261.143(e), as amended, in section 11-261.1-1, Hawaii Administrative Rules.

2. [Owner or operator] owns or operates the following facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number (if any issued), name, and address.]

3. "Closure plans" as used below refer to the plans maintained as required by the incorporated version of subpart H of 40 C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules, for the care of facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees that in the event of a determination by the director of health, State of Hawaii (hereinafter, director), that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under the incorporated version of 40 C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules,

the guarantor will dispose of any hazardous secondary material as hazardous waste, and close the facility in accordance with closure requirements found in chapters 11-264.1 and 11-265.1, Hawaii Administrative Rules, as applicable, or establish a trust fund as specified in the incorporated version of 40 C.F.R. section 261.143(a), as amended, in section 11-261.1-1, Hawaii Administrative Rules, in the name of the owner or operator in the amount of the current cost estimate.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator] that he intends to provide alternate financial assurance as specified in the incorporated version of subpart H of 40 C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the director and EPA Regional Administrator by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate financial assurance as specified in chapter 11-264.1 or 11-265.1, Hawaii Administrative Rules, or in the incorporated version of subpart H of 40 C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules, as applicable, in the name of

[owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure plan, the extension or reduction of the time of performance, or any other modification or alteration of an obligation of the owner or operator pursuant to chapter 11-264.1 or 11-265.1, Hawaii Administrative Rules, or in the incorporated version of subpart H of 40 C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

9. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator] must comply with the applicable financial assurance requirements of chapters 11-264.1 and 11-265.1, Hawaii Administrative Rules, or the financial assurance condition of the incorporated version of 40 C.F.R. section 261.4(a)(24)(vi)(F), as amended, in section 11-261.1-1, Hawaii Administrative Rules, for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]: Guarantor may terminate this guarantee by sending notice by certified mail to the director, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the director approves, alternate coverage complying with the incorporated version of 40 C.F.R. section 261.143, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator] Guarantor may terminate this guarantee 120

days following the receipt of notification, through certified mail, by the director, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and by [the owner or operator].

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in chapter 11-264.1 or 11-265.1, Hawaii Administrative Rules, or the incorporated version of subpart H of 40 C.F.R. 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules, as applicable, and obtain written approval of such assurance from the director within 90 days after a notice of cancellation by the guarantor is received from guarantor by the director, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department of Health, State of Hawaii, or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the applicable requirements of chapters 11-264.1 or 11-265.1, Hawaii Administrative Rules, or the incorporated version of subpart H of 40 C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

I hereby certify that the wording of this guarantee is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(g)(1), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(2) A guarantee, as specified in 40 C.F.R. section 261.147(g), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

GUARANTEE FOR LIABILITY COVERAGE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the State of ____" and insert name of State; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is [one of the following: "our subsidiary;" "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in the incorporated version of 40 C.F.R. section [either 264.141(h) or 265.141(h)], as amended, in section [either 11-264.1-1 or 11-265.1-1], Hawaii Administrative Rules,"] to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in the incorporated version of 40 C.F.R. section 261.147(g), as amended, in section 11-261.1-1, Hawaii Administrative Rules.

2. [Owner or operator] owns or operates the following facility(ies) covered by this guarantee: [List for each facility: EPA identification number (if any issued), name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each State.] This corporate guarantee satisfies RCRA third-party liability requirements for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers' compensation,

disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator];

(2) Premises that are sold, given away or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator];

(4) Personal property in the care, custody or control of [insert owner or operator];

(5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria,

guarantor shall send within 90 days, by certified mail, notice to the director of health, State of Hawaii (hereinafter, director), the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator] that he intends to provide alternate liability coverage as specified in the incorporated version of 40 C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the director and EPA Regional Administrator by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in the incorporated version of 40 C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules, in the name of [owner or operator], unless [owner or operator] has done so.

8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by the incorporated version of 40 C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules, provided that such modification shall become effective only if the director does not disapprove the modification within 30 days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of the

incorporated version of 40 C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules, for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the director, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the director approves, alternate liability coverage complying with the incorporated version of 40 C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]:

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the director, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and by [the owner or operator].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim

should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] facility should be paid in the amount of $.

[Signatures]

Principal

(Notary) Date

[Signatures]

Claimant(s)

(Notary) Date

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in the incorporated version of 40 C.F.R. 261.151(g)(2), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(h) A hazardous waste facility liability endorsement as required 40 C.F.R. section 261.147, as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS SECONDARY MATERIAL RECLAMATION/INTERMEDIATE FACILITY LIABILITY ENDORSEMENT

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under the incorporated version of 40 C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules. The coverage applies at [list EPA Identification Number (if any issued), name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in the incorporated version of 40 C.F.R. section 261.147(f), as amended, in section 11-261.1-1, Hawaii Administrative Rules.

(c) Whenever requested by the director of health, State of Hawaii (hereinafter, director), the Insurer agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the director, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located.

(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the director, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located.

Attached to and forming part of policy No. __ issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this _____ day of _____, 20__. The

effective date of said policy is _____ day of _____, 20__.

I hereby certify that the wording of this endorsement is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(h), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of Authorized Representative of Insurer]
[Type name]
[Title], Authorized Representative of [name of Insurer]
[Address of Representative]

(i) A certificate of liability insurance as required in 40 C.F.R. section 261.147, as incorporated and amended in this chapter, must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS SECONDARY MATERIAL RECLAMATION/INTERMEDIATE FACILITY CERTIFICATE OF LIABILITY INSURANCE

1. [Name of Insurer], (the "Insurer"), of [address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured], (the "insured"), of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under chapters 11-264.1 and 11-265.1, Hawaii Administrative Rules, and the financial assurance condition of the incorporated version of 40 C.F.R. section 261.4(a)(24)(vi)(F), as amended, in section 11-261.1-1, Hawaii Administrative Rules. The coverage applies at [list EPA Identification Number (if any issued), name, and address for each facility] for [insert "sudden accidental occurrences,"

"nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number, issued on [date]. The effective date of said policy is [date].

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in the incorporated version of 40 C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

(c) Whenever requested by the director of health, State of Hawaii (hereinafter, director), the Insurer agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is

received by the director, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the director, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located.

I hereby certify that the wording of this instrument is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(i), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of authorized representative of Insurer]
[Type name]
[Title], Authorized Representative of [name of Insurer]
[Address of Representative]

(j) A letter of credit, as specified in 40 C.F.R. section 261.147(h), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Name and Address of Issuing Institution

Director of Health
Department of Health

State of Hawaii

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. ____ in the favor of ["any and all third-party liability claimants" or insert name of trustee of the standby trust fund], at the request and for the account of [owner or operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars $____ per occurrence and the annual aggregate amount of [in words] U.S. dollars $____, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars $____ per occurrence, and the annual aggregate amount of [in words] U.S. dollars $____, for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. ____, and

[insert the following language if the letter of credit is being used without a standby trust fund:

(1) a signed certificate reading as follows:

Certificate of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal's] facility should be paid in the amount of $[ ]. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal]. This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

[Signatures]
Grantor
[Signatures]
Claimant(s)

or (2) a valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.]

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the director of health, State of Hawaii, the EPA Regional Administrator, and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

[Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess" coverage]."]

We certify that the wording of this letter of credit is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(j), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution] [Date].

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(k) A surety bond, as specified in 40 C.F.R. section 261.147(i), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PAYMENT BOND

Surety Bond No. [Insert number]

Parties [Insert name and address of owner or operator], Principal, incorporated in [Insert State of incorporation] of [Insert city and State of principal place of business] and [Insert name and address of surety company(ies)], Surety Company(ies), of [Insert surety(ies) place of business].

EPA Identification Number (if any issued), name, and address for each facility guaranteed by this bond:

—

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its(their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

(1) Chapter 342J, Hawaii Revised Statutes.

(2) Administrative Rules of the Hawaii State Department of Health, particularly chapters 11-264.1 and 11-265.1, Hawaii Administrative Rules, and the incorporated version of subpart H of 40 C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules (if applicable).

Conditions:

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert Principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert

Principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

(1) An employee of [insert Principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Principal]. This exclusion applies:

(A) Whether [insert Principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Principal];

(2) Premises that are sold, given away or abandoned by [insert Principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Principal];

(4) Personal property in the care, custody or control of [insert Principal];

(5) That particular part of real property on which [insert Principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert Principal] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

(4) The Surety(ies) shall satisfy a third party liability claim only upon the receipt of one of the following documents:

(a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert name of Principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] facility should be paid in the amount of $[ ].

[Signature]
Principal
[Notary] Date
[Signature(s)]
Claimant(s)
[Notary] Date

or (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual

aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the director of health, State of Hawaii (hereinafter, director) forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, the director, and the EPA Regional Administrator, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, the director, and the EPA Regional Administrator, as evidenced by the return receipts.

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the director, the EPA Regional Administrator, and the state agency and EPA Regional Adminsitrator regulating hazardous waste in all states where facilities covered by the guarantee are located.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(k), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]
[Title(s)]
[Corporate Seal]
CORPORATE SURETY(IES)
[Name and address]
State of incorporation:
Liability Limit: $
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: $

(l) (1) A trust agreement, as specified in 40 C.F.R. section 261.147(j), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of ____" or "a national bank"], the "trustee."

Whereas, the Department of Health, State of Hawaii, has established certain regulations applicable to the Grantor, requiring that an owner or operator must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "department" means the Department of Health, State of Hawaii.

(d) The term "director" means the director of health, State of Hawaii.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number (if any issued), name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of ____[up to $1 million] per occurrence and [up to $2 million] annual aggregate for sudden accidental occurrences and ____ [up to $3 million] per occurrence and ____[up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability

in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor]. This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the Fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the department.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents;

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] facility or group of facilities should be paid in the amount of $[ ].

[Signatures]

Grantor

[Signatures]

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or

property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common commingled, or collective trust fund created by

the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued

by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the director shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question

arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the director to the Trustee shall be in writing, signed by the director, or the director's designee, and the Trustee

shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the department, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the director.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the director, or by the Trustee and the director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the director, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the

Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor. The director will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in the incorporated version of 40 C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(l), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in 40 C.F.R. section 261.147(j), as incorporated and amended in this chapter.

State of
County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/ his name thereto by like order.
[Signature of Notary Public]

(m) (1) A standby trust agreement, as specified in 40 C.F.R. section 261.147(h), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

STANDBY TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of a State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee],

[insert, "incorporated in the State of _____" or "a national bank"], the "trustee."

Whereas, the Department of Health, State of Hawaii, has established certain regulations applicable to the Grantor, requiring that an owner or operator must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term Grantor means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term Trustee means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "department" means the Department of Health, State of Hawaii.

(d) The term "director" means the director of health, State of Hawaii.

Section 2. Identification of Facilities. This Agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number (if any issued), name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund, hereafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of ____[up to $1 million] per occurrence and ____[up to $2 million] annual aggregate for sudden accidental occurrences and ____[up to $3 million] per occurrence and ____[up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor]. This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned by [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the Fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the department.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets

are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] facility should be paid in the amount of $[ ]

[Signature]
Grantor
[Signatures]
Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of the incorporated version of 40 C.F.R. section 261.151(k), as amended, in section 11-261.1-1, Hawaii Administrative Rules, and Section 4 of this Agreement.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire

into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the

compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the director and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the

Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the department, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the director, or by the Trustee and the director if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the director, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor. The director will agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in the incorporated version of 40 C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses

reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(m), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a standby trust fund as specified in 40 C.F.R. section 261.147(h), as incorporated and amended in this chapter.

State of
County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn,

did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/ his name thereto by like order.
[Signature of Notary Public]" [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-11 (Reserved).

§11-261.1-12 Amendments to the incorporation of 40 C.F.R. part 261, subpart J. The incorporation by reference of 40 C.F.R. section 261.196 is amended as follows: in the first note to 40 C.F.R. section 261.196, replace "RCRA section 7003(a)" with "section 342J-8, HRS". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§§11-261.1-13 to 11-261.1-14 (Reserved.)

§11-261.1-15 Amendments to the incorporation of 40 C.F.R. part 261, subpart M. (a) The incorporation by reference of 40 C.F.R. section 261.411 is amended as follows: in 40 C.F.R. section 261.411(d)(3), insert "the government official designated as the on-scene coordinator from the Hawaii department of health's Hazard Evaluation and Emergency Response Office via the State Hospital at (808) 247-2191 after business

hours or directly at (808) 586-4249 during business hours and" before "the National Response Center".

(b) The incorporation by reference of 40 C.F.R. section 261.420 is amended as follows: in 40 C.F.R. section 261.420(f)(4)(ii), replace "either the government official designated as the on-scene coordinator for that geographical area, or" with "the government official designated as the on-scene coordinator from the Hawaii department of health's Hazard Evaluation and Emergency Response Office via the State Hospital at (808) 247-2191 after business hours or directly at (808) 586-4249 during business hours and". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§§11-261.1-16 to 11-261.1-28 (Reserved.)

§11-261.1-29 Amendments to the incorporation of 40 C.F.R. part 261, subpart AA. The incorporation by reference of 40 C.F.R. section 261.1033 is amended as follows:

(1) In 40 C.F.R. section 264.1033(n)(1)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart X, as incorporated and amended in section 11-264.1-1" before "; or".

(2) In 40 C.F.R. section 264.1033(n)(2)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart O, as incorporated and amended in section 11-264.1-1" before "; or".

(3) In 40 C.F.R. section 264.1033(n)(3)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the

requirements of 40 C.F.R. part 266, subpart H, as incorporated and amended in section 11-266.1-1" before "; or". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§§11-261.1-30 to 11-261.1-31 (Reserved.)

§11-261.1-32 Amendments to the incorporation of 40 C.F.R. part 261 appendices. 40 C.F.R. part 261 appendix IX is excluded from the incorporation by reference of 40 C.F.R. part 261. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-262.1

HAZARDOUS WASTE MANAGEMENT: STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

B292

Historical note: This chapter is based substantially upon chapter 11-262. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-262.1-1 Incorporation of 40 C.F.R. part 262. Title 40, part 262 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-262.1-2 to 11-262.1-15. [Eff 7/17/17; am and comp SEP 3 0 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 262, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", and "State Director" shall be replaced with "director".

(2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except in references to "EPA Acknowledgment of Consent", "EPA AOC", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA

identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(3) "Section 3010 of RCRA" shall be replaced with "section 342J-6.5, HRS".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 262, as incorporated and amended in this chapter:

(1) 40 C.F.R. section 262.32.

(2) 40 C.F.R. part 262, subparts B and H.

(3) The appendix to 40 C.F.R. part 262.

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 262, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1, except as listed in subsection (d). The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

(d) The following references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 262, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations:

(1) References to 40 C.F.R. section 260.2.

(2) References to the July 1, 2004 edition of 40 C.F.R. parts 260 to 265 in 40 C.F.R. section 262.20(a)(2).

(3) References in the definition "Exporter" in 40 C.F.R. section 262.81.

(4) The reference in 40 C.F.R. section 262.24(g).

(5) References to 40 C.F.R. part 273, 40 C.F.R. part 266, subpart G, and 40 C.F.R. 261.6(a)(3)(i) in 40 C.F.R. sections 262.83(b)(1)(xi) and 262.84(b)(1)(xi). [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-3 Amendments to the incorporation of 40 C.F.R. part 262, subpart A. (a) The incorporation by reference of 40 C.F.R. section 262.1 is amended as follows: the following definitions are amended as follows:

"Condition of exemption" definition. Delete "subpart K or".

"Independent requirement" definition. Delete "subpart K or".

(b) The incorporation by reference of 40 C.F.R. section 262.10 is amended as follows:

(1) In 40 C.F.R. section 262.10(a)(2), replace "267" with "266".

(2) In 40 C.F.R. section 262.10(f), delete "267,".

(3) In 40 C.F.R. section 262.10(g)(1) and (2), add "and sections 342J-7 and 342J-9, HRS" after each instance of "section 3008 of RCRA".

(4) In 40 C.F.R. section 262.10(g)(2), replace "267" with "266".

(5) 40 C.F.R. section 262.10(k) to (l) is excluded from incorporation.

(c) The incorporation by reference of 40 C.F.R. section 262.11 is amended as follows:

(1) In 40 C.F.R. section 262.11(c), delete "If the waste is listed, the person may file a delisting petition under 40 CFR 260.20 and 260.22 to demonstrate to the Administrator that the waste from this particular site or operation is not a hazardous waste."

(2) In 40 C.F.R. section 262.11(d)(1) and (2), replace "approved by the Administrator under 40 CFR 260.21" with "approved by the Administrator under 40 C.F.R. 260.21 and approved by the director".

(3) In 40 C.F.R. section 262.11(e), delete "267,".

(d) The incorporation by reference of 40 C.F.R. section 262.13 is amended as follows:

(1) In 40 C.F.R. section 262.13(a)(3), delete "for the hazardous waste generated".

(2) In 40 C.F.R. section 262.13(b)(4), replace "more stringent" with "larger".

(3) In 40 C.F.R. section 262.13(c)(6), insert "or" after the semicolon.

(4) 40 C.F.R. section 262.13(c)(7) is excluded from incorporation.

(e) The incorporation by reference of 40 C.F.R. section 262.14 is amended as follows:

(1) In 40 C.F.R. section 262.14(a)(5)(i) and (ii), insert "or subtitle C of RCRA" after "of this chapter".

(2) In 40 C.F.R. section 262.14(a)(5)(iv), replace "a state" with "the State or any state" and insert "or state rules that correspond to 40 C.F.R. part 258" after "of this chapter".

(3) In 40 C.F.R. section 262.14(a)(5)(v), replace "a state" with "the State or any state" and insert "or state rules that correspond to 40 C.F.R. sections 257.5 to 257.30" after "of this chapter".

(4) In 40 C.F.R. section 262.14(a)(5)(vii), replace the second instance of "part 273 of

this chapter" with "40 C.F.R. part 273 or state rules that correspond to 40 C.F.R. part 273".

(f) The incorporation by reference of 40 C.F.R. section 262.15 is amended as follows: in 40 C.F.R. section 262.15(a), replace "267" with "266".

(g) The incorporation by reference of 40 C.F.R. section 262.16 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 262.16, replace "267" with "266".

(2) In 40 C.F.R. section 262.16(b), replace "(d) and (e)" with "(c) and (d)".

(3) In 40 C.F.R. section 262.16(b)(2)(iv), insert "The owner or operator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions." at the end of the section.

(4) In 40 C.F.R. section 262.16(b)(9)(ii), replace "or" with "and".

(5) In 40 C.F.R. section 262.16(b)(9)(iv)(C), insert "and the Hawaii department of health's Hazard Evaluation and Emergency Response Office via the State Hospital at (808) 247-2191 after business hours or directly at (808) 586-4249 during business hours" at the end of the first sentence.

(6) In 40 C.F.R. section 262.16(d), delete "267,".

(h) The incorporation by reference of 40 C.F.R. section 262.17 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 262.17, replace "267" with "266".

(2) In 40 C.F.R. section 262.17(a)(1)(v), insert "The owner or operator must record inspections in an inspection log or summary. He must keep these records for at least

three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions." at the end of the section.

(3) In 40 C.F.R. section 262.17(a)(6), replace "complies" with "must comply".

(4) In 40 C.F.R. section 262.17(c) and (d), replace "267" with "266".

(5) In 40 C.F.R. section 262.17(e), delete "267,". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-4 (Reserved.)

§11-262.1-5 Amendments to the incorporation of 40 C.F.R. part 262, subpart C. Reserved for amendments to 40 C.F.R. part 262, subpart C. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-6 Amendments to the incorporation of 40 C.F.R. part 262, subpart D. (a) The incorporation by reference of 40 C.F.R. section 262.41 is amended as follows: in 40 C.F.R. section 262.41(b), delete "267".

(b) The incorporation by reference of 40 C.F.R. section 262.42 is amended as follows: in 40 C.F.R. section 262.42(a)(2) and 262.42(b), delete "for the Region in which the generator is located".

(c) The incorporation by reference of 40 C.F.R. section 262.43 is amended as follows: replace

"sections 2002(a) and 3002(a)(6) of the Act" with "section 342J-6, HRS". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-7 Amendments to the incorporation of 40 C.F.R. part 262, subpart E. Reserved for amendments to 40 C.F.R. part 262, subpart E. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§§11-262.1-8 to 11-262.1-9 (Reserved.)

§11-262.1-10 Amendments to the incorporation of 40 C.F.R. part 262, subpart H. (a) The incorporation by reference of 40 C.F.R. section 262.83 is amended as follows: in 40 C.F.R. section 262.83(i)(3), add "or director" after "the Administrator".

(b) The incorporation by reference of 40 C.F.R. section 262.84 is amended as follows: in 40 C.F.R. section 262.84(h)(4), add "or director" after "the Administrator". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-11 Amendments to the incorporation of 40 C.F.R. part 262, subpart I. Reserved for amendments to 40 C.F.R. part 262, subpart I. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-12 Amendments to the incorporation of 40 C.F.R. part 262, subpart J. Reserved for amendments to 40 C.F.R. part 262, subpart J. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-13 Amendments to the incorporation of 40 C.F.R. part 262, subpart K. 40 C.F.R. part 262, subpart K is excluded from the incorporation by reference of 40 C.F.R. part 262. [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-14 Amendments to the incorporation of 40 C.F.R. part 262, subpart L. The incorporation by reference of 40 C.F.R. section 262.232 is amended as follows: in 40 C.F.R. section 262.232(a), delete "for hazardous waste generated". [Eff and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-15 Amendments to the incorporation of 40 C.F.R. part 262, subpart M. (a) The incorporation by reference of 40 C.F.R. section 262.262 is amended as follows: in 40 C.F.R. section 262.262(b), replace "May 30, 2017" with "the effective date of these rules".

(b) The incorporation by reference of 40 C.F.R. section 262.265 is amended as follows: in 40 C.F.R. section 262.265(d)(2), replace "either the government

official designated as the on-scene coordinator for that geographical area, or" with "the government official designated as the on-scene coordinator from the Hawaii department of health's Hazard Evaluation and Emergency Response Office via the State Hospital at (808) 247-2191 after business hours or directly at (808) 586-4249 during business hours and". [Eff and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-16 Imports of hazardous waste. (a) In addition to the requirements of 40 C.F.R. section 262.60(a) to 262.60(e), as incorporated and amended in this chapter, any person who imports hazardous waste from a foreign country into the State must submit the following information in writing to the director within thirty days after the waste has arrived in the State:

(1) The date the waste arrived in the State; and

(2) The disposition of the waste, i.e., storage, treatment, recycling, or disposal.

(b) Any person who imports hazardous waste from any state into the State must comply with the requirements of 40 C.F.R. section 262.20, as incorporated and amended in this chapter, and submit the following information in writing to the director within thirty days after the waste has arrived in the State:

(1) The date the waste arrived in the State; and

(2) The disposition of the waste, i.e., storage, treatment, recycling, or disposal.

(c) The requirements of subsections (a) and (b) shall not apply if:

(1) The waste does not stay in the State for more than ten days; and

(2) A generator with an EPA identification number does not assume the generator status for the waste. [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4,

342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-263.1

HAZARDOUS WASTE MANAGEMENT: STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

Historical note: This chapter is based substantially upon chapter 11-263. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-263.1-1 Incorporation by reference of 40 C.F.R. part 263. Title 40, part 263 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-263.1-2 to 11-263.1-5. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31,

342J-33, 342J-35)

§11-263.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 263, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", and "State Director" shall be replaced with "director".

(2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except in references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 263, as incorporated and amended in this chapter: 40 C.F.R. section 263.20.

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 263, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1, except as listed in subsection (d). The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

(d) The following references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 263, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations: references to the July 1, 2004 edition of 40 C.F.R. parts 260 to 265 in 40 C.F.R. section 263.20(a)(3). [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-33, 342J-35)

§11-263.1-3 Amendments to the incorporation of 40 C.F.R. part 263, subpart A. (a) The incorporation by reference of 40 C.F.R. section 263.10 is amended as follows: in the note to 40 C.F.R. section 263.10(a), replace "enforceable by EPA" with "enforceable by EPA and the state department of health".

(b) The incorporation by reference of 40 C.F.R. section 263.12 is amended as follows: in 40 C.F.R. section 263.12(a), delete "267,". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-33, 342J-35)

§11-263.1-4 Amendments to the incorporation of 40 C.F.R. part 263, subpart B. The incorporation by reference of 40 C.F.R. section 263.20 is amended as follows: in 40 C.F.R. section 263.20(b), add a new sentence at the end of the section to read: "Before transporting the hazardous waste, a transporter who receives hazardous waste from a previous transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the previous transporter. The new transporter must return a signed copy to the previous transporter before leaving the site where possession of the waste is transferred." [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-33, 342J-35)

§11-263.1-5 Amendments to the incorporation of 40 C.F.R. part 263, subpart C. The incorporation by reference of 40 C.F.R. section 263.30 is amended as follows: in 40 C.F.R. section 263.30(c)(1), add "and to the State department of health, Hazard Evaluation and Emergency Response Office via the State Hospital at (808) 247-2191 after business hours or directly at (808) 586-4249 during business hours" before the semicolon. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-33, 342J-35)

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-264.1

HAZARDOUS WASTE MANAGEMENT: STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

Historical note: This chapter is based substantially upon chapter 11-264. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-264.1-1 Incorporation of 40 C.F.R. part 264. Title 40, part 264 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-264.1-2 to 11-264.1-24. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 264, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional

Administrator", "Regional Administrator or State Director", and "State Director" shall be replaced with "director".

(2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except in references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(3) "Section 3008 of RCRA" shall be replaced with "42 U.S.C. section 6928 or section 342J-7, HRS".

(4) "RCRA Section 3008(h)" and "RCRA 3008(h)" shall be replaced with "42 U.S.C. section 6928(h) or section 342J-36, HRS".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 264, as incorporated and amended in this chapter:

(1) 40 C.F.R. sections 264.12 and 264.71.

(2) The second occurrence of "EPA" in 40 C.F.R. section 264.1082(c)(4)(ii).

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 264, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1, except as listed in subsection (d). The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1
260	260.1

261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

(d) The following references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 264, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations:

(1) The references to the July 1, 2004 edition of 40 C.F.R. parts 260 to 265 in 40 C.F.R. section 264.70(b).

(2) The references in 40 C.F.R. sections 264.1033(n)(1)(i), 264.1033(n)(2)(i), 264.1033(n)(3)(i), 264.1082(c)(2)(vii)(A), 264.1082(c)(2)(viii)(A), and 264.1087(c)(5)(i)(D).

(3) References to 40 C.F.R. sections 268.5, 268.6, and 268.42(b). [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-3 Amendments to the incorporation of 40 C.F.R. part 264, subpart A. (a) The incorporation by reference of 40 C.F.R. section 264.1 is amended as follows:

(1) In 40 C.F.R. section 264.1(a), replace "national standards" with "state standards".

(2) Replace 40 C.F.R. section 264.1(d) in its entirety to read: "(d) Underground injection of hazardous waste is prohibited in the State of Hawaii."

(3) 40 C.F.R. section 264.1(f) is excluded from incorporation.

(4) In 40 C.F.R. section 264.1(g)(1), replace "a State" with "the State".

(5) In 40 C.F.R. section 264.1(g)(8)(iii), replace "parts 122 through 124 of this chapter" with "chapter 11-55".

(6) In 40 C.F.R. section 264.1(g)(11)(iii), delete "and".

(7) In 40 C.F.R. section 264.1(g)(11)(iv), replace the period at the end with "; and".

(8) In 40 C.F.R. section 264.1(g)(11), add a subparagraph (v) to read "(v) Electronic items as described in 40 C.F.R. section 273.6, as incorporated and amended in section 11-273.1-1."

(9) 40 C.F.R. section 264.1(g)(12) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 264.4 is amended as follows: insert "or section 342J-8, HRS" after "RCRA". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-4 Amendments to the incorporation of 40 C.F.R. part 264, subpart B. (a) The incorporation by reference of 40 C.F.R. section 264.12 is amended as follows: add a new subsection (d) to read: "(d) Any person who imports hazardous waste into the State from a foreign country or from any state must comply with section 11-262.1-16."

(b) The incorporation by reference of 40 C.F.R. section 264.13 is amended as follows:

(1) In 40 C.F.R. section 264.13(b)(3), delete the entire Comment.

(2) In 40 C.F.R. section 264.13(b)(7)(iii), delete "under §260.22 of this chapter".

(c) The incorporation by reference of 40 C.F.R. section 264.15 is amended as follows: 40 C.F.R. section 264.15(b)(5) is excluded from incorporation.

(d) The incorporation by reference of 40 C.F.R. section 264.18 is amended as follows: in 40 C.F.R. section 264.18(c), delete ", except for the Department of Energy Waste Isolation Pilot Project in New Mexico". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-5 (Reserved.)

§11-264.1-6 Amendments to the incorporation of 40 C.F.R. part 264, subpart D. The incorporation by reference of 40 C.F.R. section 264.56 is amended as follows: in 40 C.F.R. section 264.56(d)(2), replace "either the government official designated as the on-scene coordinator for that geographical area, or" with "the government official designated as the on-scene coordinator from the Hawaii department of health's Hazard Evaluation and Emergency Response Office via the State Hospital at (808) 247-2191 after business hours or directly at (808) 586-4249 during business hours and". [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-7 Amendments to the incorporation of 40 C.F.R. part 264, subpart E. (a) The incorporation by reference of 40 C.F.R. section 264.73 is amended as follows:

(1) In 40 C.F.R. section 264.73(b)(10), replace ", a petition" with "or a petition" and delete "or a certification under §268.8 of this chapter,".

(2) In 40 C.F.R. section 264.73(b)(11) and 264.73(b)(12) delete ", and the certification and demonstration, if applicable," and "or §268.8".

(3) In 40 C.F.R. section 264.73(b)(13), delete ", and the certification and demonstration if applicable,", one § symbol, and "and 268.8, whichever is applicable".

(4) In 40 C.F.R. section 264.73(b)(14), delete ", and the certification and demonstration if applicable, required under §268.8, whichever is applicable".

(5) In 40 C.F.R. section 264.73(b)(15) and 264.73(b)(16), delete ", and the certification and demonstration if applicable," and "or §268.8".

(b) The incorporation by reference of 40 C.F.R. section 264.75 is amended as follows: replace "the following" with "each". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-8 (Reserved.)

§11-264.1-9 Amendments to the incorporation of 40 C.F.R. part 264, subpart G. (a) The incorporation by reference of 40 C.F.R. section 264.113 is amended as follows: 40 C.F.R. section 264.113(e)(7)(v) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 264.116 is amended as follows: replace "local zoning authority" with "county and local zoning authority" in both instances. [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-10 Amendments to the incorporation of 40 C.F.R. part 264, subpart H. (a) The incorporation by reference of 40 C.F.R. section 264.143 is amended as follows: in 40 C.F.R. section 264.143(h), replace "Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions" with "state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state".

(b) The incorporation by reference of 40 C.F.R. section 264.145 is amended as follows: in C.F.R. section 264.145(h), replace "Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions" with "state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state".

(c) The incorporation by reference of 40 C.F.R. section 264.147 is amended as follows:

(1) In 40 C.F.R. section 264.147(a)(1)(i) and (b)(1)(i), replace ", or Regional Administrators if the facilities are located in more than one Region" with ". If the facilities are located in more than one state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state". Replace "a Regional Administrator" with "the director".

(2) In 40 C.F.R. section 264.147(g)(2)(i) and (ii), replace "each State in which a

facility covered by the guarantee is located" with "the State of Hawaii" and replace "in that State" with "in their respective states".

(3) In 40 C.F.R. section 264.147(i)(4), replace "each state in which a facility covered by the surety bond is located" with "the State of Hawaii" and replace "in that State" with "in their respective states".

(d) 40 C.F.R. sections 264.149 and 264.150 are excluded from the incorporation by reference of 40 C.F.R. part 264.

(e) The incorporation by reference of 40 C.F.R. section 264.151 is amended as follows: replace 40 C.F.R. section 264.151 in its entirety to read:

"§264.151 Wording of the instruments.

(a) (1) A trust agreement for a trust fund, as specified in 40 C.F.R. section 264.143(a) or 264.145(a), as incorporated and amended in this chapter, or 40 C.F.R. section 265.143(a) or 265.145(a), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of _____" or "a national bank"], the "Trustee."

Whereas, the Department of Health, State of Hawaii, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "department" means the Department of Health, State of Hawaii.

(d) The term "director" means the director of the Department of Health, State of Hawaii.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number, name, address, and the current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the department. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN

TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the department.

Section 4. Payment for Closure and Post-Closure Care. The Trustee shall make payments from the Fund as the director shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the director from the Fund for closure and post-closure expenditures in such amounts as the director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined

in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges

and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the director shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for

instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the director to the Trustee shall be in writing, signed by the director or the director's designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or department, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the director, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the

director, or by the Trustee and the director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the director, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(a)(1), as amended, in section

11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in 40 C.F.R. section 264.143(a) or 264.145(a), as incorporated and amended in this chapter, or 40 C.F.R. section 265.143(a) or 265.145(a), as incorporated and amended in section 11-265.1-1.

State of _____
County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(b) A surety bond guaranteeing payment into a trust fund, as specified in 40 C.F.R. section 264.143(b) or 264.145(b), as incorporated and amended in this chapter, or 40 C.F.R. section 265.143(b) or 265.145(b), as incorporated and amended in section

11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

FINANCIAL GUARANTEE BOND

Date bond executed:
Effective date:
Principal: [legal name and business address of owner or operator]
Type of Organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation: _____
Surety(ies): [name(s) and business address(es)]
EPA Identification Number, name, address and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]: _____
Total penal sum of bond: $ _____
Surety's bond number: _____
As used in this instrument:
(a) The term "department" means the Department of Health, State of Hawaii.
(b) The term "director" means the director of the Department of Health, State of Hawaii.
Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the state department of health, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under chapter 342J, Hawaii Revised Statutes, to have a permit or interim status in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit or interim status, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure is issued by the director or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in the incorporated version of subpart H of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable, and obtain the director's written approval of such assurance, within 90 days after the date notice of cancellation is received by both Principal, the director, and the EPA Regional Administrator from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the director that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the director.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, to the director, and to the EPA Regional Administrator, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, the director, and the EPA Regional Administrator, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the director.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the director.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(b), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)] _____
[Name(s)] _____
[Title(s)] _____
[Corporate seal] _____
Corporate Surety(ies)
[Name and address]
State of incorporation: _____
Liability limit: $ _____
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: $ _____

(c) A surety bond guaranteeing performance of closure and/or post-closure care, as specified in 40 C.F.R. section 264.143(c) or 264.145(c), as incorporated and amended in this chapter, must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed: _____
Effective date: _____
Principal: [legal name and business address of owner or operator]
Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation: _____
Surety(ies): [name(s) and business address(es)]
_____
EPA Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]: _____
Total penal sum of bond: $ _____
Surety's bond number: _____
As used in this instrument:

(a) The term "department" means the Department of Health, State of Hawaii.

(b) The term "director" means the director of the Department of Health, State of Hawaii.

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Department of health, State of Hawaii, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under chapter 342J, Hawaii Revised Statutes, to have a permit in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

And, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the

post-closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance as specified in the incorporated version of subpart H of 40 C.F.R. part 264, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and obtain the director's written approval of such assurance, within 90 days after the date notice of cancellation is received by the Principal, the director, and the EPA Regional Administrator from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the director that the Principal has been found in violation of the closure requirements of the incorporated version of 40 C.F.R. part 264, as amended, in section 11-264.1-1, Hawaii Administrative Rules, for a facility for which this bond guarantees performance of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the director.

Upon notification by the director that the Principal has been found in violation of the post-closure requirements of the incorporated version of 40 C.F.R. part 264, as amended, in section 11-264.1-1, Hawaii Administrative Rules, for a facility for which this bond guarantees performance of post-closure care, the Surety(ies) shall either perform post-closure care in accordance with the post-closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the director.

Upon notification by the director that the Principal has failed to provide alternate financial assurance as specified in the incorporated version of subpart H of 40 C.F.R. part 264, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and obtain written approval of such assurance from the director during the 90 days following receipt by the Principal, the director, and the EPA Regional Administrator of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the director.

The surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator, to the director, and to the EPA Regional Administrator, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, the director, and the Regional Administrator, as evidenced by the return receipts.

The principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the director.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided

that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the director.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(c), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulation was constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address]

State of incorporation: _____

Liability limit: $ _____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $ _____

(d) A letter of credit, as specified in 40 C.F.R. section 264.143(d) or 264.145(d), as incorporated and amended in this chapter, or 40 C.F.R. section 265.143(c) or 265.145(c), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

§11-264.1-10

IRREVOCABLE STANDBY LETTER OF CREDIT

Director of Health
Department of Health
State of Hawaii

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. ___ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars $___, available upon presentation of

(1) your sight draft, bearing reference to this letter of credit No. ___, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of chapter 342J, Hawaii Revised Statutes."

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the EPA Regional Administrator, and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by you, the EPA Regional Administrator, and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(d), as amended, in section 11-264.1-1, Hawaii

Administrative Rules, as such regulations were constituted on the date shown immediately below. [Signature(s) and title(s) of official(s) of issuing institution] [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(e) A certificate of insurance, as specified in 40 C.F.R. section 264.143(e) or 264.145(e), as incorporated and amended in this chapter, or 40 C.F.R. section 265.143(d) or 265.145(d), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATE OF INSURANCE FOR CLOSURE OR POST-CLOSURE CARE

Name and Address of Insurer (herein called the "Insurer"):
Name and Address of Insured (herein called the "Insured"):
Facilities Covered: [List for each facility: The EPA Identification Number, name, address, and the amount of insurance for closure and/or the amount for post-closure care (these amounts for all facilities covered must total the face amount shown below).]
Face Amount:
Policy Number:
Effective Date:

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and post-closure care" or "post-closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of the incorporated version of 40 C.F.R. sections 264.143(e),

264.145(e), 265.143(d), and 265.145(d), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the director of the state department of health, the Insurer agrees to furnish to the directors a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(e), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.
[Authorized signature for Insurer]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:
[Date]

(f) A letter from the chief financial officer, as specified in 40 C.F.R. section 264.143(f) or 264.145(f), as incorporated and amended in this chapter, or 40 C.F.R. section 265.143(e) or 265.145(e), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

[Address to director].

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure and/or post-closure costs, as specified in the incorporated version of subpart H of 40 C.F.R. parts 264 and 265, as amended,

in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules.

[Fill out the following five paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care].

1. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in subpart H of 40 C.F.R. parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: ____.

2. This firm guarantees, through the guarantee specified in subpart H of 40 C.F.R. parts 264 and 265, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: ____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ____; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee ____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In States where EPA is not administering the financial requirements of subpart H of 40 C.F.R. part 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test

specified in subpart H of 40 C.F.R. parts 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: _____.

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 C.F.R. parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 C.F.R. part 144. The current closure cost estimates as required by 40 C.F.R. section 144.62 are shown for each facility: _____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of 40 C.F.R. section 264.143(f)(1)(i) or 264.145(f)(1)(i), as incorporated and amended in this chapter, or of section 40 C.F.R. section 265.143(e)(1)(i) or 265.145(e)(1)(i), as incorporated and amended in section 11-265.1-1, are used. Fill in Alternative II if the criteria of of 40 C.F.R. section 264.143(f)(1)(ii) or 264.145(f)(1)(ii), as incorporated and amended in this chapter, or of 40 C.F.R. section 265.143(e)(1)(ii) or 265.145(e)(1)(ii), as incorporated and amended in section 11-265.1-1, are used.]

Alternative I

1. Sum of current closure and post-closure cost estimate [total of all cost estimates shown in the five paragraphs above] $____

*2. Total liabilities [if any portion of the closure or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4] $____

*3. Tangible net worth $____

*4. Net worth $____

*5. Current assets $____

*6. Current liabilities $____

7. Net working capital [line 5 minus line 6] $____

*8. The sum of net income plus depreciation, depletion, and amortization $____

*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $____

10. Is line 3 at least $10 million? (Yes/No) ____

11. Is line 3 at least 6 times line 1? (Yes/No) ____

12. Is line 7 at least 6 times line 1? (Yes/No) ____

*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14 (Yes/No) ____

14. Is line 9 at least 6 times line 1? (Yes/No) ____

15. Is line 2 divided by line 4 less than 2.0? (Yes/No) ____

16. Is line 8 divided by line 2 greater than 0.1? (Yes/No) ____

17. Is line 5 divided by line 6 greater than 1.5? (Yes/No) ____

Alternative II

1. Sum of current closure and post-closure cost estimates [total of all cost estimates shown in the five paragraphs above] $____

2. Current bond rating of most recent issuance of this firm and name of rating service ____

3. Date of issuance of bond ____

4. Date of maturity of bond ____

*5. Tangible net worth [if any portion of the closure and post-closure cost estimates is included in "total

liabilities" on your firm's financial statements, you may add the amount of that portion to this line] $____
*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $____
7. Is line 5 at least $10 million? (Yes/No) ____
8. Is line 5 at least 6 times line 1? (Yes/No) ____
*9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10 (Yes/No) ____
10. Is line 6 at least 6 times line 1? (Yes/No) ____
I hereby certify that the wording of this letter is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(f), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.
[Signature]
[Name]
[Title]
[Date]

(g) A letter from the chief financial officer, as specified in 40 C.F.R. section 264.147(f), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(f), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

LETTER FROM CHIEF FINANCIAL OFFICER

[Address to director].

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post-closure care" if applicable] as specified in the incorporated version of subpart H of 40 C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no

facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, and address].

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in the incorporated version of subpart H of 40 C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules:____

The firm identified above guarantees, through the guarantee specified in the incorporated version of subpart H of 40 C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: ____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ____; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee ____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following five paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA identification number, name, address, and current closure and/or post-closure cost estimates. Identify

each cost estimate as to whether it is for closure or post-closure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or post-closure care or liability coverage is demonstrated through the financial test specified in subpart H of 40 C.F.R. parts 264 and 265. The current closure and/or post-closure cost estimate covered by the test are shown for each facility: ____.

2. The firm identified above guarantees, through the guarantee specified in subpart H of 40 C.F.R. parts 264 and 265, the closure and post-closure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for closure or post-closure care so guaranteed are shown for each facility: ____.

3. In States where EPA is not administering the financial requirements of subpart H of 40 C.F.R. parts 264 and 265, this firm is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H or 40 C.F.R. parts 264 and 265. The current closure or post-closure cost estimates covered by such a test are shown for each facility: ____.

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanisms specified in subpart H of 40 C.F.R. parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: ____.

5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 C.F.R. part 144 and is assured through a financial test. The current closure cost

estimates as required by 40 C.F.R. section 144.62 are shown for each facility:____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of 40 C.F.R. section 264.147(f)(1)(i), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(f)(1)(i), as incorporated and amended in section 11-265.1-1, are used. Fill in Alternative II if the criteria of paragraph of 40 C.F.R. section 264.147(f)(1)(ii), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(f)(1)(ii), as incorporated and amended in section 11-265.1-1, are used.]

Alternative I

1. Amount of annual aggregate liability coverage to be demonstrated $____.
*2. Current assets $____.
*3. Current liabilities $____.
4. Net working capital (line 2 minus line 3) $____.
*5. Tangible net worth $____.
*6. If less than 90% of assets are located in the U.S., give total U.S. assets $____.
7. Is line 5 at least $10 million? (Yes/No) ____.
8. Is line 4 at least 6 times line 1? (Yes/No) ____.
9. Is line 5 at least 6 times line 1? (Yes/No) ____.
*10. Are at least 90% of assets located in the U.S.? (Yes/No) ____. If not, complete line 11.
11. Is line 6 at least 6 times line 1? (Yes/No) ____.

Alternative II

1. Amount of annual aggregate liability coverage to be demonstrated $____.
2. Current bond rating of most recent issuance and name of rating service ____ ____.
3. Date of issuance of bond _____.
4. Date of maturity of bond _____.
*5. Tangible net worth $____.
*6. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $____.
7. Is line 5 at least $10 million? (Yes/No) ____.
8. Is line 5 at least 6 times line 1? ____.
9. Are at least 90% of assets located in the U.S.? If not, complete line 10. (Yes/No) ____.
10. Is line 6 at least 6 times line 1? ____.

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or post-closure care.]

Part B. Closure or Post-Closure Care and Liability Coverage

[Fill in Alternative I if the criteria of 40 C.F.R. section 264.143(f)(1)(i) or 264.145(f)(1)(i) and 264.147(f)(1)(i), as incorporated and amended in this chapter, are used or if the criteria of 40 C.F.R. section 265.143(e)(1)(i) or 265.145(e)(1)(i) and 265.147(f)(1)(i), as incorporated and amended in section 11-265.1-1, are used. Fill in Alternative II if the criteria of 40 C.F.R. section 264.143(f)(1)(ii) or 264.145(f)(1)(ii) and 264.147(f)(1)(ii), as incorporated and amended in this chapter, are used or if the criteria of 40 C.F.R. section 265.143(e)(1)(i) 265.145(e)(1)(i) and 265.147(f)(1)(ii), as incorporated and amended in section 11-265.1-1, are used.]

Alternative I

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) $____
2. Amount of annual aggregate liability coverage to be demonstrated $____
3. Sum of lines 1 and 2 $____

*4. Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) $____
*5. Tangible net worth $____
*6. Net worth $____
*7. Current assets $____
*8. Current liabilities $____
9. Net working capital (line 7 minus line 8) $____
*10. The sum of net income plus depreciation, depletion, and amortization $____
*11. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $____
12. Is line 5 at least $10 million? (Yes/No)
13. Is line 5 at least 6 times line 3? (Yes/No)
14. Is line 9 at least 6 times line 3? (Yes/No)
*15. Are at least 90% of assets located in the U.S.? (Yes/No) If not, complete line 16.
16. Is line 11 at least 6 times line 3? (Yes/No)
17. Is line 4 divided by line 6 less than 2.0? (Yes/No)
18. Is line 10 divided by line 4 greater than 0.1? (Yes/No)
19. Is line 7 divided by line 8 greater than 1.5? (Yes/No)

Alternative II

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) $____
2. Amount of annual aggregate liability coverage to be demonstrated $____
3. Sum of lines 1 and 2 $____
4. Current bond rating of most recent issuance and name of rating service ____ ____
5. Date of issuance of bond _____
6. Date of maturity of bond _____
*7. Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line) $____

*8. Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.) $____
9. Is line 7 at least $10 million? (Yes/No)
10. Is line 7 at least 6 times line 3? (Yes/No)
*11. Are at least 90% of assets located in the U.S.? (Yes/No) If not complete line 12.
12. Is line 8 at least 6 times line 3? (Yes/No)

I hereby certify that the wording of this letter is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(g), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.
[Signature]
[Name]
[Title]
[Date]

(h) (1) A corporate guarantee, as specified in 40 C.F.R. section 264.143(f) or 264.145(f), as incorporated and amended in this chapter, or 40 C.F.R. section 265.143(e) or 265.145(e), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CORPORATE GUARANTEE FOR CLOSURE OR POST-CLOSURE CARE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in the incorporated version of 40 C.F.R. section [either 264.141(h) or 265.141(h)], as amended, in section [either 11-264.1-1 or 11-265.1-1], Hawaii

Administrative Rules,"] to the Department of Health, State of Hawaii.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in the incorporated version of 40 C.F.R. sections 264.143(f), 264.145(f), 265.143(e), and 265.145(e), as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules.

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, or both.]

3. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by the incorporated version of subpart G of 40 C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules for the closure and post-closure care of facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees to the Department of Health, State of Hawaii that in the event that [owner or operator] fails to perform [insert "closure," "post-closure care" or "closure and post-closure care"] of the above facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in the incorporated version of subpart H of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator] in the amount of the current closure or post-closure cost estimates as specified in the incorporated version of subpart H of 40 C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director of health, State of Hawaii, the EPA Regional Administrator, to the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator] that he intends to provide alternate financial assurance as specified in the incorporated version of subpart H of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the director of health, State of Hawaii, and EPA Regional Administrator by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of health, State of Hawaii, of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in the incorporated version of subpart H of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification

or alteration of an obligation of the owner or operator pursuant to the incorporated version of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules.

9. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator] must comply with the applicable financial assurance requirements of the incorporated version of subpart H of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the director of health, State of Hawaii, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the director of health, State of Hawaii, approves, alternate closure and/or post-closure care coverage complying with the incorporated version of 40 C.F.R. sections 264.143, 264.145, 265.143, and/or 265.145, as amended, in section 11-264.1-1 and/or 11-265.1-1, Hawaii Administrative Rules.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with its owner or operator] Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the director, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and by [the owner or operator].

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as

specified in the incorporated version of subpart H of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable, and obtain written approval of such assurance from the director of health, State of Hawaii, within 90 days after a notice of cancellation by the guarantor is received from guarantor by the director, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

12. Guarantor expressly waives notice of acceptance of this guarantee by the Hawaii department of health or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(h), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.
Effective date:
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

(2) A guarantee, as specified in 40 C.F.R. section 264.147(g), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(g), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

GUARANTEE FOR LIABILITY COVERAGE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the State of ____" and insert name of State; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is [one of the following: "our subsidiary;" "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in the incorporated version of 40 C.F.R. section [either 264.141(h) or 265.141(h)], as amended, in section [either 11-264.1-1 or 11-265.1-1], Hawaii Administrative Rules,"] to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in the incorporated version of 40 C.F.R. section 264.147(g), as amended, in section 11-264.1-1, Hawaii Administrative Rules, and the incorporated version of 40 C.F.R. section 265.147(g), as amended, in section 11-265.1-1, Hawaii Administrative Rules.

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA identification number, name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each State.] This corporate guarantee satisfies RCRA third-party liability requirements for [insert "sudden" or "nonsudden" or

"both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or

arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator];

(2) Premises that are sold, given away or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator];

(4) Personal property in the care, custody or control of [insert owner or operator];

(5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director of health, State of Hawaii, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator] that he intends to provide alternate liability coverage as specified in the incorporated

version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the director of health, State of Hawaii, by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of health, State of Hawaii, of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules, in the name of [owner or operator], unless [owner or operator] has done so.

8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules, provided that such modification shall become effective only if the director of health, State of Hawaii, does not disapprove the modification within 30 days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of the

incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules, for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the director of Health, State of Hawaii, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the director of Health, State of Hawaii, approves, alternate liability coverage complying with the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and/or the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]:

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the director of Health, State of Hawaii, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and by [the owner or operator].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other

responsibility or liability of the guarantor with respect to the covered facilities.

13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $.

[Signatures]

Principal

(Notary) Date

[Signatures]

Claimant(s)

(Notary) Date

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(h)(2), as amended, in section 11-265.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

Effective date:
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

(i) A hazardous waste facility liability endorsement as required in 40 C.F.R. section 264.147, as incorporated and amended in this chapter, or 40 C.F.R. section 265.147, as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS WASTE FACILITY LIABILITY ENDORSEMENT

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules. The coverage applies at [list EPA Identification Number, name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and

conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in the incorporated version of 40 C.F.R. section 264.147(f), as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.147(f), as amended, in section 11-265.1-1, Hawaii Administrative Rules.

(c) Whenever requested by the director of health, State of Hawaii, the Insurer agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the director of health, State of Hawaii, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the policy are located.

(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is

received by the director of health, State of Hawaii, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the policy are located.

Attached to and forming part of policy No. ___ issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this _____ day of _____, 20__. The effective date of said policy is _____ day of _____, 20__.

I hereby certify that the wording of this endorsement is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(i), as ameded, in section 11-264.1-1, Hawaii Administrative Rules, as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of Authorized Representative of Insurer]
[Type name]
[Title], Authorized Representative of [name of Insurer]
[Address of Representative]

(j) A certificate of liability insurance as required in 40 C.F.R. section 264.147, as incorporated and amended in this chapter, or 40 C.F.R. section 265.147, as incorporated and amended in section 11-265.1-1, must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS WASTE FACILITY CERTIFICATE OF LIABILITY INSURANCE

1. [Name of Insurer], (the "Insurer"), of [address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured], (the "insured"),

of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules. The coverage applies at [list EPA Identification Number, name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number ___, issued on [date]. The effective date of said policy is [date].

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in the incorporated version of 40 C.F.R. section 264.147(f), as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.147(f), as amended, in section 11-265.1-1, Hawaii Administrative Rules.

(c) Whenever requested by the director of health, State of Hawaii, the Insurer agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the director of health, State of Hawaii, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the policy are located.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the director of health, State of Hawaii, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the policy are located.

I hereby certify that the wording of this instrument is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(j), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of Representative]

(k) A letter of credit, as specified in 40 C.F.R. section 264.147(h), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(h), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Name and Address of Issuing Institution
Director of Health
State of Hawaii

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in the favor of ["any and all third-party liability claimants" or insert name of trustee of the standby trust fund], at the request and for the account of [owner or operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars $_____ per occurrence and the annual aggregate amount of [in words] U.S. dollars $_____, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars $_____ per occurrence, and the annual aggregate amount of [in words] U.S. dollars $_____, for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. _____, and [insert the following language if the letter of credit is being used without a standby trust fund:

(1) a signed certificate reading as follows:

Certificate of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal's] hazardous waste treatment, storage, or disposal facility should be paid in the

amount of $[ ]. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal]. This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or

subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

[Signatures]
Grantor
[Signatures]
Claimant(s)

or (2) a valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.]

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the director of health, State of Hawaii, the EPA Regional Administrator, and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us. [Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess" coverage]."]

We certify that the wording of this letter of credit is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(k), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below. [Signature(s) and title(s) of official(s) of issuing institution] [Date].

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for

Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(l) A surety bond, as specified in 40 C.F.R. section 264.147(i), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(i), as incorporated and amended in section 11-265.1-1, must be worded as follows: except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PAYMENT BOND

Surety Bond No. [Insert number]

Parties [Insert name and address of owner or operator], Principal, incorporated in [Insert State of incorporation] of [Insert city and State of principal place of business] and [Insert name and address of surety company(ies)], Surety Company(ies), of [Insert surety(ies) place of business].

EPA Identification Number, name, and address for each facility guaranteed by this bond: ____

	Sudden accidental occurrences	Nonsudden accidental occurrences
Penal Sum Per Occurrence.	[insert amount]	[insert amount]
Annual Aggregate	[insert amount]	[insert amount]

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

(1) Chapter 342J, Hawaii Revised Statutes.

(2) Administrative Rules of the Hawaii State Department of Health, particularly the incorporated version of ["40 C.F.R. section 264.147, as amended, in section 11-264.1-1" or "40 C.F.R. section 265.147, as amended, in section 11-265.1-1"], Hawaii Administrative Rules (if applicable).

Conditions:

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal]. This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

(4) The Surety(ies) shall satisfy a third party liability claim only upon the receipt of one of the following documents:

(a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert name of Principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] hazardous

waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signature]
Principal
[Notary] Date
[Signature(s)]
Claimant(s)
[Notary] Date

or

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the director of health, State of Hawaii, forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, the director of health, State of Hawaii, and the EPA Regional Administrator, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, the director of health, State of Hawaii, and the EPA Regional Administrator, as evidenced by the return receipts.

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the director of health, State of Hawaii, the EPA Regional Administrator, and the state agency and EPA Regional

Administrator regulating hazardous waste in all states where facilities covered by the bond are located.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in the incorporated version of 40 C.F.R. 264.151(l), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate Seal]

CORPORATE SURETY(IES)

[Name and address]
State of incorporation:
Liability Limit: $
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $

(m)(1) A trust agreement, as specified in 40 C.F.R. section 264.147(j), as incorporated and amended in

this chapter, or 40 C.F.R. section 265.147(j), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of ____" or "a national bank"], the "trustee."

Whereas, the Department of Health, State of Hawaii, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "department" means the Department of Health, State of Hawaii.

(d) The term "director" means the director of health, State of Hawaii.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ [up to $1 million] per occurrence and _____ [up to $2 million] annual aggregate for sudden accidental occurrences and _____ [up to $3 million] per occurrence and _____ [up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or

arising from, and in the course of employment by [insert Grantor]. This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments

necessary to discharge any liabilities of the Grantor established by the department.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents;

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signatures]

Grantor

[Signatures]

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the

interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common commingled, or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this

Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the director shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and

duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the director to the Trustee shall be in writing, signed by the director, or the director's designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the department, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the

Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the director.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the director, or by the Trustee and the director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the director, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor. The director will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in

carrying out any directions by the Grantor or the director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(m), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in 40 C.F.R. section 264.147(j), as incorporated and amended in

this chapter, or 40 C.F.R. section 265.147(j), as incorporated and amended in section 11-265.1-1.

State of
County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(n)(1) A standby trust agreement, as specified in 40 C.F.R. section 264.147(h), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(h), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

STANDBY TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of a State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of _____" or "a national bank"], the "trustee."

Whereas the Department of Health, State of Hawaii, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties

caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term Grantor means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term Trustee means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "department" means the Department of Health, State of Hawaii.

(d) The term "director" means the director of health, State of Hawaii.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund, hereafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ [up to $1 million] per occurrence and _____ [up to $2 million] annual

aggregate for sudden accidental occurrences and _____ [up to $3 million] per occurrence and _____ [up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor]. This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned by [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the department.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] hazardous

waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signature]
Grantor
[Signatures]
Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of the incorporated version of 40 C.F.R. section 264.151(k), as amended, in section 11-264.1-1, Hawaii Administrative Rules, and Section 4 of this Agreement.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question

arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the director and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on

behalf of the Grantor or the director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or department, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the director, or by the Trustee and the director if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the director, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor. The director will agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(n), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a standby trust fund as specified in 40 C.F.R. section 264.147(h), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(h), as incorporated and amended in section 11-265.1-1.

