

Request List of Routine Program Changes 2016, Hawaii CZM Program

| Added (Attachment-I) | |
|---------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1) | HRS §§ 115-5(b), 115-9(a)(4), 115-9(b)(8) and 115-10 |
| 2) | HRS §§ 205A-2(c)(9)(D) and 205A-2(c)(9)(E) |
| 3) | HRS § 266-2.2 |
| 4) | HAR § 11-23-24 |
| 5) | HAR § 11-54-4(e) |
| 6) | HAR §§ 11-54-4(b), 11-54-11, 11-54-12 and 11-54-15 |
| 7) | HAR Chapter 11-55, Appendix M |
| 8) | HAR §§ 11-55-34.05(b) to (f) |
| 9) | HAR §§ 11-55-19(a)(9) and 11-55-19(a)(10) |
| 10) | HAR Chapter 13-60.4 |
| 11) | HAR Chapter 13-60.8 |
| 12) | HAR Chapter 13-95.1 |
| 13) | HAR §§ 13-124-11, 13-124-12, and 13-124-13 |
| 14) | HAR Chapter 13-190.1 |
| 15) | HAR § 13-251-33 to § 13-251-35, and § 13-251-53 |
| 16) | Title MC-15, Chapter 111 |
| 17) | Maui County Code (MCC) § 18.20.135 |
| 18) | MCC § 16.26.3306 |
| Modified (Attachment-II) | |
| 19) | Kauai County Ordinance 979, Article 27, Chapter 8, Kauai County Code 1987 |
| 20) | HAR §§ 11-54-1, 11-54-1.1, 11-54-4(b), 11-54-5.1, 11-54