State of
County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the

corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.
[Signature of Notary Public]" [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-11 Amendments to the incorporation of 40 C.F.R. part 264, subpart I. Reserved for amendments to 40 C.F.R. part 264, subpart I. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-12 Amendments to the incorporation of 40 C.F.R. part 264, subpart J. The incorporation by reference of 40 C.F.R. section 264.191 is amended as follows:

(1) In 40 C.F.R. section 264.191(a), replace "January 12, 1988" with "January 12, 1988 for HSWA tanks and June 18, 1995 for non-HSWA tanks".

(2) In 40 C.F.R. section 264.191(c), replace "Tank systems" with "HSWA tank systems" and add the following second sentence: "Non-HSWA tank systems that store or treat materials that become hazardous wastes subsequent to June 18, 1994 must conduct this assessment within twelve months after the date that the waste becomes a hazardous waste." [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

(Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-13 Amendments to the incorporation of 40 C.F.R. part 264, subpart K. The incorporation by reference of 40 C.F.R. section 264.221 is amended as follows: in 40 C.F.R. section 264.221(e)(2)(i)(C), replace "RCRA section 3005(c)" with "section 342J-5, HRS". [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§§11-264.1-14 to 11-264.1-15 (Reserved.)

§11-264.1-16 Amendments to the incorporation of 40 C.F.R. part 264, subpart N. The incorporation by reference of 40 C.F.R. section 264.301 is amended as follows:

(1) In 40 C.F.R. section 264.301(e)(2)(i)(C), replace "RCRA 3005(c)" with "section 342J-5, HRS".

(2) 40 C.F.R. section 264.301(l) is excluded from incorporation. [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§§11-264.1-17 to 11-264.1-18 (Reserved.)

§11-264.1-19 Amendments to the incorporation of 40 C.F.R. part 264, subpart W. (a) The incorporation by reference of 40 C.F.R. section 264.570 is amended

as follows: in 40 C.F.R. 264.570(a), replace "December 6, 1990" with "December 6, 1990 for HSWA drip pads and June 18, 1994 for non-HSWA drip pads". Replace "December 24, 1992" with "December 24, 1992 for HSWA drip pads and June 18, 1994 for non-HSWA drip pads".

(b) The incorporation by reference of 40 C.F.R. section 264.573 is amended as follows: in 40 C.F.R. section 264.573(i), replace "section 3010 of RCRA" with "section 342J-6.5, HRS". [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-20 (Reserved.)

§11-264.1-21 Amendments to the incorporation of 40 C.F.R. part 264, subpart AA. (a) The incorporation by reference of 40 C.F.R. section 264.1030 is amended as follows:

(1) In 40 C.F.R. section 264.1030(b)(3), replace "262.34(a)" with "262.17".

(2) In 40 C.F.R. section 264.1030(c), replace "when the permit is reissued" with "when a state hazardous waste management permit is issued under chapter 11-270.1 or the EPA-issued RCRA permit is reissued".

(3) 40 C.F.R. section 264.1030(d) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 264.1033 is amended as follows:

(1) In 40 C.F.R. section 264.1033(a)(2)(iii), delete "EPA".

(2) In 40 C.F.R. section 264.1033(n)(1)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart X, as incorporated and amended in this chapter" before "; or".

(3) In 40 C.F.R. section 264.1033(n)(2)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart O, as incorporated and amended in this chapter" before "; or".

(4) In 40 C.F.R. section 264.1033(n)(3)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 266, subpart H, as incorporated and amended in section 11-266.1-1" before "; or". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-22 Amendments to the incorporation of 40 C.F.R. part 264, subpart BB. (a) The incorporation by reference of 40 C.F.R. section 264.1050 is amended as follows:

(1) In 40 C.F.R. section 264.1050(b)(2), replace "262.34(a)" with "262.17".

(2) In 40 C.F.R. section 264.1050(c), replace "when the permit is reissued" with "when a state hazardous waste management permit is issued under chapter 11-270.1 or the EPA-issued RCRA permit is reissued".

(3) 40 C.F.R section 264.1050(g) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 264.1060 is amended as follows: in 40 C.F.R. section 264.1060(b)(3), delete "EPA". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-23 Amendments to the incorporation of 40 C.F.R. part 264, subpart CC. (a) The

incorporation by reference of 40 C.F.R. section 264.1080 is amended as follows:

(1) In 40 C.F.R. section 264.1080(b)(5), insert "section 342J-36, HRS;" after "CERCLA authorities;".

(2) In 40 C.F.R. section 264.1080(c), replace "when the permit is reissued" with "when a state hazardous waste management permit is issued under chapter 11-270.1 or the EPA-issued RCRA permit is reissued" in both instances.

(3) 40 C.F.R. section 264.1080(e) to 264.1080(g) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 264.1082 is amended as follows:

(1) In 40 C.F.R. 264.1082(c)(2)(vii)(A), insert "or a state hazardous waste management permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart O, as incorporated and amended in section 11-264.1-1" before "; or".

(2) In 40 C.F.R. 264.1082(c)(2)(viii)(A), replace ", or" with "or a state hazardous waste management permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 266, subpart H, as incorporated and amended in section 11-266.1-1; or".

(3) In 40 C.F.R. section 264.1082(c)(4)(ii), insert "and approved by the director" at the end of the sentence.

(c) The incorporation by reference of 40 C.F.R. section 264.1087 is amended as follows: in 40 C.F.R. section 264.1087(c)(5)(i)(D), insert "; or a boiler or industrial furnace burning hazardous waste for which the owner or operator has been issued a state hazardous waste management permit under chapter 11-270.1 and has designed and operates the unit in accordance with the requirements of 40 C.F.R. part 266, subpart H, as incorporated and amended in section

11-266.1-1" before "; or". [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-24 Amendments to the incorporation of 40 C.F.R. part 264, subpart DD. The incorporation by reference of 40 C.F.R. section 264.1100 is amended as follows: in the introductory paragraph, replace "RCRA section 3004(k)" with "40 C.F.R. 268.2(c), as incorporated and amended in section 11-268.1-1". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-265.1

HAZARDOUS WASTE MANAGEMENT: INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

Historical note: This chapter is based substantially upon chapter 11-265. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-265.1-1 Incorporation of 40 C.F.R. part 265. Title 40, part 265 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-265.1-2 to 11-265.1-25. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 265, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Administrator", "applicable EPA Regional Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", "Regional Administrator or State Director", and "State Director" shall be replaced with "director".

(2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except in references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(3) "Section 3008 of RCRA" shall be replaced with "42 U.S.C. section 6928 or section 342J-7, HRS".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 265, as incorporated and amended in this chapter:

(1) 40 C.F.R. sections 265.12 and 265.71.

(2) The second occurrence of "EPA" in 40 C.F.R. section 265.1083(c)(4)(ii).

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 265, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1, except as listed in subsection (d). The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-

124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

(d) The following references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 265, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations:

(1) The references to the July 1, 2004 edition of 40 C.F.R. parts 260 to 265 in 40 C.F.R. section 265.70(b).

(2) The references in 40 C.F.R. sections 265.1033(m)(1)(i), 265.1033(m)(2)(i), 265.1033(m)(3)(i), 265.1083(c)(2)(vii)(A), 265.1083(c)(2)(viii)(A), and 265.1088(c)(5)(i)(D).

(3) References to 40 C.F.R. sections 268.5, 268.6, and 268.42(b). [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-3 Amendments to the incorporation of 40 C.F.R. part 265, subpart A. (a) The incorporation by reference of 40 C.F.R. section 265.1 is amended as follows:

(1) In 40 C.F.R. section 265.1(a), replace "national standards" with "state standards".

(2) In 40 C.F.R. section 265.1(b), replace "section 3005 RCRA" with "section 342J-5,

HRS,". Replace "facilities in existence on November 19, 1980" with "existing HWM facilities, as defined in 40 C.F.R. section 260.10, as incorporated and amended in section 11-260.1-1,". Replace "section 3010(a) of RCRA" with "42 U.S.C. section 6925(a) or section 342J-6.5, HRS".

(3) 40 C.F.R. section 265.1(c)(4) is excluded from incorporation.

(4) In 40 C.F.R. section 265.1(c)(5) replace "a State" with "the State".

(5) In 40 C.F.R. section 261.(c)(7), replace "subparts K and L" with "subpart L".

(6) In 40 C.F.R. section 265.1(c)(11)(iii), replace "parts 122 through 124 of this chapter" with "chapter 11-55".

(7) In 40 C.F.R. section 265.1(c)(14)(iii), delete "and".

(8) In 40 C.F.R. section 265.1(c)(14)(iv) replace the period at the end with "; and".

(9) In 40 C.F.R. section 265.1(c)(14), add a subparagraph (v) to read: "(v) Electronic items as described in 40 C.F.R. section 273.6, as incorporated and amended in section 11-273.1-1."

(10) 40 C.F.R. section 265.1(c)(15) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 265.4 is amended as follows: insert "or section 342J-8, HRS" after "RCRA". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-4 Amendments to the incorporation of 40 C.F.R. part 265, subpart B. (a) The incorporation by reference of 40 C.F.R. section 265.11 is amended as follows: replace "in accordance with the EPA notification procedures (45 FR 12746)" with "using EPA form 8700-12".

(b) The incorporation by reference of 40 C.F.R. section 265.12 is amended as follows: add a new subsection (c) to read: "(c) Any person who imports hazardous waste into the State from a foreign country or from any state must comply with section 11-262.1-16."

(c) The incorporation by reference of 40 C.F.R. section 265.13 is amended as follows:

(1) In 40 C.F.R. section 265.13(b)(3), delete the entire Comment.

(2) In 40 C.F.R. section 265.13(b)(7)(iii), delete "under §260.22 of this chapter".

(d) The incorporation by reference of 40 C.F.R. section 265.14 is amended as follows: in 40 C.F.R. section 265.14(a), insert "he can demonstrate to the director that" after "unless".

(e) The incorporation by reference of 40 C.F.R. section 265.18 is amended as follows: Delete ", except for the Department of Energy Waste Isolation Pilot Project in New Mexico". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-5 (Reserved.)

§11-265.1-6 Amendments to the incorporation of 40 C.F.R. part 265, subpart D. The incorporation by reference of 40 C.F.R. section 265.56 is amended as follows: in 40 C.F.R. section 265.56(d)(2), replace "either the government official designated as the on-scene coordinator for that geographical area, or" with "the government official designated as the on-scene coordinator from the Hawaii department of health's Hazard Evaluation and Emergency Response Office via the State Hospital at (808) 247-2191 after business hours or directly at (808) 586-4249 during business hours and". [Eff 7/17/17; comp SEP 30 2018]

(Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-7 Amendments to the incorporation of 40 C.F.R. part 265, subpart E. (a) The incorporation by reference of 40 C.F.R. section 265.73 is amended as follows:

(1) In 40 C.F.R. section 265.73(b)(8), replace "monitoring" with "or monitoring" and delete "or a certification under §268.8 of this chapter,".

(2) In 40 C.F.R. section 265.73(b)(9), (10), (11), (12), (13), and (14), delete ", and the certification and demonstration if applicable," and "or §268.8".

(b) The incorporation by reference of 40 C.F.R. section 265.75 is amended as follows: replace "the following" with "each". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-8 Amendments to the incorporation of 40 C.F.R. part 265, subpart F. The incorporation by reference of 40 C.F.R. section 265.90 is amended as follows: in section 40 C.F.R. section 265.90(d)(1), replace "develop" with "submit to the director". [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-9 Amendments to the incorporation of 40 C.F.R. part 265, subpart G. (a) The incorporation by reference of 40 C.F.R. section 265.113 is amended as follows: 40 C.F.R. section 265.113(e)(7)(v) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 265.116 is amended as follows: replace "local zoning authority" with "county and local zoning authority" in both instances. [Eff 7/17/17; am and comp SEP 3 0 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-10 Amendments to the incorporation of 40 C.F.R. part 265, subpart H. (a) The incorporation by reference of 40 C.F.R. section 265.143 is amended as follows: in 40 C.F.R. section 265.143(g), replace "Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions" with "state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state".

(b) The incorporation by reference of 40 C.F.R. section 265.145 is amended as follows: in 40 C.F.R. section 265.145(g), replace "Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions" with "state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state".

(c) The incorporation by reference of 40 C.F.R. section 265.147 is amended as follows:

(1) In 40 C.F.R. section 265.147(a)(1)(i) and (b)(1)(i), replace ", or Regional Administrators if the facilities are located in more than one Region" with ". If the facilities are located in more than one state, identical evidence of financial assurance must be submitted to and

maintained with the state agency regulating hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state". Replace "a Regional Administrator" with "the director".

(2) In 40 C.F.R. section 265.147(g)(2)(i) and (ii), replace "each State in which a facility covered by the guarantee is located" with "the State of Hawaii" and replace "in that State" with "in their respective states".

(3) In 40 C.F.R. section 265.147(i)(4)(ii), replace "each state in which a facility covered by the surety bond is located" with "the State of Hawaii" and replace "in that State" with "in their respective states".

(d) 40 C.F.R. sections 265.149 and 265.150 are excluded from the incorporation by reference of 40 C.F.R. part 265. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-11 Amendments to the incorporation of 40 C.F.R. part 265, subpart I. Reserved for amendments to 40 C.F.R. part 265, subpart I. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-12 Amendments to the incorporation of 40 C.F.R. part 265, subpart J. The incorporation by reference of 40 C.F.R. section 265.191 is amended as follows:

(1) In 40 C.F.R. section 265.191(a), replace "January 12, 1988" with "January 12, 1988

for HSWA tanks and June 18, 1995 for non-HSWA tanks".

(2) In 40 C.F.R. section 265.191(c), replace "Tank systems" with "HSWA tank systems" and add the following second sentence: "Non-HSWA tank systems that store or treat materials that become hazardous wastes subsequent to June 18, 1994 must conduct this assessment within twelve months after the date that the waste becomes a hazardous waste." [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-13 Amendments to the incorporation of 40 C.F.R. part 265, subpart K. The incorporation by reference of 40 C.F.R. section 265.221 is amended as follows: in 40 C.F.R. section 265.221(d)(2)(i)(C), replace "RCRA section 3005(c)" with "section 342J-5, HRS". [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§§11-265.1-14 to 11-265.1-15 (Reserved.)

§11-265.1-16 Amendments to the incorporation of 40 C.F.R. part 265, subpart N. The incorporation by reference of 40 C.F.R. section 265.301 is amended as follows: in 40 C.F.R. section 265.301(d)(2)(i)(C), replace "RCRA 3005(c)" with "section 342J-5, HRS". [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§§11-265.1-17 to 11-265.1-19 (Reserved.)

§11-265.1-20 Amendments to the incorporation of 40 C.F.R. part 265, subpart R. The incorporation by reference of 40 C.F.R. part 265, subpart R is amended as follows: replace 40 C.F.R. section 265.430 in its entirety to read:
"§265.430 Applicability
Underground injection of hazardous waste is prohibited in the State of Hawaii." [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-21 Amendments to the incorporation of 40 C.F.R. part 265, subpart W. The incorporation by reference of 40 C.F.R. section 265.440 is amended as follows: in 40 C.F.R. section 265.440(a), replace "December 6, 1990" with "December 6, 1990 for HSWA drip pads and June 18, 1994 for non-HSWA drip pads". Replace "December 24, 1992" with "December 24, 1992 for HSWA drip pads and June 18, 1994 for non-HSWA drip pads". [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-22 Amendments to the incorporation of 40 C.F.R. part 265, subpart AA. (a) The incorporation by reference of 40 C.F.R. section 265.1030 is amended as follows: 40 C.F.R. section 265.1030(c) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 265.1033 is amended as follows:

(1) In 40 C.F.R. section 265.1033(a)(2)(iii), delete "EPA".

(2) In 40 C.F.R. section 265.1033(m)(1)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart X, as incorporated and amended in section 11-264.1-1" before "; or".

(3) In 40 C.F.R. section 265.1033(m)(2)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart O, as incorporated and amended in section 11-264.1-1" before "; or".

(4) In 40 C.F.R. section 265.1033(m)(3)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 266, subpart H, as incorporated and amended in section 11-266.1-1" before "; or". [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-23 Amendments to the incorporation of 40 C.F.R. part 265, subpart BB. (a) The incorporation by reference of 40 C.F.R. section 265.1050 is amended as follows: 40 C.F.R. section 265.1050(f) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 265.1060 is amended as follows: in 40 C.F.R. section 265.1060(b)(3), delete "EPA". [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-24 Amendments to the incorporation of 40 C.F.R. part 265, subpart CC. (a) The incorporation by reference of 40 C.F.R. section 265.1080 is amended as follows:

(1) In 40 C.F.R. section 265.1080(b)(5), insert "section 342J-36, HRS;" after "CERCLA authorities;".

(2) In 40 C.F.R. section 265.1080(c)(1) and (2), replace "when the permit is reissued" with "when a state hazardous waste management permit is issued under chapter 11-270.1 or the EPA-issued RCRA permit is reissued".

(3) 40 C.F.R. section 265.1080(e) to (g) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 265.1082 is amended as follows: in 40 C.F.R. section 265.1082(c) and 265.1082(d), replace "December 8, 1997" with "March 13, 1999".

(c) The incorporation by reference of 40 C.F.R. section 265.1083 is amended as follows:

(1) In 40 C.F.R. section 265.1083(c)(2)(vii)(A), insert "or a state hazardous waste management permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart O, as incorporated and amended in section 11-264.1-1" before "; or".

(2) In 40 C.F.R. section 265.1083(c)(2)(viii)(A), replace ", or" with "or a state hazardous waste management permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 266, subpart H, as incorporated and amended in section 11-266.1-1; or".

(3) In 40 C.F.R. section 265.1083(c)(4)(ii), insert "and approved by the director" at the end of the sentence.

(d) The incorporation by reference of 40 C.F.R. section 265.1088 is amended as follows: in 40 C.F.R. section 265.1088(c)(5)(i)(D), insert "; or a boiler or industrial furnace burning hazardous waste for which the owner or operator has been issued a state hazardous waste management permit under chapter 11-270.1 and has designed and operates the unit in accordance with the requirements of 40 C.F.R. part 266, subpart H, as incorporated and amended in section

11-266.1-1" before "; or". [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-25 Amendments to the incorporation of 40 C.F.R. part 265, subpart DD. The incorporation by reference of 40 C.F.R. section 265.1100 is amended as follows: in the introductory paragraph, replace "RCRA section 3004(k)" with "40 C.F.R. 268.2(c), as incorporated and amended in section 11-268.1-1". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-266.1

HAZARDOUS WASTE MANAGEMENT: STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

Historical note: This chapter is based substantially upon chapter 11-266. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-266.1-1 Incorporation of 40 C.F.R. part 266. Title 40, part 266 of the Code of Federal Regulations

(C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-266.1-2 to 11-266.1-15. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)

§11-266.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 266, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", and "State Director" shall be replaced with "director".

(2) "Agency", "applicable EPA regional office", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except in references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(3) "Section 3010 of RCRA" shall be replaced with "section 342J-6.5, HRS".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following

sections of 40 C.F.R. part 266, as incorporated and amended in this chapter:

(1) 40 C.F.R. section 266.100(b)(1).

(2) Appendices to 40 C.F.R. part 266.

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 266, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1. The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

[Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)

§§11-266.1-3 to 11-266.1-4 (Reserved.)

§11-266.1-5 Amendments to the incorporation of 40 C.F.R. part 266, subpart C. (a) The incorporation by reference of 40 C.F.R. section 266.22 is amended as

follows: replace the comma between "264" and "265" with "and" and delete "and 267,".

(b) The incorporation by reference of 40 C.F.R. section 266.23 is amended as follows: in 40 C.F.R. section 266.23(a), delete "subparts A through N of". [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)

§§11-266.1-6 to 11-266.1-7 (Reserved.)

§11-266.1-8 Amendments to the incorporation of 40 C.F.R. part 266, subpart F. The incorporation by reference of 40 C.F.R. section 266.70 is amended as follows: in 40 C.F.R. section 266.70(d), delete "267,". [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)

§11-266.1-9 Amendments to the incorporation of 40 C.F.R. part 266, subpart G. The incorporation by reference of 40 C.F.R. part 266, subpart G is amended by replacing 40 C.F.R. section 266.80 in its entirety to read:

"§266.80 Applicability and requirements.

The rules of this section apply to persons who handle spent lead-acid batteries that are recyclable materials ("spent batteries").

(a) Persons who generate, transport, collect, or store spent batteries that will be reclaimed (other than through regeneration) but do not reclaim them are subject to regulation under chapter 11-273.1. (Note: Batteries that will be regenerated are not a solid waste and thus are not a regulated hazardous waste.)

(b) Owners or operators of facilities that reclaim spent lead-acid batteries on-site (other than through regeneration) are subject to the following requirements:

(1) Chapter 11-261.1;

(2) 40 C.F.R. sections 262.11 and 262.18, as incorporated and amended in section 11-262.1-1;

(3) For permitted facilities, all applicable provisions in 40 C.F.R. part 264, subparts A to L, as incorporated and amended in chapter 11-264.1, except 40 C.F.R. sections 264.13, 264.71, and 264.72;

(4) For interim status facilities, all applicable provisions in 40 C.F.R. part 265, subparts A to L, as incorporated and amended in chapter 11-265.1, except 40 C.F.R. sections 265.13, 265.71, and 265.72; and

(5) All applicable provisions in chapters 11-268.1 to 11-271.1.

(c) Persons who export spent lead-acid batteries for reclamation (including regeneration) in a foreign country are subject to the following requirements:

(1) Chapter 11-261.1; and

(2) 40 C.F.R. sections 262.11 and 262.18 and 40 C.F.R. part 262, subpart H, as incorporated and amended in section 11-262.1-1.

(d) Persons who transport spent lead-acid batteries in the U.S. to export them for reclamation (including regeneration) in a foreign country are subject to the requirements of 40 C.F.R. part 262, subpart H, as incorporated and amended in section 11-262.1-1.

(e) Persons who import spent lead-acid batteries from a foreign country for reclamation (other than through regeneration) and store and/or reclaim these batteries are subject to the following requirements:

(1) Chapter 11-261.1;

(2) 40 C.F.R. sections 262.11 and 262.18 and 40 C.F.R. part 262, subpart H, as incorporated and amended in section 11-262.1-1; and

(3) Applicable provisions of chapter 11-268.1."
[Eff 7/17/17; am and comp SEP 3 0 2018]
(Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)

§11-266.1-10 Amendments to the incorporation of 40 C.F.R. part 266, subpart H. (a) The incorporation by reference of 40 C.F.R. section 266.101 is amended as follows: In 40 C.F.R. sections 266.101(c)(1) and 266.101(c)(2), delete "267".

(b) The incorporation by reference of 40 C.F.R. section 266.103 is amended as follows:

(1) In 40 C.F.R. section 266.103(a)(1)(i), replace "national standards" with "state standards".

(2) In 40 C.F.R. section 266.103(c), replace "on or before August 21, 1992" with "by June 18, 1994".

(c) The incorporation by reference of 40 C.F.R. section 266.111 is amended as follows:

(1) In 40 C.F.R. section 266.111(e)(1)(ii), replace "within 2 years after August 21, 1991" with "by June 18, 1994".

(2) In 40 section C.F.R. 266.111(e)(2)(i), replace "August 21, 1992" with "June 18, 1994". [Eff 7/17/17; comp SEP 3 0 2018]
(Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)

§§11-266.1-11 to 11-266.1-14 (Reserved.)

§11-266.1-15 Amendments to the incorporation of 40 C.F.R. part 266, subpart M. The incorporation by reference of 40 C.F.R. section 266.202 is amended as follows: in 40 C.F.R. section 266.202(d), replace "RCRA section 1004(27)" with "section 342J-2, HRS" and delete "RCRA" before "corrective action". Replace "sections 3004(u) and (v), and 3008(h)" with "RCRA section 3008(h) and section 342J-36, HRS" and replace "section 7003" with "RCRA section 7003 and section 342J-8, HRS". [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-268.1

HAZARDOUS WASTE MANAGEMENT: LAND DISPOSAL RESTRICTIONS

Historical note: This chapter is based substantially upon chapter 11-268. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-268.1-1 Incorporation of 40 C.F.R. part 268. Title 40, part 268 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-268.1-2 to 11-268.1-6. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-268.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 268, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", and "State Director" shall be replaced with "director".

(2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except in references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 268, as incorporated and amended in this chapter: 40 C.F.R. sections 268.1(e)(3), 268.2(j), 268.7(e), 268.13, and 268.40(b) and the appendices to 40 C.F.R. part 268.

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 268, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1, except as listed in subsection (d). The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-

124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

(d) The following references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 268, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations: references to 40 C.F.R. sections 268.5, 268.6, 268.42(b), and 268.44. [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-268.1-3 Amendments to the incorporation of 40 C.F.R. part 268, subpart A. (a) The incorporation by reference of 40 C.F.R. section 268.1 is amended as follows:

(1) In 40 C.F.R. section 268.1(f)(3), delete "and".

(2) In 40 C.F.R. section 268.1(f)(4), replace the period at the end with "; and".

(3) In 40 C.F.R. section 268.1(f), add a new paragraph (5) to read: "(5) Electronic items as described in 40 C.F.R. section 273.6, as incorporated and amended in section 11-273.1-1."

(b) The incorporation by reference of 40 C.F.R. section 268.4 is amended as follows: in 40 C.F.R. section 268.4(a)(2)(ii), delete "under §260.22 of this chapter".

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(c) 40 C.F.R. sections 268.5 and 268.6 are excluded from the incorporation by reference of 40 C.F.R. part 268.

(d) The incorporation by reference of 40 C.F.R. section 268.7 is amended as follows:

(1) In 40 C.F.R. section 268.7(a)(9)(iii), replace "(D001-D043)" with "(D001-D043, excluding D009)".

(2) In 40 C.F.R. section 268.7(d), replace "EPA Regional Administrator (or his designated representative) or State authorized to implement part 268 requirements" with "director".

(3) In 40 C.F.R. section 268.7(d)(1), replace "EPA Regional hazardous waste division director (or his designated representative) or State authorized to implement part 268 requirements" with "director". [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§§11-268.1-4 to 11-268.1-5 (Reserved.)

§11-268.1-6 Amendments to the incorporation of 40 C.F.R. part 268, subpart D. 40 C.F.R. sections 268.42(b) and 268.44 are excluded from the incorporation by reference of 40 C.F.R. part 268. [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-270.1

HAZARDOUS WASTE MANAGEMENT: THE HAZARDOUS WASTE PERMIT PROGRAM

Historical note: This chapter is based substantially upon chapter 11-270. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-270.1-1 Incorporation of 40 C.F.R. part 270. Title 40, part 270 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-270.1-2 to 11-270.1-12. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 270, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "Environmental Appeals Board", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", and "State Director" shall be replaced with "director".

(2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except for all references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(3) "The Act" shall be replaced with "chapter 342J, HRS".

(4) "The Act and regulations" shall be replaced with "chapter 342J, HRS, and chapters 11-260.1 to 11-279.1".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 270, as incorporated and amended in this chapter:

(1) The second instance of EPA in 40 C.F.R. section 270.1(c)(7).

(2) 40 C.F.R. section 270.2 definitions of "Administrator", "Approved program or approved state", "Environmental Protection Agency", "EPA", "Regional Administrator", and "State/EPA agreement".

(3) 40 C.F.R. sections 270.5, 270.6, 270.10(e)(1)(iii), 270.10(e)(3), 270.10(f)(3), 270.11(a)(3), 270.42(k)(2)(i), 270.51(d), 270.72(a)(5), 270.72(b)(5), 270.225, and 270.235.

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 270, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1, except as listed in subsection (d). The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1

273	273.1
279	279.1

(d) The following references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 270, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations: references to 40 C.F.R. sections 268.5 and 268.6. [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-3 Amendments to the incorporation of 40 C.F.R. part 270, subpart A. (a) The incorporation by reference of 40 C.F.R. section 270.1 is amended as follows:

(1) Replace 40 C.F.R. section 270.1(a)(1) in its entirety to read: "(1) These permit regulations establish provisions for the Hazardous Waste Permit Program under chapter 342J, HRS."

(2) Replace 40 C.F.R. section 270.1(a)(2) in its entirety to read: "(2) The regulations in this part cover basic state department of health permitting requirements, such as application requirements, standard permit conditions, and monitoring and reporting requirements. These regulations are part of a regulatory scheme implementing chapter 342J, HRS, set forth in chapters 11-260.1 to 11-279.1."

(3) In 40 C.F.R. section 270.1(a)(3), delete "267,".

(4) In 40 C.F.R section 270.1(b), replace "90 days" with "45 days". Replace both instances of "section 3010" with "section 342J-6.5, HRS". Delete "Treatment, storage, and disposal facilities (TSDs) that are otherwise subject to permitting under RCRA

and that meet the criteria in paragraph (b)(1), or paragraph (b)(2) of this section, may be eligible for a standardized permit under subpart J of this part." Replace "EPA or a State with interim authorization for Phase II or final authorization under part 271" with "the state department of health". Delete "or with the analogous provisions of a State program which has received interim or final authorization under part 271".

(5) 40 C.F.R. section 270.1(b)(1) and 270.1(b)(2) is excluded from incorporation.

(6) 40 C.F.R. section 270.1(c)(1)(i) is excluded from incorporation. The State of Hawaii prohibits the underground injection of hazardous waste.

(7) In 40 C.F.R. section 270.1(c)(2)(viii)(C), delete "and".

(8) In 40 C.F.R. section 270.1(c)(2)(viii)(D), replace the period at the end with "; and".

(9) In 40 C.F.R. section 270.1(c)(2)(viii), add a new subparagraph (E) to read: "(E) Electronic items as described in 40 C.F.R. section 273.6, as incorporated and amended in section 11-273.1-1."

(10) 40 C.F.R. section 270.1(c)(2)(ix) is excluded from incorporation.

(11) In 40 C.F.R. section 270.1(c)(7), replace "EPA or by an authorized State" with "EPA or the state department of health".

(b) The incorporation by reference of 40 C.F.R. section 270.2 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 270.2, replace "parts 270, 271, and 124" with "this chapter and chapter 11-271.1".

(2) The definitions "Final authorization", "Interim authorization", "Standardized permit", "State", and "State director" are excluded from incorporation.

(3) The following definitions are amended as follows:

"Application" definition. Replace in its entirety to read: "Application means the current EPA standard national forms for applying for a permit. Application also includes the information required by the director under 40 C.F.R. sections 270.14 to 270.29, as incorporated and amended in this chapter."

"Director" definition. Replace in its entirety to read: "Director means the director of the Hawaii department of health."

"Existing hazardous waste management (HWM) facility or existing facility" definition. Replace "on or before November 19, 1980" with "on or before:

(1) November 19, 1980; or

(2) The effective date of statutory or regulatory changes made under RCRA prior to June 18, 1994 that made the facility subject to the requirement to have an RCRA permit; or

(3) The effective date of statutory or regulatory changes made under chapter 342J, HRS, after June 18, 1994 that made the facility subject to the requirement to have a permit under section 342J-30(a), HRS".

"Facility or activity" definition. Replace "the RCRA program" with "chapter 342J, HRS, and chapters 11-260.1 to 11-279.1".

"Federal, State and local approvals or permits necessary to begin physical construction" definition. Replace the second instance of "local" with "county".

"Major facility" definition. Replace in its entirety to read: "Major facility means any "facility or activity" classified as such by the Regional Administrator in conjunction with the director."

"New HWM facility" definition. Replace in its entirety to read: "New hazardous waste management (HWM) facility means a hazardous waste management facility which is not included in the definition of an existing hazardous waste management facility."

"Permit" definition. Replace in its entirety to read: "Permit means an authorization, license, or equivalent control document issued by EPA to implement the requirements of 40 C.F.R. parts 124, 270, and 271 or by the State to implement the requirements of chapters 11-270.1 and 11-271.1. Permit includes permit by rule (40 C.F.R. 270.60) and emergency permit (40 C.F.R. 270.61). Permit does not include hazardous waste management interim status (40 C.F.R. part 270, subpart G), or any permit which has not yet been the subject of final EPA or department action, such as a draft permit or a proposed permit."

"Person" definition. Replace in its entirety to read: "Person means any individual, partnership, firm, joint stock company, association, public or private corporation, federal agency, the State or any of its political subdivisions, any state and any of its political subdivisions, trust, estate, interstate body, or any other legal entity."

"Remedial Action Plan (RAP)" definition. Replace "RCRA permit" with "state hazardous waste permit or EPA-issued RCRA permit".

(c) 40 C.F.R. section 270.3 is excluded from the incorporation by reference of 40 C.F.R. part 270. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-4 Amendments to the incorporation of 40 C.F.R. part 270, subpart B. (a) The incorporation by reference of 40 C.F.R. section 270.10 is amended as follows:

(1) 40 C.F.R. section 270.10(a)(6) is excluded from incorporation.

(2) In 40 C.F.R. section 270.10(e)(1)(iii), replace "March 24, 1987" with "June 18, 1994".

(3) 40 C.F.R. section 270.10(e)(2) is excluded from incorporation.

(4) In 40 C.F.R. section 270.10(e)(3), insert ", or the director may by compliance order issued under section 342J-7, HRS," after "section 3008 of RCRA".

(5) In 40 C.F.R. section 270.10(e)(4), delete "The State Director may require submission of part B (or equivalent completion of the State RCRA application process) if the State in which the facility is located has received interim or final authorization; if not, the Regional Administrator may require submission of Part B." Replace "this Act" with "chapter 342J, HRS".

(6) In 40 C.F.R. section 270.10(f)(2), replace "The application shall be filed with the Regional Administrator if at the time of application the State in which the new hazardous waste management facility is proposed to be located has not received interim or final authorization for permitting such activity; otherwise it shall be filed with the State Director" with "The application shall be filed with the director".

(7) 40 C.F.R. section 270.10(g)(1)(i) is excluded from incorporation.

(8) Replace 40 C.F.R. section 270.10(g)(1)(ii) in its entirety to read: "(ii) With the director, no later than the effective date

of amendments to provisions in chapter 11-261.1 listing or designating wastes as hazardous, if the facility is treating, storing, or disposing of any of those newly listed or designated wastes; or".

(9) Replace 40 C.F.R. section 270.10(g)(1)(iii) in its entirety to read: "(iii) As necessary to comply with provisions of 40 C.F.R. section 270.72, as incorporated and amended in this chapter, for changes during interim status. These revised Part A applications shall be filed with the director."

(10) Replace section 40 C.F.R. section 270.10(h) in its entirety to read: "(h) Reapplying for a permit. If you have an effective permit and you want to reapply for a new one, you must submit a new application at least 180 days before the expiration date of the effective permit, unless the director allows a later date."

(b) The incorporation by reference of 40 C.F.R. section 270.12 is amended as follows: in 40 C.F.R. section 270.12(a), replace "40 CFR part 2" and "40 CFR part 2 (Public Information)" with "sections 342J-14 and 342J-14.5, HRS, and any applicable provisions of chapter 2-71 and chapter 92F, HRS".

(c) The incorporation by reference of 40 C.F.R. section 270.14 is amended as follows:

(1) In 40 C.F.R. section 270.14(a), replace "§§0.14 through 270.29" with "40 C.F.R. sections 270.14 to 270.29, as incorporated and amended in this chapter,".

(2) In 40 C.F.R. section 270.14(b)(11)(iv)(C)(2), delete "271,".

(3) 40 C.F.R. section 270.14(b)(18) is excluded from incorporation.

(4) Replace 40 C.F.R. section 270.14(b)(20) in its entirety to read: "(20) Applicants may be required to submit such information as may be necessary to enable the director to carry out his duties under other state laws or applicable federal laws." [Eff 7/17/17;

am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-5 Amendments to the incorporation of 40 C.F.R. part 270, subpart C. (a) The incorporation by reference of 40 C.F.R. section 270.31 is amended as follows: in 40 C.F.R. section 270.31(c), replace "parts 264, 266 and 267" with "chapters 11-264.1 and 11-266.1".

(b) The incorporation by reference of 40 C.F.R. section 270.32 is amended as follows:

(1) In 40 C.F.R. section 270.32(a), delete ", and for EPA issued permits only, 270.33(b) (alternate schedules of compliance) and 270.3 (considerations under Federal law)".

(2) In 40 C.F.R. section 270.32(b)(2), replace "section 3005 of this act" with "section 342J-5, HRS," and replace "Administrator or State Director" with "director".

(3) In 40 C.F.R. section 270.32(b)(3), replace "Administrator or State Director" with "director".

(4) Replace 40 C.F.R. section 270.32(c) in its entirety to read: "(c) An applicable requirement is a state statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. 40 C.F.R. section 124.14, as incorporated and amended in section 11-271.1-1, provides a means for reopening permit proceedings at the discretion of the director where new requirements become effective during the permitting process and are of sufficient magnitude to make additional proceedings desirable. An applicable requirement is also any requirement which takes effect prior to the

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modification or revocation and reissuance of a permit, to the extent allowed in 40 C.F.R. 270.41, as incorporated and amended in this chapter." [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-6 Amendments to the incorporation of 40 C.F.R. part 270, subpart D. (a) The incorporation by reference of 40 C.F.R. section 270.40 is amended as follows:

(1) In 40 C.F.R. section 270.40(a), replace "the appropriate Act" with "chapter 342J, HRS, or chapters 11-260.1 to 11-279.1".

(2) In 40 C.F.R. section 270.40(b), delete "or as a routine change with prior approval under 40 CFR 124.213".

(b) The incorporation by reference of 40 C.F.R. section 270.41 is amended as follows:

(1) In 40 C.F.R. section 270.41, delete ", or §270.320 and 40 CFR part 124, subpart G". Replace "part 124 (or procedures of an authorized State program)" with "chapter 11-271.1".

(2) 40 C.F.R. section 270.41(b)(3) is excluded from incorporation.

(c) The incorporation by reference of 40 C.F.R. section 270.42 is amended as follows:

(1) In 40 C.F.R. section 270.42(a)(1)(ii), replace "40 CFR 124.10(c)(viii)" with "40 C.F.R. section 124.10(c)(1)(ix), as incorporated and amended in section 11-271.1.-1" and replace "40 CFR 124.10(c)(ix)" with "40 C.F.R. section 124.10(c)(1)(x), as incorporated and amended in section 11-271.1-1".

(2) In 40 C.F.R. section 270.42(b)(2) and (c)(2) replace "40 CFR 124.10(c)(ix)" with "40

C.F.R. section 124.10(c)(1)(x), as incorporated and amended in section 11-271.1-1,".

(3) In 40 C.F.R. section 270.42(e)(2)(iii), replace "40 CFR 124.10(c)(ix)" with "40 C.F.R. section 124.10(c)(1)(x), as incorporated and amended in section 11-271.1-1".

(4) In 40 C.F.R. section 270.42(f)(2) and (3), replace "40 CFR 124.19" with "40 C.F.R. section 124.15, as incorporated and amended in section 11-271.1-1".

(5) In 40 C.F.R. section 270.42, Appendix I, Section A, delete Item 10 in its entirety.

(6) In 40 C.F.R. section 270.42, Appendix I, Section F, Item 1c, delete "or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in §268.8(a)(2)(ii)".

(7) In 40 C.F.R. section 270.42, Appendix I, Section F, Item 4a, delete ", or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in §268.8(a)(2)(ii)".

(8) In 40 C.F.R. section 270.42, Appendix I, Section G, Item 1e, delete "or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in §268.8(a)(2)(ii)".

(9) In 40 C.F.R. section 270.42, Appendix I, Section G, Item 5c, delete "or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in §268.8(a)(2)(ii)".

(10) In 40 C.F.R. section 270.42, Appendix I, Section J, Item 6c, delete "or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in §268.8(a)(2)(ii)".

(d) The incorporation by reference of 40 C.F.R. section 270.43 is amended as follows: in 40 C.F.R. section 270.43(b), replace "part 124 or part 22, as appropriate or State procedures" with "chapters 11-1 and 11-271.1". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-7 Amendments to the incorporation of 40 C.F.R. part 270, subpart E. (a) The incorporation by reference of 40 C.F.R. section 270.50 is amended as follows:

(1) In 40 C.F.R. section 270.50(a), replace "10 years" with "five years".

(2) In 40 C.F.R. section 270.50(d), replace "five years" with "three years".

(b) The incorporation by reference of 40 C.F.R. section 270.51 is amended as follows:

(1) Replace the introductory paragraph of 40 C.F.R. section 270.51(a) to read: "(a) The conditions of an expired permit continue in force until the effective date of a new permit (see 40 C.F.R. section 124.15, as incorporated and amended in section 11-271.1-1) if:".

(2) In 40 C.F.R. section 270.51(d), replace "In a State with a hazardous waste program authorized under 40 CFR part 271, if" with "If".

(3) 40 C.F.R. section 270.51(e) is excluded from incorporation. [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4,

342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-8 Amendments to the incorporation of 40 C.F.R. part 270, subpart F. (a) 40 C.F.R. sections 270.60(b) and 270.64 are excluded from the incorporation by reference of 40 C.F.R. part 270. Hawaii prohibits the underground injection of hazardous waste.

(b) 40 C.F.R. section 270.67 is excluded from the incorporation by reference of 40 C.F.R. part 270. [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-9 Amendments to the incorporation of 40 C.F.R. part 270, subpart G. The incorporation by reference of 40 C.F.R. section 270.70 is amended as follows:

(1) In 40 C.F.R. section 270.70(a)(1), add "or section 342J-6.5, HRS," after "RCRA".

(2) In 40 C.F.R. section 270.70(b), add "against the owner and/or operator of the facility, including, but not limited to, an enforcement action for operation of a facility without a permit or interim status" to the end of the last sentence. [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-10 Amendments to the incorporation of 40 C.F.R. part 270, subpart H. (a) The incorporation

by reference of 40 C.F.R. section 270.80 is amended as follows: in 40 C.F.R. section 270.80(c), replace "RCRA Permit under RCRA section 3005(c)" with "State hazardous waste permit under section 342J-5, HRS".

(b) The incorporation by reference of 40 C.F.R. section 270.115 is amended as follows: replace "Part 2 (Public Information) of this chapter" with "Applicable provisions of chapter 2-71 and chapter 92F, HRS" and replace "part 2 of this chapter" with "applicable provisions of chapter 2-71 and chapter 92F, HRS".

(c) The incorporation by reference of 40 C.F.R. section 270.140 is amended as follows: in 40 C.F.R. section 270.140(b)(3), replace "issuing Regional Office" with "department".

(d) The incorporation by reference of 40 C.F.R. section 270.145 is amended as follows: in 40 C.F.R. section 270.145(a)(4), replace "local government" with "county government".

(e) The incorporation by reference of 40 C.F.R. section 270.150 is amended as follows:

(1) In 40 C.F.R. section 270.150(e), insert ", chapter 91, HRS, and section 342J-12, HRS" at the end of the sentence.

(2) In 40 C.F.R. section 270.150(f), replace "issuing Regional office" with "department".

(f) The incorporation by reference of 40 C.F.R. section 270.155 is amended as follows: replace 40 C.F.R. section 270.155 in its entirety to read: "§270.155 May the decision to approve or deny my RAP application be administratively appealed?
Appeals of RAPs may be made to the same extent as for final permit decisions under 40 C.F.R. section 124.15, as incorporated and amended in section 11-271.1-1, or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under 40 C.F.R. section 270.29, as incorporated and amended in this chapter."

(g) The incorporation by reference of 40 C.F.R. section 270.160 is amended as follows: replace 40 C.F.R. section 270.160(b) in its entirety to read: "(b) You or another person has appealed your RAP under

40 C.F.R. section 270.155, as incorporated and amended in this chapter; or".

(h) The incorporation by reference of 40 C.F.R. section 270.175 is amended as follows: in 40 C.F.R. section 270.175(a), insert "After affording you an opportunity for a hearing in accordance with chapter 91, HRS," at the beginning of the section and insert "or reasons listed in section 342J-5, HRS," after "listed in this section".

(i) The incorporation by reference of 40 C.F.R. section 270.180 is amended as follows: in 40 C.F.R. section 270.180(a), insert "After affording you an opportunity for a hearing in accordance with chapter 91, HRS," at the beginning of the section and insert "and section 342J-5, HRS," after "through (8)".

(j) The incorporation by reference of 40 C.F.R. section 270.185 is amended as follows: insert "After affording you an opportunity for a hearing in accordance with chapter 91, HRS," at the beginning of the section and insert "and section 342J-5, HRS," after "through (7)".

(k) The incorporation by reference of 40 C.F.R. section 270.190 is amended as follows: replace 40 C.F.R. section 270.190 in its entirety to read: "§270.190 May the decision to approve or deny a modification, revocation and reissuance, or termination of my RAP be administratively appealed? Appeals of decisions to approve or deny a modification, revocation and reissuance, or termination of a RAP may be made to the same extent as for final permit decisions under 40 C.F.R. section 124.15, as incorporated and amended in section 11-271.1-1, or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under 40 C.F.R. section 270.29, as incorporated and amended in this chapter."

(l) The incorporation by reference of 40 C.F.R. section 270.195 is amended as follows: Replace "10 years" and "ten years" with "five years". Replace "RCRA sections 3004 and 3005" with "sections 342J-5 and 342J-34, HRS". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-5,

342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-11 (Reserved.)

§11-270.1-12 Amendments to the incorporation of 40 C.F.R. part 270, subpart J. 40 C.F.R. part 270, subpart J is excluded from the incorporation by reference of 40 C.F.R. part 270. [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-271.1

HAZARDOUS WASTE MANAGEMENT: PERMIT PROCEDURES

Historical note: This chapter is based substantially upon chapter 11-271, subchapter A. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-271.1-1 Incorporation of 40 C.F.R. part 124, subparts A and B. Title 40, part 124, subparts A and B of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-271.1-2 to 11-271.1-4. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-271.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 124, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Agency", "EPA", and "issuing Regional Office" shall be replaced with "state department of health".

(2) "Environmental Appeals Board", and "Regional Administrator" shall be replaced with "director".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 124, as incorporated and amended in this chapter: 40 C.F.R. section 124.10(c)(1)(ii).

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 124, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1. The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

[Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-271.1-3 Amendments to the incorporation of 40 C.F.R. part 124, subpart A. (a) The incorporation by reference of 40 C.F.R. section 124.1 is amended as follows:

(1) Replace 40 C.F.R. section 124.1(a) in its entirety to read: "(a) This part contains state department of health procedures for issuing, modifying, revoking and reissuing, or terminating all RCRA permits governed by chapter 11-270.1. The procedures of this part also apply to denial of a permit for the active life of a RCRA hazardous waste management facility or unit under 40 C.F.R. section 270.29, as incorporated and amended in section 11-270.1-1."

(2) Replace 40 C.F.R. section 124.1(b) in its entirety to read: "(b) Subpart A describes the steps the state department of health will follow in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment, and holding public hearings on draft permits. Subpart A also covers assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of the final permit decisions. Subpart B contains public participation requirements applicable to all RCRA hazardous waste management facilities."

(3) 40 C.F.R. section 124.1(d) to (f) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 124.2 is amended as follows: replace 40 C.F.R. section 124.2 in its entirety to read:
"§124.2 Definitions.

Terms used in this chapter have the meanings given in 40 C.F.R. section 270.2, as incorporated and amended in section 11-270.1-1. Terms not defined have the meaning given by RCRA."

(c) The incorporation by reference of 40 C.F.R. section 124.3 is amended as follows:

(1) Replace 40 C.F.R. section 124.3(a) in its entirety to read:

"(a)(1) Any person who requires a permit under 40 C.F.R. section 270.1, as incorporated and amended in section 11-270.1-1, shall complete, sign, and submit to the director an application. Applications are not required for RCRA permits by rule (40 C.F.R. section 270.60, as incorporated and amended in section 11-270.1-1).

(2) The director shall not begin the processing of a permit until the application has fully complied with the application requirements. See 40 C.F.R. sections 270.10 and 270.13, as incorporated and amended in section 11-270.1-1.

(3) Permit applications must comply with the signature and certification requirements of 40 C.F.R. section 270.11, as incorporated and amended in section 11-270.1-1."

(2) In 40 C.F.R. section 124.3(c), replace each instance of "an EPA-issued permit" with "a permit". Delete ", a new UIC injection well, a major PSD stationary source or major PSD modification, or a NPDES new source or NPDES new discharger", ", existing injection well or existing NPDES sources or sludge-only facility", and ", an existing UIC injection well or an existing NPDES source or "sludge-only facility"".

(3) In 40 C.F.R. section 124.3(d), replace

", SDWA sections 1423 and 1424, CAA section 167, and CWA sections 308, 309, 402(h), and 402(k)" with "and section 342J-7, HRS".

(4) In 40 C.F.R. section 124.3(g), delete "major new UIC injection well, major NPDES new source, major NPDES new discharger, or a permit to be issued under provisions of §122.28(c)," and "(This paragraph does not apply to PSD permits.)"

(d) 40 C.F.R. section 124.4 is excluded from the incorporation by reference of 40 C.F.R. part 124, subpart A.

(e) The incorporation by reference of 40 C.F.R. section 124.5 is amended as follows:

(1) Replace 40 C.F.R. section 124.5(a) in its entirety to read: "(a) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 40 C.F.R. sections 270.41 and 270.43, as incorporated and amended in section 11-270.1-1. All requests shall be in writing and shall contain facts or reasons supporting the request."

(2) In 40 C.F.R. section 124.5(b), delete "The Environmental Appeals Board may direct the Regional Administrator to begin modification, revocation and reissuance, or termination proceedings under paragraph (c) of this section." and "This informal appeal is, under 5 U.S.C. 704, a prerequisite to seeking judicial review of EPA action in denying a request for modification, revocation and reissuance, or termination."

(3) In 40 C.F.R. section 124.5(c), delete "(Applicable to State Programs, see 40 CFR 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA))."

(4) Replace 40 C.F.R. section 124.5(c)(1) in its entirety to read: "(1) If the director tentatively decides to modify or revoke and reissue a permit under 40 C.F.R. section 270.41 or 270.42(c), as incorporated and amended in section 11-270.1-1, he or she shall prepare a draft permit under 40 C.F.R. section 124.6, as incorporated and amended in this chapter, incorporating the proposed changes. The director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the director shall require the submission of a new application."

(5) In 40 C.F.R. section 124.5(c)(3), delete ""Minor modifications" as defined in §§122.63 (NPDES), 144.41 (UIC), and 233.16 (404), and" and "(RCRA)".

(6) Replace 40 C.F.R. section 124.5(d) in its entirety to read: "(d) If the director tentatively decides to terminate a permit under 40 C.F.R. section 270.43, as incorporated and amended in section 11-270.1-1, where the permittee objects, the director shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under 40 C.F.R. section 124.6, as incorporated and amended in this chapter."

(7) 40 C.F.R. section 124.5(f) and (g) is excluded from incorporation.

(f) The incorporation by reference of 40 C.F.R. section 124.6 is amended as follows:

(1) Replace 40 C.F.R. section 124.6(a) in its entirety to read: "(a) Once an application is complete, the director shall tentatively decide whether to prepare a draft permit or to deny the application."

(2) 40 C.F.R. section 124.6(c) is excluded from incorporation.

(3) Replace 40 C.F.R. section 124.6(d) in its entirety to read: "(d) If the director decides to prepare a draft permit, he or she shall prepare a draft permit that contains the following information:

(1) All the conditions under 40 C.F.R. sections 270.30 and 270.32, as incorporated and amended in section 11-270.1-1;

(2) All compliance schedules under 40 C.F.R. section 270.33, as incorporated and amended in section 11-270.1-1;

(3) All monitoring requirements under 40 C.F.R. section 270.31, as incorporated and amended in section 11-270.1-1; and

(4) Standards for treatment, storage, and/or disposal and other permit conditions under 40 C.F.R. section 270.30, as incorporated and amended in section 11-270.1-1."

(4) In 40 C.F.R. section 124.6(e), delete "(Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)". Replace "For RCRA, UIC or PSD permits, an appeal may be taken under §124.19 and, for NPDES permits, an appeal may be taken under §124.74. Draft permits prepared by a State shall be accompanied by a fact sheet if required under §124.8." with "A contested case hearing may be requested as provided in 40 C.F.R. section 124.15, as incorporated and amended in this chapter."

(g) The incorporation by reference of 40 C.F.R. section 124.8 is amended as follows:

(1) In 40 C.F.R. section 124.8, delete "(Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)"

(2) Replace 40 C.F.R. section 124.8(a) in its entirety to read: "(a) A fact sheet shall be

prepared for every draft permit for a major HWM facility or activity and for every draft permit which the director finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The director shall send this fact sheet to the applicant and, on request, to any other person."

(3) 40 C.F.R. section 124.8(b)(3) is excluded from incorporation.

(4) In 40 C.F.R. section 124.8(b)(4), delete "(for EPA-issued permits)".

(5) 40 C.F.R. section 124.8(b)(8) and (9) is excluded from incorporation.

(h) The incorporation by reference of 40 C.F.R. section 124.9 is amended as follows:

(1) In the section heading of 40 C.F.R. section 124.9, delete "when EPA is the permitting authority".

(2) 40 C.F.R. section 124.9(b)(6) is excluded from incorporation.

(i) The incorporation by reference of 40 C.F.R. section 124.10 is amended as follows:

(1) In 40 C.F.R. section 124.10(a)(1)(ii) and (iii), delete "(Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)"

(2) 40 C.F.R. section 124.10(a)(1)(iv) and (v) is excluded from incorporation.

(3) In 40 C.F.R. section 124.10(b), delete "(applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404, and 271.14 (RCRA))".

(4) Replace 40 C.F.R. section 124.10(b)(1) in its entirety to read: "(1) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under 40 C.F.R.

124.10(a), as incorporated and amended in this chapter, shall allow at least 45 days for public comment."

(5) In 40 C.F.R. section 124.10(c), delete "(applicable to State programs, see 40 CFR 123.25 (NPDES), 145.11 (UIC), 233.23 (404), and 271.14 (RCRA))".

(6) Replace 40 C.F.R. section 124.10(c)(1)(i) in its entirety to read: "(i) The applicant;"

(7) In 40 C.F.R. section 124.10(c)(1)(iii), delete "(For purposes of this paragraph, and in the context of the Underground Injection Control Program only, the term State includes Indian Tribes treated as States.)"

(8) 40 C.F.R. section 124.10(c)(1)(iv) to (viii) and 124.10(c)(1)(xi) is excluded from incorporation.

(9) 40 C.F.R. section 124.10(c)(2)(i) is excluded from incorporation.

(10) In 40 C.F.R. section 124.10(c)(2)(ii), replace the period at the end of the sentence with "; and".

(11) 40 C.F.R. section 124.10(c)(3) is excluded from incorporation.

(12) In 40 C.F.R. section 124.10(d), delete "(applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA))—".

(13) In 40 C.F.R. section 124.10(d)(1)(ii), delete ", except in the case of NPDES and 404 draft general permits under §§122.28 and 233.37".

(14) In 40 C.F.R. section 124.10(d)(1)(iii), delete ", for NPDES or 404 general permits when there is no application".

(15) In 40 C.F.R. section 124.10(d)(1)(vi), replace "For EPA-issued permits, the" with "The".

(16) 40 C.F.R. section 124.10(d)(1)(vii) to (ix) is excluded from incorporation.

(17) In 40 C.F.R. section 124.10(d)(2)(ii), add "and" after the semicolon.

(18) In 40 C.F.R. section 124.10(d)(2)(iii), replace "; and" with a period.

(19) 40 C.F.R. section 124.10(d)(2)(iv) is excluded from incorporation.

(20) In 40 C.F.R. section 124.10(e), delete "(Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)" and "(for EPA-issued permits)".

(j) The incorporation by reference of 40 C.F.R. section 124.11 is amended as follows: delete "(Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)" and "or the permit application for 404 permits when no draft permit is required (see §233.39)".

(k) The incorporation by reference of 40 C.F.R. section 124.12 is amended as follows:

(1) In 40 C.F.R. section 124.12(a), delete "(Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)"

(2) In 40 C.F.R. section 124.12(a)(3), delete "For RCRA permits only,".

(3) In 40 C.F.R. section 124.12(b), delete "and EPA is the permitting authority".

(4) In 40 C.F.R. section 124.12(c), replace "hearing officer" with "presiding officer".

(l) The incorporation by reference of 40 C.F.R. section 124.13 is amended as follows: replace "EPA documents" with "EPA or state department of health documents".

(m) The incorporation by reference of 40 C.F.R. section 124.15 is amended as follows:

(1) In the section heading of 40 C.F.R. section 124.15, replace "permit." with "permit; appeal of permits."

(2) In 40 C.F.R. section 124.15(a), replace "This notice shall include reference to the procedures for appealing a decision on a RCRA, UIC, PSD, or NPDES permit under §124.19 of this part." with "The notice of final permit decision shall inform the

persons authorized by 40 C.F.R. section 124.15(c), as incorporated and amended in this chapter, to request a contested case hearing of the procedures for requesting such a hearing. Chapter 11-1 procedures for contested case hearings apply to contested case hearings for permits."

(3) In 40 C.F.R. section 124.15(b)(1), delete "or".

(4) Replace 40 C.F.R. section 124.15(b)(2) in its entirety to read: "(2) A written request for a contested case hearing is made within thirty days of the date of issuance of the final permit decision by a person authorized by 40 C.F.R. section 124.15(c), as incorporated and amended in this chapter, to request a contested case hearing; or".

(5) Add a new subsection (c) to read: "(c) After the issuance of a final permit decision, a contested case hearing may be requested in writing by:

(1) The permittee whose permit has been modified, or revoked and reissued, or terminated;

(2) The person whose application for a permit has been denied; and

(3) Any person whose legal rights, duties, or privileges will be specially, personally, and adversely affected by the permit decision and who has participated as an adversary during the public comment period or public hearing in the manner provided by 40 C.F.R. sections 124.11 to 124.14, as incorporated and amended in this chapter."

(n) 40 C.F.R. section 124.16 is excluded from the incorporation by reference of 40 C.F.R. part 124, subpart A.

(o) The incorporation by reference of 40 C.F.R. section 124.17 is amended as follows:

(1) Replace the introductory paragraph of 40 C.F.R. section 124.17(a) to read: "(a) At the time that any final permit decision is issued under 40 C.F.R. section 124.15, as incorporated and amended in this chapter, the director shall issue a response to comments. This response shall:"

(2) In 40 C.F.R. section 124.17(a)(2), delete "or the permit application (for section 404 permits only)".

(3) In 40 C.F.R. section 124.17(b), replace "For EPA-issued permits, any" with "Any".

(4) Replace 40 C.F.R. section 124.17(c) in its entirety to read: "(c) The response to comments shall be available to the public."

(p) The incorporation by reference of 40 C.F.R. section 124.18 is amended as follows:

(1) In the section heading of 40 C.F.R. section 124.18, delete "when EPA is the permitting authority".

(2) 40 C.F.R. section 124.18(b)(5) is excluded from incorporation.

(3) Replace 40 C.F.R. section 124.18(d) in its entirety to read: "(d) This section applies to all final permits when the draft permit was subject to the administrative record requirements of 40 C.F.R. section 124.9, as incorporated and amended in this chapter."

(q) 40 C.F.R. sections 124.19, 124.20, and 124.21 are excluded from the incorporation by reference of 40 C.F.R. part 124, subpart A. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-271.1-4 Amendments to the incorporation of 40 C.F.R. part 124, subpart B. (a) The incorporation by reference of 40 C.F.R. section 124.31 is amended as follows:

(1) Replace 40 C.F.R. section 124.31(a) in its entirety to read: "(a) Applicability. The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a class 3 permit modification under 40 C.F.R. section 270.42, as incorporated and amended in section 11-270.1-1. The requirements of this section do not apply to permit modifications under 40 C.F.R. 270.42, as incorporated and amended in section 11-270.1-1, or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility."

(2) In 40 C.F.R. section 124.31(b), delete ", or to the submission of a written Notice of Intent to be covered by a RCRA standardized permit (see 40 CFR part 270, subpart J),".

(3) In 40 C.F.R. section 124.31(c), delete ", or with the written Notice of Intent to be covered by a RCRA standardized permit (see 40 CFR part 270, subpart J)".

(b) The incorporation by reference of 40 C.F.R. section 124.32 is amended as follows: replace 40 C.F.R. section 124.32(a) in its entirety to read: "(a) Applicability. The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units under 40 C.F.R. section 270.51, as incorporated and amended in section 11-270.1-1. The requirements of this section do not apply to permit

modifications under 40 C.F.R. 270.42, as incorporated and amended in section 11-270.1-1, or to permit applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility."

(c) The incorporation by reference of 40 C.F.R. section 124.33 is amended as follows: replace 40 C.F.R. section 124.33(a) in its entirety to read: "(a) Applicability. The requirements of this section apply to all applications seeking RCRA permits for hazardous waste management units." [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-273.1

HAZARDOUS WASTE MANAGEMENT: STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

Historical note: This chapter is based substantially upon chapter 11-273. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-273.1-1 Incorporation of 40 C.F.R. part 273. Title 40, part 273 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal

Register, as amended as of July 1, 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-273.1-2 to 11-273.1-9. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

§11-273.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 273, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", and "State Director" shall be replaced with "director".

(2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except in references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 273, as incorporated and amended in this chapter: 40 C.F.R. sections 273.32(a)(3) and 273.52(a).

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R.

part 273, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1, except as listed in subsection (d). The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

(d) The following references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 273, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations: references in 40 C.F.R. section 273.52. [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

§11-273.1-3 Amendments to the incorporation of 40 C.F.R. part 273, subpart A. (a) The incorporation by reference of 40 C.F.R. section 273.1 is amended as follows:

(1) In 40 C.F.R. section 273.1(a)(3), delete "and".

(2) In 40 C.F.R. section 273.1(a)(4), replace the period at the end with "; and".

(3) In 40 C.F.R. section 273.1(a), add a paragraph (5) to read: "(5) Electronic items as described in 40 C.F.R. section 273.6, as incorporated and amended in this chapter."

(4) In 40 C.F.R. section 273.1(b), replace "40 CFR parts 260 through 272" with "chapters 11-260.1 to 11-270.1".

(b) The incorporation by reference of 40 C.F.R. part 273 is amended by adding a new section, 40 C.F.R. section 273.6, to read:

"§273.6 Applicability—Electronic items.

(a) Electronic items covered under chapter 11-273.1. The requirements of this chapter apply to persons managing electronic items, as described in 40 C.F.R. section 273.9, as incorporated and amended in this chapter, except those listed in paragraph (b) of this section.

(b) Electronic items not covered under chapter 11-273.1. The requirements of this chapter do not apply to persons managing the following electronic items:

(4) Electronic items that are not yet wastes under chapter 11-261.1. A universal waste handler who claims that an electronic item is not a waste must manage that item as a product and bears the burden of demonstrating that there is a known market or disposition for its re-use as an electronic item.

(5) Electronic items that were previously identified as wastes under chapter 11-261.1 but are no longer identified as wastes (e.g., a discarded electronic item that is refurbished and is returned to service).

(6) Electronic items that do not exhibit a toxicity characteristic of a hazardous waste as set forth in chapter 11-261.1 and that are not otherwise identified as hazardous waste pursuant to chapter 11-261.1. A universal waste handler who claims that a waste electronic item does not exhibit a

toxicity characteristic bears the burden of demonstrating that the electronic item is not a hazardous waste. Assume all waste electronic items to be hazardous unless you evaluate and can document that they are non-hazardous (e.g., pass the Toxicity Characteristic Leaching Procedure [TCLP] test, as described in 40 C.F.R. sections 260.11 and 261.24 and incorporated by reference in chapters 11-260.1 and 11-261.1, and are not otherwise identified as hazardous waste pursuant to chapter 11-261.1)."

(c) The incorporation by reference of 40 C.F.R. section 273.9 is amended as follows:

(1) The following definitions are amended as follows:

"Destination facility" definition. Delete both instances of "(a) and (c)".

"Large Quantity Handler of Universal Waste" definition. Replace "or lamps" with "lamps, or electronic items".

"Small Quantity Handler of Universal Waste" definition. Replace "or lamps" with "lamps, or electronic items".

"Universal Waste" definition. Replace "§273.4; and (4) Lamps as described in §273.5" with "40 C.F.R. section 273.4, as incorporated and amended in this chapter; (4) Lamps as described in 40 C.F.R. section 273.5, as incorporated and amended in this chapter; and (5) Electronic items as described in 40 C.F.R. section 273.6, as incorporated and amended in this chapter".

"Universal Waste Handler" definition. Delete both instances of "(a) or (c)".

(2) Add the following additional definitions in alphabetical order:

"Circuit board" means the part of an electronic device that mechanically supports and electrically connects electronic components (such as capacitors, diodes,

power sources, resistors, sensors, switches, transducers, transistors, etc.) using conductive tracks.

"Electronic item", also referred to as "universal waste electronic item", means a device containing a circuit board, or other complex circuitry, or a video display. Indicators that a device likely contains a circuit board include the presence of a keypad, touch screen, any type of video or digital display, or common electronic ports or connectors, such as serial, parallel, Rj45 ("network"), or USB. Examples of common universal waste electronic items include, but are not limited to: computer central processing unit; computer monitor; portable computer (including notebook, laptop, and tablet computer); devices designed for use with computers (also known as computer peripherals) such as keyboard, mouse, desktop printer, scanner, and external storage drive; server; television; digital video disc (DVD) recorder or player; videocassette recorder or player (VCR); eBook reader; digital picture frame; fax machine; video game equipment; cellular telephone; answering machine; digital camera; portable music or video player; wireless paging device; remote control; and smoke detector. Electronic item does not include a device that is physically a part of, connected to, or integrated within a large piece of equipment that is not meant to be hand-carried by one person (for example, an automobile, large medical equipment, or white goods as defined in chapter 11-58.1). A device is considered physically a part of, connected to, or integrated within a large piece of equipment if the device cannot be easily disconnected from the large equipment by a layperson without specialized training. When a device

containing a circuit board or a video display is removed, separated, or separate from the large piece of equipment that it is meant to be a part of, it is a universal waste electronic item.

"Video display" means the part of an electronic device capable of presenting images electronically on a screen viewable by the device user. A video display may use cathode ray tube, liquid crystal display (LCD), gas plasma, digital light processing, or other image projection technology. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

§11-273.1-4 Amendments to the incorporation of 40 C.F.R. part 273, subpart B. (a) The incorporation by reference of 40 C.F.R. section 273.13 is amended by adding a subsection (e) to read: "(e) Electronic items. A small quantity handler of universal waste must manage electronic items in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Electronic items shall be stored in
  (i) A building, with a permanent roof and floor, that is constructed and maintained to minimize breakage of electronic items and to prevent exposure of the electronic items to precipitation; or
  (ii) A closed and secure container that is constructed and maintained to minimize breakage of electronic items and to prevent exposure of the electronic items to precipitation.

(2) All universal waste electronic items must be stored in a building or container meeting the requirements of paragraph (1) within 24 hours of being discarded.

(3) A small quantity handler of universal waste shall immediately clean up and place in a container any universal waste electronic item that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container shall be closed, structurally sound, and compatible with the contents of the electronic item, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(4) A small quantity handler of universal waste may conduct the following activities:

(i) Sorting electronic items by type;

(ii) Mixing electronic item types in one container;

(iii) Removal of discreet assemblies that are typically removed by consumers for replacement during the normal operation of an electronic item (e.g., battery packs, ink cartridges). A universal waste handler shall conduct the removal of the discrete assemblies in the manner that is prescribed in the operating manual for the electronic item, or in a manner that would otherwise reasonably be employed during the normal operation of the electronic item.

(iv) Removal of separable non-electronic pieces that are intended for assembly by retailers or consumers (e.g., monitor saucer, wall hanging bracket, cell phone case).

(5) A small quantity handler who generates other solid waste (e.g., battery packs, monitor saucers) as a result of the activities listed in paragraph (4) shall make a hazardous waste determination pursuant to 40 C.F.R. section 262.11, as incorporated and amended in section 11-262.1-1.

(i) If the waste exhibits a characteristic of hazardous waste, it is subject to all applicable requirements of chapters 11-260.1 to 11-270.1. If the waste is another type of

universal waste (e.g., a battery), it may be alternatively managed under this chapter. The handler is considered the generator of the waste and is subject to chapter 11-262.1.

(ii) If the waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, and local solid waste regulations."

(b) The incorporation by reference of 40 C.F.R. section 273.14 is amended as follows:

(1) In 40 C.F.R. section 273.14(a), replace "Universal waste batteries (i.e., each battery), or a container in which the batteries are contained" with "Each battery, or container or pallet containing universal waste batteries".

(2) In 40 C.F.R. section 273.14, add a subsection (f) to read: "(f) Each electronic item, or container or pallet containing universal waste electronic items, must be labeled or marked clearly with one of the following phrases: "Universal Waste—electronic item(s)," or "Waste electronic item(s)," or "Used electronic item(s).""

[Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

§11-273.1-5 Amendments to the incorporation of 40 C.F.R. part 273, subpart C. (a) The incorporation by reference of 40 C.F.R. section 273.32 is amended as follows: replace 40 C.F.R. section 273.32(b) in its entirety to read: "(b) This notification must include a completed EPA Form 8700-12. To obtain EPA Form 8700-12, call the department at (808) 586-4226."

(b) The incorporation by reference of 40 C.F.R. section 273.33 is amended by adding a paragraph (e) to read: "(e) Electronic items. A large quantity handler

of universal waste must manage electronic items in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Electronic items shall be stored in:
  (i) A building, with a permanent roof and floor, that is constructed and maintained to minimize breakage of electronic items and to prevent exposure of the electronic items to precipitation; or
  (ii) A closed and secure container that is constructed and maintained to minimize breakage of electronic items and to prevent exposure of the electronic items to precipitation.

(2) All universal waste electronic items must be stored in a building or container meeting the requirements of paragraph (1) within 24 hours of being discarded.

(3) A large quantity handler of universal waste shall immediately clean up and place in a container any universal waste electronic item that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container shall be closed, structurally sound, and compatible with the contents of the electronic item, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(4) A large quantity handler of universal waste may conduct the following activities:
  (i) Sorting electronic items by type;
  (ii) Mixing electronic item types in one container;
  (iii) Removal of discreet assemblies that are typically removed by consumers for replacement during the normal operation of an electronic item (e.g., battery packs, ink cartridges). A universal waste handler shall conduct the removal of the discrete assemblies in the manner that is prescribed

in the operating manual for the electronic item, or in a manner that would otherwise reasonably be employed during the normal operation of the electronic item; and

(iv) Removal of separable non-electronic pieces that are intended for assembly by retailers or consumers (e.g., monitor saucer, wall hanging bracket, cell phone case).

(5) A large quantity handler who generates other solid waste (e.g., battery packs, monitor saucers) as a result of the activities listed in paragraph (4) shall make a hazardous waste determination pursuant to 40 C.F.R. section 262.11, as incorporated and amended in section 11-262.1-1.

(i) If the waste exhibits a characteristic of hazardous waste, it is subject to all applicable requirements of chapters 11-260.1 to 11-270.1. If the waste is another type of universal waste (e.g., a battery), it may be alternatively managed under this chapter. The handler is considered the generator of the waste and is subject to chapter 11-262.1.

(ii) If the waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, and local solid waste regulations."

(c) The incorporation by reference of 40 C.F.R. section 273.34 is amended as follows:

(1) In 40 C.F.R. section 273.34(a), replace "Universal waste batteries (i.e., each battery), or a container in which the batteries are contained" with "Each battery, or container or pallet containing universal waste batteries".

(2) In 40 C.F.R. section 273.34, add a subsection (f) to read: "(f) Each electronic item, or container or pallet containing universal waste electronic items, must be labeled or marked clearly with one of the following phrases: "Universal Waste—

electronic item(s)," or "Waste electronic item(s)," or "Used electronic item(s).""

(d) The incorporation by reference of 40 C.F.R. section 273.39 is amended as follows: in 40 C.F.R. section 273.39(a)(2) and 273.39(b)(2), replace "thermostats" with "mercury-containing equipment, lamps, electronic items". [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

§11-273.1-6 Amendments to the incorporation of 40 C.F.R. part 273, subpart D. The incorporation by reference of 40 C.F.R. part 273 is amended by adding a new section 273.57, to read:

"§273.57 Tracking universal waste shipments.

(a) Records of receipt of shipments. A transporter of universal waste must keep a record of each shipment of universal waste received by the transporter. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:
   (1) The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;
   (2) The quantity of each type of universal waste received (e.g., batteries, pesticides, mercury-containing equipment, lamps, electronic items); and
   (3) The date of receipt of the shipment of universal waste.

(b) Records of delivery of shipments. A transporter of universal waste must keep a record of each shipment of universal waste delivered to other facilities. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each shipment

of universal waste sent must include the following information:

(1) The name and address of the universal waste handler, destination facility, or foreign destination to which the universal waste was sent;

(2) The quantity of each type of universal waste sent (e.g., batteries, pesticides, mercury-containing equipment, lamps, electronic devices); and

(3) The date the shipment of universal waste was delivered to the receiving universal waste handler, destination facility, or foreign destination.

(c) Record retention.

(1) A transporter of universal waste must retain the records described in subsection (a) for at least three years from the date of receipt of a shipment of universal waste.

(2) A transporter of universal waste must retain the records described in subsection (b) for at least three years from the date of delivery of a shipment of universal waste." [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

§11-273.1-7 Amendments to the incorporation of 40 C.F.R. part 273, subpart E. (a) The incorporation by reference of 40 C.F.R. section 273.60 is amended as follows: in 40 C.F.R. section 273.60(a), replace "section 3010 of RCRA" with "section 342J-6.5, HRS".

(b) The incorporation by reference of 40 C.F.R. section 273.62 is amended as follows: in 40 C.F.R. section 273.62(a)(2), replace "thermostats" with "mercury-containing equipment, lamps, electronic items". [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33,

342J-35)

§§11-273.1-8 to 11-27.1-9 (Reserved.)

§11-273.1-10 Imports of universal waste. (a) In addition to the requirements of 40 C.F.R. section 273.70, as incorporated and amended in this chapter, any person who imports universal waste from a foreign country into the State must submit the following information in writing to the director within thirty days after the waste has arrived in the State:

(1) The date the waste arrived in the State; and

(2) The disposition of the waste, i.e., storage, treatment, recycling, or disposal.

(b) Any person who imports universal waste from any state into the State must submit the following information in writing to the director within thirty days after the waste has arrived in the State:

(1) The date the waste arrived in the State; and

(2) The disposition of the waste, i.e., storage, treatment, recycling, or disposal.

(c) The requirements of subsections (a) and (b) shall not apply if:

(1) The waste does not stay in the State for more than ten days; and

(2) A generator with an EPA identification number does not assume the generator status for the waste. [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-279.1

HAZARDOUS WASTE MANAGEMENT: STANDARDS FOR THE MANAGEMENT OF USED OIL

Historical note: This chapter is based substantially upon chapter 11-279. [Eff 3/13/99; R 7/17/17]

§11-279.1-1 Incorporation of 40 C.F.R. part 279. Title 40, part 279 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2017, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-279.1-2 to 11-279.1-11. [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 279, as incorporated and amended in this chapter:

(1) "Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", and "State Director" shall be replaced with "director".

(2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except in references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)",

"EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(3) "RCRA section 3010" shall be replaced with "section 342J-6.5, HRS".

(b) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 279, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1, except as listed in subsection (c). The Hawaii Administrative Rule analogs are as follows:

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

(c) The following references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 279, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations: the references in 40 C.F.R. section 279.55(a)(2)(i)(B) and (b)(2)(i)(B). [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-3 Amendments to the incorporation of 40 C.F.R. part 279, subpart A. The incorporation by

reference of 40 C.F.R. section 279.1 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 279.1, replace the comma between "260.10" and "261.1" with the word "and" and delete ", and 280.12".

(2) The following definitions are amended as follows:

"Aboveground tank" definition. Replace "§280.12 of this chapter" with "section 342L-1, HRS".

"Existing tank" definition. Replace "the effective date of the authorized used oil program for the State in which the tank is located" with "November 13, 2001".

"New tank" definition. Replace "the effective date of the authorized used oil program for the State in which the tank is located" with "November 13, 2001".

"Used oil collection center" definition. Delete "is registered/licensed/permitted/recognized by a state/county/municipal government to manage used oil and". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-4 Amendments to the incorporation of 40 C.F.R. part 279, subpart B. (a) The incorporation by reference of 40 C.F.R. section 279.10 is amended as follows:

(1) In 40 C.F.R. section 279.10(a), insert at the end of the paragraph: "For used oil sent for disposal, a hazardous waste determination shall be made in accordance with 40 C.F.R. section 262.11, as incorporated and amended in section 11-262.1-1."

(2) In 40 C.F.R. section 279.10(b)(2), add "of 40 C.F.R. part 261, as incorporated and amended in section 11-261.1-1," after "subpart D" and after the second instance of "subpart C".

(3) In 40 C.F.R. section 279.10, add a new subsection (j) to read: "(j) Oily water. Oily water, any water that is contaminated with more than de minimis quantities of used oil, is subject to regulation as used oil under this part."

(b) The incorporation by reference of 40 C.F.R. section 279.12 is amended as follows: in 40 C.F.R. section 279.12(b), delete ", except when such activity takes place in one of the states listed in §279.82(c)". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-5 Amendments to the incorporation of 40 C.F.R. part 279, subpart C. (a) The incorporation by reference of 40 C.F.R. section 279.20 is amended as follows:

(1) In 40 C.F.R. section 279.20(b), replace "(b)(1) through (5)" with "(b)(1) to (6)".

(2) In 40 C.F.R. section 279.20(b)(5), delete ", including the use of used oil as a dust suppressant,".

(3) In 40 C.F.R. section 279.20(b), add a new paragraph (6) to read: "(6) Used oil generators shall also comply with the requirements of section 11-279.1-12."

(b) The incorporation by reference of 40 C.F.R. section 279.22 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 279.22, replace "the Underground Storage Tank (40 CFR part 280) standards" with "the State's underground storage tank

standards and any applicable federal standards".

(2) In 40 C.F.R. section 279.22(b)(1), delete "and".

(3) In 40 C.F.R. section 279.22(b)(2), replace the period at the end with "; and".

(4) In 40 C.F.R. section 279.22(b), add a new paragraph (3) to read: "(3) Closed."

(5) Replace the introductory paragraph of 40 C.F.R. section 279.22(d) in its entirety to read: "(d) Response to releases. Upon detection of a release of used oil to the environment, a generator shall perform the following cleanup steps:"

(c) The incorporation by reference of 40 C.F.R. section 279.24 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 279.24, replace "EPA identification numbers" with "a State permit pursuant to section 11-279.1-14".

(2) In 40 C.F.R. section 279.24(a)(3), replace "is registered, licensed, permitted, or recognized by a state/county/municipal government" with "has obtained a state permit under section 11-279.1-14". [Eff 7/17/17; am and comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-6 Amendments to the incorporation of 40 C.F.R. part 279, subpart D. The incorporation by reference of 40 C.F.R. section 279.31 is amended as follows: replace 40 C.F.R. section 279.31(b)(2) in its entirety to read: "(2) Obtain a permit under section 11-279.1-14." [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-7 Amendments to the incorporation of 40 C.F.R. part 279, subpart E. (a) The incorporation by reference of 40 C.F.R. section 279.40 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 279.40(d), replace "(d)(1) through (5)" with "(d)(1) to (6)".

(2) In 40 C.F.R. section 279.40(d)(4) delete "and".

(3) In 40 C.F.R. section 279.40(d)(5), delete ", including the use of used oil as a dust suppressant," and replace the period at the end with "; and".

(4) In 40 C.F.R. section 279.40(d), add a new paragraph (6) to read: "(6) Used oil transporters are also subject to the requirements of sections 11-279.1-13 and 11-279.1-14."

(b) The incorporation by reference of 40 C.F.R. section 279.42 is amended as follows: replace 40 C.F.R. section 279.42(b) in its entirety to read: "(b) Mechanics of notification. A used oil transporter who has not received an EPA identification number may obtain one by notifying the department of their used oil activity by submitting a completed EPA Form 8700-12. To obtain EPA Form 8700-12, call the department at (808) 586-4226."

(c) The incorporation by reference of 40 C.F.R. section 279.43 is amended as follows:

(1) In 40 C.F.R. section 279.43(a)(1) and (2), replace "an EPA identification number" with "a permit under section 11-279.1-14".

(2) In 40 C.F.R. section 279.43(a)(3), replace "an EPA identification number" with "a permit pursuant to chapter 11-60.1 subchapter 4 or 5 that allows the burning of used oil".

(3) In 40 C.F.R. section 279.43(a)(4), add "who has obtained a permit pursuant to chapter 11-60.1 subchapter 4 or 5 that allows the

burning of used oil" at the end of the sentence.

(4) In 40 C.F.R. section 279.43(c)(3)(i), insert "to the Hawaii department of health's Hazard Evaluation and Emergency Response Office via the State Hospital at (808) 247-2191 after business hours or directly at (808) 586-4249 during business hours and" after "Give notice".

(5) In 40 C.F.R. section 279.43, add a new subsection (d) to read: "(d) Acceptable materials. Only used oil and used oil fuel shall be accepted during any pickup or delivery. The transporter shall not deliver any oil to any person with the knowledge that the oil will be improperly used or disposed of."

(d) The incorporation by reference of 40 C.F.R. section 279.44 is amended as follows: replace 40 C.F.R. section 279.44(b) in its entirety to read: "(b) The transporter must make this determination by testing the used oil by analytical or field test."

(e) The incorporation by reference of 40 C.F.R. section 279.45 is amended as follows:

(1) In 40 C.F.R. section 279.45, replace "the Underground Storage Tank (40 CFR part 280) standards" with "the State's underground storage tank standards and any applicable federal standards".

(2) In 40 C.F.R. section 279.45(c)(1), delete "and".

(3) In 40 C.F.R. section 279.45(c)(2), replace the period at the end with "; and".

(4) In 40 C.F.R. section 279.45(c), add a new paragraph (3) to read: "(3) Closed."

(5) In 40 C.F.R. section 279.45(h), replace the introductory paragraph in its entirety to read: "(h) Response to releases. Upon detection of a release of used oil to the environment, the owner/operator shall perform the following cleanup steps:" [Eff 7/17/17; am and comp SEP 30 2018] (Auth:

HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-8 Amendments to the incorporation of 40 C.F.R. part 279, subpart F. (a) The incorporation by reference of 40 C.F.R. section 279.50 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 279.50(b), replace "(b)(1) through (b)(5)" with "(b)(1) to (6)".

(2) In 40 C.F.R. section 279.50(b)(4), delete "and".

(3) In 40 C.F.R. section 279.50(b)(5), delete ", including the use of used oil as a dust suppressant," and replace the period at the end with "; and".

(4) In 40 C.F.R. section 279.50(b), Add a new paragraph (6) to read: "(6) Used oil processors/re-refiners are also subject to the requirements of sections 11-279.1-13 and 11-279.1-14."

(b) The incorporation by reference of 40 C.F.R. section 279.51 is amended as follows: replace 40 C.F.R. section 279.51(b) in its entirety to read: "(b) Mechanics of notification. A used oil processor/re-refiner who has not received an EPA identification number may obtain one by notifying the department of their used oil activity by submitting a completed EPA Form 8700-12. To obtain EPA Form 8700-12, call the department at (808) 586-4226."

(c) The incorporation by reference of 40 C.F.R. section 279.52 is amended as follows:

(1) Replace the introductory paragraph of 40 C.F.R. section 279.52(a)(2) in its entirety to read: "(2) Required equipment. All facilities shall be equipped with the following:"

(2) In 40 C.F.R. section 279.52(a)(4)(i) and (ii), delete ", unless such a device is not

required in paragraph (a)(2) of this section".

(3) In 40 C.F.R. section 279.52(a)(5), delete ", unless aisle space is not needed for any of these purposes".

(4) Replace the introductory paragraph of 40 C.F.R. section 279.52(b)(6)(iv)(B) in its entirety to read: "(B) He shall immediately notify the National Response Center (using their 24-hour toll free number 800/424-8802) and the Hawaii department of health's Hazard Evaluation and Emergency Response Office via the State Hospital at (808) 247-2191 after business hours or directly at (808) 586-4249 during business hours. The report shall include:"

(5) In 40 C.F.R. section 279.52(b)(6)(viii)(C), replace "Regional Administrator, and appropriate State and local authorities" with "director".

(d) The incorporation by reference of 40 C.F.R. section 279.53 is amended as follows: replace 40 C.F.R. section 279.53(b) in its entirety to read: "(b) The owner or operator must make this determination by testing the used oil by analytical or field test."

(e) The incorporation by reference of 40 C.F.R. section 279.54 is amended as follows:

(1) In 40 C.F.R. section 279.54, replace "the Underground Storage Tank (40 CFR part 280) standards" with "the State's underground storage tank standards and any applicable federal standards".

(2) In 40 C.F.R. section 279.54(b)(1), delete "and".

(3) In 40 C.F.R. section 279.54(b)(2), replace the period at the end with "; and".

(4) In 40 C.F.R. section 279.54(b), add a new paragraph (3) to read: "(3) Closed."

(5) Replace the introductory paragraph of 40 C.F.R. section 279.54(g) in its entirety to read: "(g) Response to releases. Upon detection of a release of used oil to the

environment, an owner/operator shall perform the following cleanup steps:"

(6) In 40 C.F.R. section 279.54(h)(1)(i), replace "under this chapter" with "under chapters 11-260.1 to 11-279.1".

(f) The incorporation by reference of 40 C.F.R. section 279.55 is amended as follows:

(1) 40 C.F.R. section 279.55(a)(1) and the introductory paragraph of 40 C.F.R. section 279.55(a)(2) are excluded from incorporation.

(2) In 40 C.F.R. section 279.55(a)(2)(i)(B), insert "and approved by the director" before the semicolon at the end of the sentence.

(3) In 40 C.F.R. section 279.55(a)(2)(iii), replace "; and" with a period.

(4) 40 C.F.R. section 279.55(a)(3) is excluded from incorporation.

(5) 40 C.F.R. section 279.55(b)(1) and the introductory paragraph of 40 C.F.R. section 279.55(b)(2) are excluded from incorporation.

(6) In 40 C.F.R. section 279.55(b)(2)(i)(B), insert "and approved by the director" before the semicolon at the end of the sentence.

(7) In 40 C.F.R. section 279.55(b)(2)(iv), replace "; and" with a period.

(8) 40 C.F.R. section 279.55(b)(3) is excluded from incorporation.

(g) The incorporation by reference of 40 C.F.R. section 279.57 is amended as follows:

(1) In the section heading of 40 C.F.R. section 279.57, delete "and reporting".

(2) In 40 C.F.R. section 279.57(a)(2)(i), delete "and" after the semicolon.

(3) In 40 C.F.R. section 279.57(a)(2)(ii), replace the period at the end with "; and".

(4) In 40 C.F.R. section 279.57(a)(2), add a new subparagragh (iii) to read: "(iii) Records of the equipment testing and maintenance required by 40 C.F.R. section 279.52(a)(3),

as incorporated and amended in this chapter."

(5) 40 C.F.R. section 279.57(b) is excluded from incorporation.

(h) The incorporation by reference of 40 C.F.R. section 279.58 is amended as follows: replace "an EPA identification number" with "a State permit pursuant to section 11-279.1-14". [Eff 7/17/17; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

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§11-279.1-9 Amendments to the incorporation of 40 C.F.R. part 279, subpart G. (a) The incorporation by reference of 40 C.F.R. section 279.60 is amended as follows:

(1) In 40 C.F.R. section 279.60(b)(4), delete "and".

(2) In 40 C.F.R. section 279.60(b)(5), delete ", including the use of used oil as a dust suppressant," and replace the period at the end with "; and".

(3) In 40 C.F.R. section 279.60(b), add a new paragraph (6) to read: "(6) Used oil burners are also subject to the clean air requirements of chapter 11-60.1."

(b) The incorporation by reference of 40 C.F.R. section 279.62 is amended as follows: replace 40 C.F.R. section 279.62(b) in its entirety to read: "(b) Mechanics of notification. A used oil burner who has not received an EPA identification number may obtain one by notifying the department of their used oil activity by submitting a completed EPA Form 8700-12. To obtain EPA Form 8700-12, call the department at (808) 586-4226."

(c) The incorporation by reference of 40 C.F.R. section 279.63 is amended as follows:

(1) Replace 40 C.F.R. section 279.63(b)(1) in its entirety to read: "(1) Testing the used oil by analytical or field test; or".

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(2) 40 C.F.R. section 279.63(b)(2) is excluded from incorporation.

(3) In 40 C.F.R. section 279.63(b)(3), replace "information" with "test results".

(d) The incorporation by reference of 40 C.F.R. section 279.64 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 279.64, replace "the Underground Storage Tank (40 CFR part 280) standards" with "the State's underground storage tank standards and any applicable federal standards".

(2) In 40 C.F.R. section 279.64(b)(1), delete "and".

(3) In 40 C.F.R. section 279.64(b)(2), replace the period at the end with "; and".

(4) In 40 C.F.R. section 279.64(b), add a new paragraph (3) to read: "(3) Closed."

(5) Replace the introductory paragraph of 40 C.F.R. section 279.64(g) in its entirety to read: "(g) Response to releases. Upon the detection of a release of used oil to the environment, a burner shall perform the following cleanup steps:" [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-10 Amendments to the incorporation of 40 C.F.R. part 279, subpart H. (a) The incorporation by reference of 40 C.F.R. section 279.72 is amended as follows:

(1) In 40 C.F.R. section 279.72(a), delete "or other information".

(2) In 40 C.F.R. section 279.72(b), delete "(or other information used to make the determination)".

(b) The incorporation by reference of 40 C.F.R. section 279.73 is amended as follows: replace 40 C.F.R. section 279.73(b) in its entirety to read: "(b)

A marketer who has not received an EPA identification number may obtain one by notifying the department of their used oil activity by submitting a completed EPA Form 8700-12. To obtain EPA Form 8700-12, call the department at (808) 586-4226." [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-11 Amendments to the incorporation of 40 C.F.R. part 279, subpart I. (a) The incorporation by reference of 40 C.F.R. section 279.80 is amended as follows: add a second sentence to read: "For used oil sent for disposal, a hazardous waste determination shall be made in accordance with 40 C.F.R. 262.11, as incorporated and amended in section 11-262.1-1."

(b) The incorporation by reference of 40 C.F.R. section 279.81 is amended as follows: in 40 C.F.R. section 279.81(b), replace "parts 257 and 258 of this chapter" with "40 C.F.R. part 257 and chapter 11-58.1".

(c) The incorporation by reference of 40 C.F.R. section 279.82 is amended as follows: replace 40 C.F.R. section 279.82 in its entirety to read: "§279.82 Use as a dust suppressant. The use of used oil as a dust suppressant is prohibited." [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-12 Recordkeeping requirement for used oil generators. Used oil generators shall keep a record of each shipment of used oil that is delivered to a used oil transporter, or to a used oil burner, processor/re-refiner, or disposal facility.

(1) Records of each delivery shall include:

(A) The name and address of the receiving facility or transporter;

(B) The EPA identification number of the receiving facility or transporter;
(C) The quantity of used oil delivered;
(D) The date of delivery; and
(E) Except as provided in paragraph (2), the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

(2) Intermediate rail transporters are not required to sign the record of delivery.

(3) The records described in paragraph (1) shall be maintained for at least three years.

[Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-13 Annual reporting requirement for used oil transporters and processors/re-refiners. (a) Each used oil transporter shall submit an annual report for the twelve-month period ending June 30. The report shall be submitted to the director not later than July 31 of each year. The report shall be completed on forms furnished by the director and shall contain the following information concerning used oil activities:

(1) The EPA identification number, name, and address of the used oil transporter.
(2) The quantity of used oil picked up.
(3) The quantities of used oil delivered to:
(A) Another used oil transporter;
(B) A used oil processing/re-refining facility;
(C) An off-specification used oil burner;
(D) An on-specification used oil burner; and
(E) A disposal facility.

(b) Each used oil processor/re-refiner shall submit an annual report for the twelve-month period ending June 30. The report shall be submitted to the

director not later than July 31 of each year. The report shall be completed on forms furnished by the director and shall contain the following information concerning used oil activities:

(1) The EPA identification number, name, and address of the used oil processor.

(2) The quantities of used oil accepted for processing/re-refining and the manner in which the used oil was processed/re-refined, including the specific processes employed.

(3) The quantities of used oil sent to:

(A) Another used oil processing/re-refining facility;

(B) An off-specification used oil burner;

(C) An on-specification used oil burner; and

(D) A disposal facility. [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-14 Used oil and used oil fuel permitting system. (a) No person shall own, operate, add, extend, or modify a used oil or used oil fuel transportation or processing/re-refining facility or used oil collection center without first obtaining a permit from the department, except as provided in subsection (b). A permit shall be issued in accordance with this section and part IV of chapter 342J, HRS.

(b) Facilities exempted under section 40 C.F.R. 279.40(a)(1) to (4), as incorporated and amended in this chapter, are not required to obtain a permit under this section. Used oil collection centers that collect oil exclusively from household "do-it-yourselfer" generators exempted from regulation by 40 C.F.R. section 279.20(a)(1), as incorporated and amended in this chapter, are not required to obtain a permit under this section.

(c) General requirements.

(1) An application for a used oil or used oil fuel permit shall be completed on forms furnished by the director.

(2) The applicant shall be the owner or operator of the facility. Each application shall contain the original signature of the applicant and shall constitute an acknowledgment that the applicant will assume responsibility for complying with this chapter and part IV of chapter 342J, HRS, with respect to the construction and operation of the facility. The application shall be signed by one of the following:

(A) In the case of a corporation, by a principal executive officer of at least the level of vice president;

(B) In the case of a partnership, by a general partner;

(C) In the case of a sole proprietorship, by the proprietor; or

(D) In the case of a county, state, or federal entity, by either a principal executive officer, ranking elected official, or other duly authorized employee.

(3) All permit applicants shall pay a permit filing fee as required by subsection (d)(8).

(d) General conditions.

(1) The director may issue a permit that contains a requirement that the permittee complies with certain conditions.

(2) The director may add, delete, or modify any conditions on any permits.

(3) The director may grant a permit for any term, not exceeding five years, and upon application may renew a permit from time to time for a term not exceeding five years, if such is in the public interest.

(4) The permittee may request a modification of any permit condition provided that:

(A) A justification is provided to the director with the request; and
(B) No modification will be effective unless approved by the director.

(5) A permit shall not be transferred without a written application to the director by the new owner and without written approval by the director. A permit can be transferred only under the following conditions:
(A) There is no change in the operations manual; and
(B) There is a change in ownership only.

(6) Except for a court-ordered termination or termination by order of the department, all permittees shall notify the director in writing of the facility's termination of operation within ninety days of the permanent termination of the operation of a used oil facility.

(7) A person shall not willfully alter, forge, counterfeit, or falsify a permit.

(8) The permit filing fee shall be subject to the following requirements:
(A) The permit filing fee for each initial application, renewal, and modification request to DOH shall be as follows:
(i) Processor permit or collection center permit: $250.
(ii) Processor and transporter permit or collection center and transporter permit: $300.
(iii) Transporter permit: $50.
(B) There shall be no fee for permit modifications made at the director's initiative.
(C) The permit filing fee will not be refunded nor applied to any subsequent application.
(D) Fees shall be made payable to the State of Hawaii.

(e) Application for processors/re-refiners.

(1) All applications for a processing/re-refining permit shall comply with subsection (c).

(2) An application for processing/re-refining shall also include but is not limited to an operations manual. The manual shall include:

(A) A general description of the facility. This shall include, at a minimum, the name of the owner and operator, location, site information, and plot and site location plans;

(B) A description of the operations of the facility. This section shall include, at a minimum, a one-line process flow diagram, design parameters, operational units and procedures, and storage areas;

(C) A control plan for the facility. This shall describe access to the facility, drainage systems, and fire, vector, odor, and dust controls;

(D) A sampling and analysis plan for the facility. This shall include a procedure for analysis for constituents of specification fuel. The constituents and allowable levels are specified in 40 C.F.R. section 279.11, as incorporated and amended in this chapter;

(E) A description of the reporting and recordkeeping procedures for the facility that meets the requirements of section 11-279.1-13; and

(F) A closure plan to ensure that closure will comply with 40 C.F.R. section 279.54(h), as incorporated and amended in this chapter.

(f) Application for transporters.

(1) All applications for a transportation permit shall comply with subsection (c).

(2) The following shall be submitted:

(A) A site plan of appropriate scale;
(B) An operations narrative describing the proposed activity;
(C) A plan describing suitable means to prevent and control fires, spills, releases, and stormwater runoff; and
(D) An emergency response plan.

(g) Application for collection centers.
(1) All applications for a collection center permit shall comply with subsection (c).
(2) The following shall be submitted:
(A) A site plan of appropriate scale;
(B) An operations narrative describing the proposed activity;
(C) A plan describing suitable means to prevent and control fires, spills, releases, and stormwater runoff; and
(D) An emergency response plan.

(h) Any person who violates any provision of this section shall be subject to the penalties provided in chapter 342J, HRS. [Eff 7/17/17; comp SEP 30 2018] (Auth: HRS §§342J-4, 342J-13, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-9, 342J-10, 342J-31, 342J-35, 342J-52, 342J-53, 342J-54)

DEPARTMENT OF HEALTH

The Amendment and Compilation of Chapters 11-260.1, 11-261.1, 11-262.1, 11-263.1, 11-264.1, 11-265.1, 11-266.1, 11-268.1, 11-270.1, 11-271.1, 11-273.1, and 11-279.1, Hawaii Administrative Rules, on the Summary Page dated March 1, 2018, occurred on March 1, 2018 following a public hearing held on February 16, 2018, after public notice was given in the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, West Hawaii Today, and The Maui News on January 12, 2018.

The foregoing rulemaking actions shall take effect ten days after filing with the Office of the Lieutenant Governor.

Virginia Pressler

VIRGINIA PRESSLER, M.D.
Director of Health

David Y. Ige

DAVID Y. IGE
Governor of Hawaii

Dated: 09-20-2018

APPROVED AS TO FORM:

Wade H. Hargrove III
Deputy Attorney General

Filed

Added

16) HAR Chapter 11-280.1

Relating to: **Underground Storage Tanks**

DEPARTMENT OF HEALTH

Repeal of Chapter 11-281 and Adoption of
Chapter 11-280.1
Hawaii Administrative Rules

June 22, 2018

SUMMARY

1. Chapter 11-281, Hawaii Administrative Rules, is repealed.

2. Chapter 11-280.1, Hawaii Administrative Rules, entitled "Underground Storage Tanks", is adopted.

3271

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-281

UNDERGROUND STORAGE TANKS

REPEALED

§§11-281-01 to 11-281-131 Repealed. [R] JUL 15 2018

3271

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-280.1

UNDERGROUND STORAGE TANKS

Subchapter 1 Program Scope and Installation Requirements for Partially Excluded UST Systems

Subchapter 2 UST Systems: Design, Construction, and Installation

Subchapter 3 General Operating Requirements

Subchapter 4 Release Detection

Subchapter 5 Release Reporting, Investigation, and Confirmation

Subchapter 8 Financial Responsibility

Subchapter 9 Lender Liability

Historical note: This chapter is based substantially upon chapter 11-281. [Eff 1/28/00; am and comp 8/09/13; R JUL 15 2018]

SUBCHAPTER 1

PROGRAM SCOPE AND INSTALLATION REQUIREMENTS FOR PARTIALLY EXCLUDED UST SYSTEMS

§§11-280.1-1 to 11-280.1-9 (Reserved.)

§11-280.1-10 Applicability. (a) The

requirements of this chapter apply to all owners and operators of an UST system as defined in section 11-280.1-12 except as otherwise provided in this section.

(1) Airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and UST systems that store fuel solely for use by emergency power generators must meet the requirements of this chapter as follows:

(A) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks must meet all applicable requirements of this chapter, except that those installed before the effective date of these rules must meet the applicable requirements of subchapters 4, 8, 10, and 12 no later than one year after the effective date of these rules.

(B) UST systems that store fuel solely for use by emergency power generators must meet all applicable requirements of this chapter except that those installed before August 9, 2013 must meet the applicable requirements of subchapter 4 no later than one year after the effective date of these rules.

(2) Any UST system listed in subsection (c) must meet the requirements of section 11-280.1-11.

(b) Exclusions. The following UST systems are excluded from the requirements of this chapter:

(1) Any UST system holding hazardous wastes listed or identified under chapter 342J, Hawaii Revised Statutes, or the rules adopted thereunder, or Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances;

(2) Any wastewater treatment tank system that is part of a wastewater treatment facility

regulated under chapter 342D, Hawaii Revised Statutes, or Section 402 or 307(b) of the Clean Water Act;

(3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;

(4) Any UST system whose capacity is one hundred ten gallons or less;

(5) Any UST system that contains a de minimis concentration of regulated substances; and

(6) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(c) Partial Exclusions. Subchapters 2, 3, 4, 5, 7, 10, and 12 do not apply to:

(1) Wastewater treatment tank systems not covered under subsection (b)(2);

(2) Aboveground storage tanks associated with:

(A) Airport hydrant fuel distribution systems; and

(B) UST systems with field-constructed tanks;

(3) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following); and

(4) Any UST system that is part of an emergency generator system at nuclear power generation facilities licensed by the Nuclear Regulatory Commission and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including but not limited to 10 C.F.R. part 50. [Eff JUL 15 2018] (Auth: HRS §342L-3) (Imp: HRS §342L-3)

§11-280.1-11 Installation requirements for partially excluded UST systems. (a) Owners and operators must install an UST system listed in section

11-280.1-10(c)(1), (3), or (4) storing regulated substances (whether of single or double wall construction) that meets the following requirements:

(1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(2) Is cathodically protected against corrosion, constructed of non-corrodible material, steel clad with a non-corrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) Is constructed or lined with material that is compatible with the stored substance.

(b) Notwithstanding subsection (a), an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this subsection for the remaining life of the tank. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-12 Definitions. When used in this chapter, the following terms have the meanings given below:

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

"Airport hydrant fuel distribution system" (also called "airport hydrant system") means an UST system which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants (fill stands). The airport

hydrant system begins where fuel enters one or more tanks from an external source such as a pipeline, barge, rail car, or other motor fuel carrier.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

"Belowground release" means any release to the subsurface of the land and to groundwater. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

"Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"Class A operator" means the individual who has primary responsibility to operate and maintain the UST system in accordance with applicable requirements established by the department. The Class A operator typically manages resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

"Class B operator" means the individual who has

day-to-day responsibility for implementing applicable regulatory requirements established by the department. The Class B operator typically implements in-field aspects of operation, maintenance, and associated recordkeeping for the UST system.

"Class C operator" means the individual responsible for initially addressing emergencies presented by a spill or release from an UST system. The Class C operator typically controls or monitors the dispensing or sale of regulated substances.

"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

"Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

"Consumptive use" with respect to heating oil means consumed on the premises.

"Containment sump" means a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps, and related components in the containment area. Containment sumps may be single walled or secondarily contained and located at the top of tank (tank top or submersible turbine pump sump), underneath the dispenser (under-dispenser containment sump), or at other points in the piping run (transition or intermediate sump).

"Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the

National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"Department" means the state department of health.

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

"Director" means the director of the state department of health.

"Dispenser" means equipment located aboveground that dispenses regulated substances from the UST system.

"Dispenser system" means the dispenser and the equipment necessary to connect the dispenser to the underground storage tank system. The equipment necessary to connect the dispenser to the underground storage tank system includes check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are underneath the dispenser and connect the dispenser to the underground piping.

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"EPA" means the United States Environmental Protection Agency.

"Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Exposure assessment" means a determination regarding the extent of exposure of, or potential for exposure of, individuals to regulated substances from a release from an UST or tank system. An exposure

assessment shall be based on factors such as the nature and extent of contamination, the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, dermal exposure, soil ingestion, and food chain contamination), the size of the community or communities within the likely pathways of exposure, an analysis of expected human exposure levels with respect to short-term and long-term health effects associated with identified contaminants, and any available recommended exposure or tolerance limits for the contaminants.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. Farm includes fish hatcheries, rangeland, and nurseries with growing operations.

"Field-constructed tank" means a tank constructed in the field. For example, a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field is considered field-constructed.

"Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Free product" refers to a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water).

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Hazardous substance" means a hazardous substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act

of 1980, except any substance regulated as a hazardous waste under chapter 342J, Hawaii Revised Statutes, or the rules adopted thereunder, or Subtitle C of the Solid Waste Disposal Act.

"Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance or any mixture of such substances and petroleum, and that is not a petroleum UST system.

"Heating oil" means petroleum that is No. 1, No. 2, No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

"Motor fuel" means a complex blend of hydrocarbons typically used in the operation of a motor engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any blend containing one or more of these substances (e.g., motor gasoline blended with alcohol).

"Noncommercial purposes" with respect to motor fuel means not for resale.

"On the premises where stored" with respect to heating oil means UST systems located on the same

property where the stored heating oil is used.

"Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under subchapter 7.

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

"Owner" means:

(1) In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and

(2) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

"Permit" means written authorization, as provided for in section 342L-4, Hawaii Revised Statutes, from the director to install or operate an UST or tank system. A permit authorizes owners or operators to install and operate an UST or tank system in a manner, or to do an act, not forbidden by chapter 342L, Hawaii Revised Statutes, or by this chapter, but requiring review by the department.

"Person" means an individual, trust, estate, firm, joint stock company, corporation (including a government corporation), partnership, association, commission, consortium, joint venture, commercial entity, the state or a county, the United States government, federal agency, interstate body, or any other legal entity.

"Petroleum" means petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

"Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

"Pipeline facilities" (including gathering lines) means pipe rights-of-way and any associated equipment, facilities, or buildings.

"Regulated substance" means hazardous substances, petroleum, and any other substance designated by the department that, when released into the environment, may present substantial danger to human health, welfare, or the environment. The term regulated substance includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an UST system into groundwater, surface water, or subsurface soils.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or a leak has occurred into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

"Repair" means to restore to proper operating condition a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other UST system component that has caused a release of product from the UST system or has failed to function properly.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"Secondary containment" or "secondarily contained" means a release prevention and release detection system for a tank or piping. This system has an inner and outer barrier with an interstitial space that is monitored for leaks. This term includes containment sumps when used for interstitial monitoring of piping.

"Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Storm water collection system" or "wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

"Temporary closure" or "temporarily closed" means that owners and operators do not deposit regulated substances into the UST or tank system nor dispense regulated substances from the UST or tank system for sixty days or longer, except for UST systems that store fuel solely for use by emergency power generators and UST systems with field-constructed tanks. For UST systems that store fuel solely for use by emergency power generators and UST systems with

field-constructed tanks, "temporary closure" or "temporarily closed" means that the UST or tank system is empty, as defined in section 11-280.1-70(a), and owners and operators do not deposit regulated substances into the UST or tank system for sixty days or longer.

"Under-dispenser containment" or "UDC" means containment underneath a dispenser system designed to prevent leaks from the dispenser and piping within or above the UDC from reaching soil, groundwater, and surface water.

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any belowground release.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is ten percent or more beneath the surface of the ground. This term does not include any:

(1) Farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes;
(2) Tank used for storing heating oil for consumptive use on the premises where stored;
(3) Septic tank;
(4) Pipeline facility (including gathering lines):
    (A) Which is regulated under 49 U.S.C. chapter 601; or
    (B) Which is an intrastate pipeline facility regulated under state laws as provided in 49 U.S.C. chapter 601, and which is determined by the Secretary of Transportation to be connected to a

pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;

(5) Surface impoundment, pit, pond, or lagoon;
(6) Storm water or wastewater collection system;
(7) Flow-through process tank;
(8) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
(9) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term underground storage tank or UST does not include any pipes connected to any tank which is described in paragraphs (1) to (9).

"Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Variance" means a special written authorization from the director to own, install, or operate an UST or tank system in a manner deviating from, or to do an act that deviates from, the requirements of this chapter that are more stringent than 40 C.F.R. part 280.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods. [Eff JUL 15 2018] (Auth: HRS §342L-3) (Imp: HRS §342L-3)

§11-280.1-13 Installation requirements for

partially excluded UST systems--codes of practice. The following codes of practice may be used as guidance for complying with section 11-280.1-11:

(1) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection";

(2) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems";

(3) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; or

(4) Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems". [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§§11-280.1-14 to 11-280.1-19 (Reserved.)

SUBCHAPTER 2

UST SYSTEMS: DESIGN, CONSTRUCTION, AND INSTALLATION

§11-280.1-20 Performance standards for UST systems. (a) In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, owners and operators of UST systems must meet all applicable requirements of this subchapter. UST systems must meet the requirements of

this section as follows:

(1) UST systems installed after December 22, 1988, other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must meet the requirements of this section, except as specified in subsection (g).

(2) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks installed on or after the effective date of these rules must meet the requirements of this section.

(b) Tanks. Each tank must be properly designed, constructed, and installed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(1) The tank is constructed of fiberglass-reinforced plastic; or

(2) The tank is constructed of steel and cathodically protected in the following manner:

(A) The tank is coated with a suitable dielectric material;

(B) Field-installed cathodic protection systems are designed by a corrosion expert;

(C) Impressed current systems are designed to allow determination of current operating status as required in section 11-280.1-31(3); and

(D) Cathodic protection systems are operated and maintained in accordance with section 11-280.1-31 or according to guidelines established by the department; or

(3) The tank is constructed of steel and clad or jacketed with a non-corrodible material; or

(4) The tank is constructed of metal without additional corrosion protection measures

provided that:

(A) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and

(B) Owners and operators maintain records that demonstrate compliance with the requirements of subparagraph (A) for the remaining life of the tank; or

(5) The tank construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than paragraphs (1) to (4).

(c) Piping. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, installed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(1) The piping is constructed of a non-corrodible material; or

(2) The piping is constructed of steel and cathodically protected in the following manner:

(A) The piping is coated with a suitable dielectric material;

(B) Field-installed cathodic protection systems are designed by a corrosion expert;

(C) Impressed current systems are designed to allow determination of current operating status as required in section 11-280.1-31(3); and

(D) Cathodic protection systems are operated and maintained in accordance with section 11-280.1-31 or guidelines established by the department; or

(3) The piping is constructed of metal without additional corrosion protection measures provided that:
  (A) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and
  (B) Owners and operators maintain records that demonstrate compliance with the requirements of subparagraph (A) for the remaining life of the piping; or

(4) The piping construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in paragraphs (1) to (3).

(d) Spill and overfill prevention equipment.

(1) Except as provided in paragraphs (2) and (3), to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:
  (A) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and
  (B) Overfill prevention equipment that will:
    (i) Automatically shut off flow into the tank when the tank is no more than ninety-five percent full;
    (ii) Alert the transfer operator when the tank is no more than ninety percent full by restricting the flow into the tank or triggering a

high-level alarm; or

(iii) Restrict flow thirty minutes prior to overfilling, alert the transfer operator with a high-level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

(2) Owners and operators are not required to use the spill and overfill prevention equipment specified in paragraph (1) if:

(A) Alternative equipment is used that is determined by the department to be no less protective of human health and the environment than the equipment specified in paragraph (1)(A) or (B); or

(B) The UST system is filled by transfers of no more than twenty-five gallons at one time.

(3) Flow restrictors used in vent lines may not be used to comply with paragraph (1)(B) when overfill prevention is installed or replaced after the effective date of these rules.

(4) Overfill prevention methods that rely on the use of alarms must have the alarms clearly labeled "overfill alarm" and located where the delivery person can clearly see and hear the alarm in order to immediately stop delivery of the product.

(5) Spill and overfill prevention equipment must be periodically tested or inspected in accordance with section 11-280.1-35.

(e) Installation. The UST system must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

(f) Certification of installation. All owners

and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with subsection (e) by providing a certification of compliance on the "Certification of Underground Storage Tank Installation" form prescribed by the director and in accordance with section 11-280.1-325(d).

(1) The installer has been certified by the tank and piping manufacturers;

(2) The installer has been certified or licensed by the department;

(3) The installation has been inspected and certified by a licensed professional engineer with education and experience in UST system installation;

(4) The installation has been inspected and approved by the department;

(5) All work listed in the manufacturer's installation checklists has been completed and the checklists maintained; or

(6) The owner and operator have complied with another method for ensuring compliance with subsection (e) that is determined by the department to be no less protective of human health and the environment.

(g) Secondary containment.

(1) UST systems installed on or after August 9, 2013, other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must be provided with secondary containment that meets the requirements of section 11-280.1-24, except for suction piping that meets the requirements of section 11-280.1-41(b)(6).

(2) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks must be provided with secondary containment that meets the requirements of section 11-280.1-24, except for:

(A) Suction piping that meets the requirements of section

11-280.1-41(b)(6);
(B) Piping associated with UST systems with field-constructed tanks greater than 50,000 gallons; and
(C) Piping associated with airport hydrant systems. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-21 Upgrading of UST systems. (a) All UST systems must comply with one of the following requirements:
(1) UST system performance standards in section 11-280.1-20(b) to (d);
(2) For airport hydrant fuel distribution systems and UST systems with field-constructed tanks installed before the effective date of these rules:
(A) The system performance standards in section 11-280.1-20(b) and (c); and
(B) Not later than one year after the effective date of these rules, the system performance standards under section 11-280.1-20(d); or
(3) Closure requirements under subchapter 7.

(b) UST systems other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks: Not later than ten years after the effective date of these rules, tanks and piping installed before August 9, 2013 must be provided with secondary containment that meets the requirements of section 11-280.1-24, except for suction piping that meets the requirements of section 11-280.1-41(b)(6).

(c) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks: Not later than twenty years after the effective date of these rules, tanks and piping installed before the effective date of these rules must be provided with secondary containment that meets the requirements of section 11-280.1-24 or must utilize a design which the

director determines is protective of human health and the environment, except for:

(1) Suction piping that meets the requirements of section 11-280.1-41(b)(6);

(2) Piping associated with UST systems with field-constructed tanks greater than 50,000 gallons; and

(3) Piping associated with airport hydrant systems. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-22 (Reserved.)

§11-280.1-23 Tank and piping design for hazardous substance UST systems. Owners and operators of hazardous substance UST systems must provide secondary containment for tanks and underground piping that meets the requirements of section 11-280.1-24. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-24 Secondary containment design. (a) Secondary containment systems must be designed, constructed, and installed to:

(1) Contain regulated substances leaked from the primary containment until they are detected and removed;

(2) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

(3) Be checked for evidence of a release at least every thirty-one days.

(b) Double-walled tanks must be designed, constructed, and installed to:

(1) Contain a leak from any portion of the inner tank within the outer wall; and

(2) Detect the failure of the inner wall.

(c) External liners (including vaults) must be designed, constructed, and installed to:

(1) Contain one hundred percent of the capacity of the largest tank within its boundary;

(2) Prevent precipitation and groundwater intrusion from interfering with the ability to contain or detect a leak or release of regulated substances; and

(3) Surround the UST completely to effectively prevent lateral and vertical migration of regulated substances. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-25 Under-dispenser containment. (a) Dispenser systems installed on or after August 9, 2013, other than for airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must have under-dispenser containment that meets the requirements in subsection (c).

(b) Dispenser systems installed on or after the effective date of these rules must have under-dispenser containment that meets the requirements in subsection (c).

(c) Under-dispenser containment required by subsection (a) or (b) must:

(A) Be liquid-tight on its sides, bottom, and at any penetrations;

(B) Be compatible with the substance conveyed by the piping;

(C) Allow for visual inspection and access to the components in the containment system; and

(D) Be monitored for leaks from the dispenser system with a sensing device that signals the operator of the presence of regulated substances. [Eff JUL 15 2018] (Auth:

HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-26 Performance standards and design for UST systems--codes of practice. (a) The following codes of practice may be used to comply with section 11-280.1-20(b)(1):

(1) Underwriters Laboratories Standard 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures"; or

(2) Underwriter's Laboratories of Canada S615, "Standard for Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids".

(b) The following codes of practice may be used to comply with section 11-280.1-20(b)(2):

(1) Steel Tank Institute "Specification STI-P3® Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks";

(2) Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks";

(3) Underwriters Laboratories of Canada S603, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids", and S603.1, "Standard for External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids", and S631, "Standard for Isolating Bushings for Steel Underground Tanks Protected with External Corrosion Protection Systems";

(4) Steel Tank Institute Standard F841, "Standard for Dual Wall Underground Steel Storage Tanks"; or

(5) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic

Protection", and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids".

(c) The following codes of practice may be used to comply with section 11-280.1-20(b)(3):

(1) Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks";

(2) Steel Tank Institute ACT-100® Specification F894, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks";

(3) Steel Tank Institute ACT-100-U® Specification F961, "Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks"; or

(4) Steel Tank Institute Specification F922, "Steel Tank Institute Specification for Permatank®".

(d) The following codes of practice may be used to comply with section 11-280.1-20(c)(1):

(1) Underwriters Laboratories Standard 971, "Nonmetallic Underground Piping for Flammable Liquids"; or

(2) Underwriters Laboratories of Canada Standard S660, "Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids".

(e) The following codes of practice may be used to comply with section 11-280.1-20(c)(2):

(1) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems";

(2) Underwriters Laboratories Subject 971A, "Outline of Investigation for Metallic Underground Fuel Pipe";

(3) Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and

Dispensing Systems";

(4) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems"; or

(5) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection".

(f) Tank and piping system installation practices and procedures described in the following codes of practice may be used to comply with the requirements of section 11-280.1-20(e):

(1) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System";

(2) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or

(3) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" and Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages".

(g) When designing, constructing, and installing airport hydrant systems and UST systems with field-constructed tanks, owners and operators may use military construction criteria, such as Unified Facilities Criteria (UFC) 3-460-01, "Petroleum Fuel Facilities". [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§§11-280.1-27 to 11-280.1-29 (Reserved.)

SUBCHAPTER 3

GENERAL OPERATING REQUIREMENTS

3271

§11-280.1-30 Spill and overfill control. (a) Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

(b) The owner and operator must report, investigate, and clean up any spills and overfills in accordance with section 11-280.1-53. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-31 Operation and maintenance of corrosion protection. All owners and operators of metal UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented until the UST system is permanently closed or undergoes a change-in-service pursuant to section 11-280.1-71:

(1) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

(2) All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(A) Frequency. All cathodic protection systems must be tested within six months of installation and at least every three years thereafter; and

(B) Inspection criteria. The criteria that

are used to determine that cathodic protection is adequate as required by this section must be in accordance with a code of practice developed by a nationally recognized association.

(3) UST systems with impressed current cathodic protection systems must also be inspected every sixty days to ensure the equipment is operating properly.

(4) For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained, in accordance with section 11-280.1-34, to demonstrate compliance with the performance standards in this section. These records must provide the following:

(A) The results of the last three inspections required in paragraph (3); and

(B) The results of testing from the last two inspections required in paragraph (2). [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-32 Compatibility. (a) Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.

(b) Owners and operators must notify the department at least thirty days prior to switching to a regulated substance containing greater than ten percent ethanol, greater than twenty percent biodiesel, or any other regulated substance identified by the department. In addition, owners and operators with UST systems storing these regulated substances must meet one of the following:

(1) Demonstrate compatibility of the UST system (including the tank, piping, containment sumps, pumping equipment, release detection

equipment, spill equipment, and overfill equipment). Owners and operators may demonstrate compatibility of the UST system by using one of the following options:

(A) Certification or listing of UST system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or

(B) Equipment or component manufacturer approval. The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer; or

(2) Use another option determined by the department to be no less protective of human health and the environment than the options listed in paragraph (1).

(c) Owners and operators must maintain records in accordance with section 11-280.1-34(d) documenting compliance with subsection (b) for as long as the UST system is used to store the regulated substance. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-33 Repairs allowed. (a) Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must meet the following requirements:

(1) Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory;

(2) Repairs to fiberglass-reinforced plastic

tanks may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory;

(3) Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Non-corrodible pipes and fittings may be repaired in accordance with the manufacturer's specifications;

(4) Prior to the return to use of a repaired UST system, any repaired USTs must pass a tank tightness test in accordance with section 11-280.1-43(3);

(5) Prior to the return to use of a repaired UST system, any repaired piping that routinely contains product must pass a line tightness test in accordance with section 11-280.1-44(2);

(6) Prior to return to use of a repaired UST system, repairs to secondary containment areas of tanks and piping used for interstitial monitoring, containment sumps used for interstitial monitoring of piping, and containment walls must have the secondary containment tested for integrity using vacuum, pressure, or liquid methods in accordance with requirements developed by the manufacturer, a code of practice developed by a nationally recognized association or independent testing laboratory, or requirements established by the department;

(7) Within six months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with section 11-280.1-31(2) and (3) to ensure that it is operating properly; and

(8) Prior to the return to use of repaired spill or overfill prevention equipment, the

repaired spill or overfill prevention equipment must be tested or inspected, as appropriate, in accordance with section 11-280.1-35 to ensure it is operating properly.

(b) UST system owners and operators must maintain records, in accordance with section 11-280.1-34, of each repair until the UST system is permanently closed or undergoes a change-in-service pursuant to section 11-280.1-71. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-34 Notification, reporting, and recordkeeping. (a) Notification. Owners and operators shall notify the department of any of the following changes in information relating to an UST or tank system by submitting the "Notification for Underground Storage Tanks" form prescribed by the director:

(1) Planned permanent closure or change-in-service, scheduled excavation work for permanent closure or change-in-service, or completed closure or change-in-service;
(2) Temporary closure or the return to currently-in-use status;
(3) Changes in product dispensing method, dispenser, or under dispenser containment;
(4) Changes in financial responsibility mechanism;
(5) Changes in leak detection method;
(6) Changes in spill and overfill prevention method;
(7) Changes in piping;
(8) Changes in type of regulated substances stored;
(9) Changes in corrosion protection mechanism; and
(10) Installation of or changes in secondary containment.

(b) Timing of notification. Owners and operators shall submit the notifications required in subsection (a) within thirty days following any of the changes requiring notification, except that:

(1) Notification of planned permanent closure or change-in-service must be received by the department at least thirty days before commencement of excavation work for closure or change-in-service;

(2) Notification of scheduled excavation work for permanent closure or change-in-service must be received by the department at least seven days before the scheduled work date;

(3) Notification of change in type of regulated substance stored to a regulated substance containing greater than ten percent ethanol or greater than twenty percent biodiesel must be received by the department at least thirty days before the change; and

(4) Notification of temporary closure must be received by the department within thirty days of the UST system having met the definition of temporary closure in section 11-280.1-12.

(c) Reporting. Owners and operators must submit the following information to the department:

(1) Reports of all releases including suspected releases (sections 11-280.1-50 and 11-280.1-52), spills and overfills (section 11-280.1-53), and confirmed releases (section 11-280.1-61);

(2) Release response actions planned or taken, including initial abatement measures (section 11-280.1-62), initial site characterization (section 11-280.1-63), free product removal (section 11-280.1-64), investigation of soil and groundwater cleanup (section 11-280.1-65), and corrective action plan (section 11-280.1-66)

(3) Quarterly release response reports (section 11-280.1-65.2);

(4) Current evidence of financial responsibility

as required in section 11-280.1-110; and

(5) Notice of changes in Designated Class A or B Operators (section 11-280.1-241(c)).

(d) Recordkeeping. Owners and operators must maintain the following information:

(1) A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (section 11-280.1-20(b)(4); section 11-280.1-20(c)(3));

(2) Documentation of operation of corrosion protection equipment (section 11-280.1-31(4));

(3) Documentation of compatibility for UST systems (section 11-280.1-32(c));

(4) Documentation of UST system repairs (section 11-280.1-33(b));

(5) Documentation of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping (section 11-280.1-35(b));

(6) Documentation of periodic walkthrough inspections (section 11-280.1-36(b));

(7) Documentation of compliance with under-dispenser containment sensing device requirements (section 11-280.1-37(b));

(8) Documentation of compliance with release detection requirements (section 11-280.1-45);

(9) Results of the site investigation conducted at permanent closure or change-in-service (section 11-280.1-74);

(10) Documentation of operator training (section 11-280.1-245);

(11) Permits or variances or both, including all documentation, as specified in section 11-280.1-334(a); and

(12) Evidence of current financial assurance mechanisms used to demonstrate financial responsibility (section 11-280.1-111).

(e) Availability and maintenance of records.

(1) Owners and operators must keep the required records at the UST site or an alternative location approved by the department.

(2) Owners and operators must make the records immediately available for inspection by the department at the UST site.

(3) Permanent closure records required under section 11-280.1-74 may be maintained or submitted to the department as provided in section 11-280.1-74.

(f) Owners and operators of UST systems must cooperate fully with inspections, monitoring, and testing conducted by the department, as well as requests by the department for document submission, testing, and monitoring by the owner or operator pursuant to chapter 342L, Hawaii Revised Statutes.

[Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-7.5) (Imp: HRS §§342L-3, 342L-7, 342L-7.5, 342L-30)

§11-280.1-35 Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment. (a) Owners and operators of UST systems with spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping must meet these requirements to ensure the equipment is operating properly and will prevent releases to the environment:

(1) Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) must prevent releases to the environment by meeting one of the following:

(A) The equipment is double walled and the integrity of both walls is periodically monitored at a frequency not less than once every thirty-one days. Owners and operators must begin meeting the requirements of subparagraph (B) and

conduct a test within thirty days of discontinuing periodic monitoring of this equipment; or

(B) The spill prevention equipment is tested at least once every three hundred sixty-five days to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

(i) Requirements developed by the manufacturer. (Note: Owners and operators may use this option only if the manufacturer has developed requirements.);

(ii) Code of practice developed by a nationally recognized association or independent testing laboratory; or

(iii) Requirements determined by the department to be no less protective of human health and the environment than the requirements listed in clauses (i) and (ii).

(2) Containment sumps used for interstitial monitoring of piping must prevent releases to the environment by meeting one of the following:

(A) The equipment is double walled and the integrity of both walls is periodically monitored at a frequency not less than annually. Owners and operators must begin meeting the requirements of subparagraph (B) and conduct a test within thirty days of discontinuing periodic monitoring of this equipment; or

(B) The containment sumps used for interstitial monitoring of piping are tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid

testing in accordance with one of the criteria in paragraph (1)(B)(i) to (iii).

(3) Overfill prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in section 11-280.1-20(d) and will activate when regulated substance reaches that level. Inspections must be conducted in accordance with one of the criteria in paragraph (1)(B)(i) to (iii).

(b) Owners and operators must maintain records as follows (in accordance with section 11-280.1-34) for spill prevention equipment, containment sumps used for interstitial monitoring of piping, and overfill prevention equipment:

(1) All records of testing or inspection must be maintained for three years; and

(2) For spill prevention equipment not tested every three hundred sixty-five days and containment sumps used for interstitial monitoring of piping not tested every three years, documentation showing that the prevention equipment is double walled and the integrity of both walls is periodically monitored must be maintained for as long as the equipment is periodically monitored.

[Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-7.5, 342L-32) (Imp: HRS §§342L-3, 342L-7.5, 342L-32)

§11-280.1-36 Periodic operation and maintenance walkthrough inspections. (a) To properly operate and maintain UST systems, beginning not later than one year after the effective date of these rules, owners and operators must conduct walkthrough inspections that, at a minimum, check the following equipment as specified below:

(1) Every thirty-one days:
  (A) Spill prevention equipment:
    (i) Visually check for damage;
    (ii) Remove liquid or debris;
    (iii) Check for and remove obstructions in the fill pipe;
    (iv) Check the fill cap to make sure it is securely on the fill pipe; and
    (v) For double walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area; and
  (B) Release detection equipment:
    (i) Check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present; and
    (ii) Ensure records of release detection testing are reviewed and current;
(2) Annually:
  (A) Containment sumps:
    (i) Visually check for damage, leaks to the containment area, or releases to the environment;
    (ii) Remove liquid (in contained sumps) or debris; and
    (iii) For double walled sumps with interstitial monitoring, check for a leak in the interstitial area; and
  (B) Hand held release detection equipment: Check devices such as tank gauge sticks or groundwater bailers for operability and serviceability;
(3) For UST systems receiving deliveries at intervals greater than every thirty-one days, spill prevention equipment may be checked in accordance with paragraph (1)(A) prior to each delivery; and
(4) For airport hydrant systems, at least once every thirty-one days if confined space

entry according to the Occupational Safety and Health Administration is not required or at least annually if confined space entry is required (see 29 C.F.R. part 1910):

(A) Hydrant pits:

(i) Visually check for any damage;

(ii) Remove any liquid or debris; and

(iii) Check for any leaks; and

(B) Hydrant piping vaults: Check for any hydrant piping leaks.

(b) Owners and operators must maintain records, in accordance with section 11-280.1-34, of operation and maintenance walkthrough inspections for three years. Records must include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every thirty-one days due to infrequent deliveries. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-7.5, 342L-32) (Imp: HRS §§342L-3, 342L-7.5, 342L-32)

§11-280.1-37 Periodic inspection and maintenance of under-dispenser containment sensing devices. (a) Sensing devices for under-dispenser containment required by section 11-280.1-25 must:

(1) Be operated and maintained in accordance with one of the following:

(A) The manufacturer's instructions;

(B) A code of practice developed by a nationally recognized association or independent testing laboratory; or

(C) Requirements determined by the department to be no less protective of human health and the environment than those in subparagraphs (A) and (B).

(2) Be inspected for proper operation, and electronic and mechanical components tested, at least annually.

(b) UST system owners and operators must

maintain records in accordance with section 11-280.1-34 demonstrating compliance with subsection (a). Written documentation of all inspection, testing, and maintenance must be maintained for at least three years. All records that the UDC sensor and connected equipment are designed to produce must be maintained for at least three years after the record is generated. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-7.5, 342L-32) (Imp: HRS §§342L-3, 342L-7.5, 342L-32)

§11-280.1-38 General operating requirements--codes of practice. (a) The following codes of practice may be used to comply with section 11-280.1-30(a): the transfer procedures described in National Fire Protection Association Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids" or American Petroleum Institute Recommended Practice 1007, "Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles". Further guidance on spill and overfill prevention appears in American Petroleum Institute Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets".

(b) The following codes of practice may be used to comply with section 11-280.1-31(2):

(1) NACE International Test Method TM 0101, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems";

(2) NACE International Test Method TM0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems";

(3) Steel Tank Institute Recommended Practice R051, "Cathodic Protection Testing Procedures for STI-P3® USTs";

(4) NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection"; or

(5) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".

(c) The following code of practice may be useful in complying with section 11-280.1-32: American Petroleum Institute Recommended Practice 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Filling Stations".

(d) The following codes of practice may be used to comply with section 11-280.1-33(a)(1):

(1) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

(2) American Petroleum Institute Recommended Practice RP 2200, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines";

(3) American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks";

(4) National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair";

(5) National Leak Prevention Association Standard 631, Chapter A, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks";

(6) Steel Tank Institute Recommended Practice R972, "Recommended Practice for the Addition of Supplemental Anodes to STI-P3® Tanks";

(7) NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection"; or

(8) Fiberglass Tank and Pipe Institute Recommended Practice T-95-02, "Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks".

(e) The following codes of practice may be used to comply with section 11-280.1-33(a)(6):

(1) Steel Tank Institute Recommended Practice R012, "Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks";

(2) Fiberglass Tank and Pipe Institute Protocol, "Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space"; or

(3) Petroleum Equipment Institute Recommended Practice RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".

(f) The following code of practice may be used to comply with section 11-280.1-35(a)(1), (2) and (3): Petroleum Equipment Institute Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".

[Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-39 (Reserved.)

SUBCHAPTER 4

RELEASE DETECTION

§11-280.1-40 General requirements for all UST systems. (a) Owners and operators of UST systems must provide a method, or combination of methods, of release detection that:

(1) Can detect a release from any portion of the

tank and the connected underground piping that routinely contains product;

(2) Utilizes equipment compatible with the regulated substances being stored;

(3) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions;

(4) Is operated and maintained, and electronic and mechanical components are tested for proper operation, in accordance with one of the following: manufacturer's instructions; a code of practice developed by a nationally recognized association or independent testing laboratory; or requirements determined by the department to be no less protective of human health and the environment than the requirements of paragraphs (1) to (3). All maintenance and service of the release detection equipment must be conducted by a technician with current certification or training appropriate to the equipment serviced. A test of the proper operation must be performed at least every three hundred sixty-five days, or in a time frame recommended by the equipment manufacturer, whichever is more frequent. Beginning one year after the effective date of these rules, as applicable to the facility, the test must cover at a minimum the following components and criteria:

(A) Automatic tank gauge and other controllers: test alarm; verify system configuration; test battery backup;

(B) Probes and sensors: inspect for residual buildup; ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks and breaks; test alarm operability and communication with controller;

(C) Automatic line leak detector: test operation to meet criteria in section

11-280.1-44(1) by simulating a leak;

(D) Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller; and

(E) Hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation; and

(5) Meets the performance requirements in section 11-280.1-43 or 11-280.1-44, as applicable, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, the methods listed in section 11-280.1-43(2), (3), (4), (8), (9), and (10) and section 11-280.1-44(1), (2), and (4) must be capable of detecting the leak rate or quantity specified for that method in the corresponding section of the rule with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(b) When a release detection method operated in accordance with the performance standards in section 11-280.1-43 or 11-280.1-44 indicates a release may have occurred, owners and operators must notify the department in accordance with subchapter 5.

(c) Any UST system that cannot apply a method of release detection that complies with the requirements of this subchapter must complete the change-in-service or closure procedures in subchapter 7. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

§11-280.1-41 Requirements for petroleum UST systems. (a) Tanks. Owners and operators of petroleum UST systems must provide release detection for tanks as follows:

(1) UST systems other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks:

(A) Tanks installed before August 9, 2013 must be monitored for releases at least every thirty-one days using one of the methods listed in section 11-280.1-43(4) to (9), except that:

(i) UST systems that meet the performance standards in section 11-280.1-20, and the monthly inventory control requirements in section 11-280.1-43(1) or (2), may use tank tightness testing (conducted in accordance with section 11-280.1-43(3)) at least every five years until ten years after the tank was installed; and

(ii) Tanks with capacity of 550 gallons or less and tanks with a capacity of 551 to 1,000 gallons that meet the tank diameter criteria in section 11-280.1-43(2) may use manual tank gauging (conducted in accordance with section 11-280.1-43(2)).

(B) Not later than ten years after the effective date of these rules, tanks installed before August 9, 2013 must be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7).

(C) Tanks installed on or after August 9, 2013 must be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7).

(2) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks with a capacity less than or equal to 50,000 gallons:

(A) Tanks installed before the effective date of these rules must be monitored for releases at least every thirty-one days using one of the methods listed in section 11-280.1-43(4) to (9), except

that:

(i) UST systems that meet the performance standards in section 11-280.1-20, and the monthly inventory control requirements in section 11-280.1-43(1) or (2), may use tank tightness testing (conducted in accordance with section 11-280.1-43(3)) at least every five years until ten years after the tank was installed; and

(ii) Tanks with capacity of 550 gallons or less and tanks with a capacity of 551 to 1,000 gallons that meet the tank diameter criteria in section 11-280.1-43(2) may use manual tank gauging (conducted in accordance with section 11-280.1-43(2)).

(B) Tanks installed on or after the effective date of these rules must be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7).

(3) UST systems with field-constructed tanks with a capacity greater than 50,000 gallons:

(A) Tanks installed before the effective date of these rules must be monitored for releases at least every thirty-one days using one of the methods listed in section 11-280.1-43(4), (7), (8), and (9) or use one or a combination of the methods of release detection listed in section 11-280.1-43(10); and

(B) Tanks installed on or after the effective date of these rules must be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7).

(b) Piping. Underground piping that routinely contains regulated substances must be monitored for releases as follows:

(1) Piping installed before August 9, 2013, for UST systems other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must meet one of the following:

(A) Pressurized piping. Underground piping that conveys regulated substances under pressure must:

(i) Be equipped with an automatic line leak detector conducted in accordance with section 11-280.1-44(1); and

(ii) Have an annual line tightness test conducted in accordance with section 11-280.1-44(2) or have monthly monitoring conducted in accordance with section 11-280.1-44(3).

(B) Suction piping. Underground piping that conveys regulated substances under suction must:

(i) Have a line tightness test conducted at least every three years and in accordance with section 11-280.1-44(2);

(ii) Use a monthly monitoring method conducted in accordance with section 11-280.1-44(3); or

(iii) Meet the standards in paragraph (6)(A) to (E).

(2) Not later than ten years after the effective date of these rules, piping installed before August 9, 2013, for UST systems other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must meet one of the following:

(A) Pressurized piping. Underground piping that conveys regulated substances under pressure must:

(i) Be monitored for releases at least every thirty-one days in accordance with section

11-280.1-43(7); and

(ii) Be equipped with an automatic line leak detector in accordance with section 11-280.1-44(1).

(B) Suction piping. Underground piping that conveys regulated substances under suction must:

(i) Be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7); or

(ii) Meet the standards in paragraph (6)(A) to (E).

(3) Piping installed on or after August 9, 2013, for UST systems other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must meet the technical specifications in paragraph (2)(A) or (B).

(4) Piping for UST systems with field-constructed tanks with a capacity less than or equal to 50,000 gallons and not part of an airport hydrant fuel distribution system:

(A) Piping installed before the effective date of these rules must meet the technical specifications in paragraph (1)(A) or (B).

(B) Not later than twenty years after the effective date of these rules, piping installed before the effective date of these rules must meet the technical specifications in paragraph (2)(A) or (B), unless an alternative design is approved by the director under section 11-280.1-21(c).

(C) Piping installed on or after the effective date of these rules must meet the technical specifications in paragraph (2)(A) or (B).

(5) Piping for airport hydrant fuel distribution systems and UST systems with field-constructed tanks with a capacity greater

than 50,000 gallons must meet one of the following:

(A) Pressurized piping. Underground piping that conveys regulated substances under pressure must:

(i) Be equipped with an automatic line leak detector conducted in accordance with section 11-280.1-44(1); and

(ii) Have an annual line tightness test conducted in accordance with section 11-280.1-44(2) or have monthly monitoring conducted in accordance with any of the methods in section 11-280.1-43(7) to (9) designed to detect a release from any portion of the underground piping that routinely contains regulated substances; or

(iii) Use one or a combination of the methods of release detection listed in section 11-280.1-44(4).

(B) Suction piping. Underground piping that conveys regulated substances under suction must:

(i) Have a line tightness test conducted at least every three years and in accordance with section 11-280.1-44(2);

(ii) Use a monthly monitoring method conducted in accordance with section 11-280.1-43(7) to (9) designed to detect a release from any portion of the underground piping that routinely contains regulated substances;

(iii) Use one or a combination of the methods of release detection listed in section 11-280.1-44(4); or

(iv) Meet the standards in paragraph (6)(A) to (E).

(6) No release detection is required for suction piping that is designed and constructed to meet the following standards:

(A) The below-grade piping operates at less than atmospheric pressure;

(B) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(C) Only one check valve is included in each suction line;

(D) The check valve is located directly below and as close as practical to the suction pump; and

(E) A method is provided that allows compliance with subparagraphs (B) to (D) to be readily determined. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

§11-280.1-42 Requirements for hazardous substance UST systems. Owners and operators of hazardous substance UST systems must monitor these systems in accordance with section 11-280.1-43(7) at least every thirty-one days. In addition, underground piping that conveys hazardous substances under pressure must be equipped with an automatic line leak detector in accordance with section 11-280.1-44(1). [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

§11-280.1-43 Methods of release detection for tanks. Each method of release detection for tanks used to meet the requirements of sections 11-280.1-40 to 11-280.1-42 must be conducted in accordance with the following:

(1) Inventory control. Product inventory control

(or another test of equivalent performance) must be conducted monthly to detect a release of at least one percent of flow-through plus one hundred thirty gallons on a monthly basis in the following manner:

(A) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;

(B) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(C) If a manual measuring device is used (e.g., a gauge stick), the measurements must be made through a drop tube that extends to within one foot of the tank bottom. Level measurements shall be to the nearest one-eighth of an inch;

(D) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

(E) Deliveries are made through a drop tube that extends to within one foot of the tank bottom;

(F) Product dispensing is metered and recorded within the state standards for meter calibration or an accuracy of six cubic inches for every five gallons of product withdrawn, and the meter is calibrated every three hundred sixty-five days; and

(G) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.

(2) Manual tank gauging. Manual tank gauging must meet the following requirements:

(A) Tank liquid level measurements are taken at the beginning and ending of a

period using the appropriate minimum duration of test value in the table below during which no liquid is added to or removed from the tank;

(B) If a manual measuring device is used (e.g., a gauge stick), the measurements must be made through a drop tube that extends to within one foot of the tank bottom. Level measurements shall be to the nearest one-eighth of an inch;

(C) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;

(D) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(E) A release is suspected and subject to the requirements of subchapter 5 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal tank capacity	Minimum duration of test	Weekly standard (one test)	Monthly standard (four test average)
550 gallons or less	36 hours	10 gallons	5 gallons
551–1,000 gallons (when tank diameter is 64 inches)	44 hours	9 gallons	4 gallons
551–1,000 gallons (when tank diameter is 48 inches)	58 hours	12 gallons	6 gallons
551–1,000 gallons (also requires periodic tank tightness testing)	36 hours	13 gallons	7 gallons
1,001–2,000 gallons (also requires periodic tank tightness testing)	36 hours	26 gallons	13 gallons

(F) Tanks of five hundred fifty gallons or less nominal capacity and tanks with a nominal capacity of five hundred fifty-one to one thousand gallons that meet the tank diameter criteria in the table in subparagraph (E) may use manual tank gauging as the sole method of release detection. All other tanks with a

nominal capacity of five hundred fifty-one to two thousand gallons may use manual tank gauging in place of inventory control in paragraph (1), combined with tank tightness testing as indicated in the table. Tanks of greater than two thousand gallons nominal capacity may not use this method to meet the requirements of this subchapter.

(3) Tank tightness testing. Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

(4) Automatic tank gauging. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:

(A) The automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product;

(B) The automatic tank gauging equipment must meet the inventory control (or other test of equivalent performance) requirements of paragraph (1); and

(C) The test must be performed with the system operating in one of the following modes:

(i) In-tank static testing conducted at least once every thirty-one days; or

(ii) Continuous in-tank leak detection operating on an uninterrupted basis or operating within a

process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every thirty-one days.

(5) Vapor monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:

(A) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

(B) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

(C) The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than thirty-one days;

(D) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

(E) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

(F) In the UST excavation zone, the site is assessed to ensure compliance with the

requirements in subparagraphs (A) to (D) and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product; and

(G) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(6) Groundwater monitoring. Testing or monitoring for liquids on the groundwater must meet the following requirements:

(A) The regulated substance stored is immiscible in water and has a specific gravity of less than one;

(B) Groundwater is never more than twenty feet from the ground surface and the hydraulic conductivity of the soils between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);

(C) The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions;

(D) Monitoring wells shall be sealed from the ground surface to the top of the filter pack;

(E) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

(F) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the

groundwater in the monitoring wells;

(G) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in subparagraphs (A) to (E) and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product; and

(H) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(7) Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed, and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

(A) For double walled UST systems, the sampling or testing method can detect a leak through the inner wall in any portion of the tank that routinely contains product;

(B) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a leak between the UST system and the secondary barrier;

(i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10^{-6} cm/sec for the regulated substance stored) to direct a leak to the monitoring point and permit its detection;

(ii) The barrier is compatible with the

regulated substance stored so that a leak from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(iii) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;

(iv) The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than thirty-one days;

(v) The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a twenty-five-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and,

(vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(C) For tanks with an internally fitted liner, an automated device can detect a leak between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

(8) Statistical inventory reconciliation. Release detection methods based on the application of statistical principles to inventory data similar to those described in paragraph (1) must meet the following requirements:

(A) Report a quantitative result with a calculated leak rate;

(B) Be capable of detecting a leak rate of 0.2 gallon per hour or a release of one

hundred fifty gallons within thirty-one days; and

(C) Use a threshold that does not exceed one-half the minimum detectible leak rate.

(9) Other methods. Any other type of release detection method, or combination of methods, can be used if:

(A) It can detect a 0.2 gallon per hour leak rate or a release of one hundred fifty gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or

(B) The owner and operator can demonstrate to the department that the method can detect a release as effectively as any of the methods allowed in paragraphs (3) to (8), and the department approves the method. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the department on its use to ensure the protection of human health and the environment.

(10) Methods of release detection for field-constructed tanks. One or a combination of the following methods of release detection for tanks may be used when allowed by section 11-280.1-41.

(A) Conduct an annual tank tightness test that can detect a 0.5 gallon per hour leak rate;

(B) Use an automatic tank gauging system to perform release detection at least every thirty-one days that can detect a leak rate less than or equal to one gallon per hour. This method must be combined with a tank tightness test

that can detect a 0.2 gallon per hour leak rate performed at least every three years;

(C) Use an automatic tank gauging system to perform release detection at least every thirty-one days that can detect a leak rate less than or equal to two gallons per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every two years;

(D) Perform vapor monitoring (conducted in accordance with paragraph (5) for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;

(E) Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25, ATA Airport Fuel Facility Operations and Maintenance Guidance Manual, or equivalent procedures) at least every thirty-one days that can detect a leak equal to or less than 0.5 percent of flow-through; and

(i) Perform a tank tightness test that can detect a 0.5 gallon per hour leak rate at least every two years; or

(ii) Perform vapor monitoring or groundwater monitoring (conducted in accordance with paragraph (5) or (6), respectively, for the stored regulated substance) at least every thirty-one days; or

(F) Another method approved by the department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subparagraphs (A) to (E). In comparing

methods, the department shall consider the size of release that the method can detect and the frequency and reliability of detection. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

§11-280.1-44 Methods of release detection for piping. Each method of release detection for piping used to meet the requirements of sections 11-280.1-40 to 11-280.1-42 must be conducted in accordance with the following:

(1) Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping may be used only if they detect leaks of three gallons per hour at ten pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector must be conducted in accordance with section 11-280.1-40(a)(4).

(2) Line tightness testing. A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.

(3) Applicable tank methods. Any of the methods in section 11-280.1-43(5) to (9) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

(4) Methods of release detection for piping associated with airport hydrant systems and field-constructed tanks. One or a combination of the following methods of release detection for piping may be used when allowed by section 11-280.1-41.

(A) (i) Perform a semiannual or annual

line tightness test at or above the piping operating pressure in accordance with the table below.

MAXIMUM LEAK DETECTION RATE PER TEST SECTION VOLUME

Test section volume (gallons)	Semiannual test—leak detection rate not to exceed (gallons per hour)	Annual test—leak detection rate not to exceed (gallons per hour)
<50,000	1.0	0.5
≥50,000 to <75,000	1.5	0.75
≥75,000 to <100,000	2.0	1.0
≥100,000	3.0	1.5

(ii) Piping segment volumes ≥100,000 gallons not capable of meeting the maximum 3.0 gallon per hour leak rate for the semiannual test may be tested at a leak rate up to 6.0 gallons per hour according to the following schedule:

PHASE IN FOR PIPING SEGMENTS ≥100,000 GALLONS IN VOLUME

First test	Not later than three years after the effective date of these rules (may use up to 6.0 gph leak rate).
Second test	Between three and six years after the effective date of these rules (may use up to 6.0 gph leak rate).
Third test	Between six and seven years after the effective date of these rules (must use 3.0 gph for leak rate).
Subsequent tests	Not later than seven years after the effective date of these rules, begin using semiannual or annual line testing according to the Maximum Leak Detection Rate Per Test Section Volume table above.

(B) Perform vapor monitoring (conducted in accordance with section 11-280.1-43(5) for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;

(C) Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25, ATA Airport Fuel Facility Operations and Maintenance Guidance Manual, or equivalent procedures) at least every thirty-one days that can detect a leak equal to or less than 0.5 percent of flow-through; and

(i) Perform a line tightness test (conducted in accordance with subparagraph (A) using the leak rates for the semiannual test) at least every two years; or

(ii) Perform vapor monitoring or groundwater monitoring (conducted in accordance with section 11-280.1-43(5) or (6), respectively, for the stored regulated substance) at least every thirty-one days; or

(D) Another method approved by the department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subparagraphs (A) to (C). In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability of detection. [Eff JUL 15 2018]
(Auth: HRS §§342L-3, 342L-32, 342L-33)
(Imp: HRS §§342L-3, 342L-32, 342L-33)

§11-280.1-45 Release detection recordkeeping. All UST system owners and operators must maintain records in accordance with section 11-280.1-34 demonstrating compliance with all applicable requirements of this subchapter. These records must include the following:

(1) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for the operating life of the UST system. Records of site assessments required under section 11-280.1-43(5)(F) and (6)(G) must be maintained for as long as the methods are used. Records of site assessments developed after the effective date of these rules must be signed by a professional engineer or professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the department;

(2) The results of any sampling, testing, or monitoring must be maintained for at least three years, except as follows:

(A) The results of annual operation tests conducted in accordance with section 11-280.1-40(a)(4) must be maintained for three years. At a minimum, the results must list each component tested, indicate whether each component tested meets criteria in section 11-280.1-40(a)(4) or needs to have action taken, and describe any action taken to correct an issue;

(B) The results of tank tightness testing conducted in accordance with section 11-280.1-43(3) must be retained until the next test is conducted; and

(C) The results of tank tightness testing, line tightness testing, and vapor monitoring using a tracer compound placed in the tank system conducted in accordance with section 11-280.1-43(10) or section 11-280.1-44(4) must be retained until the next test is

conducted;

(3) All records that the equipment being utilized to monitor or maintain the UST system is designed to produce must be maintained for at least three years after the record is generated; and

(4) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least three years. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for five years from the date of installation. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-7.5, 342L-33) (Imp: HRS §§342L-3, 342L-7.5, 342L-33)

§11-280.1-46 Release detection--codes of practice. (a) The following code of practice may be used to comply with section 11-280.1-40(a)(4): Petroleum Equipment Institute Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".

(b) Practices described in the American Petroleum Institute Recommended Practice RP 1621, "Bulk Liquid Stock Control at Retail Outlets" may be used, where applicable, as guidance in meeting the requirements of section 11-280.1-43(1). [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-33) (Imp: HRS §§342L-3, 342L-33)

§§11-280.1-47 to 11-280.1-49 (Reserved.)

SUBCHAPTER 5

RELEASE REPORTING, INVESTIGATION, AND CONFIRMATION

§11-280.1-50 Reporting of suspected releases. Owners and operators of UST systems must notify the department within twenty-four hours and follow the procedures in section 11-280.1-52 for any of the following conditions:

(1) The discovery by any person of evidence of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water).

(2) Unusual UST or tank system operating conditions observed or experienced by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, an unexplained presence of water in the tank, or liquid in the interstitial space of secondarily contained systems), unless:

(A) The system equipment or component is found not to be releasing regulated substances to the environment;

(B) Any defective system equipment or component is immediately repaired or replaced; and

(C) For secondarily contained systems, except as provided for in section 11-280.1-43(7)(B)(iv), any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed.

(3) Monitoring results, including investigation of an alarm, from a release detection method required under sections 11-280.1-41 and 11-280.1-42 that indicate a release may have occurred unless:

(A) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result;

(B) The leak is contained in the secondary containment and:

(i) Except as provided for in section 11-280.1-43(7)(B)(iv), any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed; and

(ii) Any defective system equipment or component is immediately repaired or replaced;

(C) In the case of inventory control described in section 11-280.1-43(1), a second month of data does not confirm the initial result or the investigation determines no release has occurred; or

(D) The alarm was investigated and determined to be a non-release event (for example, from a power surge or caused by filling the tank during release detection testing). [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-34) (Imp: HRS §§342L-3, 342L-34)

§11-280.1-51 Investigation of off-site impacts. When required by the department, owners and operators of UST systems must follow the procedures in section 11-280.1-52 to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that has been observed by the department or brought to the department's attention by

any person. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§11-280.1-52 Release investigation and confirmation steps. (a) Unless release response action is initiated in accordance with subchapter 6, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under section 11-280.1-50 within seven days following the discovery of the suspected release, unless a written request for extension of time is granted by the director.

(b) Investigations and confirmations required in subsection (a) must use the following steps or another procedure approved by the department:

(1) System test. Owners and operators must conduct tests (according to the requirements for tightness testing in sections 11-280.1-43(3) and 11-280.1-44(2) or, as appropriate, secondary containment testing described in section 11-280.1-33(a)(6).

(A) The test must determine whether:

(i) A leak exists in that portion of the tank that routinely contains product, or the attached delivery piping; or

(ii) A breach of either wall of the secondary containment has occurred.

(B) If the system test confirms a leak into the interstice or a release, owners and operators must repair, replace, or close the UST system. In addition, owners and operators must begin release response action in accordance with subchapter 6 if the test results for the system, tank, or delivery piping indicate that a release exists.

(C) Further investigation is not required if the test results for the system,

tank, and delivery piping do not indicate that a release exists and if environmental contamination is not the basis for suspecting a release.

(D) Owners and operators must conduct a site assessment as described in paragraph (2) if the test results for the system, tank, and delivery piping do not indicate that a release exists but environmental contamination is the basis for suspecting a release.

(2) Site assessment. Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill and surrounding soil, the depth and flow of groundwater, and other factors as appropriate for identifying the presence and source of the release.

(A) If the test results for the excavation zone or the UST site indicate that a release has occurred, owners and operators must begin release response action in accordance with subchapter 6;

(B) If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.

(c) If it is determined that a release has not occurred, owners and operators must report the results of the investigation in writing to the department within thirty days following discovery of the suspected release. The report shall include, but not be limited to, results of the tests required by subsection (b) as well as performance claims pursuant

to section 11-280.1-40(a)(5). [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§11-280.1-53 Reporting and cleanup of spills and overfills. (a) Owners and operators of UST systems must contain and immediately clean up all spills and overfills in a manner which is protective of human health and the environment as set forth in section 11-280.1-65.3.

(b) Owners and operators must notify the department within twenty-four hours and begin release response action in accordance with subchapter 6 in the following cases:

(1) Spill or overfill of petroleum that results in a release to the environment that exceeds twenty-five gallons or that causes a sheen on nearby surface waters; and

(2) Spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity as determined in compliance with section 11-451-6.

(c) Owners and operators of UST systems must contain and immediately clean up a spill or overfill of petroleum that is less than 25 gallons or a spill or overfill of a hazardous substance that is less than the reportable quantity as determined in compliance with section 11-451-6. If cleanup cannot be accomplished within twenty-four hours, then the owners and operators must immediately notify the department of the incident and continue cleaning up the spill or overfill. Owners and operators must also complete and submit to the department a written report of the actions taken in response to the spill or overfill within twenty days.

(d) An owner or operator must submit the appropriate forms listed in section 11-280.1-111(b) documenting current evidence of financial responsibility to the director within thirty days

after identifying a release from an underground storage tank or tank system required to be reported under this section. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-34, 342L-35) (Imp: HRS §§342L-3, 342L-34, 342L-35)

§§11-280.1-54 to 11-280.1-59 (Reserved.)

SUBCHAPTER 6

RELEASE RESPONSE ACTION

§11-280.1-60 General. Owners and operators of petroleum or hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this subchapter, except for USTs excluded under section 11-280.1-10(b) and UST systems subject to RCRA Subtitle C corrective action requirements under section 3004(u) of the Resource Conservation and Recovery Act, as amended, or under section 342J-36, Hawaii Revised Statutes. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§11-280.1-61 Immediate response actions. (a) Upon confirmation of a release in accordance with section 11-280.1-52 or after a release from the UST system is identified in any other manner, owners and operators must perform the following response actions within twenty-four hours:

(1) Report the release to the department by telephone;

(2) Take necessary actions to prevent any further release of the regulated substance into the environment, including removal of

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as much of the regulated substance from the UST or tank system as possible;

(3) Identify and mitigate any safety hazards (such as fire, explosion, and vapor hazards) posed by the release of the regulated substance; and

(4) Take necessary action to minimize the spread of contamination.

(b) Within seven days of confirmation, owners and operators must submit to the department a written notice of confirmation. The notice shall include, but not be limited to, the following information: source of the release, method of discovery and confirmation, estimated quantity of substance released, type of substance released, immediate hazards, release impact, migration pathways, and actions taken.

(c) An owner or operator must submit the appropriate forms listed in section 11-280.1-111(b) documenting current evidence of financial responsibility to the director within thirty days after identifying a release from an underground storage tank or tank system required to be reported under this section. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-34, 342L-35) (Imp: HRS §§342L-3, 342L-34, 342L-35)

§11-280.1-61.1 Posting of signs. (a) If the department determines that posting of signs is appropriate, owners and operators shall post signs around the perimeter of the site informing passersby of the potential hazards. In this instance, "site" means an area where contamination poses an immediate health risk or an area where contaminated media is exposed to the surface.

(b) Signs shall be placed at each entrance to the site and at other locations in sufficient numbers to be seen from any approach to the site.

(c) Signs shall be legible and readable from a distance of at least twenty-five feet. The sign legend shall read, "Caution - Petroleum/Hazardous

Substance Contamination - Unauthorized Personnel Keep Out". Other sign legends may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the site and that entry onto the site may be dangerous. A contact person and telephone number shall be listed on the sign.

(d) The sign may be removed upon determination by the department that no further release response action is necessary or that posting of signs is no longer appropriate. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§11-280.1-62 Initial abatement measures and site assessment. (a) Unless directed to do otherwise by the department, owners and operators must perform the following abatement measures:

(1) Continue to remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;

(2) Visually inspect the area around the UST or tank system for evidence of any aboveground releases or exposed belowground releases and continue to take necessary actions to minimize the spread of contamination and to prevent further migration of the released substance into surrounding soils, air, surface water, and groundwater;

(3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);

(4) Remedy hazards (such as dust and vapors and the potential for leachate generation) posed by contaminated soils and debris that are excavated or exposed as a result of release confirmation, site investigation, abatement, or release response action activities;

(5) Conduct an assessment of the release by measuring for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site assessment required by section 11-280.1-52(b) or the site assessment required for change-in-service or permanent closure in section 11-280.1-72(a). In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill and surrounding soil, depth and flow of groundwater and other factors as appropriate for identifying the presence and source of the release;

(6) Investigate to determine the possible presence of free product, and begin free product removal in accordance with section 11-280.1-64;

(7) Remove or remediate contaminated soil at the site to the extent necessary to prevent the spread of free product; and

(8) If any of the remedies in this section include treatment or disposal of contaminated soils, owners or operators must comply with all applicable local, state, and federal requirements.

(b) Within twenty days after release confirmation, or within another reasonable period of time determined by the department, owners and operators must submit a report to the department summarizing the initial abatement steps taken under subsection (a) and any resulting information or data.

[Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§11-280.1-63 Initial site characterization.

(a) Owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in sections 11-280.1-60 and 11-280.1-61. This information must include, but is not necessarily limited to the following:

(1) Data on the nature and estimated quantity of release;

(2) Data from available sources and all previous site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;

(3) Results of the site assessment required under section 11-280.1-62(a)(5); and

(4) Results of the free product investigations required under section 11-280.1-62(a)(6), to be used by owners and operators to determine whether free product must be recovered under section 11-280.1-64.

(b) Within forty-five days of release confirmation, or another reasonable period of time determined by the department, owners and operators must submit the information collected in compliance with subsection (a) to the department in a manner that demonstrates its applicability and technical adequacy. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-7.5, 342L-35) (Imp: HRS §§342L-3, 342L-7.5, 342L-35)

§11-280.1-64 Free product removal. (a) At sites where investigations under section 11-280.1-62(a)(6) indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the department while continuing, as necessary, any actions initiated under sections 11-280.1-61 to 11-280.1-63,

or preparing for actions required under sections 11-280.1-65 to 11-280.1-66. In meeting the requirements of this section, owners and operators must:

(1) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, state, and federal regulations;

(2) Use abatement of free product migration as a minimum objective for the design of the free product removal system;

(3) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and

(4) Prepare and submit to the department, within forty-five days after confirming a release, a free product removal report that provides at least the following information:

(A) The name of the person responsible for implementing the free product removal measures;

(B) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;

(C) The type of free product recovery system used;

(D) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;

(E) The type of treatment applied to, and the effluent quality expected from, any discharge;

(F) All actions already performed or currently underway to remove free product, including steps that

have been or are being taken to obtain necessary permits for any discharge;

(G) The disposition of the recovered free product; and

(H) Schedule for completion of free product removal.

(b) Owners and operators shall initiate free product removal as soon as practicable but no later than thirty days following confirmation of a release, or sooner if directed by the department. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§11-280.1-65 Investigations for soil and groundwater cleanup. (a) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the groundwater and surface water, owners and operators must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

(1) There is evidence that groundwater wells have been affected by the release (e.g., as found during release confirmation or previous release response actions);

(2) Free product is found to need recovery in compliance with section 11-280.1-64;

(3) There is evidence that contaminated soils may be in contact with groundwater (e.g., as found during conduct of the initial response measures or investigations required under sections 11-280.1-60 to 11-280.1-64); and

(4) The department requests an investigation, based on the potential effects of contaminated soil or groundwater on nearby surface water and groundwater resources.

(b) Owners and operators must include information collected in accordance with this section

with each quarterly report required pursuant to section 11-280.1-65.2. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§11-280.1-65.1 Notification of confirmed releases. (a) Within ninety days following confirmation of a release, the owner and operator shall notify those members of the public directly affected by the release in writing of the release and the proposed response to the release, including a historical account of actions performed since the discovery of the release. Members of the public directly affected by the release shall include:

(1) Persons who own, hold a lease for, or have easements at, any property on which the regulated substance released from the UST was discovered; and

(2) Other persons identified by the director.

(b) The owner and operator shall send a letter to all members of the public directly affected by the release. Model language for the letter shall be provided by the department and shall include at least the following information:

(1) Name and address of the UST or UST system;

(2) Statement that a release of regulated substance has been confirmed at the UST or UST system;

(3) Name of a contact person at the department; and

(4) Reference to an attached factsheet pursuant to subsection (c).

(c) The letter to the members of the public directly affected by the release shall include a factsheet which contains the following information:

(1) Name and address of the UST or UST system;

(2) Name and address of the owner and operator of the UST or UST system;

(3) Name, address, and telephone contact of the party performing the cleanup activities;

(4) Date of the confirmed release;

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(5) Nature and extent of the confirmed release;
(6) Summary of measures taken to assess the release and extent of contamination; and
(7) Summary of the proposed response to the release.

(d) The factsheet shall be updated on a quarterly basis and sent to all members of the public directly affected by the release. If additional members of the public directly affected by the release are identified in the course of release response actions, then the owner and operator shall provide those persons with all previous and future letters and factsheets.

(e) The owner and operator shall include in the quarterly report required pursuant to section 11-280.1-65.2 the following information:

(1) Copy of the letter pursuant to subsection (b);
(2) List of the members of the public directly affected by the release and to whom the letter was sent; and
(3) Copies of the factsheet and amended factsheets pursuant to subsections (c) and (d). [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§11-280.1-65.2 Release response reporting. (a) No later than ninety days following the confirmation of a release, owners and operators must submit to the department a written report in the format specified by the department. The report must include:

(1) All release response actions taken pursuant to this subchapter during the first ninety-day period (first quarter); and
(2) A plan for future release response actions to be taken.

(b) Beginning one hundred eighty days following confirmation of a release, owners and operators must submit to the department written quarterly progress reports and an electronic copy of the written report

in a format specified by the department. The reports must document:

(1) All response actions taken pursuant to this subchapter after the last reported date;

(2) A plan for future release response actions to be taken; and

(3) Information required pursuant to section 11-280.1-65.1.

(c) Quarterly progress reports are not required if:

(1) Response actions have met the requirements of section 11-280.1-65.3; and

(2) A final quarterly report has been submitted.

[Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-7.5, 342L-35) (Imp: HRS §§342L-3, 342L-7.5, 342L-35)

§11-280.1-65.3 Site cleanup criteria. (a) Owners and operators must remediate soil, surface water, and groundwater, and materials contaminated by releases from USTs or tank systems in a manner that is protective of human health and the environment and achieves cleanup as described in subsection (b).

(b) Owners and operators must remediate contaminated soil, groundwater, and surface water at the site to residual concentrations that meet one of the following criteria:

(1) Default Tier 1 Screening Levels as presented in Table 1 in subsection (e); or

(2) Site-specific action levels as approved by the department. Owners and operators should consult with the department on how the standards in this paragraph can be met. Site-specific action levels must take into account the following factors:

(A) For systemic toxicants, acceptable levels shall represent concentration levels to which the human population may be exposed without adverse effect during a lifetime or part of a

lifetime, and incorporating an adequate margin of safety;

(B) For known or suspected carcinogens, acceptable levels are generally concentration levels in soil, groundwater and vapor that represent an excess upper bound lifetime cancer risk to an individual of between 10^{-4} and 10^{-6} using information on the relationship between dose and response. The 10^{-6} excess risk level shall be used as the point of departure for determining acceptable levels for alternatives when chemical-specific state or federal requirements are not available or are not sufficiently protective because of the presence of multiple contaminants at the site or multiple pathways of exposure;

(C) Impacts to ecological receptors, including but not limited to plants and animals; and

(D) Other applicable requirements, including but not limited to nuisance concerns for odor and taste, if applicable.

(c) The department may require the owners and operators to modify cleanup activities being performed at a site if the department determines that the activities are not being carried out in accordance with this subchapter, or are not achieving cleanup levels that are protective of human health and the environment. The department may impose modifications to cleanup activities by written notice to the owners and operators, and the owners and operators must implement necessary changes to the cleanup activities in response to the department's notice by a time schedule established by the department.

(d) A schedule for estimated completion of site cleanup shall be included in each fourth quarter report required pursuant to section 11-280.1-65.2(b).

(e) The figure labeled "Table 1. Tier 1

Screening Levels of Soil and Groundwater" is made a part of this subsection.

Table 1. Tier 1 Screening Levels for Soil and Groundwater

Contaminant	DRINKING WATER SOURCE THREATENED				DRINKING WATER SOURCE NOT THREATENED			
	Groundwater (ug/l)	Basis[1]	Soil (mg/kg)	Basis[2]	Groundwater (ug/l)	Basis[3]	Soil (mg/kg)	Basis[2]
Acenaphthene	N/A[4]	-	120	L/VI	N/A[4]	-	120	L/VI
Benzene	5.0	DWP	0.30	L	71	CAT	0.77	VI
Benzo(a)pyrene	N/A[4]	-	3.6	DE	N/A[4]	-	3.6	DE
Dichloroethylene, cis 1,2-	70	DWP	0.36	VI	620	CAT	0.36	VI
Dichloroethylene, trans 1,2-	100	DWP	3.6	VI	560	CAT	3.6	VI
Ethylbenzene	7.3	CAT	0.90	L	7.3	CAT	0.90	L
Fluoranthene	N/A[4]	-	87	L	N/A[4]	-	87	L
Lead	5.6	CAT	200	DE	5.6	CAT	200	DE
Methyl Tert Butyl Ether (MTBE)	5.0	DWS	0.028	L	730	CAT	2.3	VI
Naphthalene	12	CAT	3.1	L	12	CAT	3.1	L
Polychlorinated Biphenyls (PCBs)	N/A[4]	-	1.2	DE	N/A[4]	-	1.2	DE
Tetrachloethylene (PCE)	5.0	DWP	0.098	VI	53	CAT	0.098	VI
Toluene	9.8	CAT	0.78	L	9.8	CAT	0.78	L
TPH-gasolines	300	DWP	100	GC	500	CAT	100	GC
TPH-middle distillates	400	DWP	220	DE	640	CAT	220	DE
TPH-residual fuels	500	DWS	500	GC	640	CAT	500	GC
Trichloroethylene	5.0	DWP	0.089	VI	47	CAT	0.089	VI
Vinyl Chloride	2.0	DWP	0.036	VI	18	VI	0.036	VI
Xylenes	13	CAT	1.4	L	13	CAT	1.4	L

Notes to Table 1.

1. Drinking water screening levels are the lowest of screening levels for: drinking water primary maximum contaminant levels based on toxicity ("DWP"), drinking water secondary maximum contaminant levels based on taste and odor concerns ("DWS"), vapor intrusion ("VI"), and chronic aquatic toxicity ("CAT").

2. Soil screening levels are the lowest of screening levels for: direct exposure ("DE"), vapor intrusion ("VI"), leaching ("L"), and gross contamination ("GC").

3. Non-drinking water screening levels are the lowest of screening levels vapor intrusion ("VI"), chronic aquatic toxicity ("CAT"), and gross contamination ("GC").

4. Testing for acenaphthene, benzo(a)pyrene, fluoranthene, and PCBs in groundwater is not necessary due to low solubility and low mobility. Cleanup of contaminated soil will be adequate to address potential groundwater concerns.

[Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§11-280.1-66 Corrective action plan. (a) The department may require that the owner and operator submit a written corrective action plan for responding to a release, if one or more of the following minimum threshold criteria is met:

(1) Actual or probable release to groundwater which is a drinking water supply;
(2) Actual or probable release to surface water which is a drinking water supply;
(3) Actual or probable release to air that poses a threat to public health;

(4) Actual or probable release to and extensive contamination of soil that poses a direct contact hazard due to uncontrolled access;
(5) Actual or probable existence of uncontrolled regulated substances that pose a direct contact hazard due to uncontrolled access;
(6) Actual or probable adverse impact to natural resources;
(7) Actual or probable imminent danger of fire or explosion; or
(8) A determination by the director that a release poses a substantial endangerment to public health or welfare, the environment, or natural resources.

(b) If a plan is required, owners and operators must submit the plan to the department in a format established by the department within thirty days of the department's request, unless an extension of time is granted by the department.

(c) Corrective action plans which are required to be submitted to the department shall be subject to the review and discretionary approval of the department in accordance with the procedures set forth in this section. Owners and operators are responsible for submitting a corrective action plan that provides for adequate protection of human health and the environment as determined by the department and must make necessary modifications to the plan when directed to do so by the department.

(d) The department will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the department will consider the following factors as appropriate:

(1) Physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;
(2) Hydrogeologic characteristics of the facility and the surrounding area;
(3) Proximity, quality, and current and future uses of nearby surface water and

groundwater;

(4) Potential effects of residual contamination on nearby surface water and groundwater;

(5) An exposure assessment; and

(6) All other information assembled in compliance with this subchapter.

(e) The public participation procedures set forth in section 11-280.1-67 apply to all corrective action plans submitted under this section.

(f) Upon approval of a corrective action plan, owners and operators must implement the plan, including any modifications to the plan made by the department. Owners and operators must monitor, evaluate, and report quarterly to the department the results of implementing the corrective action plan pursuant to this section and section 11-280.1-65.2.

(g) Owners and operators who have been requested by the department to submit a corrective action plan are encouraged to begin cleanup of contaminated soils, surface water, groundwater, and materials before the plan is approved by the department provided that they:

(1) Notify the department of their intention to begin cleanup;

(2) Ensure that cleanup measures undertaken are consistent with the cleanup actions required pursuant to section 11-280.1-65.3;

(3) Comply with any conditions imposed by the department, including halting cleanup or mitigating adverse consequences from cleanup activities; and

(4) Incorporate self-initiated cleanup measures in the corrective action plan that is submitted to the department for approval.

[Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§11-280.1-67 Public participation for corrective action plans. (a) The department shall conduct public participation activities in accordance with subsections (c) through (h) when:

(1) A corrective action plan required pursuant to section 11-280.1-66(a) has been submitted and the department has made a tentative decision concerning the proposed plan; or

(2) Implementation of any previously approved corrective action plan has not achieved the cleanup levels established in the plan and termination of the plan is under consideration by the department.

(b) The department will provide notice to the public of the release and the applicable response as required in subsections (c) and (d). Costs for all public participation activities described in subsections (c) through (h) shall be borne by the owner and operator of the UST or UST system, including the costs of making copies of materials to the public under subsection (f).

(c) Notice to members of the public directly affected by the release, as defined in section 11-280.1-65.1(a), shall be given in the form of a letter from the department and shall include at least the following information:

(1) Name and address of the UST or UST system;

(2) Name and address of the owner and operator of the UST or UST system;

(3) Summary of the release information and the proposed or previously approved corrective action plan;

(4) The department's tentative decision concerning the proposed corrective action plan or concerning the termination of the previously approved corrective action plan;

(5) Announcement that an informational meeting will be held in accordance with subsection (g);

(6) Request for comments on the corrective action plan and the department's tentative decision; and

(7) Availability of information on the release and the department's tentative decision.

(d) Notice to the general public shall be given in the form of a notice in a local newspaper and shall include at least the information required in

subsection (c)(1) to (7).

(e) Comments shall be received by the department no later than thirty days after the notice provided in subsections (c) and (d) or after the end of the public meeting held pursuant to subsection (g), if any, whichever occurs later.

(f) Information on the release, the proposed corrective action plan, and the department's tentative decision on the plan shall be made available to the public for inspection upon request.

(g) Before approving a corrective action plan, the department may conduct a public meeting to provide information and receive comments on the proposed plan. A meeting will be held if there is sufficient public interest. Public interest shall be indicated by written request to the department.

(h) At the director's discretion, a notice of final decision may be issued. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§§11-280.1-68 to 11-280.1-69 (Reserved.)

SUBCHAPTER 7

OUT-OF-SERVICE UST SYSTEMS AND CLOSURE

§11-280.1-70 Temporary closure. (a) When an UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with section 11-280.1-31, and applicable release detection in accordance with subchapter 4. Subchapters 5 and 6 must be complied with if a release is suspected or confirmed. Spill and overfill operation and maintenance testing and inspections in subchapter 3 are not required during

temporary closure. If the UST system is empty, release detection and release detection operation and maintenance testing and inspections in subchapters 3 and 4 are not required. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.

(b) When an UST system is temporarily closed for ninety days or more, owners and operators must also comply with the following requirements:

(1) Leave vent lines open and functioning; and

(2) Cap and secure all other lines, pumps, manways, and ancillary equipment.

(c) When an UST system is temporarily closed for more than twelve months, owners and operators must permanently close the UST system if it does not meet the applicable design, construction, and installation requirements in subchapter 2, except that the spill and overfill equipment requirements do not have to be met. Owners and operators must permanently close the substandard UST systems at the end of this twelve-month period in accordance with sections 11-280.1-71 to 11-280.1-74, unless the department provides an extension of the twelve-month temporary closure period. Owners and operators must complete a site assessment in accordance with section 11-280.1-72 before such an extension can be applied for. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-37)

§11-280.1-71 Permanent closure and changes-in-service. (a) At least thirty days before beginning either permanent closure or a change-in-service of an UST or tank system under subsections (c) and (d), owners and operators must notify the department in writing of their intent to permanently close or make the change-in-service, unless such action is in response to a confirmed release. The required

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assessment of the excavation zone under section 11-280.1-72 must be performed after notifying the department but before completion of the permanent closure or change-in-service.

(b) At least seven days before excavation work for a permanent closure or change-in-service, owners or operators must notify the department of the exact date that the work will occur.

(c) To permanently close an UST or tank system, owners and operators must:

(1) Empty and clean the UST and tank system by removing all liquids and accumulated sludges;

(2) Remove the UST or tank system from the ground, fill the UST or tank system with an inert solid material, or close the tank in place in a manner approved by the department; and

(3) Conduct a site assessment in accordance with section 11-280.1-72.

(d) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators must:

(1) Empty and clean the UST and tank system by removing all liquids and accumulated sludges; and

(2) Conduct a site assessment in accordance with section 11-280.1-72.

(e) Within thirty days of completing a permanent closure or change-in-service, owners and operators must submit a notification to the department indicating completion of the closure or change-in-service. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-37)

§11-280.1-72 Assessing the site at closure or change-in-service. (a) Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where

contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the types of backfill and surrounding soil, the depth and flow of groundwater, and other factors appropriate for identifying the presence of a release. The requirements of this section are satisfied if one of the external release detection methods allowed in section 11-280.1-43(5) and (6) is operating in accordance with the requirements in section 11-280.1-43 at the time of closure, and indicates no release has occurred.

(b) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered under subsection (a), or by any other manner, owners and operators must begin release response action in accordance with subchapter 6. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-372)

§11-280.1-73 Applicability to previously closed UST systems. (a) When directed by the department, the owner and operator of an UST system permanently closed before December 22, 1988 must assess the excavation zone and close the UST system in accordance with this subchapter if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment.

(b) When directed by the department, the owner and operator of an UST system with field-constructed tanks or an airport hydrant fuel distribution system permanently closed before August 9, 2013 must assess the excavation zone and close the UST system in accordance with this subchapter if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-37)

§11-280.1-74 Closure records. Owners and operators must maintain records in accordance with section 11-280.1-34 that are capable of demonstrating compliance with closure requirements under this subchapter. The results of the excavation zone assessment required in section 11-280.1-72 must be maintained for at least three years after completion of permanent closure or change-in-service in one of the following ways:

(1) By the owners and operators who took the UST system out of service;

(2) By the current owners and operators of the UST system site; or

(3) By mailing these records to the department if they cannot be maintained at the closed facility. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-7.5, 342L-37) (Imp: HRS §§342L-3, 342L-7.5, 342L-37)

§11-280.1-75 Closure--codes of practice. The following cleaning and closure procedures may be used to comply with section 11-280.1-71:

(1) American Petroleum Institute Recommended Practice RP 1604, "Closure of Underground Petroleum Storage Tanks";

(2) American Petroleum Institute Standard 2015, "Safe Entry and Cleaning of Petroleum Storage Tanks, Planning and Managing Tank Entry From Decommissioning Through Recommissioning";

(3) American Petroleum Institute Recommended Practice 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks";

(4) American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks", may be used as guidance for

compliance with this section;

(5) National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair"; and

(6) National Institute for Occupational Safety and Health Publication 80-106, "Criteria for a Recommended Standard...Working in Confined Space", may be used as guidance for conducting safe closure procedures at some tanks containing hazardous substances. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-37)

§§11-280.1-76 to 11-280.1-89 (Reserved.)

SUBCHAPTER 8

FINANCIAL RESPONSIBILITY

§11-280.1-90 Applicability. (a) This subchapter applies to owners and operators of all petroleum underground storage tank (UST) systems except as otherwise provided in this section.

(b) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this subchapter.

(c) The requirements of this subchapter do not apply to owners and operators of any UST system described in section 11-280.1-10(b), (c)(1), (c)(3), or (c)(4).

(d) If the owner and operator of a petroleum underground storage tank system are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in

the event of noncompliance. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-91 (Reserved.)

§11-280.1-92 Definition of terms. When used in this subchapter, the following terms have the meanings given below:

"Accidental release" means any sudden or nonsudden release of petroleum arising from operating an underground storage tank system that results in a need for release response action and/or compensation for bodily injury or property damage neither expected nor intended by the tank system owner or operator.

"Bodily injury" shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Chief financial officer" in the case of local government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

"Controlling interest" means direct ownership of at least fifty percent of the voting stock of another entity.

"Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared:

(1) A 10-K report submitted to the U.S. Securities and Exchange Commission;
(2) An annual report of tangible net worth submitted to Dun and Bradstreet; or
(3) Annual reports submitted to the Energy

Information Administration or the Rural Utilities Service.

"Financial reporting year" may thus comprise a fiscal or a calendar year period.

"Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:

(1) By EPA or the state to require release response action or to recover the costs of release response action;

(2) By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

(3) By any person to enforce the terms of a financial assurance mechanism.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank system. This definition is intended to assist in the understanding of these regulations and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence".

"Owner or operator", when the owner or operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.

"Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Property damage" shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include response actions associated with releases from USTs or tank systems which are covered by the policy.

"Provider of financial assurance" means an entity

that provides financial assurance to an owner or operator of an underground storage tank system through one of the financial mechanisms listed in sections 11-280.1-95 through 11-280.1-107, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

"Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

"Substantial governmental relationship" means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an UST or tank system release such as coterminous boundaries, overlapping constituencies, common groundwater aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Termination" under section 11-280.1-97(b)(1) and (2) means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp:

HRS §§342L-3, 342L-36)

§11-280.1-93 Amount and scope of required financial responsibility. (a) Owners or operators of petroleum USTs or tank systems must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs or tank systems in at least the following per-occurrence amounts:

(1) For owners or operators of petroleum USTs or tank systems that are located at petroleum marketing facilities, or that handle an average of more than ten thousand gallons of petroleum per month based on annual throughput for the previous calendar year: $1,000,000; and

(2) For all other owners or operators of petroleum USTs or tank systems: $500,000.

(b) Owners or operators of petroleum USTs or tank systems must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs or tank systems in at least the following annual aggregate amounts:

(1) For owners or operators of one to one hundred petroleum USTs: $1,000,000; and

(2) For owners or operators of one hundred one or more petroleum USTs: $2,000,000.

(c) For the purposes of subsections (b) and (f) only, "a petroleum underground storage tank" or "a petroleum UST" means a single containment unit and does not mean combinations of single containment units.

(d) Except as provided in subsection (e), if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

(1) Taking corrective action;
(2) Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or
(3) Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in subsections (a) and (b).

(e) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

(f) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks for which assurance must be provided exceeds one hundred, the owner or operator shall demonstrate financial responsibility in the amount of at least $2,000,000 of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least $2,000,000 of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

(g) The amounts of assurance required under this section exclude legal defense costs.

(h) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-94 Allowable mechanisms and combinations of mechanisms. (a) Subject to the limitations of subsections (b) and (c):

(1) An owner or operator, including a local government owner or operator, may use any one or combination of the mechanisms listed in sections 11-280.1-95 through 11-280.1-103 to demonstrate financial responsibility under this subchapter for one or more USTs or tank systems; and

(2) A local government owner or operator may use any one or combination of the mechanisms listed in sections 11-280.1-104 through 11-280.1-107 to demonstrate financial responsibility under this subchapter for one or more USTs or tank systems.

(b) An owner or operator may use a guarantee under section 11-280.1-96 or surety bond under section 11-280.1-98 to establish financial responsibility only if the State Attorney General has submitted a written statement to the director that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in the State.

(c) An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-95 Financial test of self-insurance. (a) An owner or operator, and/or guarantor, may satisfy the requirements of section 11-280.1-93 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, and/or guarantor, must meet the

criteria of subsection (b) or (c) based on year-end financial statements for the latest completed fiscal year.

(b) (1) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:

(A) The total of the applicable aggregate amount required by section 11-280.1-93, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the department, to EPA, or to a state implementing agency under a state program approved by EPA under 40 C.F.R. part 281;

(B) The sum of the RCRA subtitle C corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to demonstrate financial responsibility to the department under 40 C.F.R. sections 261.143 and 261.147, as incorporated and amended in section 11-261.1-1, 40 C.F.R. sections 264.101, 264.143, 264.145, and 264.147, as incorporated and amended in section 11-264.1-1, and 40 C.F.R. sections 265.143, 265.145, and 265.147, as incorporated and amended in section 11-265.1-1, to EPA under 40 C.F.R. sections 261.143, 261.147, 264.101, 264.143, 264.145, 264.147, 265.143, 265.145, and 265.147, or to a state implementing agency under a state program authorized by EPA under 40 C.F.R. part 271; and

(C) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under

40 C.F.R. section 144.63 or to a state implementing agency under a state program authorized by EPA under 40 C.F.R. part 145.

(2) The owner or operator, and/or guarantor, must have a tangible net worth of at least $10,000,000.

(3) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in subsection (d).

(4) The owner or operator, and/or guarantor, must either:

(A) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Utilities Service; or

(B) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.

(5) The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(c) (1) The owner or operator, and/or guarantor, must meet the financial test requirements of 40 C.F.R. section 264.147(f)(1), as incorporated and amended in chapter 11-264.1, substituting the appropriate amounts specified in section 11-280.1-93(b)(1) and (2) for the "amount of liability coverage" each time specified in that section.

(2) The fiscal year-end financial statements of the owner or operator, and/or guarantor, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

(3) The firm's year-end financial statements

cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(4) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in subsection (d).

(5) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Utilities Service, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:

(A) The accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in such financial statements; and

(B) In connection with that comparison, no matters came to the accountant's attention which caused the accountant to believe that the specified data should be adjusted.

(d) To demonstrate that it meets the financial test under subsection (b) or (c), the chief financial officer of the owner or operator, or guarantor, must sign, within one hundred twenty days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance" or "guarantee" or both] to demonstrate financial responsibility for [insert: "taking corrective action" or "compensating third parties for bodily injury and property damage" or both] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test, or a corresponding financial test under EPA or another authorized state program, by this [insert: "owner or operator" or "guarantor"]:

[List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test or a corresponding financial test under EPA or under a state program approved under 40 C.F.R. part 281. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326.]

A [insert: "financial test" and/or "guarantee"] is also used by this [insert: "owner or operator" or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 C.F.R. parts 271 and 145:

	Amount
EPA Regulations:	

Closure (§§261.143, 264.143, and 265.143)	$
Post-Closure Care (§§264.145 and 265.145)	$
Liability Coverage (§§261.147, 264.147, and 265.147)	$
Corrective Action (§264.101(b))	$
Plugging and Abandonment (§144.63)	$
Authorized State Programs:	
Closure	$
Post-Closure Care	$
Liability Coverage	$
Corrective Action	$
Plugging and Abandonment	$
TOTAL	$

This [insert: "owner or operator" or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his or her financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of subsection (b) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of subsection (c) are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

		Amount
1.	Amount of annual UST aggregate coverage being assured by a financial test, or guarantee or both	$
2.	Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment	$

	costs covered by a financial test, or guarantee or both		
3.	Sum of lines 1 and 2	$	
4.	Total tangible assets	$	
5.	Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]	$	
6.	Tangible net worth [subtract line 5 from line 4]	$	
7.	Is line 6 at least $10,000,000?	Yes	No
8.	Is line 6 at least ten times line 3?	Yes	No
9.	Have financial statements for the latest fiscal year been filed with the U.S. Securities and Exchange Commission?	Yes	No
10.	Have financial statements for the latest fiscal year been filed with the federal Energy Information Administration?	Yes	No
11.	Have financial statements for the latest fiscal year been filed with the federal Rural Utilities Service?	Yes	No
12.	Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.]	Yes	No

ALTERNATIVE II

		Amount
1.	Amount of annual UST aggregate coverage being assured by a financial test, or guarantee or both	$

2.	Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, or guarantee or both	$	
3.	Sum of lines 1 and 2	$	
4.	Total tangible assets	$	
5.	Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]	$	
6.	Tangible net worth [subtract line 5 from line 4]	$	
7.	Total assets in the U.S. [required only if less than ninety per cent of assets are located in the U.S.]	$	
8.	Is line 6 at least $10,000,000?	Yes	No
9.	Is line 6 at least six times line 3?	Yes	No
10.	Are at least ninety per cent of assets located in the U.S.? [If "No," complete line 11]	Yes	No
11.	Is line 7 at least six times line 3?	Yes	No
[Fill in either lines 12-15 or lines 16-18:]			
12.	Current assets	$	
13.	Current liabilities	$	
14.	Net working capital [subtract line 13 from line 12]	$	
15.	Is line 14 at least six times line 3?	Yes	No
16.	Current bond rating of most recent bond issue		
17.	Name of rating service		
18.	Date of maturity of bond		

		Yes	No
19.	Have financial statements for the latest fiscal year been filed with the U.S. Securities and Exchange Commission, the federal Energy Information Administration, or the federal Rural Utilities Service?		

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in section 11-280.1-95(d), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

(e) If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.

(f) The director may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the director finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of subsections (b) or (c) and (d), the owner or operator must obtain alternate coverage within thirty days after notification of such a finding.

(g) If the owner or operator fails to obtain alternate assurance within one hundred fifty days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within thirty days of notification by the director that he or she no longer meets the requirements of the financial test, the owner or operator must notify the director of such failure within ten days. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-96 Guarantee. (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

(1) A firm that:
  (A) Possesses a controlling interest in the owner or operator;
  (B) Possesses a controlling interest in a firm described under subparagraph (A); or
  (C) Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or
(2) A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

(b) Within one hundred twenty days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of section 11-280.1-95 based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in section 11-280.1-95(d) and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the

financial test at the end of any financial reporting year, within one hundred twenty days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the director notifies the guarantor that it no longer meets the requirements of the financial test of section 11-280.1-95(b) or (c), and (d), the guarantor must notify the owner or operator within ten days of receiving such notification from the director. In both cases, the guarantee will terminate no less than one hundred twenty days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in section 11-280.1-114(e).

(c) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the State of [name of state], herein referred to as guarantor, to the Hawaii state department of health and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of section 11-280.1-95(b) or (c) and (d), Hawaii Administrative Rules, and agrees to comply with the requirements for guarantors as specified in section 11-280.1-96(b), Hawaii Administrative Rules.

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies)

where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326 and the name and address of the facility.] This guarantee satisfies subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the Hawaii department of health and to any and all third parties that:

In the event that [owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the Hawaii director of health has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the Hawaii director of health, shall fund a standby trust fund in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, in an amount not to exceed the

coverage limits specified above.

In the event that the Hawaii director of health determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, the guarantor, upon written instructions from the Hawaii director of health, shall fund a standby trust in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Hawaii director of health, shall fund a standby trust in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of section 11-280.1-95(b) or (c) and (d), Hawaii Administrative Rules, guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate one hundred twenty days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within ten days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this

guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 11-280.1, Hawaii Administrative Rules.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Hawaii department of health, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in section 11-280.1-96(c), Hawaii Administrative Rules, as such regulations were constituted on the effective date shown immediately below.

Effective date:
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

(d) An owner or operator who uses a guarantee to satisfy the requirements of section 11-280.1-93 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the Hawaii director of health under section 11-280.1-112. This standby trust fund must meet the requirements specified in section 11-280.1-103. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-97 Insurance and risk retention group coverage. (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(b) Each insurance policy must be amended by an endorsement worded as specified in paragraph (1) or evidenced by a certificate of insurance worded as

specified in paragraph (2), except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

(1) ENDORSEMENT

Name: [name of each covered location]
Address: [address of each covered location]
Policy Number:
Period of Coverage: [current policy period]
Name of [Insurer or Risk Retention Group]:
Address of [Insurer or Risk Retention Group]:
Name of Insured:
Address of Insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.] for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental

releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage, and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) to (e) of this paragraph are hereby amended to conform with subsections (a) to (e);

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not

apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in sections 11-280.1-95 to 11-280.1-102 and sections 11-280.1-104 to 11-280.1-107, Hawaii Administrative Rules.

c. Whenever requested by the Hawaii director of health, the ["Insurer" or "Group"] agrees to furnish to the Hawaii director of health a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such

policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in section 11-280.1-97(b)(1), Hawaii Administrative Rules, and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the State of Hawaii"].

[Signature of authorized representative of Insurer or Risk Retention Group]
[Name of person signing]
[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]
[Address of Representative]

(2) CERTIFICATE OF INSURANCE

Name: [name of each covered location]
Address: [address of each covered location]
Policy Number:
Endorsement (if applicable):
Period of Coverage: [current policy period]
Name of [Insurer or Risk Retention Group]:
Address of [Insurer or Risk Retention Group]:
Name of Insured:
Address of Insured:

Certification:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as

identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.] for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under

the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in sections 11-280.1-95 to 11-280.1-102 and 11-280.1-104 to 11-280.1-107, Hawaii Administrative Rules.

c. Whenever requested by the Hawaii director of health, the ["Insurer" or "Group"] agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only

upon written notice and only after expiration of a minimum of ten days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in section 11-280.1-97(b)(2), Hawaii Administrative Rules, and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of Hawaii"].

[Signature of authorized representative of Insurer]
[Type Name]
[Title], Authorized Representative of [name of Insurer or Risk Retention Group]
[Address of Representative]

(c) Each insurance policy must be issued by an

insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the State of Hawaii. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-98 Surety bond. (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

(b) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed:
Period of coverage:
Principal: [legal name and business address of owner or operator]
Type of organization: [insert: "individual", "joint venture", "partnership", or "corporation"]
State of incorporation (if applicable):
Surety(ies): [name(s) and business address(es)]
Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the

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name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].
Penal sums of bond:
Per occurrence $
Annual aggregate $
Surety's bond number:

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Hawaii department of health, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used

to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, and the Hawaii director of health's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "sudden and nonsudden accidental releases"] arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, within one hundred twenty days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the

requirements of section 11-280.1-93, Hawaii Administrative Rules.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Hawaii director of health that the Principal has failed to ["take corrective action, in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, and the Hawaii director of health's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in accordance with chapter 11-280.1, Hawaii Administrative Rules, and the Hawaii director of health's instructions," and/or "third party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Hawaii director of health under section 11-280.1-112, Hawaii Administrative Rules.

Upon notification by the Hawaii director of health that the Principal has failed to provide alternate financial assurance within sixty days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Hawaii director of health has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Hawaii director of health under section 11-280.1-112, Hawaii Administrative Rules.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in section 11-280.1-98(b), Hawaii Administrative Rules, as such regulations were constituted on the date this bond was executed.

Principal
[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

Corporate Surety(ies)
[Name and address]
State of Incorporation:
Liability limit: $
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $

(c) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

(d) The owner or operator who uses a surety bond to satisfy the requirements of section 11-280.1-93 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the director under section 11-280.1-112. This standby trust fund must meet the requirements specified in section 11-280.1-103. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-99 Letter of credit. (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in the State of Hawaii and whose letter-of-credit operations are regulated and examined by a federal or State of Hawaii agency.

(b) The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]
[Name and address of Hawaii director of health]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. ___ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars ($[insert dollar amount]), available upon presentation of

(1) your sight draft, bearing reference to this letter of credit, No. ___, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of chapter 342L, Hawaii Revised Statutes."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] $[insert dollar amount] per occurrence and [in words] $[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a

petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least one hundred twenty days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for one hundred twenty days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in section 11-280.1-99(b), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]
[Date]

This credit is subject to [insert: "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform

Commercial Code"].

(c) An owner or operator who uses a letter of credit to satisfy the requirements of section 11-280.1-93 must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the director under section 11-280.1-112. This standby trust fund must meet the requirements specified in section 11-280.1-103.

(d) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least one hundred twenty days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the one hundred twenty days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§§11-280.1-100 to 11-280.1-101 (Reserved.)

§11-280.1-102 Trust fund. (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by establishing a trust fund that conforms to the requirements of this section. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(b) The wording of the trust agreement must be

identical to the wording specified in section 11-280.1-103(b)(1), and must be accompanied by a formal certification of acknowledgment as specified in section 11-280.1-103(b)(2).

(c) The trust fund, when established, must be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

(d) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the director for release of the excess.

(e) If other financial assurance as specified in this subchapter is substituted for all or part of the trust fund, the owner or operator may submit a written request to the director for release of the excess.

(f) Within sixty days after receiving a request from the owner or operator for release of funds as specified in subsection (d) or (e), the director will instruct the trustee to release to the owner or operator such funds as the director specifies in writing. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-103 Standby trust fund. (a) An owner or operator using any one of the mechanisms authorized by section 11-280.1-96, 11-280.1-98, or 11-280.1-99 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(b)(1) The standby trust agreement, or trust agreement, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert: "corporation", "partnership", "association", or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert: "Incorporated in the State of ____" or "a national bank"], the "Trustee".

Whereas, the Hawaii state department of health has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the [insert "standby" where trust agreement is standby trust agreement] trust agreement;

[Whereas, the Grantor has elected to establish [insert either "a guarantee", "surety bond", or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.)];

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act

as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism. This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Hawaii state department of health. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the Hawaii director of health's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to

collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Hawaii state department of health.

Section 4. Payment for ["Corrective Action" or "Third-Party Liability Claims" or both]. The Trustee shall make payments from the Fund as the Hawaii director of health shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for

which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

The Trustee shall reimburse the Grantor, or other persons as specified by the Hawaii director of health, from the Fund for corrective action expenditures and/or third-party liability claims, in such amounts as the director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the

conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show

that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may

replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Hawaii director of health to the Trustee shall be in writing, signed by the director, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee

shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Hawaii director of health, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Hawaii director of health if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Hawaii director of health, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Hawaii director of health issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including

all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in section 11-280.1-103(b)(1), Hawaii Administrative Rules, as such regulations were constituted on the date written above.

[Signature of Grantor]
[Name of the Grantor]
[Title]

Attest:
[Signature of Trustee]
[Name of the Trustee]
[Title]
[Seal]

[Signature of Witness]
[Name of the Witness]
[Title]

[Seal]

(2) The standby trust agreement, or trust agreement, must be accompanied by a formal certification of acknowledgment similar to the following:

State of ___
County of ___

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]
[Name of Notary Public]

(c) The director will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the director determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

(d) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-104 Local government bond rating test. (a) A general purpose local government owner or operator and/or local government serving as a guarantor may satisfy the requirements of section 11-280.1-93 by having a currently outstanding issue or issues of general obligation bonds of $1,000,000 or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating must be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.

(b) A local government owner or operator or local government serving as a guarantor that is not a general-purpose local government and does not have the legal authority to issue general obligation bonds may satisfy the requirements of section 11-280.1-93 by having a currently outstanding issue or issues of revenue bonds of $1,000,000 or more, excluding refunded issues and by also having a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard & Poor's, the lower rating for each bond must be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

(c) The local government owner or operator and/or guarantor must maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.

(d) To demonstrate that it meets the local government bond rating test, the chief financial officer of a general purpose local government owner or operator and/or guarantor must sign a letter worded

exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM THE CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency*

*[Moody's or Standard & Poor's]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of $1,000,000. All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated

as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last twelve months. Neither rating service has provided notification within the last twelve months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in section 11-280.1-104(d), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Date]
[Signature]
[Name]
[Title]

(e) To demonstrate that it meets the local government bond rating test, the chief financial officer of local government owner or operator and/or guarantor other than a general purpose government must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM THE CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal

authority under state law or constitutional provisions to issue general obligation debt.

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test.]

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding revenue bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency*

*[Moody's or Standard & Poor's]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of $1,000,000. All outstanding revenue bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last twelve months. The revenue bonds listed are not backed by third-party credit enhancement or insured by a municipal bond insurance company. Neither rating service has provided notification within the last twelve months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in section 11-280.1-104(e), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Date]
[Signature]
[Name]
[Title]

(f) The director may require reports of financial condition at any time from the local government owner or operator and/or local government guarantor. If the director finds, on the basis of such reports or other information, that the local government owner or operator and/or guarantor no longer meets the local government bond rating test requirements of this section, the local government owner or operator must obtain alternative coverage within thirty days after notification of such a finding.

(g) If a local government owner or operator using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the local government owner or operator must obtain alternative coverage within one hundred fifty days of the change in status.

(h) If the local government owner or operator fails to obtain alternate assurance within one hundred fifty days of finding that it no longer meets the requirements of the bond rating test or within thirty days of notification by the director that it no longer meets the requirements of the bond rating test, the owner or operator must notify the director of such failure within ten days. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-105 Local government financial test. (a) A local government owner or operator may satisfy the requirements of section 11-280.1-93 by passing the financial test specified in this section. To be eligible to use the financial test, the local government owner or operator must have the ability and authority to assess and levy taxes or to freely

establish fees and charges. To pass the local government financial test, the owner or operator must meet the criteria of subsection (b)(2) and (3) based on year-end financial statements for the latest completed fiscal year.

(b) (1) The local government owner or operator must have the following information available, as shown in the year-end financial statements for the latest completed fiscal year:

(A) Total Revenues: Consists of the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt.

(B) Total Expenditures: Consists of the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for

retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).

(C) Local Revenues: Consists of total revenues (as defined in subparagraph (A)) minus the sum of all transfers from other governmental entities, including all monies received from federal, state, or local government sources.

(D) Debt Service: Consists of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. Includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest-bearing warrants. Excludes payments on non-interest-bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

(E) Total Funds: Consists of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. Includes federal securities, federal agency securities, state and local government securities,

and other securities such as bonds, notes and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets.

(F) Population consists of the number of people in the area served by the local government.

(2) The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The local government cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.

(3) The local government owner or operator must have a letter signed by the chief financial officer worded as specified in subsection (c).

(c) To demonstrate that it meets the financial test under subsection (b), the chief financial officer of the local government owner or operator, must sign, within one hundred twenty days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental

releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating [an] underground storage tank[s].

Underground storage tanks at the following facilities are assured by this financial test [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules.]

This owner or operator has not received an adverse opinion, or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A, or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A or Baa and a Standard and Poor's rating of AAA, AA, A, or BBB.

WORKSHEET FOR MUNICIPAL FINANCIAL TEST

PART I: BASIC INFORMATION

1. Total Revenues
   a. Revenues (dollars)
      Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and non-operating revenues, as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.

b. Subtract interfund transfers (dollars)
c. Total Revenues (dollars)

2. Total Expenditures
   a. Expenditures (dollars)
      Value consists of the sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.
   b. Subtract interfund transfers (dollars)
   c. Total Expenditures (dollars)
3. Local Revenues
   a. Total Revenues (from 1c) (dollars)
   b. Subtract total intergovernmental transfers (dollars)
   c. Local Revenues (dollars)
4. Debt Service
   a. Interest and fiscal charges (dollars)
   b. Add debt retirement (dollars)
   c. Total Debt Service (dollars)
5. Total Funds (Dollars)
(Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee retirement funds, agency funds, and trust funds)
6. Population (Persons)

PART II: APPLICATION OF TEST

7. Total Revenues to Population
   a. Total Revenues (from 1c)
   b. Population (from 6)
   c. Divide 7a by 7b
   d. Subtract 417
   e. Divide by 5,212
   f. Multiply by 4.095
8. Total Expenses to Population
   a. Total Expenses (from 2c)
   b. Population (from 6)
   c. Divide 8a by 8b

d. Subtract 524
e. Divide by 5,401
f. Multiply by 4.095

9. Local Revenues to Total Revenues
   a. Local Revenues (from 3c)
   b. Total Revenues (from 1c)
   c. Divide 9a by 9b
   d. Subtract 0.695
   e. Divide by 0.205
   f. Multiply by 2.840
10. Debt Service to Population
   a. Debt Service (from 4c)
   b. Population (from 6)
   c. Divide 10a by 10b
   d. Subtract 51
   e. Divide by 1,038
   f. Multiply by -1.866
11. Debt Service to Total Revenues
   a. Debt Service (from 4c)
   b. Total Revenues (from 1c)
   c. Divide 11a by 11b
   d. Subtract 0.068
   e. Divide by 0.259
   f. Multiply by -3.533
12. Total Revenues to Total Expenses
   a. Total Revenues (from 1c)
   b. Total Expenses (from 2c)
   c. Divide 12a by 12b
   d. Subtract 0.910
   e. Divide by 0.899
   f. Multiply by 3.458
13. Funds Balance to Total Revenues
   a. Total Funds (from 5)
   b. Total Revenues (from 1c)
   c. Divide 13a by 13b
   d. Subtract 0.891
   e. Divide by 9.156
   f. Multiply by 3.270
14. Funds Balance to Total Expenses
   a. Total Funds (from 5)
   b. Total Expenses (from 2c)
   c. Divide 14a by 14b

d. Subtract 0.866
e. Divide by 6.409
f. Multiply by 3.270

15. Total Funds to Population
a. Total Funds (from 5)
b. Population (from 6)
c. Divide 15a by 15b
d. Subtract 270
e. Divide by 4,548
f. Multiply by 1.866

16. Add 7f+8f+9f+10f+11f+12f+13f+14f+15f+4.937

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in section 11-280.1-105(c), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Date]
[Signature]
[Name]
[Title]

(d) If a local government owner or operator using the test to provide financial assurance finds that it no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.

(e) The director may require reports of financial condition at any time from the local government owner or operator. If the director finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of subsections (b) and (c), the owner or operator must obtain alternate coverage within thirty days after notification of such a finding.

(f) If the local government owner or operator

fails to obtain alternate assurance within one hundred fifty days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within thirty days of notification by the director that it no longer meets the requirements of the financial test, the owner or operator must notify the director of such failure within ten days. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-106 Local government guarantee. (a) A local government owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be a local government having a "substantial governmental relationship" with the owner or operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor must:

(1) Demonstrate that it meets the bond rating test requirement of section 11-280.1-104 and deliver a copy of the chief financial officer's letter as contained in section 11-280.1-104(d) and (e) to the local government owner or operator;

(2) Demonstrate that it meets the worksheet test requirements of section 11-280.1-105 and deliver a copy of the chief financial officer's letter as contained in section 11-280.1-105(c) to the local government owner or operator; or

(3) Demonstrate that it meets the local government fund requirements of section 11-280.1-107(1), (2), or (3), and deliver a copy of the chief financial officer's letter as contained in section 11-280.1-107 to the local government owner or operator.

(b) If the local government guarantor is unable to demonstrate financial assurance under section

11-280.1-104, 11-280.1-105, or 11-280.1-107(1), (2), or (3), at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than one hundred twenty days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in section 11-280.1-114(e).

(c) The guarantee agreement must be worded as specified in subsection (d) or (e), depending on which of the following alternative guarantee arrangements is selected:

(1) If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the director, the guarantee shall be worded as specified in subsection (d).

(2) If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the director for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in subsection (e).

(d) The local government guarantee with standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

LOCAL GOVERNMENT GUARANTEE WITH STANDBY TRUST MADE BY A LOCAL GOVERNMENT

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of Hawaii, herein referred to as guarantor, to the Hawaii department of health and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of section 11-280.1-104, Hawaii Administrative Rules, the local government financial test requirements of section 11-280.1-105, Hawaii Administrative Rules, or the local government fund under section 11-280.1-107(1), (2), or (3), Hawaii Administrative Rules.]

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.] This guarantee satisfies subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the Hawaii department of health and to any and all third parties that:

In the event that [local government owner or

operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the director of the Hawaii department of health has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the director shall fund a standby trust fund in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, in an amount not to exceed the coverage limits specified above.

In the event that the director determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, the guarantor upon written instructions from the director shall fund a standby trust fund in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the director, shall fund a standby trust in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within one hundred twenty days of such failure, by certified mail, notice

to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within ten days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 11-280.1, Hawaii Administrative Rules.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage

tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Hawaii department of health, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in section 11-280.1-106(d), Hawaii Administrative Rules, as such regulations were constituted on the effective date shown immediately below.

Effective date:
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

(e) The local government guarantee without standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

LOCAL GOVERNMENT GUARANTEE WITHOUT STANDBY TRUST MADE BY A LOCAL GOVERNMENT

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of Hawaii, herein referred to as guarantor, to the Hawaii department of health and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of section 11-280.1-104, Hawaii Administrative Rules, the local government financial test requirements of section 11-280.1-105, Hawaii Administrative Rules, or the local government fund under section 11-280.1-107(1), (2), or (3), Hawaii Administrative Rules].

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.] This guarantee satisfies subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the Hawaii department of health and to any and all third parties and obliges that:

In the event that [local government owner or

operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the Hawaii director of health has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the director shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the director determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, the guarantor upon written instructions from the director shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the director, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or

operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within ten days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 11-280.1, Hawaii Administrative Rules.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or

operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Hawaii department of health, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in section 11-280.1-106(e), Hawaii Administrative Rules, as such regulations were constituted on the effective date shown immediately below.

Effective date:
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

[Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-107 Local government fund. A local government owner or operator may satisfy the requirements of section 11-280.1-93 by establishing a dedicated fund account that conforms to the requirements of this section. Except as specified in paragraph (2), a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets one of the following requirements:

(1) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks or tank systems and is funded for the full amount of coverage required under section 11-280.1-93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage; or

(2) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks or tank systems, and is funded for five times the full amount of coverage required under section 11-280.1-93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under section 11-280.1-93, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth the amount in the fund; or

(3) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the

operation of petroleum underground storage tanks or tank systems. A payment is made to the fund once every year for seven years until the fund is fully-funded. This seven-year period is hereafter referred to as the "pay-in-period". The amount of each payment must be determined by this formula:

$$\frac{TF - CF}{Y}$$

Where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in-period, and;

(A) The local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks or tank systems, or

(B) The local government owner or operator has a letter signed by the appropriate state attorney general stating that the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws. The letter must also state that prior voter approval is not necessary before use of the bonding authority.

(4) To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local

government owner or operator and/or guarantor must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor.] This letter is in support of the use of the local government fund mechanism to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s). Underground storage tanks at the following facilities are assured by this local government fund mechanism: [List for each facility: the name and address of the facility where tanks are assured by the local government fund].

[Insert: "The local government fund is funded for the full amount of coverage required under section 11-280.1-93, Hawaii Administrative Rules, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage." or "The local government fund is funded for five times the full amount of coverage required under section 11-280.1-93, Hawaii Administrative Rules, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that

provide the remaining coverage." or "A payment is made to the fund once every year for seven years until the fund is fully-funded and [name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund" or "A payment is made to the fund once every year for seven years until the fund is fully-funded and I have attached a letter signed by the State Attorney General stating that (1) the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws and (2) that prior voter approval is not necessary before use of the bonding authority"].

The details of the local government fund are as follows:
Amount in Fund (market value of fund at close of last fiscal year):

[If fund balance is incrementally funded as specified in section 11-280.1-107(3), Hawaii Administrative Rules, insert:
Amount added to fund in the most recently completed fiscal year:
Number of years remaining in the pay-in period:]

A copy of the state constitutional provision, or local government statute, charter, ordinance or order dedicating the fund is attached.

I hereby certify that the wording of this letter is identical to the wording specified in section 11-280.1-107(4), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Date]
[Signature]
[Name]
[Title]

[Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-108 Substitution of financial assurance mechanisms by owner or operator. (a) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this subchapter, provided that at all times the owner or operator maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of section 11-280.1-93.

(b) After obtaining alternate financial assurance as specified in this subchapter, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-109 Cancellation or nonrenewal by a provider of financial assurance. (a) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(1) Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until one hundred twenty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(2) Termination of insurance or risk retention

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coverage, except for non-payment or misrepresentation by the insured, may not occur until sixty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of ten days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in section 11-280.1-114, the owner or operator must obtain alternate coverage as specified in this subchapter within sixty days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within sixty days after receipt of the notice of termination, the owner or operator must notify the director of such failure and submit:

(1) The name and address of the provider of financial assurance;

(2) The effective date of termination; and

(3) The evidence of the financial assurance mechanism subject to the termination maintained in accordance with section 11-280.1-111(b). [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-110 Reporting by owner or operator. (a) An owner or operator must submit the appropriate forms listed in section 11-280.1-111(b) documenting current evidence of financial responsibility to the director:

(1) Within thirty days after the owner or operator identifies a release from an underground storage tank or tank system required to be reported under section

11-280.1-53 or 11-280.1-61;

(2) If the owner or operator fails to obtain alternate coverage as required by this subchapter, within thirty days after the owner or operator receives notice of:

(A) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor;

(B) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;

(C) Failure of a guarantor to meet the requirements of the financial test; or

(D) Other incapacity of a provider of financial assurance; or

(3) As required by sections 11-280.1-95(g) and 11-280.1-109(b).

(b) An owner or operator must certify compliance with the financial responsibility requirements of this subchapter as specified in the notification form submitted pursuant to section 342L-30, Hawaii Revised Statutes, section 11-280.1-34, or the permit applications under sections 11-280.1-324 and 11-280.1-326.

(c) The director may require an owner or operator to submit evidence of financial assurance as described in section 11-280.1-111(b) or other information relevant to compliance with this subchapter at any time. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-111 Recordkeeping. (a) Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subchapter for an underground storage tank or tank system until released

from the requirements of this subchapter under section 11-280.1-113. An owner or operator must maintain such evidence at the underground storage tank or tank system site or the owner's or operator's place of work. Records maintained off-site must be made available upon request of the director.

(b) An owner or operator must maintain the following types of evidence of financial responsibility:

(1) An owner or operator using an assurance mechanism specified in sections 11-280.1-95 to 11-280.1-99 or section 11-280.1-102 or sections 11-280.1-104 to 11-280.1-107 must maintain a copy of the instrument worded as specified.

(2) An owner or operator using a financial test or guarantee, or a local government financial test or a local government guarantee supported by the local government financial test must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than one hundred twenty days after the close of the financial reporting year.

(3) An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(4) A local government owner or operator using a local government guarantee under section 11-280.1-106(d) must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(5) A local government owner or operator using the local government bond rating test under section 11-280.1-104 must maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.

(6) A local government owner or operator using the local government guarantee under section 11-280.1-106, where the guarantor's demonstration of financial responsibility relies on the bond rating test under section 11-280.1-104 must maintain a copy of the guarantor's bond rating published within the last twelve months by Moody's or Standard & Poor's.

(7) An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(8) An owner or operator using a local government fund under section 11-280.1-107 must maintain the following documents:

(A) A copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund;

(B) Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under section 11-280.1-107(3) using incremental funding backed by bonding authority, the financial statements must show the previous year's balance, the amount of funding during the year, and the closing balance in the fund; and

(C) If the fund is established under section 11-280.1-107(3) using incremental funding backed by bonding authority, the owner or operator must also maintain documentation of the required bonding authority, including either the results of a voter referendum (under section

11-280.1-107(3)(A), or attestation by the state attorney general as specified under section 11-280.1-107(3)(B)).

(9) A local government owner or operator using the local government guarantee supported by the local government fund must maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.

(10) (A) An owner or operator using an assurance mechanism specified in sections 11-280.1-95 to 11-280.1-107 must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF FINANCIAL RESPONSIBILITY

[Owner or operator] hereby certifies that it is in compliance with the requirements of subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules.

The financial assurance mechanism(s) used to demonstrate financial responsibility under subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, is (are) as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by"

either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases".]

[Signature of owner or operator]
[Name of owner or operator]
[Title]
[Date]
[Signature of witness or notary]
[Name of witness or notary]
[Date]

(B) The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s). [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-7.5, 342L-36) (Imp: HRS §§342L-3, 342L-7.5, 342L-36)

§11-280.1-112 Drawing on financial assurance mechanisms. (a) Except as specified in subsection (d), the director shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

(1) (A) The owner or operator fails to establish alternate financial assurance within sixty days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

(B) The director determines or suspects that a release from an underground storage tank or tank system covered by the mechanism has occurred and so notifies the owner or operator or the

owner or operator has notified the director pursuant to subchapter 5 or 6 of a release from an underground storage tank or tank system covered by the mechanism; or

(2) The conditions of subsection (b)(1), (b)(2)(A), or (b)(2)(B) are satisfied.

(b) The director may draw on a standby trust fund when:

(1) The director makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted release response action as required under subchapter 6; or

(2) The director has received either:

(A) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF A VALID CLAIM

The undersigned, as principals and as legal representatives of [insert: owner or operator] and [insert: name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of $[_____].

[Signatures]
Owner or Operator
Attorney for Owner or Operator
(Notary)
Date
[Signatures]
Claimant(s)
Attorney(s) for Claimant(s)
(Notary)
Date

or;

(B) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank or tank system covered by financial assurance under this subchapter and the director determines that the owner or operator has not satisfied the judgment.

(c) If the director determines that the amount of corrective action costs and third-party liability claims eligible for payment under subsection (b) may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The director shall pay third-party liability claims in the order in which the director receives certifications under subsection (b)(2)(A), and valid court orders under subsection (b)(2)(B).

(d) A governmental entity acting as guarantor under section 11-280.1-106(e), the local government guarantee without standby trust, shall make payments as directed by the director under the circumstances described in subsections (a), (b), and (c). [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-113 Release from the requirements. An owner or operator is no longer required to maintain financial responsibility under this subchapter for an underground storage tank or tank system after the tank or tank system has been permanently closed or undergoes a change-in-service or, if release response action is required, after release response action has been completed and the tank or tank system has been permanently closed or undergoes a change-in-service as required by subchapter 7. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-114 Bankruptcy or other incapacity of owner or operator or provider of financial assurance. (a) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the director by certified mail of such commencement and submit the appropriate forms listed in section 11-280.1-111(b) documenting current financial responsibility.

(b) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in section 11-280.1-96.

(c) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator must notify the director by certified mail of such commencement and submit the appropriate forms listed in section 11-280.1-111(b) documenting current financial responsibility.

(d) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11

(Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor must notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in section 11-280.1-106.

(e) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit. The owner or operator must obtain alternate financial assurance as specified in this subchapter within thirty days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within thirty days after such notification, the owner or operator must notify the director. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§11-280.1-115 Replenishment of guarantees, letters of credit, or surety bonds. (a) If at any time after a standby trust is funded upon the instruction of the director with funds drawn from a guarantee, local government guarantee with standby trust, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

(1) Replenish the value of financial assurance to equal the full amount of coverage required; or

(2) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(b) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by section 11-280.1-93. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§§11-280.1-116 to 11-280.1-199 (Reserved.)

SUBCHAPTER 9

LENDER LIABILITY

§11-280.1-200 Definitions. (a) UST technical standards, as used in this subchapter, refers to the UST preventative and operating requirements under subchapters 2, 3, 4, 7, and 10 and section 11-280.1-50.

(b) Petroleum production, refining, and marketing.

(1) "Petroleum production" means the production of crude oil or other forms of petroleum (as defined in section 11-280.1-12) as well as the production of petroleum products from purchased materials.

(2) "Petroleum refining" means the cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products.

(3) "Petroleum marketing" means the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes.

(c) "Indicia of ownership" means evidence of a

secured interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter "lease financing transaction"), and legal or equitable title obtained pursuant to foreclosure. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

(d) A "holder" is a person who, upon the effective date of this regulation or in the future, maintains indicia of ownership (as defined in subsection (c)) primarily to protect a security interest (as defined in subsection (f)(1)) in a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located. A holder includes the initial holder (such as a loan originator); any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market); a guarantor of an obligation, surety, or any other person who holds ownership indicia primarily to protect a security interest; or a receiver or other person who acts on behalf or for the benefit of a holder.

(e) A "borrower, debtor, or obligor" is a person whose UST or UST system or facility or property on which the UST or UST system is located is encumbered by a security interest. These terms may be used interchangeably.

(f) "Primarily to protect a security interest" means that the holder's indicia of ownership are held

primarily for the purpose of securing payment or performance of an obligation.

(1) "Security interest" means an interest in a petroleum UST or UST system or in the facility or property on which a petroleum UST or UST system is located, created or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in an UST or UST system or in the facility or property on which the UST or UST system is located, for the purpose of securing a loan or other obligation.

(2) "Primarily to protect a security interest", as used in this subchapter, does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why any ownership indicia are held must be as protection for a security interest.

(g) "Operation" means, for purposes of this subchapter, the use, storage, filling, or dispensing of petroleum contained in an UST or UST system. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§§11-280.1-201 to 11-280.1-209 (Reserved.)

§11-280.1-210 Participation in management. (a) The term "participating in the management of an UST or UST system" means that the holder is engaging in decisionmaking control of, or activities related to, operation of the UST or UST system, as defined in this section. Actions that are participation in management:

(1) Participation in the management of an UST or UST system means, for purposes of this subchapter, actual participation by the holder in the management or control of decisionmaking related to the operation of an UST or UST system. Participation in management does not include the mere capacity or ability to influence or the unexercised right to control UST or UST system operations. A holder is participating in the management of the UST or UST system only if the holder either:

(A) Exercises decisionmaking control over the operational (as opposed to financial or administrative) aspects of the UST or UST system, such that the holder has undertaken responsibility for all or substantially all of the management of the UST or UST system; or

(B) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decisionmaking of the enterprise with respect to all, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise.

(2) Operational aspects of the enterprise relate to the use, storage, filling, or dispensing

of petroleum contained in an UST or UST system, and include functions such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer. Financial or administrative aspects include functions such as that of a credit manager, accounts payable/receivable manager, personnel manager, controller, chief financial officer, or similar functions. Operational aspects of the enterprise do not include the financial or administrative aspects of the enterprise, or actions associated with environmental compliance, or actions undertaken voluntarily to protect the environment in accordance with applicable requirements in this chapter.

(b) Actions that are not participation in management pre-foreclosure:

(1) Actions at the inception of the loan or other transaction. No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management within the meaning of this subchapter. A prospective holder who undertakes or requires an environmental investigation (which could include a site assessment, inspection, and/or audit) of the UST or UST system or facility or property on which the UST or UST system is located (in which indicia of ownership are to be held), or requires a prospective borrower to clean up contamination from the UST or UST system or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such action considered to be participating in the management of the UST or UST system or

facility or property on which the UST or UST system is located.

(2) Loan policing and work out. Actions that are consistent with holding ownership indicia primarily to protect a security interest do not constitute participation in management for purposes of this subchapter. The authority for the holder to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations or promises from the borrower. Loan policing and work out activities cover and include all such activities up to foreclosure, exclusive of any activities that constitute participation in management.

(A) Policing the security interest or loan.

(i) A holder who engages in policing activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in section 11-280.1-210(a). Such policing actions include, but are not limited to, requiring the borrower to clean up contamination from the UST or UST system during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the UST or UST system or facility or property on which the UST or

UST system is located (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial condition during the term of the security interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower).

(ii) Policing activities also include undertaking by the holder of UST environmental compliance actions and voluntary environmental actions taken in compliance with this chapter, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system as provided in sections 11-280.1-210(a) and 11-280.1-230. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in this chapter. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by

such action considered to be participating in the management of the UST or UST system.

(B) Loan work out. A holder who engages in work out activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in section 11-280.1-210(a). For purposes of this rule, "work out" refers to those actions by which a holder, at any time prior to foreclosure, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Work out activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(c) Foreclosure on an UST or UST system or facility or property on which an UST or UST system is located, and participation in management activities post-foreclosure.

(1) Foreclosure.

(A) Indicia of ownership that are held

primarily to protect a security interest include legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. For purposes of this subchapter, the term "foreclosure" means that legal, marketable or equitable title or deed has been issued, approved, and recorded, and that the holder has obtained access to the UST, UST system, UST facility, and property on which the UST or UST system is located, provided that the holder acted diligently to acquire marketable title or deed and to gain access to the UST, UST system, UST facility, and property on which the UST or UST system is located. The indicia of ownership held after foreclosure continue to be maintained primarily as protection for a security interest provided that the holder undertakes to sell, re-lease an UST or UST system or facility or property on which the UST or UST system is located, held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the UST or UST system or facility or property on which the UST or UST system is located, in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, taking all facts and circumstances into consideration, and provided that the holder does not participate in management (as defined in section 11-280.1-210(a)) prior to or after

foreclosure.

(B) For purposes of establishing that a holder is seeking to sell, re-lease pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or divest in a reasonably expeditious manner an UST or UST system or facility or property on which the UST or UST system is located, the holder may use whatever commercially reasonable means as are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, or may employ the means specified in section 11-280.1-210(c)(2). A holder that outbids, rejects, or fails to act upon a written, bona fide, firm offer of fair consideration for the UST or UST system or facility or property on which the UST or UST system is located, as provided in section 11-280.1-210(c)(2), is not considered to hold indicia of ownership primarily to protect a security interest.

(2) Holding foreclosed property for disposition and liquidation. A holder, who does not participate in management prior to or after foreclosure, may sell, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), an UST or UST system or facility or property on which the UST or UST system is located, liquidate, wind up operations, and take measures, prior to sale or other disposition, to preserve, protect, or prepare the secured UST or UST system or facility or property on which the UST or UST system is located. A holder may also arrange for an existing or new operator

to continue or initiate operation of the UST or UST system. The holder may conduct these activities without voiding the security interest exemption, subject to the requirements of this subchapter.

(A) A holder establishes that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest by, within twelve months following foreclosure, listing the UST or UST system or the facility or property on which the UST or UST system is located, with a broker, dealer, or agent who deals with the type of property in question, or by advertising the UST or UST system or facility or property on which the UST or UST system is located, as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the UST or UST system or facility or property on which the UST or UST system is located, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the location of the UST or UST system or facility or property on which the UST or UST system is located. For purposes of this provision, the twelve-month period begins to run from the date that the marketable title or deed has been issued, approved and recorded, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, provided that the holder acted

diligently to acquire marketable title or deed and to obtain access to the UST, UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the twelve-month period begins to run from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

(B) A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the UST or UST system or the facility or property on which the UST or UST system is located, establishes by such outbidding, rejection, or failure to act, that the ownership indicia in the secured UST or UST system or facility or property on which the UST or UST system is located are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or state law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

(i) Fair consideration, in the case of a holder maintaining indicia of ownership primarily to protect a senior security interest in the UST or UST system or facility or property on which the UST or UST system is located, is the value of the security interest as defined in this section. The value of the security interest includes all debt and costs incurred by the

security interest holder, and is calculated as an amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure, plus any unpaid interest, rent, or penalties (whether arising before or after foreclosure). The value of the security interest also includes all reasonable and necessary costs, fees, or other charges incurred by the holder incident to work out, foreclosure, retention, preserving, protecting, and preparing, prior to sale, the UST or UST system or facility or property on which the UST or UST system is located, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), of an UST or UST system or facility or property on which the UST or UST system is located, or other disposition. The value of the security interest also includes environmental investigation costs (which could include a site assessment, inspection, and/or audit of the UST or UST system or facility or property on which the UST or UST system is located), and release response and corrective action costs incurred under

sections 11-280.1-51 to 11-280.1-67 or any other costs incurred as a result of reasonable efforts to comply with any other applicable federal, state or local law or regulation; less any amounts received by the holder in connection with any partial disposition of the property and any amounts paid by the borrower (if not already applied to the borrower's obligations) subsequent to the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure. In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth in this subsection.

(ii) Outbids, rejects, or fails to act upon an offer of fair consideration means that the holder outbids, rejects, or fails to act upon within ninety days of receipt, a written, bona fide, firm offer of fair consideration for the UST or UST system or facility or property on which the UST or UST system is located received at any time after six months following foreclosure, as defined in section 11-280.1-210(c). A "written, bona fide, firm offer" means a legally enforceable, commercially

reasonable, cash offer solely for the foreclosed UST or UST system or facility or property on which the UST or UST system is located, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. For purposes of this provision, the six-month period begins to run from the date that marketable title or deed has been issued, approved and recorded to the holder, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, provided that the holder was acting diligently to acquire marketable title or deed and to obtain access to the UST or UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the six-month period begins to run from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

(3) Actions that are not participation in management post-foreclosure. A holder is not considered to be participating in the management of an UST or UST system or facility or property on which the UST or UST system is located when undertaking actions

under this chapter, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system as provided in sections 11- 280.1-210(a) and 11-280.1-230. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in this chapter. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the UST or UST system. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§§11-280.1-211 to 11-280.1-219 (Reserved.)

§11-280.1-220 Ownership of an underground storage tank or underground storage tank system or facility or property on which an underground storage tank or underground storage tank system is located. Ownership of an UST or UST system or facility or property on which an UST or UST system is located. A holder is not an "owner" of a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located for purposes of compliance with the UST technical standards as defined in section 11-280.1-200(a), the UST release response and corrective action requirements under sections

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11-280.1-51 to 11-280.1-67, and the UST financial responsibility requirements under sections 11-280.1-90 to 11-280.1-111, provided the person:

(1) Does not participate in the management of the UST or UST system as defined in section 11-280.1-210; and

(2) Does not engage in petroleum production, refining, and marketing as defined in section 11-280.1-200(b). [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§§11-280.1-221 to 11-280.1-229 (Reserved.)

§11-280.1-230 Operating an underground storage tank or underground storage tank system. (a) Operating an UST or UST system prior to foreclosure. A holder, prior to foreclosure, as defined in section 11-280.1-210(c), is not an "operator" of a petroleum UST or UST system for purposes of compliance with the UST technical standards as defined in section 11-280.1-200(a), the UST corrective action requirements under sections 11-280.1-51 to 11-280.1-67, and the UST financial responsibility requirements under sections 11-280.1-90 to 11-280.1-111, provided that the holder is not in control of or does not have responsibility for the daily operation of the UST or UST system.

(b) Operating an UST or UST system after foreclosure. The following provisions apply to a holder who, through foreclosure, as defined in section 11-280.1-210(c), acquires a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located.

(1) A holder is not an "operator" of a petroleum UST or UST system for purposes of compliance with this chapter if there is an operator, other than the holder, who is in control of

or has responsibility for the daily operation of the UST or UST system, and who can be held responsible for compliance with applicable requirements of this chapter.

(2) If another operator does not exist, as provided for under paragraph (1), a holder is not an "operator" of the UST or UST system, for purposes of compliance with the UST technical standards as defined in section 11-280.1-200(a), the UST corrective action requirements under sections 11-280.1-51 to 11-280.1-67, and the UST financial responsibility requirements under sections 11-280.1-90 to 11-280.1-111, provided that the holder:

(A) Empties all of its known USTs and UST systems within sixty calendar days after foreclosure, or another reasonable time period specified by the department, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment; and

(B) Empties those USTs and UST systems that are discovered after foreclosure within sixty calendar days after discovery, or another reasonable time period specified by the department, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment.

(3) If another operator does not exist, as provided for under paragraph (1), in addition to satisfying the conditions under

paragraph (2), the holder must either:

(A) Permanently close the UST or UST system in accordance with sections 11-280.1-71 to 11-280.1-74, except section 11-280.1-72(b); or

(B) Temporarily close the UST or UST system in accordance with the following applicable provisions of section 11-280.1-70:

(i) Continue operation and maintenance of corrosion protection in accordance with section 11-280.1-31;

(ii) Report suspected releases to the department; and

(iii) Conduct a site assessment in accordance with section 11-280.1-72(a) if the UST system is temporarily closed for more than twelve months and the UST system does not meet the applicable system design, construction, and installation requirements in subchapter 2, except that the spill and overfill equipment requirements do not have to be met. The holder must report any suspected releases to the department. For purposes of this provision, the twelve-month period begins to run from the date on which the UST system is emptied and secured under paragraph (2).

(4) The UST system can remain in temporary closure until a subsequent purchaser has acquired marketable title to the UST or UST system or facility or property on which the UST or UST system is located. Once a subsequent purchaser acquires marketable title to the UST or UST system or facility or property on which the UST or UST system is located, the purchaser must decide

whether to operate or close the UST or UST system in accordance with applicable requirements in this chapter. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§§11-280.1-231 to 11-280.1-239 (Reserved.)

SUBCHAPTER 10

OPERATOR TRAINING

§11-280.1-240 General requirement for all UST systems. All owners and operators of UST systems must ensure they have designated Class A, Class B, and Class C operators who meet the requirements of this subchapter. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-241 Designation of Class A, B, and C operators. (a) UST system owners and operators must designate:

(1) At least one Class A and one Class B operator for each UST or group of USTs at a facility; and

(2) Each individual who meets the definition of Class C operator at the UST facility as a Class C operator.

(b) Separate individuals may be designated for each class of operator or an individual may be designated for more than one of the operator classes.

(c) Owners and operators shall submit written notice to the department identifying the Class A and Class B operators for each UST or tank system in use

or temporarily out of use no later than thirty days after an operator assumes the operator's responsibilities as a Class A or Class B operator. The notification must include the name of each operator, the date training was completed, the name and address of each facility where the USTs or tank systems for which the operator has been designated is located, and written verification from a training program approved or administered by the department that the Class A and Class B operator for each UST or tank system has successfully completed operator training in the operator's class. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-242 Requirements for operator training. UST system owners and operators must ensure Class A, Class B, and Class C operators meet the requirements of this section. Any individual designated for more than one operator class must successfully complete the required training program or comparable examination according to the operator classes in which the individual is designated.

(1) Class A operators. Each designated Class A operator must either be trained in accordance with subparagraphs (A) and (B) or pass a comparable examination in accordance with paragraph (5).

(A) At a minimum, the training must teach the Class A operators about the purpose, methods, and function of:

(i) Spill and overfill prevention;

(ii) Release detection;

(iii) Corrosion protection;

(iv) Emergency response;

(v) Product and equipment compatibility and demonstration;

(vi) Financial responsibility;

(vii) Notification and permitting;

(viii) Temporary and permanent closure;

(ix) Reporting, recordkeeping, testing, and inspections;

(x) Environmental and regulatory consequences of releases; and

(xi) Training requirements for Class B and Class C operators.

(B) At a minimum, the training program must evaluate Class A operators to determine these individuals have the knowledge and skills to make informed decisions regarding compliance and determine whether appropriate individuals are fulfilling the operation, maintenance, and recordkeeping requirements for UST systems in accordance with subparagraph (A).

(2) Class B operators. Each designated Class B operator must either receive training in accordance with subparagraphs (A) and (B) or pass a comparable examination, in accordance with paragraph (5).

(A) At a minimum, the training program for Class B operators must teach the Class B operator about the purpose, methods, and function of:

(i) Operation and maintenance, including components of UST systems, materials of UST system components, and methods of release detection and release prevention applied to UST components;

(ii) Spill and overfill prevention;

(iii) Release detection and related reporting;

(iv) Corrosion protection;

(v) Emergency response;

(vi) Product and equipment compatibility and demonstration;

(vii) Reporting, recordkeeping, testing, and inspections;

(viii) Environmental and regulatory consequences of releases; and

(ix) Training requirements for Class C operators.

(B) At a minimum, the training program must evaluate Class B operators to determine these individuals have the knowledge and skills to implement applicable UST regulatory requirements in the field on the components of typical UST systems in accordance with subparagraph (A).

(3) Class C operators. Each designated Class C operator must either: be trained by a Class A or Class B operator in accordance with subparagraphs (A) and (B); complete a training program in accordance with subparagraphs (A) and (B); or pass a comparable examination, in accordance with paragraph (5).

(A) At a minimum, the training program for the Class C operator must teach the Class C operators to take appropriate actions (including notifying appropriate authorities) in response to emergencies or alarms caused by spills or releases resulting from the operation of the UST system.

(B) At a minimum, the training program must evaluate Class C operators to determine these individuals have the knowledge and skills to take appropriate action (including notifying appropriate authorities) in response to emergencies or alarms caused by spills or releases from an underground storage tank system.

(4) Training program requirements. Any training program must meet the minimum requirements of this section, must incorporate an evaluation of operator knowledge through written examination, a practical demonstration, or other reasonable testing methods acceptable to the department, and must be approved or administered by the

department. An operator training program may consist of in-class or on-line instruction and may include practical exercises.

(5) Comparable examination. A comparable examination must, at a minimum, test the knowledge of the Class A, Class B, or Class C operators in accordance with the requirements of paragraph (1), (2), or (3), as applicable. The acceptability of a comparable examination to meet the requirements of this section is determined by the department. The department may accept operator training verification from other states if the operator training is deemed by the department to be equivalent to the requirements of this section. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-243 Timing of operator training. (a) An owner and operator must ensure that designated Class A, Class B, and Class C operators meet the requirements in section 11-280.1-242.

(b) Class A and Class B operators designated on or after the effective date of these rules must meet requirements in section 11-280.1-242 within thirty days of assuming duties.

(c) Class C operators designated after the effective date of these rules must be trained before assuming duties of a Class C operator. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-244 Retraining. (a) Class A and class B operators shall be retrained every five years. Class C operators shall be retrained every three hundred sixty-five days.

(b) Class A and Class B operators of UST systems determined by the department to be out of compliance must complete a training program or comparable examination in accordance with requirements in section 11-280.1-242. The training program or comparable examination must be developed or administered by the department or an independent organization. An UST or tank system is out of compliance if the system:

(1) Meets any of the delivery prohibition criteria outlined in section 11-280.1-429; or

(2) Is in significant violation of other requirements, such as temporary or permanent closure, tank registration, or financial responsibility, as determined by the director.

(c) UST system owners and operators must ensure Class A and Class B operators are retrained as required in subsection (b) no later than thirty days from the date the department determines the facility is out of compliance except in one of the following situations:

(1) Class A and Class B operators take annual refresher training. Refresher training for Class A and Class B operators must cover all applicable requirements in section 11-280.1-242;

(2) The department, at its discretion, waives this retraining requirement for either the Class A or Class B operator or both. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§11-280.1-245 Documentation. Owners and operators of underground storage tank systems must maintain a list of designated Class A, Class B, and Class C operators and maintain records verifying that training and retraining, as applicable, have been completed, in accordance with section 11-280.1-34 as follows:

(1) The list must:
   (A) Identify all Class A, Class B, and Class C operators currently designated for the facility; and
   (B) Include names, class of operator trained, date assumed duties, date each completed initial training, and any retraining.

(2) Records verifying completion of training or retraining must be a paper or electronic record for Class A, Class B, and Class C operators. The records, at a minimum, must identify name of trainee, date trained, operator training class completed, and list the name of the trainer or examiner and the training company name, address, and telephone number. Owners and operators must maintain these records for as long as Class A, Class B, and Class C operators are designated. The following requirements also apply to the following types of training:
   (A) Records from classroom or field training programs (including Class C operator training provided by the Class A or Class B operator) or a comparable examination must, at a minimum, be signed by the trainer or examiner;
   (B) Records from computer based training must, at a minimum, indicate the name of the training program and web address, if Internet based; and
   (C) Records of retraining must include those areas on which the Class A or Class B operator has been retrained.

[Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-7.5, 342L-32) (Imp: HRS §§342L-3, 342L-7.5, 342L-32)

§§11-280.1-246 to 11-280.1-249 (Reserved.)

SUBCHAPTER 11

(RESERVED.)

§§11-280.1-250 to 11-280.1-299 (Reserved.)

SUBCHAPTER 12

PERMITS AND VARIANCES

§§11-280.1-300 to 11-280.1-322 (Reserved.)

§11-280.1-323 Permit required. (a) No person shall install or operate an UST or tank system without first obtaining a permit from the director.

(b) The director shall approve an application for a permit only if the applicant has submitted sufficient information to the satisfaction of the director that the technical, financial, and other requirements of this chapter are or can be met and the installation and operation of the UST or tank system will be done in a manner that is protective of human health and the environment.

(c) A permit shall be issued only in accordance with chapter 342L, Hawaii Revised Statutes, and this chapter, and it shall be the duty of the permittee to ensure compliance with the law in the installation and operation of the UST or tank system.

(d) Issuance of a permit shall not relieve any person of the responsibility to comply fully with all applicable laws. [Eff JUL 15 2018] (Auth: HRS §342L-3) (Imp: HRS §§342L-3, 342L-31)

§11-280.1-324 Application for a permit. (a) Every application for a permit shall be submitted to the department on the "Application for an Underground Storage Tank Permit" form prescribed by the director.

(b) A permit fee in accordance with section 11-280.1-335 shall accompany each application for a permit.

(c) The applicant shall submit sufficient information to enable the director to make a decision on the application. Information submitted shall include but not be limited to the following:

(1) General information on involved parties, including the landowner, UST owner, and UST operator; location of the property (including TMK); and basic description of the UST or tank system;

(2) Age, size, precise location within the property, and use of each UST;

(3) Other information required in the form prescribed by the director; and

(4) Other information as the department may require.

(d) Every application shall be signed by the owner and the operator and shall constitute an acknowledgment that the applicants assume responsibility for the installation and operation of the UST or tank system in accordance with this chapter and the conditions of the permit, if issued. Each signatory shall be:

(1) In the case of a corporation, a principal executive officer of at least the level of vice president, or a duly authorized representative if that representative is responsible for the overall operation of the UST or tank system;

(2) In the case of a partnership, a general partner;

(3) In the case of a sole proprietorship, the proprietor; or

(4) In the case of a county, state, or federal entity, either a principal executive officer, ranking elected official, or other duly authorized employee. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-7.5, 342L-14) (Imp: HRS §§342L-4, 342L-30, 342L-31)

§11-280.1-325 Permit. (a) Upon approval of an application for a permit to install and operate an UST or tank system, the director shall issue a permit for a term of five years except as noted in subsection (b).

(b) The owner or operator shall have one year from the issuance of the permit to install an UST or tank system. If the installation is not completed within one year, the permit expires and the owner or operator must apply for a new permit.

(c) The owner or operator must inform the department at least seven days prior to performing the actual installation. The information shall include the permit number, name and address of the UST or tank system, the contact person, the contact person's phone number, and date and time of actual installation.

(d) The owner or operator must notify the department within thirty days after the installation of the UST or tank system. The notification shall be submitted on the "Certification of Underground Storage Tank Installation" form prescribed by the director. If information submitted on the "Application for an Underground Storage Tank Permit" form has changed since the original application, the section of the certification form entitled "Changes to Original Installations Plans" must completed and submitted. The certification of installation must certify compliance with the following requirements:

(1) Installation of tanks and piping under section 11-280.1-20(f);

(2) Cathodic protection of steel tanks and piping under section 11-280.1-20(b) and (c);

(3) Financial responsibility under subchapter 8; and

(4) Release detection under sections 11-280.1-41 and 11-280.1-42.

(e) The department, where practicable and appropriate, may issue one permit to the owner or operator of an UST system for the purpose of combining all USTs, piping, and any ancillary equipment constituting that UST system under one permit, irrespective of the number of individual USTs, so long as that UST system is part of one reasonably contiguous physical location. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-7.5) (Imp: HRS §§342L-4, 342L-31)

§11-280.1-326 Permit renewals. (a) On application, a permit may be renewed for a term of five years.

(b) A renewal fee in accordance with section 11-280.1-335 shall accompany each application for renewal of a permit.

(c) An application for a renewal shall be received by the department at least one hundred eighty days prior to the expiration of the existing permit and shall be submitted on the "Application for Renewal of an Underground Storage Tank Permit" form prescribed by the director. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-7.5, 342L-14) (Imp: HRS §§342L-4, 342L-31)

§11-280.1-327 Action on and timely approval of an application for a permit. (a) The director need not act upon nor consider any incomplete application for a permit. An application shall be deemed complete only when:

(1) All required and requested information, including the application form, plans, specifications, and other information

required by this subchapter have been submitted in a timely fashion;

(2) All fees have been paid as prescribed in section 11-280.1-335; and

(3) The director determines that the application is complete.

(b) The director shall approve, approve with conditions, or deny a complete application for a permit to install or operate an UST or tank system or a permit renewal, modification, or transfer, required under this chapter. The director shall notify the applicant of the director's decision within one hundred eighty days of receipt of a complete application, as defined in subsection (a). Otherwise, a complete application is deemed approved on the one hundred eightieth day after it is received by the department. [Eff JUL 15 2018] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

§11-280.1-328 Permit conditions. The director may impose conditions on a permit that the director deems reasonably necessary to ensure compliance with this chapter and any other relevant state requirement, including conditions relating to equipment, work practice, or operation. Conditions may include, but shall not be limited to, the requirement that devices for measurement or monitoring of regulated substances be installed and maintained and the results reported to the director, all costs and expenses to be borne by the applicant. [Eff JUL 15 2018] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

§11-280.1-329 Modification of permit. (a) The director may modify a permit if there is a change that requires a modification to an existing permit. Changes requiring a permit modification shall include but not be limited to:

(1) The addition or removal of an UST from an

UST system; and

(2) Any change to or modification of an UST or UST system which would otherwise place the existing UST or UST system out of compliance with this chapter or an existing permit.

(b) An application for modification of a permit shall be made in writing to the department and shall be accompanied by sufficient information on the planned renovation or modification to the UST or tank system to assist the director in making a determination as to whether the application for modification should be denied or granted.

(c) Applications for a permit modification shall be received by the department no later than sixty days prior to the occurrence of the event that prompted the application except that applications for change-in-service must be received by the department at least thirty days before the owner or operator begins the change-in-service. Applications shall be submitted on the "Application for an Underground Storage Tank Permit" form prescribed by the director.

(d) Owners and operators shall submit a permit application to add USTs or tank systems to an existing permit. If the director approves the addition, the existing permit shall be terminated, and a new permit shall be issued which covers the additional USTs as well as the already-permitted USTs. The term of the new permit shall be for the remaining term of the original permit. [Eff JUL 15 2018] (Auth: HRS §342L-3)(Imp: HRS §§342L-4, 342L-31)

§11-280.1-330 Revocation or suspension of permit. The director may revoke or suspend a permit if the director finds any one of the following:

(1) There is a release or threatened release of regulated substances that the department deems to pose an imminent and substantial risk to human health or the environment;

(2) The permittee violated a condition of the permit; or

(3) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts. [Eff JUL 15 2018] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

§11-280.1-331 Change in owner or operator for a permit. (a) No permit to install, own, or operate an UST or tank system shall be transferable unless approved by the department. Request for approval to transfer a permit from one owner to another owner must be made by the new owner. Request for approval to transfer a permit from one operator to another operator must be made by the owner.

(b) The transferred permit will be effective for the remaining life of the original permit.

(c) An application for the transfer shall be received by the department at least thirty days prior to the proposed effective date of the transfer and shall be submitted on the "Application for Transfer of an Underground Storage Tank Permit" form prescribed by the director. [Eff JUL 15 2018] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-30, 342L-31)

§11-280.1-332 Variances allowed. Provisions of chapter 342L, Hawaii Revised Statutes, and this chapter relating to USTs or tank systems which are more stringent than Title 40, part 280 of the Code of Federal Regulations, published by the Office of the Federal Register, as amended as of July 1, 2017, may be varied by the director in accordance with sections 342L-5 and 342L-6, Hawaii Revised Statutes, and this chapter. No variance may be less stringent than the federal requirements. [Eff JUL 15 2018] (Auth: HRS §342L-3) (Imp: HRS §342L-5)

§11-280.1-333 Variance applications. (a) An application for a variance shall be submitted to the department on the "Application for an Underground Storage Tank Variance" form prescribed by the director.

(b) A variance fee in accordance with section 11-280.1-335 shall accompany each application for a variance.

(c) Every application shall be signed by the owner and operator, and the signature shall be by one of the following:

(1) In the case of a corporation, by a principal executive officer of at least the level of vice president, or a duly authorized representative if that representative is responsible for the overall operation of the UST or tank system;

(2) In the case of a partnership, by a general partner;

(3) In the case of a sole proprietorship, by the proprietor; or

(4) In the case of a county, state, or federal entity, by a principal executive officer, ranking elected official, or other duly authorized employee.

(d) The director shall approve, approve with conditions, or deny a complete application for a variance or variance renewal or modification as required under this chapter and sections 342L-5 and 342L-6, Hawaii Revised Statutes. The director shall notify the applicant of the director's decision, within one hundred eighty days of receipt of a complete application. Otherwise, a complete application is deemed approved on the one hundred eightieth day after it is received by the department. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-7.5, 342L-14) (Imp: HRS §§342L-5, 342L-6)

§11-280.1-334 Maintenance of permit or variance. (a) Permits and variances, including application

records, shall be maintained at the location of the UST or tank system for which the permit was issued and shall be made available for inspection upon request of any duly authorized representative of the department.

(b) No person shall wilfully deface, alter, forge, counterfeit, or falsify any permit or variance. [Eff JUL 15 2018] (Auth: HRS §§342L-3, 342L-7.5) (Imp: HRS §§342L-4, 342L-7, 342L-31)

§11-280.1-335 Fees. (a) Every applicant for a permit or a variance, or applicant for modification or renewal of a permit or variance, or applicant for a transfer of a permit, shall pay the applicable fees as set forth below:

Type of Application	Permit	Variance
Permit or variance application	$300	$400
Application to modify	$200	$300
Application for renewal	$100	$200
Application for transfer	$50	NA

(b) Fees shall be submitted with the application and are nonrefundable.

(c) Fees shall be made payable to the State of Hawaii.

(d) If more than one type of application is combined, the highest applicable fee will be assessed. However, a permit application and a variance application shall not be combined under one fee. [Eff JUL 15 2018] (Auth: HRS §342L-3) (Imp: HRS §342L-14)

§§11-280.1-336 to 11-280.1-399 (Reserved.)

SUBCHAPTER 13

ENFORCEMENT

§§11-280.1-400 to 11-280.1-420 (Reserved.)

§11-280.1-421 Purpose. The purpose of this subchapter is to create an enforcement program that facilitates the effective and expeditious resolution of violations of chapter 342L, Hawaii Revised Statutes, and this chapter. [Eff JUL 15 2018] (Auth: HRS §342L-3) (Imp: HRS §§342L-7, 342L-8, 342L-10)

§11-280.1-422 Field citations. (a) Field citations may be issued for violations of chapter 342L, Hawaii Revised Statutes, and this chapter that the department deems appropriate for resolution through the issuance of a field citation. Nothing in this section requires the department to elect one enforcement mechanism over another and the decision to proceed with one course of action over, or in conjunction with, another is within the discretion of the director.

(b) The field citation is an offer to settle an allegation of noncompliance with this chapter. If the owner or operator declines to accept the department's offer to settle within the time period set forth in the field citation, the department may bring administrative or civil enforcement action under chapter 342L, Hawaii Revised Statutes.

(c) The field citation shall set forth

sufficient facts to notify the recipient of the alleged violations, the applicable law, the proposed settlement amount, and the time period during which to respond.

(d) By returning the signed settlement agreement attached to the field citation and payment of the proposed settlement amount to the department, the owner or operator will be deemed to have accepted the terms and conditions of the settlement offer.

(e) By signing the settlement agreement, the owner or operator waives his or her right to a contested case hearing pursuant to chapter 91, Hawaii Revised Statutes. [Eff JUL 15 2018] (Auth: HRS §342L-3) (Imp: HRS §§342L-7, 342L-8, 342L-10)

§§11-280.1-423 to 11-280.1-428 (Reserved.)

§11-280.1-429 Delivery, deposit, and acceptance prohibition. (a) No person shall deliver to, deposit into, or accept a regulated substance into an UST or tank system that has been identified by the department as ineligible for delivery, deposit, or acceptance.

(b) An UST or tank system shall be identified by the department as ineligible for delivery, deposit, or acceptance by placement of a tag or other notice of ineligibility onto the fill pipe of the ineligible UST or tank system. If an owner or operator is not present at the facility at the time the underground storage tank is identified as ineligible, the department may notify an employee at the facility at the time of identification in lieu of the owner or operator.

(c) No person shall remove, tamper with, destroy, or damage a tag or other notice of ineligibility affixed to any UST or tank system unless authorized to do so by the department. Removal of a tag or other notice of ineligibility by the department or person authorized by the department shall occur

only after the department confirms that the conditions giving rise to the delivery prohibition have been corrected to the department's satisfaction. The department shall make this determination either at a hearing, if one is requested in accordance with this section, or as soon as practicable.

(d) Pursuant to this section, a tag or other notice of ineligibility may immediately be affixed to the fill pipe of an UST or tank system upon finding by the department of any of the following:

(1) Operating without a permit issued by the department;

(2) Operating inconsistently with one or more conditions of a permit issued by the department;

(3) Required spill prevention equipment is not installed or properly functioning or maintained;

(4) Required overfill protection equipment is not installed or properly functioning or maintained;

(5) Required release detection equipment is not installed or properly functioning or maintained;

(6) Required corrosion protection equipment is not installed or properly functioning or maintained;

(7) Failure to maintain financial responsibility; or

(8) Failure to protect a buried metal flexible connector from corrosion.

(e) An owner or operator of an UST or tank system designated by the department to be ineligible shall be provided a hearing to contest the department's determination of ineligibility within forty-eight hours of the department's receipt of a written request for a hearing by the owner or operator of the ineligible UST or tank system. The hearing shall modify or affirm the department's determination of ineligibility and shall be conducted in accordance with chapter 91, Hawaii Revised Statutes, and the department's rules of practice and procedure. [Eff

JUL 15 2018

] (Auth: HRS §342L-3) (Imp: HRS §342L-32.5)

DEPARTMENT OF HEALTH

The repeal of chapter 11-281 and adoption of chapter 11-280.1, Hawaii Administrative Rules, on the Summary Page dated June 22, 2018, occurred on June 22, 2018 following a public hearing held on May 31, 2018, after public notice was given in the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, West Hawaii Today, and The Maui News on April 30, 2018.

The foregoing rulemaking actions shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

DAVID Y. IGE
Governor of Hawaii

Dated: 07-05-2018

APPROVED AS TO FORM:

Wade H. Hargrove III
Deputy Attorney General

Filed

'18 JUL -5 A11:13

LIEUTENANT GOVERNOR'S OFFICE

3271

Added

17) HAR Chapter 13-86.1

Relating to: **Protected Marine Fisheries Resources Sea Cucumber Management**

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART V PROTECTED MARINE FISHERIES RESOURCES

CHAPTER 86.1

SEA CUCUMBER MANAGEMENT

§13-86.1-1 Definitions. As used in this chapter, unless otherwise provided:

"Aquarium permit" means the permit issued by the department pursuant to section 188-31, HRS.

"Aquarium purposes" means to hold the sea cucumber alive in a state of captivity, whether as a pet, for scientific study, for public exhibition, for public display, or for sale for these purposes.

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

"Consumption purposes" means for food, medicine, or any other use whereby the sea cucumber is killed.

"Sea cucumber" means any echinoderm species of aquatic life in the class Holothuroidea.

"Take" means to catch, kill, remove, capture, confine, or harvest, or to attempt to catch, kill, remove, capture, confine, or harvest. [Eff 1/14/16] (Auth: HRS §190-3) (Imp: HRS §190-3)

§13-86.1-2 Commercial consumption fishery; prohibition. It is unlawful for any person to sell or offer for sale any sea cucumber taken from State waters for consumption purposes, or to otherwise take any sea cucumber from State waters for commercial purposes, except for commercial aquarium purposes as provided in section 13-86.1-3. [Eff 1/14/16] (Auth: HRS §§189-10, 190-3) (Imp: HRS §§189-10, 189-11, 190-3)

§13-86.1-3 Commercial aquarium fishery; season; closure; restrictions. (a) There is established an annual sea cucumber aquarium harvesting season for the taking of certain species of sea cucumber for commercial aquarium purposes from waters of Oahu only. For purposes of this section, "waters of Oahu" means all ocean waters within three nautical miles seaward from the highest wash of the waves on the shores of Oahu.

(b) Only *Holothuria hilla* and *Holothuria edulis* may be harvested for commercial aquarium purposes pursuant to this section.

(c) When a sea cucumber aquarium harvesting season is open, any person issued a valid aquarium permit and a valid commercial marine license may take, possess, and sell up to twenty sea cucumbers per day for aquarium purposes, subject to the provisions of this chapter, and as may be otherwise provided by law.

(d) When a sea cucumber aquarium harvesting season is closed, it is unlawful for any person to take, possess, sell, or offer for sale any sea cucumber taken from State waters for commercial aquarium purposes, except that aquarium dealers may possess, sell, and offer for sale sea cucumbers

validly obtained during an open season, provided that proper receipts are kept on file pursuant to HRS §189-11.

(e) There is established an annual catch limit for sea cucumber when taken for commercial aquarium purposes. The annual catch limit for sea cucumber for commercial aquarium purposes shall be 3,600 animals per year.

(f) The chairperson shall give notice of closure of the sea cucumber aquarium harvesting season when the annual catch limit is reached or exceeded or is anticipated to be reached or exceeded. [Eff 1/14/16] (Auth: HRS §§189-10, 190-3) (Imp: HRS §§189-10, 189-11, 190-3)

§13-86.1-4 Non-commercial fishery; daily bag limits. Any person may take and possess up to ten sea cucumbers per day, provided that the sea cucumbers are taken and possessed for personal human use or consumption and not for commercial use or sale. [Eff 1/14/16] (Auth: HRS §§187A-5, 190-3) (Imp: HRS §§187A-5, 190-3)

§13-86.1-5 Licenses, permits, and other exemptions. Notwithstanding the provisions of this chapter, the department may issue the following licenses and permits to exempt persons from the provisions of this chapter:

(1) Licenses issued pursuant to sections 187A-3.5 or 189-6, HRS;
(2) Permits issued pursuant to sections 187A-6, 188-37, or 190-4, HRS;
(3) As may be otherwise provided by law. [Eff 1/14/16] (Auth: HRS §§187A-3.5, 187A-6, 188-37, 189-6, 190-3) (Imp: HRS §§187A-3.5, 187A-6, 188-37, 189-6, 190-4)

§13-86.1-6 Penalty. (a) Any person violating any provision of this chapter shall be subject to:

(1) Administrative penalties as provided by section 187A-12.5, HRS;
(2) Criminal penalties as provided by section 190-5, HRS; and
(3) Any other penalty as provided by law.

(b) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State. [Eff 1/14/16] (Auth: HRS §190-3) (Imp: HRS §§187A-12.5, 190-5)

Added

18) HAR § 19-42-131

Relating to: **Dumping of Materials at Sea**

HAWAII ADMINISTRATIVE RULES
TITLE 19
DEPARTMENT OF TRANSPORTATION
CHAPTER 42
VESSEL AND HARBOR CONTROLS

SUBCHAPTER 4
SAFETY, CLEANLINESS, AND USE OF FACILITIES

§19-42-131 Dumping of materials at sea.

(a) When any owner, agent or individual contemplates the dumping of sinkable materials at sea by hauling across, within or on the navigable and/or shore waters of the State that person shall notify and obtain the permission of the department as specified in sections 19-42-161 and 19-42-162 prior to movement and shall not fail to perform any duty imposed thereby. All dumping at sea of sinkable objects or materials shall be done in the areas designated by the Secretary of the Army for such disposal and in accordance with the Corps of Engineers requirements and applicable state agency requirements.

(b) The dumping of floating objects is strictly prohibited. [Eff 5/20/82; am and comp 2/26/96] (Auth: HRS §§266-2, 266-3) (Imp: HRS §§266-2, 266-3)

Note: Refer to Corps of Engineers, U.S. Army, for information concerning location of designated areas for dumping at sea and for requirements.

Added

19) HAR § 19-42-136

Relating to: **Fueling**

HAWAII ADMINISTRATIVE RULES
TITLE 19
DEPARTMENT OF TRANSPORTATION
CHAPTER 42
VESSEL AND HARBOR CONTROLS

SUBCHAPTER 4
SAFETY, CLEANLINESS, AND USE OF FACILITIES

§19-42-136 Fueling. (a) All fueling operations shall be done in compliance with the stricter of any applicable federal, state, and county rules. The fueling of vessels at a state commercial harbor where a marine fueling station has been established, or where authorized tank trucks or tank trailers are available shall be accomplished only at a station, or by tank trucks or tank trailers with a state permit. A permit shall be issued only if:

(1) Proper application has been submitted;
(2) Established fees have been paid to the department by the applicant;
(3) There exists a comprehensive general liability insurance policy or policies, or a certificate of insurance in lieu thereof evidencing that a policy has been issued and is in force with a combined single limit of not less than $500,000. The specification of limits contained in this section shall not be construed in any way to be a limitation on the liability of the permittee for any injury or damage proximately caused by it. The insurance shall:

(A) Be issued by an insurance company or surety company authorized to do business in the State;
(B) Name the State as an additional insured;
(C) Provide that the department shall be notified at least thirty days prior to any termination, cancellation, or material change in its insurance coverage;
(D) Cover all injuries, losses, or damages arising from, growing out of, or caused by any acts or omissions of the permittee, its officers, agents, employees, invitees, or licensees, in connection with the permittee's use or occupancy of the premises; and
(E) Be maintained and kept in effect at the permittee's own expense throughout the life of the permit. The permittee shall submit evidence to the department of renewals or other actions to indicate that the insurance policy remains in effect as prescribed in this section.

(b) Prior to fueling a vessel at a state commercial harbor, the operator shall:
(1) Securely moor the vessel;
(2) Stop all engines, motors, fans, and devices which could produce sparks;
(3) Extinguish all fires;
(4) Close all ports, windows, doors, and hatches; and
(5) Clear the area of people not directly involved with the operation of the vessel or servicing of the vessel.

(c) Persons fueling a vessel at a state commercial harbor shall:
(1) Refrain from smoking, striking matches, or throwing switches; and
(2) Keep the nozzle of the fuel hose, or fuel can in continuous contact with fuel tank opening to guard against static sparks.

(d) After fueling is completed, the following actions shall be taken:
(1) Close fill openings;
(2) Wipe up all spilled fuel;
(3) Open all ports, windows, doors, and hatches;
(4) Permit vessel to ventilate for at least five minutes; and
(5) Check that there are no fuel fumes in the vessel's bilges or below deck spaces before starting machinery or lighting fires.

(e) Fueling a vessel from a fuel barge or tanker barge shall be allowed only when it is done in accordance with operational procedures approved by the U. S. Coast Guard. [Eff 5/20/82; am 12/5/83; am 11/7/91; am and comp 2/26/96] (Auth: HRS §§266-2, 266-3) (Imp: HRS §§266-2, 266-3)

Added

20) HAR § 19-42-161

Relating to: **Dredging, Filling, and Construction**

HAWAII ADMINISTRATIVE RULES
TITLE 19
DEPARTMENT OF TRANSPORTATION
CHAPTER 42
VESSEL AND HARBOR CONTROLS

SUBCHAPTER 6
PRIVATE INSTALLATION OR CONSTRUCTION

§19-42-161 Dredging, filling, and construction. (a) Any person, firm, or corporation desiring to perform any dredging, filling, or erecting of any construction within commercial harbors and entrance channels belonging to or controlled by the State, shall first obtain a permit therefor from the department.

(b) The application for any dredging, filling, or construction shall be in the form prescribed by the department, accompanied by maps and drawings which shall clearly show the location, scope, character, and details of the proposed work, and shall be further accompanied by a fee of $50 to cover costs of the necessary investigation. This fee is not refundable whether or not a permit is granted. [Eff 5/20/82; am and comp 2/26/96] (Auth: HRS §§266-2, 266-3) (Imp: HRS §§266-2, 266-3)

Added

21) HAR § 19-42-162

Relating to: **Jurisdiction of other Agencies**

HAWAII ADMINISTRATIVE RULES
TITLE 19
DEPARTMENT OF TRANSPORTATION
CHAPTER 42
VESSEL AND HARBOR CONTROLS

SUBCHAPTER 6
PRIVATE INSTALLATION OR CONSTRUCTION

§19-42-162 Jurisdiction of other agencies. The United States Army Corps of Engineers, the department of health, and the department of land and natural resources may have certain jurisdiction over navigable waters. The approval of these agencies shall also be secured before performing work within their jurisdictions. When directed, the applicant shall notify the United States Coast Guard of such work for publication of a "Notice to Mariners". [Eff 5/20/82; am and comp 2/26/96] (Auth: HRS §§266-2, 266-3) (Imp: HRS §§266-2, 266-3)

Added

22) HAR § 19-42-164

Relating to: **Construction of Structures**

HAWAII ADMINISTRATIVE RULES
TITLE 19
DEPARTMENT OF TRANSPORTATION
CHAPTER 42
VESSEL AND HARBOR CONTROLS

SUBCHAPTER 6
PRIVATE INSTALLATION OR CONSTRUCTION

§19-42-164 Construction of structures. No buildings or structures of any nature shall be erected or constructed on state property, nor shall existing structures be modified, without obtaining the prior permission of the division and any other governmental agency as required by law. The division may require plans, specifications, and other pertinent data to accompany any request for construction or modification of state facilities. In general, approval shall be dependent on an agreement to return the property to its original state when vacating the property, if requested by the division." [Eff 5/20/82; comp 2/26/96] (Auth: HRS §§266-2, 266-3) (Imp: HRS §§266-2, 266-3)

Added

23) City and County of Honolulu Rules Chapter 20-3

Relating to: **Water Quality**

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

REPEAL OF RULES RELATING TO SOIL EROSION STANDARDS AND GUIDELINES AND §1-5 SECTION II OF THE RULES RELATING TO STORM DRAINAGE STANDARDS; AND ADOPTION OF RULES RELATING TO WATER QUALITY (ADOPTED AUGUST 16, 2016 [EFFECTIVE AUGUST 16, 2017]).

Summary

1. Rules Relating to Soil Erosion Standards and Guidelines, effective April 8, 1999, is repealed.

2. §1-5 Section II – Standards for Storm Water Quality, Rules Relating to Storm Drainage Standards, effective June 1, 2013, is repealed.

3. Rules Relating to Water Quality of the Administrative Rules, Title 20, Department of Planning and Permitting, Chapter 3, is adopted August 16, 2016.

CITY AND COUNTY OF HONOLULU

ADMINISTRATIVE RULES

TITLE 20

DEPARTMENT OF PLANNING AND PERMITTING

CHAPTER 3

RULES RELATING TO WATER QUALITY

SUBCHAPTER 1
GENERAL PROVISIONS AND REQUIREMENTS

§20-3-1 Short Title. This document and its provisions, inclusive of any additions and/or amendments hereto, shall be known as the *Rules Relating to Water Quality* and may from time to time be referred to herein as the "Rules."

[Eff August 16, 2017] (Auth: ROH §§ 1-9.1, 14-12.1 et. seq., ROH § 14-13.1 et. seq., ROH § 14-16.1 et. seq.) (Imp: ROH § 14-12.1 et. seq.).

§20-3-2 Purpose. The Rules Relating to Water Quality are adopted to further the City and County of Honolulu's compliance with, and, performance of duties under Article XI, Section 1 of the Hawaii State Constitution, Hawaii Revised Statutes Chapters 180C and 342D, Chapter 14 of the Revised Ordinances of Honolulu 1990 (*as amended*), and the City and County of Honolulu's National Pollutant Discharge Elimination System Permit, No. NPDES Permit No. HI S000002, 2015 (*as amended*).

The Rules Relating to Water Quality apply to all Development and Land Disturbing Activities within the City and County of Honolulu and establish minimum requirements for the selection, design, implementation and maintenance of best management practices ("BMPs") to protect the MS4 and Receiving Waters from pollutants that are associated with land disturbance, surface hardening, and land use activities. The pollutants of concern ("POC") addressed by these Rules include, but are not limited to, sediment, nutrients, trash, pathogens, pesticides, oil, grease, hazardous waste, toxic waste, metals, and organic compounds.

The standards and requirements established by these Rules are not a maximum limit to the design requirements for BMPs. Compliance with the minimum requirements and standards established by these Rules does not guarantee that selected BMPs will meet their pollution control and/or drainage objectives. Land owners, design professionals, developers, and contractors are encouraged to implement BMPs that go beyond that requirements of these Rules and seek the advice of other agencies that are responsible for water quality, pollution control, receiving waters, water rights, flood plains, and storm water.

Compliance with these rules does not excuse violations of State or Federal law, City Ordinances, or permits issued by Department of Planning and Permitting or other permitting authorities.

[Eff August 16, 2017] (Auth: ROH §§ 1-9.1, 14-12.1 et. seq., ROH § 14-13.1 et. seq. , ROH § 14-16.1 et. seq.) (Imp: ROH § 14-12.1 et. seq).

§20-3-3 Definitions. As used in this Chapter, unless the context clearly requires otherwise:

"Action of the Director" or "Director's Action" means a written decision by the Director of Planning and Permitting or his authorized agent regarding an application submitted to the Department pursuant to Chapter 14 of the Revised Ordinances of Honolulu or the Rules Relating to Water Quality.

"Architect" means an Architect licensed in the State of Hawai'i.

"Best Management Practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, management practices, treatments, and temporary or permanent Structures or devices that are intended and designed to eliminate and Minimize the discharge of pollutants, directly or indirectly, to receiving waters, to the maximum extent practicable.

"Biofiltration" means a pollution control technique that uses living material to capture, and absorb or biologically degrade pollutants.

"Bonded Fiber Matrix" means a matrix consisting of strands of continuous, elongated wood fibers combined with a stabilizing emulsion and water. Bonded fiber matrix must be 100 percent biodegradable, mixed with water in a hydraulic mulcher, and applied as liquid slurry.

"Certified Water Pollution Plan Preparer" means an Architect, Land Surveyor, or Landscape Architect licensed in the State of Hawaii who has a current Water Pollution Plan Preparer Certificate from the Department.

"City" means the City and County of Honolulu.

"Contested case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after a hearing before the Department.

"Days" means calendar days, including weekends and holidays, unless otherwise indicated.

"Department" or "DPP" means the City and County of Honolulu Department of Planning and Permitting.

"Department of Health" or "DOH" means the State of Hawai'i Department of Health.

"Design Engineer" means a licensed Civil Engineer in the State of Hawaii who stamps or certifies plans that are submitted to the Department for review and approval.

"Developer" means the owner of real property subject to Development and includes any person that causes, contributes to, or participates in the actions necessary to accomplish Development.

"Development" means the sum of any and all actions that are undertaken to alter the natural or existing condition of real property or improvements on real property if a building, electric, grading, grubbing, plumbing, stockpiling or trenching permit is required for the Project. Development also includes Redevelopment and changes in land use that may result in different or increased Pollutant discharges to the MS4 or Receiving Waters. Development does not include work that does not involve any Land Disturbing Activity, the installation of signs and traffic control devices, the construction of individual bus shelters, the installation of temporary BMPs, emergency work necessary to repair surfaces that are in immediate need of stabilization, the marking of improved surfaces with striping or signage, and minor and ordinary repairs to existing improvements, provided that the work will not increase the impervious surface area of the Project Site or involve replacing 50 percent or more of the on-Site impervious surfaces area.

"Director" means the director of the City and County of Honolulu Department of Planning and Permitting or the Director's authorized agent or representative.

"Discharge" means the deposit, disposal, injection, dumping, spilling, leaking, tracking or placing of any substance into the MS4 or Receiving Waters, directly or indirectly, and includes allowing the foregoing to occur.

"Disturbed Area" means any and all portions of Project Site affected by Land Disturbing Activities. Disturbed Areas include, but are not limited to, soils and surface areas affected by excavation, areas that are graded, grubbed, or clearing by uprooting vegetation, areas affected by the demolition of foundations, areas used for equipment staging, materials, or staging, and areas affected by heavy pedestrian or vehicular traffic that disrupts ground covers or surface soil conditions.

"Engineer" means an Engineer licensed in the State of Hawai'i.

"Erosion and Sediment Control Plan" or "ESCP" means a plan prepared to prevent and control erosion and sediment discharges from a construction Site. ESCPs also include good housekeeping BMPs to limit or reduce other pollutants associated with construction activities.

"ESCP Coordinator" means the designee responsible for the implementation of an ESCP approved by the Director. The designation of an ESCP Coordinator does not relieve the property owner or other responsible parties from compliance with these Rules or liability for violations of the same.

"Erosion Control" means practices and devices that are intended and designed to prevent wind and water erosion, water pollution, soil loss, and Pollutant discharges to the MS4 and Receiving Water. Erosion Control may be achieved, among other things, by the appropriate and effective use of BMPs to address energy and/or velocity dissipation, slope and surface stabilization, and the creation of physical barriers that separate erodible soils from factors that cause or contribute to erosion. Erosion control BMPs include, but are not limited to: Rolled Erosion Control Products, fiber matrix devices, mulching, hydoseeding, and the preservation of existing vegetation.

"Erosion Control Blankets" means biodegradable or photodegradable blankets that are designed to Minimize and/or prevent erosion.

"Evapotranspiration" means the loss of water from soil by evaporation and vegetative transpiration.

"Excavation" or "cut" means any act by which earth material is dug into or moved, and shall include conditions resulting therefrom.

"Final action" means placing an Action of the Director in the U.S. mail for delivery to a person.

"Geotextiles" or "Geotextile Mats" means woven non-biodegradable polypropylene fabric designed for use on Disturbed Areas where high strength materials are needed to endure abrasive forces through the life of a Project. Geotextiles can be used for drainage control and slope stabilization.

"Grading" means any excavation or fill, or combination thereof.

"Grubbing" means the uprooting of vegetation, including trees, shrubbery, and plant life from the surface of the ground.

"Hearings officer" means a person appointed by the Director to preside over a contested case hearing.

"Hydraulic Matrix" means a matrix consisting of stabilizing emulsion combined with wood fiber, paper fiber, and water.

"Improvement" means any structure or work on real property that increases the usefulness or value of the realty.

"Industrial Park" means an area of land used or zoned for industrial Development.

"Infeasible" means not technologically possible, or, cost prohibitive and not achievable in light of best industry practices.

"Infiltration" means practices which capture and temporarily store a design storm volume of water before allowing it to infiltrate into the soil.

"Land Disturbing Activity" or "Land Disturbance" means any action, activity, or land use that alters the integrity, structure, texture, density, permeability, contents, or stress conditions of soil or ground surfaces if a building, electric, grading, grubbing, plumbing, stockpiling or trenching permit is required for the Project. Land disturbing activities include, but are not limited to actions that result in the turning, penetration, or moving of soil, the resurfacing of pavement that involves the exposure of the base course or subsurface soils, and the use of portions of a Project Site as staging areas or base yards.

"Low Impact Development" or "LID" means systems and practices that use or mimic natural processes that result in the Infiltration, evapotranspiration or use storm water in order to protect water quality and the aquatic habitat. At both site and regional scales, LID aims to preserve, restore, and create green space using soils, vegetation, and rain harvest techniques.

"Maximum Extent Practicable" or "MEP" means economically achievable measures that prevent or reduce the addition of pollutants to the environment to the greatest degree achievable through the application of the best available pollution control practices, technologies, processes, siting criteria, operating methods and other alternatives.

"Minimize" means to reduce and/or eliminate to the extent achievable using BMPs and storm water controls that are technologically available and economically practicable and achievable in light of the best industry practices.

"Municipal Separate Storm Sewer System" or "MS4" means the City's drainage infrastructure that is designed or intended to collect and convey storm water and includes, but is not limited to, City roads with drainage improvements, City streets, catch basins, curbs, gutters, ditches, man-made channels, and storm drains.

"National Pollutant Discharge Elimination System permit" or "NPDES permit" means the permit issued to the City pursuant to *Title 40, Code of Federal Regulations, Part 122,* Subpart B, Section 122.26(a) (1) (iii), for storm water discharge from the City's separate storm sewer systems; or the permit issued to a person or property owner for a storm water discharge associated with industrial activity pursuant to *Title 40, Code of Federal Regulations, Part 122,* Subpart B, Section 122.26(a) (1) (ii), or other applicable section of Part 122; or the permit issued to a person or property owner for the discharge of any Pollutant from a point source into the State Waters through the City's separate storm sewer system pursuant to *Hawaii Administrative Rules*, Chapter 11-55, "Water Pollution Control".

"Netting" means plastic or geotextile netting that is biodegradable or photodegradable and designed to secure loose mulches to the ground.

"Permanent BMP" or "Post-Construction BMP" means a BMP that will remain on site after the completion of a Project in order to prevent or reduce the discharge of pollutants to the MS4 and/or receiving waters.

"Person" means an individual, association, partnership, corporation, municipality, State or Federal agency, or an officer, agent or employee thereof. Person also includes trusts, estates, associations, groups of individuals and legal entities. Where person refers to a corporation,

association, or other legal entity that has directors or corporate officers, person shall also refer to the individual directors or corporate officers that authorize, allow, or direct actions governed by these rules.

"Plastic Sheeting" means covers comprised of plastic that are impervious, non-biodegradable, and designed for short-term drainage control, slope stabilization, or stockpile and/or materials management.

"Pollutant" means any dredge, spoil, solid refuse, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or dismantled equipment, rock, sand, soil, sediment, dirt, industrial, municipal, or agricultural waste and substances of similar nature.

"Project" means all planned or intended Development, Land Disturbing Activities, construction activities, and improvements to real property and includes any unplanned construction, developments, and/or improvements that occur on Site.

"Real property" means realty, real estate, or land and includes all Structures and improvements upon the same.

"Receiving Waters" or "State Waters" means all waters, fresh, brackish, or salt, around and within the State of Hawai'i, including but not limited to coastal waters, streams, rivers, ponds, estuaries, reservoirs, canals, ground waters, and lakes. Waters in drainage ditches, drainage ponds, and drainage reservoirs required as part of a water pollution control system are excluded.

"Redevelopment" means the creation, addition, and/or replacement of impervious surface on improved real property. Redevelopment does not include trenching and resurfacing associated with utility work, resurfacing and reconfiguring existing impervious surfaces, the repair of sidewalks or pedestrian ramps, pothole repair, ordinary road maintenance, or the marking of vehicular or pedestrian lanes on existing roads.

"Replacement of Impervious Surface" includes any activity that is not part of routine maintenance and where impervious materials are removed, exposing underlying soil during construction.

"Retail Mall" or "Commercial mall" means one or more buildings that house or form a complex of retail stores with interconnecting walkways. Retail and Commercial malls include, but are not limited to, mini-malls, strip malls, retail complexes, and enclosed shopping malls or shopping centers.

"Rolled Erosion Control Products" means geotextiles, plastic sheeting, Erosion Control blankets, netting, and mats used to protect disturbed soil areas from erosion by water and wind. Rolled Erosion Control products can be used as stand-alone soil stabilization BMPs, in conjunction with re-vegetation, or to reinforce mulch.

"Sediment Control" means practices and devices that are intended and designed to prevent soils on a Project Site from being transported to the MS4 and Receiving Waters. Sediment Control may be achieved, among other things, by the appropriate and effective use of silt fences, fiber rolls, gravel bags, drain inlet protection devices, and dewatering filtration.

"Self-Mitigating Area" means a natural or landscaped area, including green roofs, which retains and/or treats rainfall within its perimeter without accepting runoff from other areas. Self-Mitigating Areas must retain all collected storm water or drain directly to the MS4.

"Site" means the real property on which Development, construction, or other land disturbing activities occur and/or are intended to occur.

"Site Design Strategies" means LID design techniques that are intended to maintain or restore the Site's hydrologic and hydraulic functions with the intent of minimizing runoff volume and preserving existing flow paths.

"Source Control BMPs" means BMPs that are designed to prevent pollutants from contacting storm water runoff and prevent their discharge into the MS4 or Receiving Waters.

"Structure" means a building, improvement on real property, or arrangement of items on property that has or requires a fixed location on the ground.

"Temporary BMPs" means BMPs that will discontinue or be removed from the Site after construction or land disturbing activities are complete.

"Treatment Control BMPs" means engineered technologies designed to remove pollutants from storm water runoff prior to discharge to the storm drain system or receiving waters.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2).

§20-3-4 Construction. In the interpretation and application of these Rules, the following shall be observed unless it is apparent from the context of the Rules that a different construction is intended:

(a) General Rule. All words and phrases shall be construed and understood according to the common and approved usage of the language, but technical words and phrases that have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

(b) Construction of Ambiguous Words. Where the words are ambiguous:

(1) The meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning.

(2) The reason and spirit of the rule and the cause which induced enactment or promulgation of the rule may be considered to discover its true meaning.

(3) Every construction which leads to an absurdity shall be rejected.

(c) Rules in pari materia. Rules in pari materia, or upon the same subject matter, shall be construed with reference to each other. What is clear in one ordinance may be called in aid to explain what is doubtful in another.

(d) Number and Gender. Words in the masculine gender signify both the masculine and feminine gender, those in the singular or plural number signify both the singular and plural number, and words importing adults include youths or children.

(e) Tenses. Every word used in the present tense shall include the future.

(f) Acts by Subordinate Officer. When any provision herein requires an act to be done, which may by law as well be done by a subordinate officer as by the superior officer, such requirement shall be construed to include all such acts when done by an authorized subordinate officer.

(g) Rules Not Retrospective. No rule or regulation herein has any retrospective operation, unless otherwise expressed or obviously intended.

(h) Persons and Property Subject to Rules and Regulations. The Rules and regulations are obligatory upon all persons and property within the jurisdiction of the City.

(i) Effect of Prohibitory Rules. Whatever is done in contravention of a prohibitory Rule is void, although the nullity be not formally directed.

(j) References Apply to Amendments. Whenever reference is made to any portion of the Revised Ordinances of Honolulu, any permit issued to the City, or of any other law, the reference applies to all amendments thereto.

(k) References Inclusive. Whenever reference is made to a series of sections in the Revised Ordinances of Honolulu by citing only the numbers of the first and last sections connected by the word "to," the reference includes both the first and last sections.

(l) Effect of Rules. In requirements of these Rules are to be regarded as minimum requirements for the protection of the public health, safety, and welfare.

(m) Use of capitalized terms. Defined words and phrases have been capitalized in the body of these Rules to ensure that the reader is aware of the intended use and meaning of defined words and phrases. The failure to capitalize any defined term or phrase does indicate an intention to apply a meaning or definition to a defined word or phrase other than that provided in §20-3-3 of these Rules. All defined terms and phrases shall be construed in accordance with their defined meanings unless such construction will necessarily lead to an absurd result.

(n) Conflicts with Other Laws or Standards. If other laws, ordinances, rules or regulations cover the same subject as these Rules, conflicts shall be resolved by applying the stricter standard as between conflicting authorities.

(o) No abrogation. These Rules shall not abrogate or annul any permits or approved drainage reports, construction plans, easements, or covenants issued or approved by the Director before the effective date of the Rules unless land disturbing activities have not begun or is inconsequential and the permit or approved construction plans is expired. Approved construction plans expire two years after the Director's approval.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2).

§20-3-5 Enforcement Authority. Except as otherwise specified in these Rules, the Director shall be responsible for the administration and enforcement of the requirements and regulations contained in these Rules.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

§20-3-6 Enforcement of Post-Construction Violations. Violations involving the failure to effectively prevent Pollutant discharges to the MS4 or receiving waters and violations involving the failure to properly use or maintain Permanent BMPs may be enforced by the Director of the Department of Facility Maintenance.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

§20-3-7 Responsible Parties. The owner of real property located within the City and County of Honolulu is absolutely responsible for compliance with these rules and shall be held liable for any violations occurring on, or, arising from, their property. In addition, the

Director may hold any person that causes, contributes to, or fails to prevent a violation of these Rules responsible for the violation and any penalties for the same. Where more than one person is deemed responsible for a violation, the Director may cite and penalize each responsible person separately or hold one or more responsible parties jointly and severally responsible for the violation and penalty.

[Eff August 16, 2017] (Auth: ROH §§ 1-9.1, 14-12.1 et. seq., ROH § 14-13.1 et. seq. , ROH § 14-16.1 et. seq.) (Imp: ROH § 14-12.1 et. seq).

§20-3-8 Additional Standards. The reader is advised to review the documents listed below for informational purposes:

(a) City and County of Honolulu, Storm Water Best Management Practices Manual, Construction, 2011 (as amended);

(b) City and County of Honolulu, Storm Water BMP Guide, 2012 (as amended);

(c) City and County of Honolulu, Storm Water Management Program Plan, 2016 (as amended);

(d) Hawaii Administrative Rules, Title 11, Chapter 54, Water Quality Standards, 2014 (as amended); and

(e) Hawaii Administrative Rules, Title 11, Chapter 55, Water Pollution Control, 2014 (as amended).

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2).

SUBCHAPTER 2
GENERAL REQUIREMENTS FOR DEVELOPMENT AND LAND DISTURBING ACTIVITIES

§20-3-9 Best Management Practices Required. All persons who engage in Development or Land Disturbing Activities shall install, implement, and maintain appropriate BMPs to prevent the discharge of pollutants to the MS4 and Receiving Waters.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§1-9.1, 14-12.31, 18-4.1) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

§20-3-10 Minimum BMP Performance Requirements. BMPs for all Development and Land Disturbing Activities must effectively prevent the discharge of the following to the MS4 and Receiving Waters:

(a) Material that will settle to form objectionable sludge or bottom deposits;
(b) Floating debris, oil, grease, scum or particulates;
(c) Substances in amounts sufficient to produce taste in the water or detectable flavor in the flesh of aquatic life, or in amounts sufficient to produce objectionable color, turbidity, or other conditions in receiving waters;
(d) 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, or plant life, or in amounts to interfere with the beneficial uses of water;
(e) Substances or conditions or combinations thereof in concentrations that produce undesirable aquatic life;
(f) 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; and
(g) Discharges that cause or contribute to a violation of Chapter 11-54 of the Hawaii Administrative Rules.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§1-9.1, 14-12.31, 18-4.1) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

§20-3-11 Conditions of Approval. The Director may condition the approval of any permit issued by the Department on the implementation and maintenance of temporary or permanent BMPs to address the following to the Maximum Extent Practicable:
(a) Erosion Control;
(b) Run-on Control;
(c) Run-off Control;
(d) Sediment Control;
(e) Pollution Control;
(f) Post-Construction Pollutant Control;
(g) Low Impact Development objectives; and
(h) Water treatment and/or remediation.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§1-9.1, 14-12.31, 18-4.1) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

§20-3-12 BMP Use and Maintenance Required. (a) All BMPs must be designed, used, and maintained in compliance with the standards and specifications set forth in these rules at all times. Where these Rules do not provide standards and specifications for a BMP, the BMP must be installed and maintained in compliance with the manufacturer's specifications, which must be kept onsite and immediately made available for inspection upon request by the Director. If BMPs fail, notwithstanding their intent or design, the BMPs shall be modified or upgraded to prevent any further failure in the same or similar circumstances.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§1-9.1, 14-12.31, 18-4.1) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

SUBCHAPTER 3
PROJECT CATEGORIES AND CLASSIFICATIONS

§20-3-13 Projects. (a) A Project is the sum of all Development and Land Disturbing Activities that are planned or conducted on a Project Site. Individual actions, Project phases, and incremental improvements to real property shall be construed as a single Project where:

(1) The Development and any associated Land Disturbing Activities are phases or increments of a larger total Project or undertaking;
(2) The Development and any associated Land Disturbing Activities are a necessary precedent for a larger total Project or undertaking;
(3) The Development and any associated Land Disturbing Activities represent a commitment to a larger Project or undertaking; or
(4) The combined effects of Development and Land Disturbing Activities on adjoining lots cannot be adequately address by separate BMP planning and/or implementation.

(b) All Development shall be categorized as a Trenching Permit Project, Category 1A, Category 1B, Category 1C, Category 2, Category 3, Category 4, or Category 5 Project.

(c) Where Development qualifies a Project for placement in more than one Project category, the higher Project category shall apply to that Project.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-14 Project Categories for Development. (a) Trenching Permit Projects. Development that requires a trenching permit but does not require a building, grading, grubbing, or stockpiling permit.

(b) Category 1A Projects. Development that requires a building permit but does not require a grading, grubbing, or stockpiling permit shall be classified as a Category 1A Project if it meets all of the following criteria:

(1) Residential single-family or two-family detached Development;
(2) The total Disturbed Area for the Project is less than 1,000 square feet; and
(3) Land Disturbing activities will not occur on slopes equal to or greater than 15 percent at the Site.

(c) Category 1B Projects. Development that requires a building permit but does not require a grading, grubbing, or stockpiling permit shall be classified as a Category 1B Project if it meets any of the following criteria:

(1) Commercial Development with less than one acre of Disturbed Area;
(2) Residential single-family and two-family detached Development between 1,000 square feet and less than one acre of Disturbed Area; or

(3) Residential single-family and two-family detached Development less than 1,000 square feet of Disturbed Area if work will be performed on slopes equal to or greater than 15 percent at the Site.

(d) Category 1C Projects. Development that requires a building permit but is not required to obtain a grading, grubbing, or stockpiling permit shall be classified as a Category 1C Project if it involves a Disturbed Area of one acre or more or requires a NPDES General/ Individual Permit Authorizing Discharges of Storm Water Associated with Construction Activity, issued by the DOH.

(e) Category 2 Projects. Development requiring a grading, grubbing, or stockpiling permit shall be classified as a Category 2 Project if the area of the zoning lot or portion thereof subject to the permit is less than 15,000 square feet for single-family or two-family dwelling uses and less than 7,500 square feet for other uses.

(f) Category 3 Projects. Development requiring a grading, grubbing, or stockpiling permit shall be classified as a Category 3 Project if the area of the zoning lot or portion thereof subject to the permit is 15,000 square feet or more for single-family or two-family dwelling uses, or 7,500 square feet or more for other uses, but where the total area graded or stockpiled upon is less than 15,000 square feet for single-family or two-family dwellings uses and less than 7,500 square feet for other uses.

(g) Category 4 Projects. Development requiring a grading, grubbing, or stockpiling permit shall be classified as a Category 4 Project if the total area including any areas developed incrementally that is to be graded, grubbed, or stockpiled upon is 15,000 square feet or more for single-family or two-family dwelling uses, or 7,500 square feet or more for other uses, or in the event a proposed cut or fill is greater than 15 feet in height for single-family or two-family dwelling uses, or 7.5 feet in height for other uses.

(h) Category 5 Projects. Development requiring a grading, grubbing, or stockpiling permit shall be classified as a Category 5 Project if it involves a Disturbed Area of one acre or more and which require a NPDES General/Individual Permit Authorizing Discharges of Storm Water Associated with Construction Activity issued by the DOH.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

SUBCHAPTER 4
REQUIREMENTS FOR REGULATED PROJECTS AND ACTIVITIES DURING CONSTRUCTION

§20-3-15 Erosion and Sediment Control Plans for Development. (a) No person shall conduct, participate in, or allow any Development without an Erosion and Sediment Control Plan (ESCP) approved by the Director.

(b) It is a violation of these Rules to conduct, participate in, or allow any Development that is not conducted in accordance with an ESCP approved by the Director.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

§20-3-16 Processing and Approval of Erosion and Sediment Control Plans. (a) ESCPs must be reviewed and approved by the Director prior to issuance of a building, grading, grubbing, or stockpiling or trenching permit for Development.

(b) ESCPs shall be submitted to the Director for review and approval with the first set of plans for work on the Project or Site.

(c) The Director shall review ESCPs for conformance with the requirements of these Rules and require any revisions necessary to achieve compliance with these Rules. The Director may also condition the approval of an ESCP on the implementation, use, and/or maintenance of BMPs not expressly required by these Rules if additional BMPs are necessary to reduce Pollutant discharges to the MS4 and/or Receiving Waters to the MEP.

(d) Minor changes to an ESCP may be made during construction if approved by a Department Inspector. Minor changes to an ESCP shall be noted on the Site copy of the ESCP and initialed by the approving inspector.

(e) Major changes to an ESCP must be proposed to the Director in writing and approved by the Director before work resumes.

(f) Each failure to comply with the requirements of an ESCP approved by the Director shall be a separate violation of these rules. In addition, each day continuance of a violation shall be separate offense.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§1-9.1, 14-12.31, 18-4.1) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1 18-5.1).

§20-3-17 Requirements for Trenching Permit Projects. (a) Projects which require a trenching permit but do not require a building, grading, grubbing, or stockpiling permit must include, at a minimum, the following BMPs as part of their trenching plan and notes which shall constitute the ESCP:

(1) Project Scheduling;
(2) Storm Drain Inlet Protection for storm drains that may receive runoff from the Disturbed Area;
(3) Stockpile Management BMPs;
(4) Perimeter Controls;

(5) Dewatering Operations BMPs; and
(6) Good Housekeeping Practices for work area and staging areas.

(b) The ESCP for Trenching Permit Projects shall designate a person responsible for implementing the ESCP at the Project Site ("ESCP Coordinator") and must be signed by the owner of the property and the ESCP coordinator. The name, phone number, mailing address, and email address of the ESCP Coordinator shall be submitted to the Director in writing at least 2 weeks prior to commencing any work governed by these Rules.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-18 Requirements for Category 1A Projects. (a) ESCPs for Category 1A Projects may be prepared by the owner of the property subject to Development or their authorized agent and shall designate a person responsible for implementing the ESCP at the Project Site ("ESCP Coordinator"). The name, phone number, mailing address, and email address of the ESCP Coordinator shall be submitted to the Director in writing at least 2 weeks prior to commencing any work governed by these Rules. The ESCP must be signed by the owner of the property and the ESCP coordinator.

(b) ESCPs for Category 1A Projects must contain information that is sufficient to allow the Director to evaluate the environmental characteristics and impacts of the Project on the MS4 and Receiving Waters, and include, at a minimum, a BMP Site Plan, which depicts the outline of buildings and Structures, provides a clear delineation of Disturbed Areas, and the proximate location of proposed BMPs and any drainage Structures and Receiving Waters located within 50 feet of the Project Site.

(c) ESCPs for Category 1A Projects must include, at a minimum, BMPs to address and achieve:
(1) Erosion Control which shall include the following BMPs:
(i) Project Planning and Design;
(ii) Project Scheduling; and
(iii) Permanent Stabilization.
(2) Sediment Control to prevent release of sediment laden waters to the MS4 and Receiving Waters, which shall include the following BMPs:
(i) Storm Drain Inlet Protection; and
(ii) Perimeter Controls.
(3) Good Housekeeping practices to prevent and Minimize Pollutant discharges to the MS4 and Receiving Waters, which shall include the following BMPs:
(i) BMP and Site Maintenance;
(ii) Dust Control;
(iii) Material Delivery, Storage, and Use BMPs;
(iv) Stockpile Management BMPs;
(v) Spill Prevention and Control BMPs;
(vi) Solid Waste Management BMPs;
(vii) Hazardous Waste Management BMPs;
(viii) Contaminated Soil Management BMPs;
(ix) Concrete Waste Management BMPs;

(x) Sanitary/Septic Waste Management BMPs;
(xi) Liquid Waste Management BMPs;
(xii) Vehicle and Equipment Cleaning BMPs;
(xiii) Vehicle and Equipment Fueling BMPs;
(xiv) Vehicle and Equipment Maintenance BMPs; and
(xv) Tracking Control.

(d) ESCPs for Category 1A Projects shall be completed using the small Project ESCP template provided as Appendix A to these Rules and may include additional plans and materials to aid the Director's review.

(e) If any of the BMPs listed above are not included in an ESCP for a Category 1A Project, the ESCP narrative shall provide a brief explanation of why the omitted BMP is unnecessary or impracticable for the Project.

(f) The Director shall approve accept an ESCP if it complies with the requirements of these Rules and reduces the risk of onsite erosion, off-site sedimentation, and Pollutant discharges to the MS4 and Receiving Waters to the MEP. The Director may also require revisions to ESCPs and Project schedules or approve the same subject to conditions in order to achieve practicable reductions to the risk of Pollutant discharges to the MS4 and/or Receiving Waters.

(g) Copies of the approved ESCP and Project schedule must be kept on the Project Site at all times and immediately made available for review by the Director upon request.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-19 Requirements for Category 1B Projects. (a) ESCPs for Category 1B Projects may be prepared by the owner of the property subject to Development or their authorized agent and shall designate a person responsible for implementing the ESCP at the Project Site ("ESCP Coordinator"). The name, phone number, mailing address, and email address of the ESCP Coordinator shall be submitted to the Director in writing at least 2 weeks prior to commencing any work governed by these Rules. The ESCP must be signed by the owner of the property and the ESCP coordinator.

(b) ESCPs for Category 1B Projects must contain information that is sufficient to allow the Director to evaluate the environmental characteristics and impacts of the Project on the MS4 and Receiving Waters, and include, at a minimum, a BMP Site Plan, which depicts the outline of buildings and Structures, provides a clear delineation of Disturbed Areas, and the proximate location of proposed BMPs and any drainage Structures and Receiving Waters located within 50 feet of the Project Site.

(c) ESCPs for Category 1B Projects must include, at a minimum, BMPs to address and achieve:
(1) Erosion Control which shall include the following BMPs:
(i) Project Planning and Design;
(ii) Project Scheduling;
(iii) Slope Management and Protection;
(iv) Temporary Stabilization; and
(v) Permanent Stabilization.

(2) Sediment Control to prevent release of sediment laden waters to the MS4 and Receiving Waters, which shall include the following BMPs:
  (i) Storm Drain Inlet Protection; and
  (ii) Perimeter Controls.

(3) Good Housekeeping Practices to prevent and minimize Pollutant discharges to the MS4 and Receiving Waters, which shall include the following BMPs:
  (i) BMP and Site Maintenance;
  (ii) Dust Control;
  (iii) Material Delivery, Storage, and Use BMPs;
  (iv) Stockpile Management BMPs;
  (v) Spill Prevention and Control BMPs;
  (vi) Solid Waste Management BMPs;
  (vii) Hazardous Waste Management BMPs;
  (viii) Contaminated Soil Management BMPs;
  (ix) Concrete Waste Management BMPs;
  (x) Sanitary/Septic Waste Management BMPs;
  (xi) Liquid Waste Management BMPs;
  (xii) Vehicle and Equipment Cleaning BMPs;
  (xiii) Vehicle and Equipment Fueling BMPs;
  (xiv) Vehicle and Equipment Maintenance BMPs; and
  (xv) Tracking Control.

(d) ESCPs for Category 1B Projects shall be completed using the Small Project ESCP template provided as Appendix B to these Rules and may include additional plans and materials to aid the Director's review.

(e) If any of the BMPs listed above are not included in an ESCP for a Category 1B Project, the ESCP narrative shall provide a brief explanation of why the omitted BMP is unnecessary or impracticable for the Project.

(f) The Director shall approve an ESCP if it complies with the requirements of these Rules and reduces the risk of onsite erosion, off-site sedimentation, and Pollutant discharges to the MS4 and Receiving Waters to the MEP. The Director may also require revisions to ESCPs and Project schedules or approve the same subject to conditions in order to achieve practicable reductions to the risk of Pollutant discharges to the MS4 and/or Receiving Waters.

(g) Copies of the approved ESCP and Project schedule must be kept on the Project Site at all times and immediately made available for review by the Director upon request.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-20 Requirements for Category 1C Projects. (a) ESCPs for Category 1C Projects must be prepared by an Engineer licensed in the State of Hawaii and must designate a person responsible for implementing the ESCP at the Project Site ("ESCP Coordinator"). The name, phone number, mailing address, and email address of the ESCP Coordinator shall be submitted to the Director in writing at least 2 weeks prior to commencing any work governed by these Rules. The ESCP must be signed by the owner of the property and the ESCP Coordinator.

(b) The ESCP must contain information that is sufficient to allow the Director to evaluate the environmental characteristics and impacts of the Project on the MS4 and Receiving Waters, and include, at a minimum:

(1) A location map showing the name, coordinate, and classification (e.g., Class 1, 2, Class A, Class AA waters) of Receiving Waters, as identified through the DOH State Water Quality Map, available at the DOH Clean Water Branch website;

(2) A vicinity map showing the location of streams, channels, and drainage Structures located within 100 feet of the Project Site;

(3) The location of the 100-year flood plain as shown on the FEMA Map Service Center website;

(4) The location of drainage Structures located within 100 feet of the Project Site;

(5) Topographic maps showing the existing and finished contours of the Site;

(6) Existing and final drainage patterns and discharge points;

(7) Proposed Structures, impervious areas, existing vegetation, final landscaping conditions, and appurtenant improvements;

(8) Erosion Control construction notes including non-structural BMPs that cannot be shown on a Site plan;

(9) A BMP Site Plan, drawn to scale, which depicts the outline of buildings and Structures, provides a clear delineation of Disturbed Areas, and the proximate location of proposed BMPs;

(10) BMP design details and notes clearly identifying temporary BMPs, permanent BMPs, a schedule for BMP implementation, and BMP maintenance activities;

(11) A list or table of preconstruction, during construction, and post-construction BMPs;

(12) A statement in the ESCP construction notes that the contractor, developer, and/or owner shall obtain written approval from the Director at each stage of Development before proceeding to the next step in Development described in the ESCP; and

(13) Any additional information required by the Director.

(c) ESCPs for Category 1C Projects shall include, at a minimum, BMPs to address and achieve:

(1) Erosion Control which shall include the following BMPs:

(i) Project Planning and Design;

(ii) Project Scheduling;

(iii) Slope Management and Protection;

(iv) Temporary Stabilization;

(v) Permanent Stabilization;

(vi) Diversion BMPs to divert runoff from upstream areas around Disturbed Areas of the Site;

(vii) Velocity Dissipation Devices;

(viii) Preserve Existing Vegetation; and

(ix) Minimize Soil Compaction.

(2) Sediment Control to prevent release of sediment laden waters to the MS4 and Receiving Waters, which shall include following BMPs:
  (i) Storm Drain Inlet Protection;
  (ii) Perimeter Controls; and
  (iii) Buffer Zones.

(3) Good Housekeeping Practices to prevent and Minimize Pollutant discharges to the MS4 and Receiving Waters, which shall include the following BMPs:
  (i) BMP and Site Maintenance;
  (ii) Dust Control;
  (iii) Material Delivery, Storage and Use BMPs;
  (iv) Stockpile Management BMPs;
  (v) Spill Prevention and Control BMPs;
  (vi) Solid Waste Management BMPs;
  (vii) Hazardous Waste Management BMPs;
  (viii) Contaminated Soil Management BMPs;
  (ix) Concrete Waste Management BMPs;
  (x) Sanitary/Septic Waste Management BMPs;
  (xi) Liquid Waste Management BMPs;
  (xii) Vehicle and Equipment Cleaning BMPs;
  (xiii) Vehicle and Equipment Fueling BMPs;
  (xiv) Vehicle and Equipment Maintenance BMPs;
  (xv) Tracking Control;
  (xvi) Stabilized Construction Entrance and Exit; and
  (xvii) Dewatering Operations BMPs.

(d) If any of the BMPs listed above are not included in an ESCP for a Category 1C Project, the ESCP notes shall provide a list of the omitted BMP that are unnecessary or impracticable for the Project.

(e) The Director shall approve an ESCP if it complies with the requirements of these Rules and reduces the risk of onsite erosion, off-site sedimentation, and Pollutant discharges to the MS4 and Receiving Waters to the MEP. The Director may also require revisions to ESCPs and Project schedules or approve the same subject to conditions in order to achieve practicable reductions to the risk of Pollutant discharges to the MS4 and/or Receiving Waters.

(f) Copies of the approved ESCP and Project schedule must be kept on the Project Site at all times and immediately made available for review by the Director upon request.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-21 Requirements for Category 2 Projects. (a) ESCPs for Category 2 Projects may be prepared by the owner of the property subject to Development or his authorized agent and shall designate a person responsible for implementing the ESCP at the Project Site ("ESCP Coordinator"). The name, phone number, mailing address, and email address of the ESCP Coordinator shall be submitted to the Director in writing at least 2 weeks prior to commencing any work governed by these Rules. The ESCP must be signed by the owner of the property and the ESCP Coordinator.

(b) The ESCP must contain information that is sufficient to allow the Director to evaluate the environmental characteristics and impacts of the Project on the MS4 and Receiving Waters, and include, at a minimum:

(1) A BMP Site Plan, drawn to scale, which depicts the outline of buildings and Structures, provides a clear delineation of Disturbed Areas, and the proximate location of proposed BMPs;

(2) Construction notes with a narrative description of any BMPs that cannot be shown on a Site plan; and

(3) A vicinity map showing any drainage Structures and Receiving Waters located within 50 feet of the Project Site.

(c) ESCPs for Category 2 Projects must include, at a minimum, BMPs to address and achieve:

(1) Erosion Control which shall include the following BMPs:
- (i) Project Planning and Design;
- (ii) Project Scheduling;
- (iii) Slope Management and Protection;
- (iv) Temporary Stabilization; and
- (v) Permanent Stabilization.

(2) Sediment Control to prevent release of sediment laden waters to the MS4 and Receiving Waters, which shall include the following BMPs:
- (i) Storm Drain Inlet Protection; and
- (ii) Perimeter Controls.

(3) Good Housekeeping Practices to prevent and Minimize Pollutant discharges to the MS4 and Receiving Waters, which shall include the following BMPs:
- (i) BMP and Site Maintenance;
- (ii) Dust Control;
- (iii) Material Delivery, Storage, and Use BMPs;
- (iv) Stockpile Management BMPs;
- (v) Spill Prevention and Control BMPs;
- (vi) Solid Waste Management BMPs;
- (vii) Hazardous Waste Management BMPs;
- (viii) Contaminated Soil Management BMPs;
- (ix) Concrete Waste Management BMPs;
- (x) Sanitary/Septic Waste Management BMPs;
- (xi) Liquid Waste Management BMPs;
- (xii) Vehicle and Equipment Cleaning BMPs;
- (xiii) Vehicle and Equipment Fueling BMPs;
- (xiv) Vehicle and Equipment Maintenance; and
- (xv) Tracking Control.

(d) ESCPs for Category 2 Projects may include additional plans and materials to aid the Director's review.

(e) If any of the BMPs listed above are not included in an ESCP for a Category 2 Project, the ESCP notes shall provide a list of the omitted BMPs that are unnecessary or impracticable for the Project.

(f) The Director shall approve an ESCP if it complies with the requirements of these Rules and reduces the risk of onsite erosion, off-site sedimentation, and Pollutant discharges to the MS4 and Receiving Waters to the MEP. The Director may also require revisions to ESCPs and Project schedules or approve the same subject to conditions in order to achieve practicable reductions to the risk of Pollutant discharges to the MS4 and/or Receiving Waters.

(g) Copies of the approved ESCP and Project schedule must be kept on the Project Site at all times and immediately made available for review by the Director upon request.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-22 Requirements for Category 3 Projects. (a) ESCPs for Category 3 Projects must be prepared by an Engineer licensed in the State of Hawaii or Certified Water Pollution Plan Preparer and must designate a person responsible for implementing the ESCP at the Project Site ("ESCP Coordinator"). The name, phone number, mailing address, and email address of the ESCP Coordinator shall be submitted to the Director in writing at least 2 weeks prior to commencing any work governed by these Rules. The ESCP must be signed by the owner of the property and the ESCP Coordinator.

(b) The ESCP must contain information that is sufficient to allow the Director to evaluate the environmental characteristics and impacts of the Project on the MS4 and Receiving Waters, and include, at a minimum:

(1) A BMP Site Plan, drawn to scale, which depicts the outline of buildings and Structures, provides a clear delineation of Disturbed Areas, and the proximate location of proposed BMPs;

(2) Construction notes with a narrative description of any BMPs that cannot be shown on a Site plan; and

(3) A vicinity map showing any drainage Structures and Receiving Waters located within 50 feet of the Project Site.

(c) ESCPs for Category 3 Projects must include, at a minimum, BMPs to address and achieve:

(1) Erosion Control which shall include the following BMPs:
  (i) Project Planning and Design;
  (ii) Project Scheduling;
  (iii) Slope Management and Protection;
  (iv) Temporary Stabilization;
  (v) Permanent Stabilization; and
  (vi) Velocity Dissipation Devices.

(2) Sediment Control to prevent release of sediment laden waters to the MS4 and Receiving Waters, which shall include the following BMPs:
  (i) Storm Drain Inlet Protection; and
  (ii) Perimeter Controls.

(3) Good Housekeeping Practices to prevent and Minimize Pollutant discharges to the MS4 and Receiving Waters, which shall include the following BMPs:
  (i) BMP and Site Maintenance;
  (ii) Dust Control;

(iii) Material Delivery, Storage, and Use BMPs;
(iv) Stockpile Management BMPs;
(v) Spill Prevention and Control BMPs;
(vi) Solid Waste Management BMPs;
(vii) Hazardous Waste Management BMPs;
(viii) Contaminated Soil Management BMPs;
(ix) Concrete Waste Management BMPs;
(x) Sanitary/Septic Waste Management BMPs;
(xi) Liquid Waste Management BMPs;
(xii) Vehicle and Equipment Cleaning BMPs;
(xiii) Vehicle and Equipment Fueling BMPs;
(xiv) Vehicle and Equipment Maintenance;
(xv) Tracking Control;
(xvi) Stabilized Construction Entrance and Exit; and
(xvii) Dewatering Operations BMPs.

(d) If any of the BMPs listed above are not included in an ESCP for a Category 3 Project, the ESCP notes shall provide a list of omitted BMPs that are unnecessary or impracticable for the Project.

(e) The Director shall approve an ESCP if it complies with the requirements of these Rules and reduces the risk of onsite erosion, off-site sedimentation, and Pollutant discharges to the MS4 and Receiving Waters to the MEP. The Director may also require revisions to ESCPs and Project schedules or approve the same subject to conditions in order to achieve practicable reductions to the risk of Pollutant discharges to the MS4 and/or Receiving Waters.

(f) Copies of the approved ESCP and Project schedule must be kept on the Project Site at all times and immediately made available for review by the Director upon request.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-23 Requirements for Category 4 Projects. (a) ESCPs for Category 4 Projects must be prepared by an Engineer licensed in the State of Hawaii and must designate a person responsible for implementing the ESCP at the Project Site ("ESCP Coordinator"). The name, phone number, mailing address, and email address of the ESCP Coordinator shall be submitted to the Director in writing at least 2 weeks prior to commencing any work governed by these Rules. The ESCP must be signed by the owner of the property and the ESCP Coordinator.

(b) The ESCP must contain information that is sufficient to allow the Director to evaluate the environmental characteristics and impacts of the Project on the MS4 and Receiving Waters, and include, at a minimum:

(1) A location map showing the name, coordinate, and classification (e.g., Class 1, 2, Class A, Class AA waters) of Receiving Waters, as identified through the DOH State Water Quality Map, available at available at the DOH Clean Water Branch website;
(2) A vicinity map showing the location of streams, channels, and drainage Structures located within 100 feet of the Project Site;
(3) The location of the 100-year flood plain as shown on the FEMA Map Service Center website;

(4) The location of drainage Structures located within 100 feet of the Project Site;
(5) Topographic maps showing the existing and finished contours of the Site;
(6) Existing and final drainage patterns and discharge points;
(7) Proposed Structures, impervious areas, existing vegetation, final landscaping conditions, and appurtenant improvements;
(8) Erosion Control construction notes including non-structural BMPs that cannot be shown on a Site plan;
(9) A BMP Site Plan, drawn to scale, which depicts the outline of buildings and Structures, provides a clear delineation of Disturbed Areas, and the proximate location of proposed BMPs;
(10) BMP design details and notes clearly identifying temporary BMPs, permanent BMPs, a schedule for BMP implementation, and BMP maintenance activities;
(11) A list or table of preconstruction, during construction, and post-construction BMPs; and
(12) A statement in the ESCP construction notes that the contractor, developer, and/or owner shall obtain written approval from the Director at each stage of Development before proceeding to the next step in Development described in the ESCP; and
(13) Any additional information required by the Director.

(c) ESCPs for Category 4 shall include, at a minimum, BMPs to address and achieve:
(1) Erosion Control which shall include the following BMPs:
(i) Project Planning and Design;
(ii) Project Scheduling;
(iii) Slope Management and Protection;
(iv) Temporary Stabilization;
(v) Permanent Stabilization ;
(vi) Velocity Dissipation Devices; and
(vii) Diversion BMPs to divert runoff from upstream areas around Disturbed Areas of the Site.
(2) Sediment Control to prevent release of sediment laden waters to the MS4 and Receiving Waters, which shall include the following BMPs:
(i) Storm Drain Inlet Protection; and
(ii) Perimeter Controls.
(3) Good Housekeeping Practices to prevent and Minimize Pollutant discharges to the MS4 and Receiving Waters, which shall include the following BMPs:
(i) BMP and Site Maintenance;
(ii) Dust Control;
(iii) Material Delivery, Storage and Use BMPs;
(iv) Stockpile Management BMPs;
(v) Spill Prevention and Control BMPs;
(vi) Solid Waste Management BMPs;
(vii) Hazardous Waste Management BMPs;
(viii) Contaminated Soil Management BMPs;

(ix) Concrete Waste Management BMPs;
(x) Sanitary/Septic Waste Management BMPs;
(xi) Liquid Waste Management BMPs;
(xii) Vehicle and Equipment Cleaning BMPs;
(xiii) Vehicle and Equipment Fueling BMPs;
(xiv) Vehicle and Equipment Maintenance BMPs;
(xv) Tracking Control;
(xvi) Stabilized Construction Entrance and Exit; and
(xvii) Dewatering Operations BMPs.

(d) If any of the BMPs listed above are not included in an ESCP for a Category 4 Project, the ESCP notes shall provide a list of the omitted BMPs that are unnecessary or impracticable for the Project.

(e) The Director shall approve an ESCP if it complies with the requirements of these Rules and reduces the risk of onsite erosion, off-site sedimentation, and Pollutant discharges to the MS4 and Receiving Waters to the MEP. The Director may also require revisions to ESCPs and Project schedules or approve the same subject to conditions in order to achieve practicable reductions to the risk of Pollutant discharges to the MS4 and/or Receiving Waters.

(f) Copies of the approved ESCP and Project schedule must be kept on the Project Site at all times and immediately made available for review by the Director upon request.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-24 Requirements for Category 5 Projects. (a) ESCPs for Category 5 Projects must be prepared by an Engineer licensed in the State of Hawaii and must designate a person responsible for implementing the ESCP at the Project Site ("ESCP Coordinator"). The name, phone number, mailing address, and email address of the ESCP Coordinator shall be submitted to the Director in writing at least 2 weeks prior to commencing any work governed by these Rules. The ESCP must be signed by the owner of the property and the ESCP Coordinator.

(b) The ESCP must contain information that is sufficient to allow the Director to evaluate the environmental characteristics and impacts of the Project on the MS4 and Receiving Waters, and include, at a minimum:

(1) A location map showing the name, coordinate, and classification (e.g., Class 1, 2, Class A, Class AA waters) of Receiving Waters, as identified through the DOH State Water Quality Map, available at the DOH Clean Water Branch website;
(2) A vicinity map showing the location of streams, channels, and drainage Structures located within 100 feet of the Project Site;
(3) The location of the 100-year flood plain as shown on the FEMA Map Service Center website;
(4) The location of drainage Structures located within 100 feet of the Project Site;
(5) Topographic maps showing the existing and finished contours of the Site;
(6) Existing and final drainage patterns and discharge points;
(7) Proposed Structures, impervious areas, existing vegetation, final landscaping conditions, and appurtenant improvements;

(8) Erosion Control construction notes including non-structural BMPs that cannot be shown on a Site plan;

(9) A BMP Site Plan, drawn to scale, which depicts the outline of buildings and Structures, provides a clear delineation of Disturbed Areas, and the proximate location of proposed BMPs;

(10) BMP design details and notes clearly identifying temporary BMPs, permanent BMPs, a schedule for BMP implementation, and BMP maintenance activities;

(11) A list or table of preconstruction, during construction, and post-construction BMPs; and

(12) A statement that the contractor, developer, and/or owner shall obtain written approval from the Director at each stage of Development before proceeding to the next step in Development described in the ESCP; and

(13) Any additional information required by the Director.

(c) ESCPs shall include, at a minimum, BMPs to address and achieve:

(1) Erosion Control which shall include the following BMPs:

(i) Project Planning and Design;
(ii) Project Scheduling;
(iii) Slope Management and Protection;
(iv) Temporary Stabilization;
(v) Permanent Stabilization ;
(vi) Diversion BMPs to divert runoff from upstream areas around Disturbed Areas of the Site;
(vii) Velocity Dissipation Devices;
(viii) Preserver Existing Vegetation; and
(ix) Minimize Soil Compaction;

(2) Sediment Control to prevent release of sediment laden waters to the MS4 and Receiving Waters, which shall include the following BMPs:

(i) Storm Drain Inlet Protection;
(ii) Perimeter Controls;
(iii) Buffer Zones;
(iv) Sediment Traps; and
(v) Sediment Basins.

(3) Good Housekeeping Practices to prevent and Minimize Pollutant discharges to the MS4 and Receiving Waters, which shall include the following BMPs:

(i) BMP and Site Maintenance;
(ii) Dust Control;
(iii) Material Delivery, Storage and Use BMPs;
(iv) Stockpile Management BMPs;
(v) Spill Prevention and Control BMPs;
(vi) Solid Waste Management BMPs;
(vii) Hazardous Waste Management BMPs;
(viii) Contaminated Soil Management BMPs;
(ix) Concrete Waste Management BMPs;
(x) Sanitary/Septic Waste Management BMPs;

(xi) Liquid Waste Management BMPs;
(xii) Vehicle and Equipment Cleaning BMPs;
(xiii) Vehicle and Equipment Fueling BMPs;
(xiv) Vehicle and Equipment Maintenance BMPs;
(xv) Tracking Control;
(xvi) Stabilized Construction Entrance and Exit; and
(xvii) Dewatering Operations BMPs.

(d) If any of the BMPs listed above are not included in an ESCP for a Category 5 Project, the ESCP notes shall provide a list of the omitted BMPs that are unnecessary or impracticable for the Project.

(e) The Director shall approve an ESCP if it complies with the requirements of these Rules and reduces the risk of onsite erosion, off-site sedimentation, and Pollutant discharges to the MS4 and Receiving Waters to the MEP. The Director may also require revisions to ESCPs and Project schedules or approve the same subject to conditions in order to achieve practicable reductions to the risk of Pollutant discharges to the MS4 and/or Receiving Waters.

(f) Copies of the approved ESCP and Project schedule must be kept on the Project Site at all times and immediately made available for review by the Director upon request.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-25 Additional Requirements for Development Projects.

(a) Category 1C and Category 5 Projects may not begin work unless an NPDES General/Individual Permit Authorizing Discharges of Storm Water Associated with Construction Activity has been issued by the DOH.

(b) Dewatering non-storm water. For all categories, including work for trenching permits only, non-storm water from dewatering activities shall not be discharged from the Site unless an NPDES Permit Authorizing Discharges Associated with Construction Activity Dewatering has been issued by the DOH.

(c) Hydrotesting water. For all categories, including work for trenching permits only, hydrotesting water shall not be discharged from the Site unless an NPDES Permit Authorizing Discharges of Hydrotesting Waters has been issued by the DOH.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-26 BMP Inspections. (a) All Projects involving Development or Land Disturbing Activities shall be inspected on a regular basis to ensure that BMPs are properly installed, used, and maintained.

(b) A pre-construction inspection must be performed for Trenching Permit Projects and all Categories 1A to 5 Projects by the ESCP Coordinator prior to commencing ground-disturbing activities, to confirm that BMPs are installed correctly and according to the ESCP.

(c) Requirements for Category 1A, 1B, and 2 Projects. Category 1A, 1B and 2 Projects must be inspected once every 30 days by the ESCP Coordinator. However, if the Project will be completed in less than thirty days, inspection shall occur midway through the

Project. Inspection results and corrective actions shall be documented with photographs and by completing the form provided as Appendix C to these Rules.

(d) Requirements for Category 3 and 4 Projects and Trenching Permit Projects. Category 3 to 4 Projects must be inspected by the ESCP Coordinator once every seven days. Inspection results and corrective actions shall be documented with photographs and by completing the form provided as Appendix C to these Rules.

(e) Requirements for Category 1C and 5 Projects. Category 1C and 5 Projects must be inspected by the ESCP Coordinator once every seven days. Inspection results and corrective actions shall be documented with photographs and by completing the form provided as Appendix D to these Rules.

(f) Any deficiencies or BMPs that may violate any provision of these Rules or may result in Pollutant discharges to the MS4 or State Waters and requires corrective actions shall be addressed immediately.

(g) All photographs and inspection reports must be compiled in a 3-ring folder or binder or kept electronically, which shall be the Project Log. The Project Log shall be kept on Site or electronically accessible from the Site at all times, in a complete condition, and immediately produced for inspection if request by the Director.

(h) At the conclusion of the Project, the property owner or ESCP Coordinator shall inspect the Site and confirm that all Disturbed Areas have been stabilized and all temporary BMPs have been removed. An electronic copy of the final Project Log and a letter confirming compliance with this subsection shall be provided to the Director within 5 business days of completing work on the Project. Permits for work on the Project Site will not be closed until compliance with this subsection is achieved.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§1-9.1, 14-12.31, 14-12.32) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 14-12.32, 18-4.1, 18-5.1).

SUBCHAPTER 5
BMPS, STANDARDS, AND SPECIFICATIONS FOR ACTIVITIES DURING CONSTRUCTION

§20-3-41 Sediment Basins
§20-3-42 Sediment Traps
§20-3-43 Tracking Control
§20-3-44 Stabilized Construction Entrances and Exits
§20-3-45 Dust Control
§20-3-46 Good Housekeeping Practices
§20-3-47 Dewatering Operations

§20-3-27 Project Planning and Design. Projects should be planned and designed to eliminate and prevent Pollutant discharges to the MS4 and Receiving Waters to the MEP. All Project planning and design should be executed in a manner that prioritizes the following to the MEP:

(a) Preservation native topsoil;
(b) Minimization of soil compaction;
(c) Directing discharges from storm water controls to vegetated areas;
(d) Preservation and use of natural buffers;
(e) Restriction of vehicle use to necessary areas;
(f) Location of materials and stockpiles outside of buffers;
(g) Effective primary and secondary containment for potential sources of pollution;
(h) Establishment of effective perimeter controls;
(i) Protection of storm drain inlets; and
(j) Effective prohibition of off-site discharges from wastewater and concrete washout, washout or cleanout water containing stucco, paint, release oils, curing compounds, and waste from construction materials, and discharges containing fuels, oils, soaps, solvents, detergents, and toxic and/or hazardous substances.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-28 Project Scheduling. (a) All Development must be performed according to a written Project schedule approved by the Director.

(b) Project schedules must establish a sequence of all planned actions and activities on the Project Site, including, but not limited to, all Land Disturbing Activities, the implementation of the BMPs identified in the Project ESCP, scheduled inspections and maintenance of BMPs, and the removal of temporary BMPs. Deadlines for the implementation and removal of BMPs shall be provided in the form of specific dates or Project milestones. The scheduled start date shall be submitted to the Director in writing 2 weeks prior to commencing any work governed by these Rules.

(c) Project schedules must be designed to reduce the amount and duration of soil exposed to erosion by wind, rain, runoff and vehicle tracking to the MEP and sequence Land Disturbing Activities to Minimize onsite storage of equipment, materials and wastes that may cause or contribute to pollution discharges to the MS4 and/or Receiving Waters. In addition, all Project Schedules shall include a rain response plan that identifies work that will not be performed during defined rain conditions and/or events.

(d) The Director may require DPP approval of BMPs and/or Site conditions at one or more points on a Project schedule before work may commence on the next sequenced action or event.

(e) Project schedules must be revised if delays or disruptions to the Project necessitate changes to the sequence of work or BMPs. Revisions to a Project schedule must be proposed by the submission of a revised Project schedule to DPP and approved by the Director before work may be performed pursuant to the revised schedule.

(f) A copy of the original Project schedule and all revised Project schedules must be kept on Site, in chronological order, and stored in a three ring folder or binder or electronically, which shall be the Project Log. A complete version of the Project Log shall be on Site or electronically accessible from the Site at all times and immediately made available for inspection by the Director upon request.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-29 Slope Management and Protection. (a) Land Disturbing Activities on slopes with a grade of 15 percent or greater must be Minimized to the MEP. Where necessary, work on slopes with a grade of 15 percent or more should be phased to Minimize the amount disturbed to no greater than 5 acres at any time.

(b) Slopes with a grade of 15 percent or more must be stabilized at all times unless the slopes are being actively worked. Slope Stabilization must be initiated immediately unless active work is scheduled on the slope within 7 calendar days or where necessary due to anticipated weather conditions.

(c) Minimum stabilization of slopes 15 percent or greater shall consist of one or more of the following:

(1) Rolled Erosion Control Products that conform to the requirements of the American Association of State Highway and Transportation Officials M288 may be installed and maintained per the manufacturer's specifications, which must be kept onsite at all times and immediately made available for inspection by the Director upon request;

(2) Hydraulic mulch or hydroseed consisting of at least 5 percent soil binder and applied at a minimum of rate of 2000 lb/acre, unless otherwise required by the manufacturer's instructions, which shall be kept onsite at all times and immediately produced for inspection upon request;

(3) Hydraulic or Bonded Fiber Matrix installed and maintained per the manufacturer's specifications, which must be kept onsite at all times and immediately made available for inspection by the Director upon request; or

(4) Planting and/or vegetation providing at least 70 percent surface cover for Temporary Stabilization and at least 90 percent surface cover for Permanent Stabilization.

(d) Category 1C, 4 and 5 Projects with slopes with a grade of 15 percent or more must provide a minimum10-foot buffer with a maximum slope of 5 percent at the toe of the slope.

(e) Category 1C, 4, and 5 Projects must provide upstream runoff diversion using such measures as earth dikes, drainage swales and/or slope drains to intercept and direct surface flow away from disturbed slope areas of 15 percent or more.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-30 Temporary Stabilization. (a) Temporary Stabilization must be initiated immediately for Disturbed Areas that are not on slopes with a grade of 15 percent or more when they reach final grade or when active work is not scheduled within 14 calendar days.

(b) Minimum stabilization of Disturbed Areas shall consist of one or more of the following:

(1) Rolled Erosion Control Products that conform to the requirements of the American Association of State Highway and Transportation Officials M288 may be installed and maintained per the manufacturer's specifications, which must be kept onsite at all times and immediately made available for inspection by the Director upon request;

(2) Hydraulic mulch or hydroseed consisting of at least 5 percent soil binder and applied at a minimum of rate of 2000 lb/acre, unless otherwise required by the manufacturer's instructions, which shall be kept onsite at all times and immediately produced for inspection upon request;

(3) Hydraulic or Bonded Fiber Matrix installed and maintained per the manufacturer's specifications, which must be kept onsite at all times and immediately made available for inspection by the Director upon request; or

(4) Planting and/or vegetation providing at least 70 percent surface cover for Temporary Stabilization and at least 90 percent surface cover for Permanent Stabilization.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-31 Permanent Stabilization. (a) Prior to final approval and closing of the permits for work on the Site, permanent stabilization must be in place.

(b) All Disturbed Areas must be stabilized with permanent Erosion Control BMPs such as vegetation, mulch, compost, or gravel;

(c) Rain gutters, downspouts, and channelized flows must be installed and functioning as designed;

(d) In seeded areas, grass or vegetation must cover at least 90 percent of the disturbed soils;

(e) Seeded areas that have not achieved 90 percent ground cover must be stabilized by tackifiers, mulch, turf reinforcement mats, or Rolled Erosion Control Products until 90 percent vegetative cover is established;

(f) Temporary Erosion Control measures, such as sediment fences, should be removed when permanent measures are in place;

(g) Ditches and areas of concentrated flow must be lined with rock, appropriately installed geosynthetics, or similar materials to prevent scour;

(h) All paved surfaces must be clean; and

(i) Storm drain inlet filters must be removed after all cleanup activities have been completed.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-32 Diversion BMPs. (a) Diversion BMPs consist of Earth Dikes, Drainage Swales and Slope Drains.

(b) Earth dikes are ridges of compacted soil may be placed at the top or base of a disturbed slope or along the perimeter of a Disturbed Area to intercept runoff and direct flows to areas where erosion can be controlled. The tributary area addressed by a single earth dike may not exceed 5 acres. Design capacity for earth dikes must be equal to or greater than the peak flow from a 10-year, 1-hour storm. The upslope side of the dike must provide positive drainage to the dike outlet. No erosion shall occur at the outlet. Earth dike must be fully compacted and stabilized with vegetation and/or riprap.

(c) Drainage swales are sloped depressions in the soil surface to convey runoff to a desired location. The tributary area addressed by a single drainage swale may not exceed 5 acres. Design capacity for drainage swale must be equal to or greater than the peak flow from a 10-year, 1-hour storm. Drainage swale must be fully stabilized with vegetation and/or riprap.

(d) Earth dikes and drainage swales can be used with slope drains to divert water from the top of a slope to the bottom of a slope. Slope Drains may be a rigid pipe, such as corrugated metal, a flexible conduit, or a lined terrace drain with the inlet placed on the top of a slope and the outlet at the bottom of the slope. The capacity for temporary slope drains intercepting offsite or on-site runoff should be sufficient to convey at least the peak runoff from a 10-year, 1-hour storm. The tributary area addressed by a single slope drain may not exceed 10 acres. Outlets should be stabilized with riprap, concrete or other type of Velocity Dissipation Device, or directed into a stable sediment trap or basin.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-33 Preservation of Existing Vegetation. (a) Preservation of existing vegetation is to Minimize the potential of removing or injuring existing trees, vines, shrubs, and grasses that protect soil erosion. Clearly mark the areas to be preserved with flags or temporary fencing. Where temporary fencing is used, fencing must be adequately supported by posts and maintained in an upright position.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-34 Minimize Soil Compaction. (a) Areas where the final stabilization will occur and areas where Infiltration practices will be installed must be protected from excessive

compaction by restricting the vehicle and equipment use to appropriate areas or implementing soil conditioning techniques.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-35 Velocity Dissipation Devices. (a) Velocity dissipation devices are channel linings, Structures, or flow barriers that are placed at outlets for storm drains, pipes, culverts, steep ditches, flumes and areas of contacted flow to lower flow velocities, prevent scour and dissipate energy.

(b) Velocity dissipation devices are required where the Director, Engineer, or preparer of the ESCP determines that discharge velocities and energies are sufficient to erode the immediate downstream reach of discharges.

(c) The apron length and materials for velocity dissipation devices must be adequate to accommodate the peak flow of a 10 year, 1 hour storm without resulting in scour or erosion in immediate downstream areas.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-36 Perimeter Controls. (a) Perimeter Controls shall be required if a Project involves any Land Disturbing Activities within 50 feet of State Waters unless the Project has obtained a CWA 404 Permit for the work or the Land Disturbing Activities relate to a water-dependent structure such as a pier or boat ramp. Perimeter Controls shall also be required if the Director, Engineer, or ESCP Coordinator determines that Pollutant discharges to the MS4 or State Waters are likely to occur based on Site conditions, the nature of planned construction activities, or the location of planned Land disturbing Activities, or expected weather conditions.

(b) At a minimum, perimeter controls shall consist of vegetated buffers, sediment barriers, or silt fences along those perimeter areas of the Site that will receive storm water from earth disturbing activities.

(c) For Category 1C and 5 Projects that are within 50 feet of State Waters, perimeter controls must be installed along the perimeter of the Site along areas that will receive storm water from Disturbed Areas and consist of a 50 foot wide, undisturbed, natural buffer or in-series perimeter controls consisting of two or more sediment barriers or silt fences with spacing of at least 5 feet between the sediment barriers or silt fences (refer to §20-3-40 Vegetated Buffers).

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-37 Silt Fences. (a) Silt fences are temporary, linear sediment barriers that are composed of permeable fabric and vertical posts. Silt fence fabric shall conform to the requirements set forth under American Society for Testing and Materials (ASTM) designation D4632, or an approved equal, and shall have an integral reinforcement layer. The reinforcement layer shall be a polypropylene or equivalent provided by the manufacturer.

(b) Silt fences may be used as sediment barriers on the face of slopes, at the toe of slopes, down-slope from exposed soil areas, around temporary stockpiles, along streams and channels, and along the perimeter of a Project Site.

(c) Silt fences may not be used at the toe of slopes subject to creep, slumping, or landslides, or, in streams, channels, drain inlets and areas of concentrated flow. Slit fences may not be used to divert flows.

(d) Silt fences used for erosion and runoff control shall comply with the following minimum design standards and criteria:

(1) Silt fence fabric shall be woven polypropylene with a minimum width of 36 inches and a minimum tensile strength of 100 lbs. force. The fabric shall conform to the requirements set forth under ASTM designation D4632 and shall have an integral reinforcement layer. The reinforcement layer shall be a polypropylene or equivalent provided by the manufacturer.

(2) Silt fence fabric shall retain 85 percent of soil by weight, based on sieve analysis. The permittivity of the fabric shall be between 0.1 $sec.^{-1}$ and 0.15 $sec.^{-1}$

(3) Silt fences shall be installed along a trench line at least 6 inches wide and 6 inches deep, set back a minimum of 3 feet from the toe of an abutting slope. Silt fences shall be keyed to a minimum depth of 12 inches. Fence posts shall be no more than 6 feet apart and driven securely to a depth of no less than 18 inches from top soil or 12 inches below the trench line. When overlap is necessary, silt fence fabric shall be spliced together securely at a fence post and overlap by no less than 6 inches. Staples used to fasten fabric to posts shall be no less than 1.75 inches long and composed of 15 gauge or heavier wire. Wire used at fence joints shall be 9 gauge or heavier. Metal stakes with holders for silt fence must have No. 4 or greater bar reinforcement.

(4) Silt fences shall not be the only Sediment or Erosion Control BMP on slopes greater than 2:1.

(e) Silt fence fabric has a general life of 5 to 8 months. All spilt, torn, weathered or slumping portions of any fence shall be replaced immediately.

(f) Water depth along a silt fence may not exceed 1.5 feet at any point and accumulated sediments may not exceed one third of the fence height at any time.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-38 Sediment Barriers. (a) Sediment barriers are temporary BMPs that intercept sediment-laden runoff from small drainage areas in order to slow runoff velocities and allow suspended solids to settle out of storm water. Sediment barriers may consist of gravel bags, sandbags, fiber rolls, and compost filter socks.

(b) Sediment barriers must be used to protect disturbed or denuded soils that are not scheduled for active work within 24 hours if the Engineer, preparer of the ESCP, or Director determines that sediment discharge to State Waters or the MS4 is likely due to Site conditions, the nature of work that will occur in the vicinity of the Disturbed Area, or the proximity of the Disturbed Area to State Waters or portions of the MS4.

(c) Unless more specific criteria apply to the specific type of sediment barrier selected, the contributing drainage area addressed by a single sediment barrier may not exceed 1/4 acre per 100 feet of barrier length. In addition, the maximum length of slope above a barrier may not exceed 100 feet. The spacing between sediment barriers along the slopes must follow the following requirements:

Slope ≥ 2:1 10 feet spacing
Slope ≥ 4:1 and < 2:1 15 feet spacing
Slope < 4:1 20 feet spacing

(d) Sediment barriers may not be used in areas of concentrated flows, such as drainage channels, live streams or in swales where there is the possibility of a washout.

(e) Sediment levels shall not exceed one half of the height of a sediment barrier at any point along the length of the sediment barrier.

(f) Sediment collected from sediment barriers must be reincorporated into the Project Site or disposed of at off-site locations that are approved by the Director (refer to Solid Waste Management §20-3-46(i)).

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-39 Storm Drain Inlet Protection. (a) All drain inlets and catch basins that are not connected to a sediment basin or trap must be protected by sediment barriers or inlet protection devices if they are capable of receiving sediment or runoff from the Project Site unless severe weather conditions make the use of such devices unsafe or Infeasible.

(b) Sediment levels may not exceed one third of the height of a sediment barrier or inlet protection device at any point along the length of the sediment barrier or the inlet protection device.

(c) Sediment barriers and inlet protection devices must be unclogged and cleaned when performance is compromised.

(d) Torn, weathered or sagging sediment barriers or inlet protection devices must be repaired or replaced immediately.

(e) Sediment collected from sediment barriers and inlet protection devices must be reincorporated into the Project Site or disposed of at off-site locations that are approved by the Director (refer to Solid Waste Management §20-3-46(i)) .

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

§20-3-40 Vegetated Buffers. (a) Vegetated buffer strips are vegetated surfaces that are designed to treat sheet flow from adjacent surfaces by slowing runoff velocities and allowing sediment and other pollutants to settle and partially infiltrate into underlying soils.

(b) The width of the vegetative buffer strips must have slope of 5 percent or less. The vegetative buffer must be one foot wide for every 3 feet of upslope drainage area directed to the vegetative buffer.

(c) Categories 1C and 5 Projects must maintain a 50-foot undisturbed natural buffer and sediment control between State Waters and the Construction Site. If a 50-foot natural buffer zone cannot be maintained, provide a natural undisturbed buffer zone that is less than 50 feet and

either double sediment barriers or silt fences spaced at a minimum of 5 feet apart. If it is Infeasible to provide and maintain an undisturbed natural buffer of any size, provide double sediment barriers or silt fences spaced a minimum of five feet apart and complete stabilization within 7 consecutive days of the temporary or permanent cessation of earth disturbing activities. All discharges from the area of earth disturbance to the natural buffer must be treated by the Site's erosion and sediment controls before release to buffer areas.

(d) Planned vegetated buffer strips must be shown in the ESCP for a Project. During clearing and grubbing, vegetation designated for use in a vegetated buffer must be enclosed by temporary fencing made of orange polypropylene that is stabilized against ultraviolet light. The temporary fencing must be at least 3.2 feet tall and have openings not larger than 2 inches by 2 inches. Fence posts must be comprised of wood or metal, driven securely to a depth of no less than one foot, and spacing to completely support the fence in an upright position without sagging at all times.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§1-9.1, 14-12.31, 14-12.32) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 14-12.32, 18-4.1, 18-5.1).

§20-3-41 Sediment Basins. (a) Sediment basins are excavated or depressed areas that are used to collect and detain runoff to allow suspended solids to settle out of storm water before storm water is discharged to off-site areas.

(b) The use of sediment basins shall be mandatory for Category 5 Projects with 5 acres of Disturbed Area or greater.

(c) Sediment basins shall provide sufficient storage to accommodate the volume of runoff for the 2-year, 24-hour storm for the Project Site or at least 3,600 cubic feet per acre area to be drained.

(d) The embankment slopes must be no steeper than 3 horizontal to 1 vertical. Basin depth must be no less than 3 feet and the length to settling depth ratio must be less than 200. Discharges from sediment basins shall pass though outlet Structures that withdraw surface waters from the basin in order to Minimize Pollutant discharges. Outlet Structures shall be sized to Minimize clogging and achieve a draw-down time between 36 and 72 hours.

(e) Sediment basins shall also use stabilization controls such as Erosion Control blankets to prevent erosion of basin surfaces and use velocity dissipation devices to reduce flow rates at inlets and outlets.

(f) Sediment basins shall also have emergency spillways to accommodate overflow bypass. Emergency spillways may not direct overflow to sloped areas or other areas of concentrated flow. Emergency spillways and outlets require erosion protection such as velocity dissipation devices.

(g) Sediment basins must be kept in effective operation condition and sediment shall be removed to maintain at least one half of the design capacity of the sediment basin at all times.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

§ 20-3-42 Sediment Traps. (a) Sediment traps are excavated or depressed areas that are used to collect and detain sediments from areas of the Site that were cleared or graded during construction.

(b) The use of Sediment traps shall be mandatory for Category 5 Projects with less than 5 acres of Disturbed Area.

(c) The drainage area addressed by a single sediment trap shall not exceed 5 acres.

(d) The traps must be designed to provide storage for calculated volume of runoff for the 2-year, 24-hour storm for the Project Site or at least 3,600 cubic feet per acre to be drained.

(e) The embankment slopes shall be no steeper than 3 horizontal to 1 vertical.

(f) Sediment traps shall have an emergency spillway to accommodate overflow or bypass flows that exceed the design storm event. Emergency spillways and outlets require erosion protection such as velocity dissipation devices.

(g) Sediment traps must be kept in effective operation condition and sediment shall be removed when the sediment accumulation reaches one third of the trap capacity.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

§20-3-43 Tracking Control (a) All Projects must Minimize sediment track-out onto off-site streets, other paved areas, and sidewalks from vehicles exiting the construction Site by restricting vehicle traffic to properly designated areas and using additional controls to remove sediment from vehicle tires prior to exiting the Site.

(b) Vehicular parking and movements on Project sites must be confined to paved surfaces or predefined parking areas and vehicle paths, which shall be marked with flags or boundary fencing.

(c) All pollutants and materials that are dropped, washed, tracked, spilled, or otherwise discharged from a Project Site to off-site streets, other paved areas, sidewalks or the MS4 must be cleaned immediately using dry methods such as sweeping or vacuuming. Washing pollutants and materials that are discharged from the Project Site to the MS4 into drain inlets or catch basins is prohibited unless the material is sediment and the inlets are directed to a sediment basin or sediment trap.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-44 Stabilized Construction Entrance and Exits. (a) Except where vehicular traffic is limited to paved surfaces, all construction entrances and exits for Categories 1C, 3, 4, and 5 shall provide an effective buffer for the deposit of mud and sediment from the Project Site prior to vehicles entering a paved or public road.

(b) Unpaved construction entrances and exits for Categories 1C, 4 and 5 Projects must consist of 3-6 inch diameter gravel placed upon a geotextile mat. The gravel must have a minimum depth of 12 inches above geotextile mat. The graveled entrance must be at least 50 feet long and 30 feet wide. Entrances and exits must also provide a turning radius sufficient to accommodate the construction vehicles entering and exiting the Project Site.

(c) Unpaved construction entrances and exits for Categories 3 Projects must consist of 3-6 inch diameter gravel placed upon a geotextile mat. The gravel must have a minimum depth of 8 inches above geotextile mat. The graveled entrance must be at least 30 feet long and 20 feet wide. Entrances and exits must also provide a turning radius sufficient to accommodate the construction vehicles entering and exiting the Project Site.

(d) Where Site conditions prevent the removal of all sediment and mud from tires traveling across construction entrances and exits, tire wash facilities must be provided to allow for the removal of mud and sediments from vehicle tires before they are allowed to enter a public road. Tire wash racks and facilities must direct all wash water and sediments away from the construction entrance or exit to a designated settling area located on the Project Site. The discharge of wash water or sediment from the wash area to the MS4 or State Waters is prohibited.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

§20-3-45 Dust Control. (a) Dust from a Project Site shall not be transported or discharged to off-site areas. The work must be in conformance with air pollution control standards contained in the Hawaii Administrative Rules: Title 11 Chapter 60.1, "Air Pollution Control." All ESCPs shall provide for the control of dust by one or more of the following:

(1) Mulching to a depth of no less than 1 inch;
(2) Sprinkling exposed soils with water to maintain moistness at a depth of 2-3 inches during working hours and not to generate any runoff;
(3) Vertical dust barriers no less than 6 feet in height, constructed of materials capable of effectively preventing the spread of dust particles; and
(4) Spray-on Chemical Soil Treatments (palliatives) such as anionic asphalt emulsion, latex emulsion, resin-water emulsions, or calcium chloride. Spray-on chemical treatment must be applied according to the manufacturer's specifications.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

§20-3-46 Good Housekeeping Practices. All Projects must implement and maintain Good Housekeeping Practices to eliminate and Minimize Pollutant discharges to the MEP. Mandatory Good Housekeeping Practices include, but are not limited to:

(a) Street Sweeping and Vacuuming. All pollutants discharged from a construction Site to off-site areas must be swept or vacuumed each day before leaving the job site.

(b) Materials Delivery, Storage and Use Management. Prevent, reduce, or eliminate the discharge of pollutants from material delivery, storage, and use to the storm water system or watercourses by minimizing the storage of hazardous materials onsite, storing materials in a designated area, installing secondary containment. Construction materials, waste, toxic and hazardous substances, stockpiles and other sources of pollution shall not be stored in buffer areas, near areas of concentrated flow, or areas abutting the MS4, Receiving Waters, or drainage improvements that discharge off-site. Primary and secondary containment controls and covers shall be implemented to the MEP.

(c) Spill Prevention and Control. Projects shall create and implement spill prevention and response plans to eliminate and Minimize the discharge of pollutants to the MS4 and Receiving Waters from leaks and spills by reducing the chance for spills, absorbing, containing, and cleaning up spills and properly disposing of spill materials. At a minimum, all Projects shall cleanup all leaks and spills immediately.

(d) Hazardous Materials. Prevent or reduce the discharge of pollutants to storm water from hazardous waste through proper material use and waste disposal. In the event that hazardous materials are discharged to the MS4, the property owner or ESCP Coordinator shall immediately notify the Department of Facilities Maintenance, Honolulu Fire Department, and Honolulu Police Department of the discharge by telephone. A written report describing the pollutants that were discharged, the reasons for the discharge, and the measures that have been taken or will be taken to prevent a reoccurrence of the discharge shall be submitted to the Director no less than 3 days after notification by phone.

(e) Nonhazardous Materials. In the event that nonhazardous materials are discharged to the MS4, the property owner or ESCP Coordinator shall notify the City Department of Facilities Maintenance by telephone no later than the next business day. A written report describing the pollutants that were discharged, the reasons for the discharge, and the measures that have been taken or will be taken to prevent a reoccurrence of the discharge shall be submitted to the Director no less than 3 days after notification by phone.

(f) Vehicle and Equipment Cleaning. Eliminate and Minimize the discharge of pollutants to storm water from vehicle and equipment cleaning operations by using off-site facilities when feasible, washing in designated, contained areas only, and eliminating discharges to the storm drain system by evaporating and/or treating wash water, as appropriate or infiltrating wash water for exterior cleaning activities that use water only.

(g) Vehicle and Equipment Fueling. Prevent fuel spills and leaks by using off-site facilities, fueling only in designated areas, enclosing or covering stored fuel, and implementing spill controls such as secondary containment and active measures using spill response kits.

(h) Vehicle and Equipment Maintenance. Eliminate and Minimize the discharge of pollutants to storm water from vehicle and equipment cleaning operations by using off-site facilities when feasible, performing work in designated areas only, using spill pads under vehicles and equipment, checking for leaks and spills, and containing and cleaning up spills immediately

(i) Solid Waste Management. Prevent or reduce discharge of pollutants to the land, groundwater, in storm water from solid waste or construction and demolition waste by providing designated waste collection areas, collect Site trash daily, and ensuring that construction waste is collected, removed, and disposed of only at authorized disposal areas.

(j) Sanitary/Septic Waste Management. Temporary and portable sanitary and septic waste systems shall be mounted or staked in, well-maintained and scheduled for regular waste disposal and servicing. Sources of sanitary and/or septic waste shall not be stored near the MS4 or Receiving Waters.

(k) Stockpile Management. Stockpiles shall not be located in drainage ways, within 50 feet from areas of concentrated flows, and are not allowed in the City right-of-way. Sediment barriers or silt fences shall be used around the base of all stockpiles. Stockpiles shall not exceed 15 feet in height. Stockpiles greater than 15 feet in height shall require 8 foot wide benching in accordance with ROH Chapter 14, Article 15. Stockpiles must be covered with plastic sheeting or a comparable material if they will not be actively used within 7 days.

(l) Liquid Waste Management. Liquid waste shall be contained in a controlled area such as a holding pit, sediment basin, roll-off bin, or portable tank of sufficient volume and to contain the liquid wastes generated. Containment areas or devices must be impermeable and leak free and should not be located where accidental release of the contained liquid can discharge to water bodies, channels, or storm drains.

(m) Concrete Waste Management. Prevent or reduce the discharge of pollutants to storm water from concrete waste by conducting washout offsite or performing onsite washout in a designated area constructed and maintained in sufficient quantity and size to contain all liquid and concrete waste generated by washout operations. Plastic lining material should be a minimum of 10 millimeter polyethylene sheeting and should be free of holes, tears, or other defects that compromise the impermeability of the material. Containment areas or devices should not be located where accidental release of the contained liquid can discharge to water bodies, channels, or storm drains. Washout facilities must be cleaned, or new facilities must be constructed and ready for use once the washout is 75 percent full. Once concrete wastes are washed into the designated area and allowed to harden, the concrete should be broken up, removed, and disposed of as solid wastes.

(n) Contaminated Soil Management. At minimum contain contaminated material soil by surrounding with impermeable lined berms or cover exposed contaminated material with Plastic Sheeting. Contaminated soil should be disposed of properly in accordance with all applicable regulations.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-47 Dewatering Operations. (a) Dewatering Operations are practices that manage the discharge of pollutants when non-storm water and accumulated precipitation must be removed from a work location so that construction work may be accomplished and may include sediment basins, sediment traps, weir tanks, dewatering tanks, filtration systems, or other manufactured systems. Dewatering non-storm water cannot be discharged from the Site without prior notice to and approval from the DOH.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

SUBCHAPTER 6
POST-CONSTRUCTION REQUIREMENTS

§20-3-48 Priority Projects. (a) Priority Projects must include or provide permanent structural BMPs to effectively prevent the discharges of pollutants to the MS4 and State Waters by implementing Low Impact Development (LID) Site Design Strategies, Source Control BMPs, and Treatment Control BMPs which retain and/or treat storm water on Site. All Projects that meet one or more of the following criteria are Priority Projects:

(1) Priority A: All new Development and Redevelopment, including any incremental Development, that proposes Land Disturbing Activities of one acre or more, excluding contractor staging areas and base yards.

(2) Priority B1: Any new Development and Redevelopment Project that results in 5,000 square feet or greater of impervious surface area that may have significant water quality impacts due to its location or associated land use activities, including but not limited to the Development or Redevelopment of:

(i) Retail gas outlets;
(ii) Automotive repair shops;
(iii) Restaurants;
(iv) Parking lots with 20 stalls or more;
(v) Buildings greater than 100 feet in height;
(vi) Retail malls; and
(vii) Industrial parks.

(3) Priority B2: Any new Development and Redevelopment Project that results in less than 5,000 square feet of impervious surface area that may have significant water quality impacts due to its location or associated land use activities, including but not limited to the Development or Redevelopment of:

(i) Retail gas outlets;
(ii) Automotive repair shops;
(iii) Restaurants;
(iv) Parking lots with 20 stalls or more;
(v) Buildings greater than 100 feet in height;
(vi) Retail malls; and
(vii) Industrial parks.

(b) Where 50 percent or more of the impervious surface of a previously developed Site will be altered, the entire Development Site must meet the requirements of these Rules.

(c) Where less than 50 percent of the impervious surface of a previously developed Site will be altered, only the proposed alteration must meet the requirements of these Rules.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

§20-3-49 Post-Construction Storm Water Requirements. (a) The criteria must be met for Priority A, Priority B1, and Priority B2 Projects as follows:

(1) Incorporate appropriate LID Site Design Strategies to the MEP.
(2) Incorporate appropriate Source Control BMPs to the MEP.

(b) The criteria must be met for Priority A and B1 Projects as follows:

(1) Retain on-site by Infiltration, Evapotranspiration or Harvest/Reuse, as much of the Water Quality Volume or "WQV" as feasible, with appropriate LID Retention Post-Construction Treatment Control BMPs. The WQV is defined in §20-3-58.

(2) Biofilter the remaining portion of the WQV that is not retained on-site with appropriate LID Biofiltration Post-Construction Treatment Control BMPs as much as feasible.

(3) If it is demonstrated to be infeasible to retain and/or biofilter the Water Quality Volume (WQV) by the criteria in §20-3-63 one of the following alternative compliance measures is required:

(i) Treat (by detention, filtration, settling, or vortex separation) and discharge with appropriate Alternative Compliance Post-Construction Treatment Control BMPs, any portion of the Water Quality Volume that is not retained on-site or biofiltered.

(ii) Retain or biofilter at an offsite location, the volume of runoff from a non-tributary drainage area equivalent to the difference between the Project's WQV and the amount retained on-site or biofiltered. Offsite mitigation Projects must be submitted for City approval.

(c) Post-Construction Treatment Control BMPs are categorized as Retention BMPs, Biofiltration BMPs, and BMPs for Alternative Compliance according to the following:

Treatment Control	**Retention**	**Biofiltration**	**Alternative Compliance**
Infiltration Basin	●		
Infiltration Trench	●		
Subsurface Infiltration[1]	●		
Dry Well	●		
Bioretention Basin	●		
Permeable Pavement	●		
Harvesting / Reuse	●		
Green Roof		●	
Vegetated Bio-Filter[1]		●	
Enhanced Swale		●	
Vegetated Swale		●	
Vegetated Buffer Strip		●	
Detention Basin			●
Manufactured Treatment Device			●
Sand Filter			●

[1]Includes both proprietary and non-proprietary systems

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

§20-3-50 Storm Water Quality Strategic Plans. (a) Priority A Projects must submit a Storm Water Quality Strategic plan with or as a part of the Master Development Plan for Department review. The Strategic Plan shall include a written description of the proposed Development, expected activities and pollutants that will be generated by activities at the Site, and LID Site Design Strategies that will be used to comply with these Rules. The Strategic Plan must also include a Development schedule.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-51 Storm Water Quality Reports. (a) Priority A and Priority B1 Projects must submit a Storm Water Quality Report (SWQR) prepared by an Engineer licensed in the State of Hawaii or Certified Water Pollution Plan Preparer, which must be reviewed and approved by the Director prior to issuance of a building, grading, grubbing, or stockpiling permit for Development.

(b) SWQRs shall be submitted using the report template provided as Appendix E to these Rules. The SWQR must address the requirements in §20-3-49 and must include the following information:

(1) Project Name;
(2) Master Plan Development Name;
(3) Project Address;
(4) Project size (acres);
(5) Impervious Area (square feet);
(6) Tax Map Key;
(7) The name, address, and telephone number of the owner(s)/ developers of the property;
(8) A description of Site characteristics including drainage patterns, soils, vegetation, and steep or unstable slopes that may be of concern;
(9) A description of the future activities at the Site including those that would require Source Control BMPs;
(10) A description of the pollutants of concern (POC) expected to be generated at the Site (see §20-3-55); and
(11) A description of the BMPs that will be implemented including Site Design, Self-Mitigating Areas, Source Control, Retention, Biofiltration, and Alternative Compliance and which POCs are addressed by those BMPs.
(12) The following reports and plans shall be included as attachments:
    (i) Location Map and Site Plans;
    (ii) Existing and Proposed Runoff Maps with Drainage Management Areas;
    (iii) Permanent BMP Plan including locations of all Source Control and Treatment Control BMPs and a clear and definite delineation of areas covered by vegetation or trees that will be saved;
    (iv) Treatment Control BMP Sizing Calculations or Spreadsheets;
    (v) Infiltration testing results;
    (vi) Operation and Maintenance Plan;
    (vii) Proprietary Treatment Device Washington State Department of Ecology Technology Assessment Protocol (TAPE) Certification or New Jersey Corporation for Advanced Technology (NJCAT) Verification Documentation; and
    (viii) Evidence or explanation for any feasibility and/or infeasibility criteria claimed in order to comply with the requirements for

Infiltration, Harvest/ Reuse, and Biofiltration. Infeasibility criteria must be documented on the form provided as Appendix F to these Rules.

(c) SWQRs shall be submitted to the Director for review and approval with the first set of plans for work on the Project or Site.

(d) The Director shall review SWQRs for conformance with the requirements of these Rules and require any revisions necessary to achieve compliance with these Rules. The Director may also condition the approval of an SWQR on the implementation, use, and/or maintenance of BMPs not expressly required by these Rules if additional BMPs are necessary to reduce Pollutant discharges to the MS4 and/or Receiving Waters to the MEP.

(e) Changes to an SWQR must be proposed to the Director in writing and approved by the Director before work resumes.

(f) Each failure to comply with the requirements of an SWQR approved by the Director shall be a separate violation of these rules. In addition, each day continuance of a violation shall be separate offense.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-52 Storm Water Quality Checklists. (a) Priority B2 Projects must submit a Storm Water Quality Checklist (SWQC) prepared by an Engineer licensed in the State of Hawaii or Certified Water Pollution Plan Preparer, which must be reviewed and approved by the Director prior to issuance of a building, grading, grubbing, or stockpiling permit for Development.

(b) SWQCs shall be submitted using the report template provided as Appendix G to these Rules. The SWQC must address the requirements in §20-3-49 and must include the following information:

(1) Project Name;
(2) Master Plan Development Name;
(3) Project Address;
(4) Total Project Size (acres or square feet);
(5) Impervious Area (square feet);
(6) Tax Map Key;
(7) The name, address, and telephone number of the owner(s)/ developers of the property; and
(8) BMPs that will be implemented including Site Design Strategies, Self-Mitigating Areas, and Source Control BMPs.
(9) The following reports and plans shall be included as attachments:
    (i) Permanent BMP Plan including locations of all Site Design Strategies, Source Control BMPs, and vegetated or landscaped areas;
    (ii) Operation and Maintenance Plan.

(c) SWQCs shall be submitted to the Director for review and approval with the first set of plans for work on the Project or Site.

(d) The Director shall review SWQCs for conformance with the requirements of these Rules and require any revisions necessary to achieve compliance with these Rules. The

Director may also condition the approval of an SWQC on the implementation, use, and/or maintenance of BMPs not expressly required by these Rules if additional BMPs are necessary to reduce Pollutant discharges to the MS4 and/or Receiving Waters to the MEP.

(e) Changes to an SWQC must be proposed to the Director in writing and approved by the Director before work resumes.

(f) Each failure to comply with the requirements of an SWQC approved by the Director shall be a separate violation of these rules. In addition, each day continuance of a violation shall be a separate offense.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

§20-3-53 Operation and Maintenance Plans. (a) The owner of the property on which a permanent structural BMP is located must submit to the Director for acceptance an Operation and Maintenance Plan for all permanent structural BMPs and maintain the BMP in compliance with the Operation and Maintenance Plan. Permanent structural BMPs include Source Control BMPs and Treatment Control BMPs.

(b) Operation and Maintenance plans shall include:

(1) Name, phone number and mailing address for the owner of the property;

(2) Name and phone number for the individual(s), association, or management company responsible ensuring maintenance is being performed;

(3) Maintenance activities for each BMP;

(4) Inspection frequencies for each BMP;

(5) A Post-Construction BMP plan showing the location of each BMP with a summary of the maintenance activities and inspection schedule for each BMP; and

(6) Identification of the source of funds and/or revenue for implementation of the Operations and Maintenance Plan.

(c) Inspections of post-construction BMPs must be performed regularly and maintenance performed as needed. At a minimum, inspections shall be performed quarterly (4 times per year) and maintenance of all post-construction BMPs performed at least once annually.

(d) For facilities that will be dedicated to the City, the City reserves the right to alter the maintenance plan to conform to its practices.

(e) Modifications to the Operations and Maintenance plan after Department acceptance are permitted before closing applicable building and/or grading, grubbing, stockpiling, or trench permits.

(f) A record of inspection and maintenance activities must be kept on Site, in chronological order, and stored in a three ring binder or electronically for a minimum of 5 years. The records must be kept on Site or electronically accessible from the Site at all times and shall be made available to the City immediately upon request.

(g) The Operations and Maintenance Plan must be prepared using the template provided as Appendix H to these Rules

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-54 Post-Construction BMP Certification and Recording. (a) Owners shall retain and/or hire an Engineer licensed in the State of Hawaii to observe the installation of Treatment Control BMPs during construction. The licensed Engineer shall inspect the installation of post-construction BMPs at least 2 times prior to final stabilization to confirm that the Treatment Control BMPs and Source Control BMPs have been installed in conformance with the approved construction plans and submit the signed Certificate of Completion form prior to closing the building and/or grading permits. Inspection Reports shall include photographic evidence, visual observation, maps, and test data, to confirm the installation of all required BMPs.

(b) Permanent Post-Construction BMPs and the accepted Operations and Maintenance Plan for projects on privately owned Real Property shall be recorded in the State of Hawaii Land Court or Bureau of Conveyances, as appropriate.

(c) For all Priority Projects, one copy of the drainage connection permit and Operations and Maintenance Plan shall be submitted to the Department and Director and Chief Engineer of the Department of Facility Maintenance prior to closing the building and/or grading, grubbing, or stockpiling permits.

(d) Modifications to the BMP Plan or Operations and Maintenance Plan after permit closure or after the drainage connection permit has been issued must be approved with the Department of Facility Maintenance. Any modifications to BMP plans or Operations and Maintenance Plans shall not reduce the level of protection from Pollutant discharges afforded to State Waters or the MS4 when compared to the accepted plans prior to permit closure.

(e) Facilities with Post-Construction BMPs are subject to annual inspection by an Inspector from the Department of Facility Maintenance and must provide access to the facility for the annual inspections.

(f) Each failure to comply with the requirements of an Operations and Maintenance Plan approved by the Director and on file at the Department of Facility Maintenance shall be a separate violation of these rules. In addition, each day the violation continues shall be a separate offense.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

SUBCHAPTER 7
BMPS, STANDARDS, AND SPECIFICATIONS FOR PERMANENT POST-CONSTRUCTION BMPS AND LOW IMPACT DEVELOPMENT

§20-3-55 BMP Selection. (a) Post-construction BMPs shall be chosen to address identified POCs for each Project Site and/or the Receiving Water for that Site.

Note: The following Table Summarizes the Pollutants Typically Associated with the Priority Project Land Uses

Priority Project Categories	**Nutrients**	**Sediment**	**Trash**	**Pathogens**	**Pesticides**	**Oil & Grease**	**Metals**	**Organic Compounds**
Priority A: Residential Development > one acre	X	X	X	X	X	X		
Priority A: Commercial Development >one acre	P(1)	P(1)	X	P(3)	P(5)	X	X	P(2)
Priority B: Industrial		X	X			X	X	X
Priority B: Automotive Repair Shops			X			X	X	X(4)(5)
Priority B: Restaurants			X	X	P(1)	X		
Priority B: Parking Lots	P(1)	P(1)	X		P(1)	X	X	X
Priority B: Retail Gasoline Outlets			X			X	X	X
Priority B: Buildings taller than 100 ft in height	X	X	X	X	X	X		
(All) Streets, Highways & Freeways	P(1)	X	X	X	P(1)	X	X	X(4)

X = anticipated P = potential

(1) A potential Pollutant if landscaping exists onsite.
(2) A potential Pollutant if the Project includes uncovered parking areas.
(3) A potential Pollutant if land use involves food or animal waste products.
(4) Including petroleum hydrocarbons.
(5) Including Solvents

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-56 Site Design Strategies. (a) All Priority A and Priority B Projects shall implement Site Design Strategies. Site Design strategies are LID design techniques that are intended to maintain or restore the Site's hydrologic and hydraulic functions with the intent of minimizing runoff volume and preserving existing flow paths. Site Design Strategies reduce the amount of storm water runoff that requires treatment, resulting in smaller Treatment Control BMP size. They include:

(1) Conserve natural areas, soils, and vegetation
(2) Minimize disturbances to natural drainages.
(3) Minimize soil compaction.
(4) Minimize Impervious Surfaces.
(5) Direct Runoff to Landscaped Areas and Reduce directly connected impervious areas (DCIA).

(b) Site Design Strategies may be used to exclude drainage areas on Site from requiring additional Treatment Control BMPs if they are self-mitigating. Self-mitigating areas consist of natural or landscaped area, including green roofs, which retain and/or treat rainfall over the footprint of the self-mitigating area but do not accept runoff from other areas. Self-mitigating areas may drain directly to the MS4 or other off-site drainage without further treatment and can be excluded in calculation of the WQV or WQF. They must meet all the following criteria to be eligible for exclusion:

(1) Vegetation in the natural or landscaped area is native and/or non-native/non-invasive drought tolerant species that do not require regular application of fertilizers and pesticides.
(2) Soils are undisturbed native topsoil, or disturbed soils that have been amended and aerated to promote water retention characteristics equivalent to undisturbed native topsoil.
(3) The incidental impervious areas are less than 5 percent of the self-mitigating area.
(4) Impervious area within the self-mitigated area should not be hydraulically connected to other impervious areas unless it is a storm water conveyance system (such as brow ditches).
(5) The self-mitigating area is hydraulically separate from other drainage areas that contain permanent storm water Pollutant control BMPs.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

§20-3-57 Source Control BMPs. (a) Source Control BMPs are required for all Priority A and B Projects for the following activities and areas: Landscaped areas, Automatic irrigation systems, Storm drain Inlets, Vehicle/equipment fueling, Vehicle/equipment repair, Vehicle/equipment washing/cleaning, Loading docks, Outdoor trash storage, Outdoor material storage, Outdoor work areas, Outdoor process equipment operations, and Parking areas. They shall be implemented to the MEP.

(b) Landscaped areas.
(1) Limit runoff from landscaped areas to impervious areas
(2) Protect slopes and channels

(c) Automatic Irrigation.
(1) Design irrigation systems to each landscape area's specific water requirements.
(2) Implement landscape plans consistent with City water conservation resolutions, which may include provision of drip irrigation, water sensors, or programmable irrigation times (for short cycles)
(3) Design timing and application methods of irrigation water to Minimize the runoff of excess irrigation water into the storm water drainage system.
(4) Group plants with similar water requirements in order to reduce excess irrigation runoff and promote surface filtration.

(d) Storm Drain Inlets.
(1) Provide stenciling or labeling of all storm drain inlets and catch basins, constructed or modified, within the Project area with prohibitive language.
(2) Place the marker in clear sight facing toward anyone approaching the inlet from either side
(3) Signage must not be placed on the face of curbs to avoid contact with vehicle tires and sweeper brooms.
(4) Post signs with prohibitive language and/or graphical icons, which prohibit illegal dumping at public access points along channels and streams within the Project area.

(e) Vehicle and Equipment fueling areas.

(1) Covering. Include an overhanging roof structure or canopy over fuel dispensing areas. The cover's minimum dimensions must be equal to or greater than the area within the grade break. The cover must not drain onto the fuel dispensing area and the downspouts must be routed to prevent drainage across the fueling area. If fueling large equipment or vehicles that prohibit the use of covers or roofs, the fueling island should be designed to accommodate the larger vehicles and equipment and to prevent storm water run-on and runoff.

(2) Surfacing. Pave fuel dispensing areas with Portland cement concrete (or equivalent smooth impervious surface). Extend the paved area a minimum of 6.5 feet from the corner of each fuel dispenser, or the length at which the hose and nozzle assembly may be operated plus 1 foot, whichever is less. The use of asphalt concrete is prohibited. Use asphalt sealant to protect asphalt paved areas surrounding the fueling area.

(3) Grading/Contouring. Slope the dispensing areas to prevent ponding, and separate it from the rest of the Site by a grade break that prevents run-on. Grade the fueling areas to drain toward a dead-end sump or vegetated/landscaped area. Direct runoff from downspouts/roofs away from fueling areas towards vegetated/landscaped areas if possible.

(4) Drains. Label all drains within facility boundaries using paint or stencil, to indicate whether flow is to the storm drain, sewer, or oil/water separator.

(f) Vehicle and Equipment Repair.

(1) Locate repair/ maintenance bays indoors; or design them to preclude run-on and runoff.

(2) Pave repair /maintenance floor areas with Portland cement concrete (or equivalent smooth impervious surface).

(3) Provide impermeable berms, drop inlets, trench drain, catch basins, or overflow containment Structures around repair bays to prevent spilled materials and wash-down waters from entering the storm drain system. Connect drains to a sump for collection and disposal. Direct connection of the repair/ maintenance bays to the storm drain system is prohibited.

(4) Label all drains within facility boundaries using paint or stencil, to indicate whether flow is to the storm drain, sewer, or oil/ water separator.

(g) Vehicle and Equipment Washing and Cleaning. At least one of the following features for vehicle and equipment washing must be incorporated into the Project design:

(1) Be self-contained and/or covered with a roof or overhang; or

(2) Be equipped with a clarifier or other pretreatment facility; or

(3) Have a proper connection to a sanitary sewer; or

(4) Install sumps or drain lines to collect wash water. Divert wash water to the sanitary sewer, an engineered Infiltration system, or an equally effective alternative; or

(5) Direct and divert surface water runoff away from the exposed area around the wash pad, and wash pad itself to alternatives other than the sanitary sewer; or

(6) Cover areas used for regular washing of vehicles, trucks, or equipment, surround them with a perimeter berm, and clearly mark them as a designated washing area; or

(7) Label all drains within facility boundaries using paint or stencil, to indicate whether flow is to the storm drain, sewer, or oil/water separator.

(8) Approval for a sanitary connection must be obtained from the City Department of Environmental Services and may require an industrial wastewater discharge permit.

(h) Loading Docks.

(1) Cover all loading dock areas, or design them to preclude run-on and runoff.

(2) Do not allow runoff from depressed loading docks (truck wells) to discharge into storm drains.

(3) Drain below-grade loading docks from grocery stores and warehouse/distribution centers of fresh food items through water quality inlets, an engineered Infiltration system, or an equally effective alternative.

(4) Grade and/or berm the loading/unloading area to a drain that is connected to a dead-end.

(5) Pave loading areas with Portland cement concrete.

(i) Outdoor Trash Storage.

(1) Hazardous waste must be handled in accordance with legal requirements established in Hawaii Administrative Rules Title 11 Chapter 58.1 Solid Waste Management Control, and enforcement by the State of Hawaii Department of Health solid and Hazardous Waste Branch.

(2) Berm trash storage areas to prevent run-on from adjoining roofs and pavement, or grade areas towards vegetated/landscaped areas.

(3) Reduce/prevent leaking of liquid waste by incorporating at least one of the following: Lined bins or dumpsters, Low containment berm around the dumpster area, or Drip pans underneath dumpsters

(4) Prevent rainfall from entering containers with roofs, awnings, or attached lids.

(5) Pave trash storage areas with an impervious surface to mitigate spills.

(6) Do not locate storm drains in immediate vicinity of the trash storage area.

(7) Post signs on dumpsters indicating that hazardous material are not to be disposed of therein.

(j) Outdoor Material Storage may be in the form of raw products, by-products, finished products, and waste products.

(1) Materials with the potential to contaminate storm water must either be placed in an enclosure that prevents contact with runoff or spillage to the storm water conveyance system, or protected by secondary containment Structures such as berms, dikes, or curbs.

(2) Pave the storage area with Portland cement concrete (or equivalent smooth impervious surface) to contain leaks and spills.
(3) Slope the storage area towards a dead-end sump to contain spills.
(4) Direct runoff from downspouts/roofs away from storage areas.
(5) Cover the storage area with an awning that extends beyond the storage area to Minimize collection of storm water within the secondary containment area. A manufactured storage shed may be used for small containers.

(k) Outdoor Work Areas may include but are not limited to areas where grinding, painting, coating, sanding, and parts cleaning are performed.
(1) Use an impermeable surface such as concrete or asphalt, or a prefabricated metal drip pan, appropriate for the work area.
(2) Cover the area with a roof to prevent rain from falling on the work area and becoming polluted runoff.
(3) Berm or perform mounding around the perimeter of the area to prevent water from adjacent areas from flowing on to the surface of the work area.
(4) Directly connect runoff to the sanitary sewer or other specialized containment system(s). This allows the more highly concentrated pollutants from these areas to receive special treatment that removes particular constituents. Approval for a sanitary connection must be obtained from the City Department of Environmental Services and may require an industrial wastewater discharge permit.
(5) Locate the work area away from storm drains or catch basins.

(l) Outdoor Process Equipment Operations may include but are not limited to rock grinding or crushing, painting or coating, grinding or sanding, and degreasing or parts cleaning.
(1) Cover or enclose areas that would be the most significant source of pollutants; or slope the area toward a dead-end sump; or, discharge to the sanitary sewer system following appropriate treatment in accordance with conditions established by the City Department of Environmental Services.
(2) Grade or berm area to prevent run-on from surrounding areas.
(3) Do not install storm drains in areas of equipment repair.
(4) Provide secondary containment Structures (not double wall containers) where wet material processing occurs (e.g., electroplating), to hold spills resulting from accidents, leaking tanks, or equipment, or any other unplanned releases (Note: if these are plumbed to the sanitary sewer, they must be with the prior approval of the City.)

(m) Parking Areas that are paved with impermeable material must be graded to direct runoff towards vegetated/landscaped areas or other Post-Construction Treatment Control BMPs.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

§20-3-58 Treatment Control BMPs numeric sizing criteria. (a) Treatment Control BMPs include retention (Infiltration and Harvest/ Reuse) BMPs, Biofiltration BMPs, and

manufactured treatment devices and be sized either based on volume, flow, or demand, depending on the BMP.

(b) Treatment Control BMPs shall be designed off-line from the drainage system, unless a bypass system is provided for the design storm.

(c) Drainage management areas should be defined based on proposed drainage patterns of the Site and BMPs to which they drain. More than one drainage management area can drain to a single BMP but a single drainage management area cannot drain to more than one BMP unless those BMPs are in series and not parallel. Drainage management area calculations should not include Self-Mitigating areas.

(d) De Minimis Areas are very small drainage areas that are not significant contributors of pollutants. Examples include portions of sidewalks, driveways, and retaining walls at the external boundary of a Project. De Minimis Areas can be excluded from Treatment Control requirements and WQV or WQF calculations if they meet all of the following characteristics:

(1) Areas abut the perimeter of the Development Site.

(2) Topography or land ownership constraints make BMP construction Infeasible.

(3) Each De Minimis area should be less than 250 square feet and the sum of all De Minimis areas should represent less than 2 percent of the total added or replaced impervious surface of the Project.

(4) Two De Minimis Areas cannot be adjacent to each other and hydraulically connected.

(e) Volume based BMPs numeric sizing criteria. Volume based storm water quality facilities include LID retention BMPs: Infiltration Basins, Infiltration Trenches, Subsurface Infiltration Systems, Dry Wells, Bioretention Basins, Permeable Pavement; Biofiltration BMPs: Green Roofs, Vegetated Bio-Filters, Enhanced Swales; and Alternative Compliance BMPs: Detention Basins, and Sand Filters.

(1) Volume based BMPs shall be sized for the Water Quality Volume (WQV), which is calculated as follows:

$$WQV = P C A \times 3630$$

Where:

WQV	=	water quality volume (cubic feet)
P	=	design storm runoff depth (inches)
C	=	volumetric runoff coefficient
A	=	drainage management area(s) (acres)

(2) A design storm runoff depth of 1 inch shall be used for LID retention BMPs. A design storm runoff depth of 1.5 inches shall be used for volume- based Biofiltration and Alternative Compliance BMPs.

(3) The volumetric runoff coefficient shall be calculated using the following equation as developed by EPA for smaller storms in urban areas:

$$C = 0.05 + 0.009I$$

Where:

C	=	volumetric runoff coefficient
I	=	percent of impervious cover, expressed as a percentage

(f) Flow-through based BMPs Numeric Sizing Criteria. Flow-through based BMPs include Vegetated Swales, Vegetated Filter Strips, and Alternative Compliance Manufactured Treatment Devices.

(1) Flow-through based BMPs shall be sized for the Water Quality Flow Rate (WQF), which is calculated using the Rational Formula as follows:

$$WQF = 1.5 \; X \; CiA$$

Where:
- WQF = water quality flow rate (cubic feet per second)
- C = runoff coefficient
- i = peak rainfall intensity (inches per hour)
- A = drainage management area(s) (acres)

(2) A peak rainfall intensity of 0.4 inches per hour shall be used.

(3) The runoff coefficient shall be determined from the table below.

(4) For drainage areas containing multiple land uses the following formula may be used to compute a composite weighted runoff coefficient:

$$C_c = \left(\sum_{i=1}^{n} C_i A_i \right) / A_t$$

Where:
- C_c = composite weighted runoff coefficient
- $C_{1,2,...n}$ = runoff coefficient for each land use cover type
- $A_{1,2,...n}$ = drainage area of each land use cover type (acres)
- A_t = total drainage area (acres)

(5) The calculated WQF for Vegetated Swales and Vegetated Filter Strips may be reduced by 25 percent if the soil beneath the BMP is classified as Hydrologic Soils Group (HSG) "A" or "B", as reported by the United States Department of Agriculture (USDA) Natural Resources Conservation Service, or if the soil beneath the BMP is amended by incorporating 6 inches of compost/amendments and tilled up to 8 inches.

Note: the following table provides runoff coefficients to be used for Flow-through based BMP calculations

Type of Surface	Runoff Coefficient
Roofs	0.90
Concrete	0.80
Stone, brick, or concrete pavers with mortared joints and bedding	0.80
Asphalt	0.70
Stone, brick, or concrete pavers with sand joints and bedding	0.70
Pervious Concrete	0.10
Porous asphalt	0.10
Permeable interlocking concrete pavement	0.10
Grid pavements with grass or aggregate surface	0.10
Crushed aggregate	0.10
Grass	0.10
Grass over Porous Plastic	0.05
Gravel over Porous Plastic	0.05

Note: These runoff coefficients are only appropriate for small storm treatment design and should not be used for flood control sizing.

(g) The sizing procedures for BMP size based on the WQV and WQF are based on simple dynamic and static principles and therefore may result in larger BMPs than are necessary. More rigorous sizing methods, such as detailed routing methods or continuous simulation models, may be used with Director approval. Any other sizing method for retention BMPs must retain the first 1 inch of rainfall. Any treat and release BMP must use a design storm depth of 1.5 inches.

(h) Demand based BMP Numeric Sizing Criteria. Demand based BMPs include Harvesting /Reuse. One of two equivalent performance standards shall be met:

(1) Harvest and Reuse BMPs must be designed to capture at least 80 percent of average annual (long term) runoff volume AND meet 80 percent of the annual overall demand. If these criteria are met then no further BMPs are required to retain the WQV for the contributing drainage management area(s).

(2) Harvest and Reuse BMPs must be sized to drain the tank in 48 hours following the end of rainfall. The size of the BMP is dependent on the demand at the Site. It is rare that cisterns can be sized to capture the full WQV and use this volume in 48 hours, therefore the BMP should be sized to the estimated 48-hour demand and the remaining WQV not captured is required to be retained onsite through Infiltration/ evapotranspiration or, if

Infeasible, treated with Biofiltration or Alternative Compliance as required in §20-3-49.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

§20-3-59 Infiltration Testing. (a) The Infiltration rate, or permeability, measured in inches per hour, is the rate at which water passes through the soil profile during saturated conditions. Soil investigations and Infiltration tests are required to accurately determine the local soil characteristics and capacity for Infiltration. For Infiltration basins, subsurface Infiltration systems, dry wells, bioretention basins, and permeable pavement, at a minimum, one permeability test must be performed for every 2,500 square feet. For Infiltration trenches, at a minimum, one permeability test must be performed for every 100 linear feet.

(b) Design Infiltration Rates. To account for uncertainties and inaccuracies in testing, a correction (i.e., safety) factor shall be applied to the assumed or measured Infiltration rate to produce a design Infiltration rate for BMP sizing calculations. The minimum safety factor shall be 2 for Infiltration facilities

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

§20-3-60 Retention BMPs. Retention BMPs include Infiltration BMPs and Harvest/ Reuse.

(a) Infiltration Basin. An Infiltration basin is a shallow impoundment with no outlet, where storm water runoff is stored and infiltrates through the basin invert and into the soil matrix.

(1) Infiltration Basins shall have a flat invert, interior side slopes (length per unit height) no steeper than 3 horizontal to 1 vertical unless approved by a licensed Engineer with geotechnical expertise, and at least 3 feet from the basin invert to the seasonally high groundwater table. For side slopes greater than 3 horizontal to 1 vertical, permanent Erosion Control using Geotextiles or Rolled Erosion Control Products and grassing is required.

(2) The soil Infiltration rate below the basin invert shall be at least 0.5 inches per hour, and drain completely in 48 hours.

(b) Infiltration Trench. An Infiltration trench is a rock-filled trench with no outlet, where storm water runoff is stored in the void space between the rocks and infiltrates through the bottom and into the soil matrix.

(1) Infiltration Trenches shall have no more than 6 inches of a top backfill layer, no more than 12 inches of a bottom sand layer, and 1.5-3.0 inch diameter trench rock.

(2) The soil Infiltration rate below the trench invert shall be at least 0.5 inches per hour, the depth from the trench invert to the seasonally high groundwater table shall be at least 3 feet, and the trench shall completely drain in 48 hours.

(3) The depth of the Infiltration trench shall not exceed the greater of the trench width and trench length to avoid classification as an Underground Injection Control (UIC) Class V injection well.

(c) Subsurface Infiltration System. A subsurface Infiltration system is a rock (or alternative pre-manufactured material) storage bed below other surfaces such as parking lots, lawns and playfields for temporary storage and Infiltration of runoff.

(1) In addition to applicable manufacturer's guidelines, the soil Infiltration rate below the system invert shall be at least 0.5 inches per hour, the depth from the system invert to the seasonally high groundwater table shall be at least 3 feet, and the system shall completely drain in 48 hours.

(2) The depth of the subsurface Infiltration system storage bed shall not exceed the greater of the storage bed's width and storage bed's length to avoid classification as a UIC Class V injection well.

(d) Dry Well. A dry well is a subsurface aggregate-filled or prefabricated perforated storage facility, where roof runoff is stored and infiltrates into the soil matrix.

(1) The soil Infiltration rate below the dry well invert shall be at least 0.5 inches per hour, the depth from the dry well invert to the seasonally high groundwater table shall be at least 3 feet, and the dry well shall completely drain in 48 hours.

(2) If the dry well is aggregate-filled, 1.0-3.0 inch aggregate shall be used unless an alternative is approved by a licensed Engineer with geotechnical expertise.

(3) The depth of the dry well shall not exceed the diameter to avoid classification as an UIC Class V injection well.

(e) Bioretention Basin. Sometimes referred to as a Rain Garden, a Bioretention Basin is an engineered shallow depression that collects and filters storm water runoff using conditioned planting soil beds and vegetation. The filtered runoff infiltrates through the basin invert and into the soil matrix.

(1) Bioretention Basins shall have a flat invert, interior side slopes (length per unit height) no steeper than 1:1 for single family residential installations and no steeper than 3 horizontal to 1 vertical for all other installations unless approved by a licensed Engineer with geotechnical expertise, and at least 3 feet from the basin invert to the seasonally high groundwater table. For side slopes greater than 3 horizontal to 1 vertical, permanent Erosion Control using geotextiles or erosion mats and grassing is required.

(2) The ponding depth shall be no greater than 12 inches, the mulch thickness shall be 2-4 inches, and the planting soil depth shall be 2-4 feet.

(3) The soil Infiltration rate below the basin invert shall be at least 0.5 inches per hour, and the basin shall drain completely in 48 hours.

(f) Permeable Pavement. Sometimes referred to as pervious pavement or porous pavement, permeable pavement refers to any porous, load-bearing surface that allows for temporary rainwater storage in an underlying aggregate layer until it infiltrates into the soil matrix. It includes pervious concrete, porous asphalt, interlocking paver blocks, and reinforced turf grassing and gravel filled grids.

(1) Permeable pavement shall have a reservoir layer no thicker than 3 feet and have at least 3 feet from the reservoir invert to the seasonally high groundwater table.

(2) The soil beneath the reservoir layer invert shall have an Infiltration rate of at least 0.5 inches per hour, and the reservoir layer shall drain completely in 48 hours.

(g) Harvesting/Reuse. Sometimes referred to as Capture/Reuse or Rainwater Harvesting, is the collection and temporary storage of roof runoff in rain barrels or cisterns for subsequent non-potable use (landscape irrigation, vehicle washing and other uses as allowed by the Building Code).

(1) Harvesting / Reuse facilities must be sized according to the sizing criteria in §20-3-58.

(2) Harvest/ Reuse facilities must not conflict with any applicable building codes.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

§20-3-61 Biofiltration BMPs.

(a) Green Roof. Sometimes referred to as a Vegetated Roof or Eco-roof, a green roof is a roof that is entirely or partially covered with vegetation and soils for the purpose of filtering, absorbing, evapotranspirating, and retaining/ detaining the rain that falls upon it.

(1) Green roofs shall have a slope no greater than 20 percent, at least 2 inches of soil media, and at least 2 inches of drainage layer.

(b) Vegetated Bio-Filter. This category of BMPs may be referred to as a Bioretention Filter, Stormwater Curb Extension, Tree box filter, or Planter Box. A Vegetated Bio-Filter is an engineered or proprietary system that collects and filters storm water runoff using conditioned planting soil beds and vegetation. The filtered runoff discharges through an underdrain system.

(1) Engineered vegetated Bio-Filters shall have a relatively flat invert, the ponding depth shall be no greater than 12 inches, the mulch thickness shall be 2-4 inches, and the planting soil depth shall be 2-4 feet.

(2) Engineered vegetated Bio-Filters planting soil shall have a coefficient of permeability equal to at least 1.0 foot per day, and the WQV shall drain completely in 48 hours.

(3) Non-vegetated filter media may be used in lieu of planting soil.

(4) For proprietary systems, the BMP must be certified for general use by the Washington State Department of Ecology Technology Assessment Protocol (TAPE) for Enhanced Treatment (for the treatment of dissolved metals), Phosphorous Treatment, or Oil Treatment, according to the predominant Pollutant(s) of concern at that Site.

(c) Dry Swale. Sometimes referred to as a Bioretention Swale or Enhanced Swale, a Dry Swale is a shallow linear channel with a planting bed and covered with turf or other surface material (other than mulch or plants). Runoff filters through a planting bed, is collected in an underdrain system, and discharged at the downstream end of the swale.

(1) Enhanced Swales shall have interior side slopes (length per unit height) no steeper than 3 horizontal to 1 vertical unless approved by a licensed Engineer with geotechnical expertise, a bottom width between 2-8 feet, and a longitudinal slope no greater than 2 percent without check dams or 5 percent with check dams. For side slopes greater than 3 horizontal to 1

vertical, permanent Erosion Control using geotextiles or erosion mats and grassing is required.

(2) If used, check dams shall be no higher than 12 inches. The maximum ponding depth is 18 inches and the minimum media depth is 18 inches.

(d) Vegetated Swale. Sometimes referred to as a Grass Swale, Grass Channel, or Biofiltration Swale, a vegetated swale is a broad shallow earthen channel vegetated with erosion resistant and flood tolerant grasses. Runoff typically enters the swale at one end and exits at the other end.

(1) Vegetated Swales shall have interior side slopes (length per unit height) no steeper than 3 horizontal to 1 vertical unless approved by a licensed Engineer with geotechnical expertise, a bottom width no greater than 10 feet, and a water depth no greater than 4 inches.

(2) The velocity in the swale shall not exceed 1 foot per second, and the hydraulic residence time shall be at least 7 minutes.

(e) Vegetated Buffer Strip. Sometimes referred to as a Vegetated Filter Strip or Biofiltration Strip, a vegetated buffer strip is a grassy slope vegetated with turf grass that is designed to accommodate sheet flow. They may remove pollutants by vegetative filtration.

(1) Vegetated Buffer Strips shall have a length (in the direction of flow) no less than 15 feet, the depth of flow shall not exceed 1 inch, and the velocity shall not exceed 1 foot per second. The length of the filter strip in the direction of flow may be noncontiguous so long as the minimum length is met for the tributary area.

(2) The flow length of the tributary area discharging perpendicularly onto the strip shall not exceed 75 feet.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-62 Alternative Compliance BMPs.

(a) Manufactured Treatment Device. Sometimes referred to as hydrodynamic or vortex separators, a manufactured treatment device is a proprietary water quality structure utilizing settling, filtration, adsorptive/absorptive materials, vortex separation, or other appropriate technology to remove pollutants from storm water runoff.

(1) The device must provide, at minimum, a TSS removal rate of 80 percent, certified for general use by the Washington State Department of Ecology Technology Assessment Protocol (TAPE) or verified by the New Jersey Corporation for Advanced Technology (NJCAT) consistent with the New Jersey Department of Environmental Protection (NJDEP) protocols.

(2) Systems not meeting the required TSS removal criteria are allowed as pre-treatment for other BMPs

(b) Detention Basin. Sometimes referred to as a Dry Extended Detention Basin, a detention basin is a shallow man-made impoundment intended to provide for the temporary storage of storm water runoff to allow particles to settle. It does not have a permanent pool and is designed to drain between storm events.

(1) Detention Basins shall have an invert sloped between 1 to 2 percent, interior side slopes (length per unit height) no steeper than 3 horizontal to

1 vertical unless approved by a licensed Engineer with geotechnical expertise, a minimum length to width ratio of 2 to 1, and a maximum depth of 8 feet.

(2) With outlets no smaller than 4 inches in diameter, the basin shall drain completely in 48 hours when full and 24-36 hours when half full.

(c) Sand Filter. A sand filter is an open chambered structure that captures, temporarily stores, and treats storm water runoff by passing it through an engineered media (e.g., sand).

(1) Sand filter beds shall have at least 18 inches of sand with a coefficient of permeability of at least 3.5 feet per day, and shall drain completely in 48 hours.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

§20-3-63 Feasibility Criteria. For compliance with §20-3-49 of these Rules, the following feasibility criteria are established.

(a) Infiltration Feasibility. Infiltration BMPs are Infeasible and must not be used if any of the following conditions are met:

(1) Soils beneath the BMP invert have measured Infiltration rates of less than 0.5 in/ hr or are USDA HSG "C" or "D" as reported by the USDA Natural Resources Conservation Service;

(2) The seasonally high groundwater table is within 3 feet from the BMP invert;

(3) There is a documented concern that there is a potential onsite for soil pollutants, ground water pollutants, or pollutants associated with industrial activities to be mobilized;

(4) There are geotechnical concerns at the Site;

(5) Excavation for the installation of the BMP would disturb iwi kupuna or other archeological resources;

(6) The BMP cannot be built within the following setbacks:

(i) 50 feet from the nearest drinking water well;

(ii) 35 feet from the nearest septic system;

(iii) 10 feet from the nearest property line;

(iv) 20 feet from the nearest building foundation at the Project Site;

(v) 100 feet from the nearest down-gradient building foundation; or

(7) Infiltration facilities would conflict with the location of existing or proposed underground utilities or easements, or would result in their placement on top of underground utilities, or otherwise oriented to underground utilities, such that they would discharge to the utility trench, restrict access, or cause stability concerns.

(b) Harvest/Reuse feasibility. Harvest/ Reuse is considered Infeasible for the any of the flowing reasons:

(1) The demand is inadequate to reuse the required volume of water;

(2) The technical requirements cause the harvesting system to exceed 2 percent of the total Project cost;

(3) The Site where a cistern must be located is at a slope greater than 10 percent;
(4) There is no available space to locate a cistern of adequate size to harvest and use the required amount of water;
(5) The cistern cannot be built within the following setbacks:
(i) 10 feet from the nearest septic system;
(ii) 5 feet from the nearest property line;
(iii) 5 feet from the nearest building foundation at the Project Site; or
(6) The Project includes a reclaimed water system and demand for a harvest/ reuse system cannot be met.

(c) Biofiltration feasibility.
(1) Vegetated Biofilters are Infeasible for any of the following reasons:
(i) Excavation would disturb iwi kupuna or other archaeological resources;
(ii) The invert of underdrain layer is below seasonally high groundwater table;
(iii) The Site does not receive enough sunlight to support vegetation;
(iv) The Site lacks sufficient hydraulic head to support BMP operation by gravity; or
(v) Unable to operate off-line with bypass and unable to operate in-line with safe overflow mechanism;
(2) Green Roofs are Infeasible for any of the following reasons:
(i) The roof is for a single family residential dwelling;
(ii) Roof space is unavailable due to renewable energy, electrical, and/or mechanical systems; or
(iii) Slope on roof exceeds 25 percent (14 degrees);
(3) Dry Swales are Infeasible for any of the following reasons:
(i) Excavation would disturb iwi kupuna or other archaeological resources;
(ii) The invert of underdrain layer is below seasonally high groundwater table;
(iii) The Site lacks sufficient hydraulic head to support BMP operation by gravity; or
(iv) Unable to operate off-line with bypass and unable to operate in-line with safe overflow mechanism.
(4) Vegetated Swales are Infeasible for any of the following reasons:
(i) The excavation would disturb iwi kupuna or other archaeological resources;
(ii) The Site does not receive enough sunlight to support vegetation; or
(iii) Unable to operate off-line with bypass and unable to operate in-line with safe overflow mechanism.
(5) Vegetated filter strips are Infeasible for any of the following reasons:
(i) Excavation would disturb iwi kupuna or other archaeological resources;
(ii) The Site does not receive enough sunlight to support vegetation; or

(iii) Unable to operate off-line with bypass and unable to operate in-line with safe overflow mechanism.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1)

SUBCHAPTER 8
VARIANCES

§20-3-64 Variances

§20-3-64 Variances. (a) Petitions for variances from the requirements of these rules may be submitted to the Director.

(b) Petitions for a variance must include:

(1) The name, address, phone number and email address of the petitioner;

(2) A designation of the specific sections and provisions of these rules from which variance is sought;

(3) A narrative explanation of the grounds on which the variance may be granted; and

(4) Engineer certified plans, illustrations, and/or calculations in support of the petition.

(c) The Director may authorize a petitioner to vary from any requirement established by these rules if the petitioner is able to establish all of the following are true:

(1) The variance is necessary to prevent a hardship caused by unique Site conditions on the property that are not ordinarily found in other areas within the City;

(2) The unique conditions on the property are not the result of petitioner's own actions or the actions of h/her agents, contractors, consultants, or tenants;

(3) Granting a variance will not adversely affect the rights of abutting property owners;

(4) The variance requested will not result in an unreasonable threat of Pollutant discharges to the MS4 or State Waters;

(5) The variance requested is the minimum accommodation needed to overcome the hardship caused by naturally occurring conditions on the property; and

(6) Pollutant discharges to the MS4 and State Waters will not exceed levels that would occur if the petitioner complied with a strict application of these rules.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§1-9.1, 14-12.31, 14-12.32) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 14-12.32, 18-4.1, 18-5.1).

SUBCHAPTER 9
VIOLATIONS AND ENFORCEMENT

§20-3-65 BMP Deficiencies. BMP Deficiencies and violations of ESCPs shall be classified as critical, major, and minor deficiencies as follows.

(a) Critical deficiencies are any BMP deficiencies that result in or pose an immediate threat of pollutant discharges to the MS4 or state waters.

(b) Major deficiencies are non-critical deficiencies that indicate a lack of good-faith efforts to comply with the requirements of these rules and those deficiencies that may reasonably be expected to result in the discharge of pollutants to the MS4 or state waters under rain conditions with a 10 year recurrence interval or less.

(c) Minor deficiencies means those deficiencies that do not pose a threat for discharge of untreated storm water or pollutants to the MS4, surface waters, or State waters, but are not in strict conformance with an approved ESCP.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

§20-3-66 Enforcement. (a) If the Director determines that any person is violating any provision of these rules, the Director may issue a notice of violation and order to the person or persons responsible for the violation. The person responsible for a violation of these rules shall be the owner of the real property on which the violation occurs and the person responsible for implementing the ESCP for the Project. The responsible person or persons may also include all persons who directed, authorized, allowed, or participated in the acts of omissions that cause the violation to occur.

(b) The notice of violation shall contain the following:

(1) The date of the notice
(2) The name and address of the person or persons served with the notice
(3) The section of the ordinance or rule that has been violated
(4) The nature of the violation; and
(5) The deadline for compliance with the notice.

(c) Contents of the Order. The order may require the person or persons responsible for the violation to do any or all of the following:

(1) Cease and desist from the violation;
(2) Correct the violation at the person's own expense;
(3) Pay and administrative fine; or
(4) Appear before the Director at the time and place specified by the order to answer charges and explain why a fine for the violation should not be imposed; and
(5) Clean and abate any discharge to the MS4.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.24, 14-12.26, 14-12.28, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

§20-3-67 Penalties. (a) Any person violating the provisions of these rules may be ordered to pay an administrative or civil penalty of not less than $1,000.00 nor more than $25,000.00 per violation per day, except that in cases where such offense shall continue after due notice, each day's continuance of the same shall constitute a separate offense.

(b) A civil fine that remains unpaid after all rights to a contested case hearing have expired or been exhausted may be added by administrative action of the Director to any taxes, fees, or chargers collected by the City, other than charges for residential water and sewer use. Once added to fees or charges collected by the City, no permit, approval, or license shall be issued to a person responsible for the unpaid fine until said fines are paid in full. Taxes, fees, and charges that unpaid civil fines may be added to include, but are not limited to:

(1) Building, grading, grubbing, stockpiling, trenching, sign, special management area, shoreline variance, subdivision approval, building relocation, conditional use, and general plan amendment, and state land use district boundary amendment permits issued by the Department;

(2) Motor vehicle registration and vehicle weight tax, motor vehicle transfer of ownership fee, driver's license renewal fees, and business license fees collected by the customer services department;

(3) Liquor license and liquor license renewal fees collected by the Liquor Commission;

(4) Refuse collection and disposal fees collected by the Department of Environmental Services; and

(5) Real property taxes collected by the Department of Budget and Fiscal services. However, fines added to real property taxes after the effective date of these rules shall be junior to all interests recorded against real property before the unpaid fines are added to the real property taxes for the property.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.24, 14-12.26, 14-12.28, 14-12.31) (Imp: ROH §§ 14-12.1, 14-12.23, 14-14.2, 18-4.1, 18-5.1).

SUBCHAPTER 10
APPEALS

§20-3-77 Judicial Remand

§20-3-68 Appeals. (a) A property owner, permit holder, discharger, or person that is personally and adversely affected by an action of the Director in the administration of these rules may appeal the Director's action by filing a petition for appeal with the Department of Planning and Permitting within thirty days of the mailing of the Director's action.

(b) A petition for appeal shall not exceed ten pages in length and must be signed by the petitioner or the petitioner's attorney. A petition for appeal must also include all of the following:

(1) The petitioner's name, address, phone number, and interest in the Director's action;
(2) All pertinent facts;
(3) The provisions of the Director's action that are objected to;
(4) The reasons for the objection;
(5) The alternate provisions, if any, that petitioner seeks to place in the Director's action; and
(6) The reasons why the petitioner believes that the Director's action is based on an erroneous finding of material fact, arbitrary or capricious decision making, or an abuse of discretion.

(c) Upon receipt of a petition for appeal containing all required information, the Director shall assign a hearings officer to hold a contested case hearing on the petition.

(d) A petition for appeal shall only be sustained if the petitioner is able to prove, by a preponderance of the evidence, that the Director's action is based on an erroneous finding of material fact, arbitrary or capricious decision-making, or an abuse of discretion. In all other cases, an appeal shall be denied.

(e) If an appeal is sustained, the hearings officer shall remand the Director's action or to the Department for further action consistent with the hearings officer's findings and decision.

(f) The filing of a petition for appeal shall not stay an action of the Director of the requirements of a notice of violation and order.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: HRS §§ 91-2, 91-9, 91-9.5, 91-12, ROH § 14-12.27).

§20-3-69 Computation of Time. Whenever these rules specify a period of days for the completion of an action, the action shall be completed by 4:30 p.m. on the last day specified in the period, except when the specified period of days ends on a weekend, observed holiday, or other day on which the City is not open for business. In such cases, the action shall be completed by 4:30 p.m. on the next business day.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: HRS §91-2).

§20-3-70 Mandatory Filing Deadline. (a) A petition for appeal must be received by the Department within thirty days of the mailing or personal service of the Director's action. The date of mailing may be established by a postal receipt or official Department records which

state the date on which the director's action was placed in the US mail or hand delivered to the petitioner.

(b) If a petition for appeal is not filed within thirty days, it shall be dismissed upon motion by the Director.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.27, 14-12.31) (Imp: HRS §91-2, ROH § 14-12.27).

§20-3-71 Representation in Contested Case Hearings. (a) A person may appear before the hearings officer in the person's own behalf, a partner may represent a partnership, an officer, trustee, or authorized employee of a corporation, trust, or association may represent the corporation, trust, or association, and an officer or employee of an agency may represent the agency in contested case proceedings.

(b) A person may be represented by counsel in any proceedings under these rules.

(c) A person may not be represented in proceedings before the hearings officer except as stated in (a) and (b).

(d) When a person who is not an attorney acts in a representative capacity and appears in person or signs documents or papers in practice before the hearings officer, the person shall provide proof of h/her authority to act on behalf of the represented person upon request of the hearings officer or the Director.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.27, 14-12.31) (Imp: HRS §91-2, ROH § 14-12.27).

§20-3-72 Prehearing Procedure. (a) Within thirty days of receiving a petition for appeal, the hearings officer shall schedule a prehearing conference with the parties by issuing a notice of prehearing conference. The notice shall be served upon the parties by certified mail, with return receipt requested, no less than seven days prior to the prehearing conference. If the notice is mailed to the address provided by the petitioner in h/her petition for appeal and returned to the hearings officer as unclaimed, notice of the scheduling may then be provided by publishing a copy of the notice in a newspaper published in the State of Hawaii and having a general circulation within the City and County of Honolulu at least once per week in two successive weeks.

(b) At the prehearing conference, the hearings officer shall establish a date for the contested case hearing and a schedule for the submission of prehearing motions, prehearing briefs, witness lists, and exhibit lists by the parties.

(c) Prehearing briefs must contain a statement of relevant facts, the relief sought, and all grounds on which relief is sought. The petitioner's prehearing brief shall be filed with the Department no less than 30 days prior to the contested case hearing. The Director's reply brief shall be filed no less than seven days prior to the contested case hearing. Arguments that are not presented in the petitioner's prehearing brief shall not be heard in the contested case hearing.

(d) After the conclusion of the prehearing conference, the hearings officer shall issue a notice of contested case hearing to the parties. The notice shall be served upon the parties by certified mail no less than seven days before the contested case hearing date and include the following information:

(1) The date time, place and nature of the contested case hearing,

(2) The legal authority under which the hearing is to be held,
(3) The particular sections of the statutes and rules involved,
(4) An explicit statement, in plain language, of the issues involved and the facts alleged by the Director, unless the hearings officer is unable to determine the same and
(5) The fact that any party may retain counsel or be represented in accordance with §20-3-71 of these rules.

If the notice is mailed to the address provided by the petitioner in h/her petition for appeal and returned to the hearings officer as unclaimed, notice of the scheduling may then be provided by publishing a copy of the notice in a newspaper published in the State of Hawaii and having a general circulation within the City and County of Honolulu at least once per week in two successive weeks. The last required publication of the notice shall be no less than seven days before the contested case hearing date.

(e) Any procedure in a contested case may be modified or waivered by stipulation of the parties and an information disposition of the appeal may be made by agreement, consent order, or default, which shall be entered against any party that fails to appear at two consecutive hearings on the petition for appeal or motion thereon after receiving due notice of the same.

§20-3-73 Intervention. (a) Persons with a financial interest in the real property concerned by the Director's action and persons who will be directly and personally affected by the Director's action may submit a petition to intervene in a contested case appeal from an action of the Director.

(b) Petitions to intervene shall only be granted if the petitioner meets the requirements of subsection (a).

(c) Petitioners who are in support of the petition for appeal shall submit all prehearing documents concurrently with the petitioner-appellant. Petitioners who oppose the petition for appeal shall submit all prehearing documents concurrently with the Director.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.27, 14-12.31) (Imp: HRS §91-2, ROH § 14-12.27).

§20-3-74 Withdrawal of Petition. A written request for the withdrawal of a petition for appeal may be filed at any time. A request to withdraw the petition may be approved by the hearings officer shall be approved if submitted with the concurrence of all parties.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.27, 14-12.31) (Imp: HRS §91-2, ROH § 14-12.27).

§20-3-75 Contested Case Hearings. (a) The party initiating the proceedings shall have the burden of proof, which includes the burden of producing evidence and the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.

(b) Any oral or documentary evidence may be received; however, the hearings officer shall exclude all irrelevant, immaterial, or unduly repetitious evidence and shall give effect to the rules of privilege recognized by law.

(c) Every party shall have the right to conduct cross-examination as required for the full and fair disclosure of the facts.

(d) All parties shall have the right to submit rebuttal evidence;

(e) The hearings officer may take judicial notice of judicially recognizable facts and generally recognized technical or scientific facts within the specialized knowledge of the Department, provided that the parties shall be given notice of any judicially noticed facts and given the opportunity to dispute or contest the same.

(f) If any party fails to appear at two consecutive hearings on a matter, their right to a contested case hearing shall be waived and the petition for appeal shall be dismissed.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.27, 14-12.31) (Imp: HRS §91-2, 91-9, 91-10, ROH § 14-12.27).

§20-3-76 Decision and Order. (a) At the conclusion of the contested case hearing, the hearings officer may enter an oral ruling and direct the prevailing party to prepare a proposed findings of fact, conclusions of law, and decision and order for adoption by the hearings officer or take the matter under consideration for a period of time not to exceed 60 days.

(b) Where the matter is taken under consideration, the hearings officer shall issue a findings of fact, conclusions of law, and decision and order prepared by the hearings officer.

(c) If the hearings officer requires the prevailing party to prepare a prosed findings of fact, conclusions of law, and decision and order, the other parties to the case may submit written objections or exceptions to the proposed findings of fact, conclusions of law, and decision and order within fourteen days of receiving a copy of the same. A hearing to adopt or modify the proposed order shall be held within thirty days of the filing of exceptions or the expiration of the opportunity to do the same.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: HRS §§ 91-2, 91-9, 91-12, 91-14, ROH § 14-12.27).

§20-3-77 Judicial Remand. (a) If a matter is remanded to the Department or hearings officer for further proceedings pursuant to HRS §91-14, the judicial record shall be incorporated into the record of proceedings before the hearings officer.

(b) Upon notice of the remand, the hearings officer shall schedule a public hearing within sixty (60) days of the remand. Notice of the hearing shall be transmitted to the parties by certified mail no less than fifteen (15) days prior to the public hearing

(c) At the public hearing, the hearings officer shall identify the issues on remand and the scope of the additional testimony or evidence that may be received based on the needs of the case and the order directing remand to the Department or hearings officer.

(d) The hearings officer shall conduct further proceedings in compliance with the requirements for contested cases in these rules and may require additional briefs, witness lists, and/or exhibit lists.

[Eff August 16, 2017] (Auth: HRS §91-2, RCH §4-105, ROH §§ 1-9.1, 14-12.31) (Imp: HRS §§ 91-2, 91-9, 91-14, ROH § 14-12.27).

August 11, 2016

The Rules Relating to Water Quality were adopted on August 16, 2016, following a public hearing held on August 4, 2016, after public notice was given on July 5, 2016, in the Honolulu StarAdvertiser, State and County Public Notices Section, Honolulu, Hawaii.

These Rules shall take effect on August 16, 2017.

George I. Atta

GEORGE I. ATTA
Director
Department of Planning and Permitting

APPROVED:

KIRK CALDWELL
Mayor
City and County of Honolulu

Dated: October 10, 2016

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

FILED:
Given unto my hand and affixed with the Seal of the City and County of Honolulu this 20th day of October, 2016.

Glen I. Takahashi, City Clerk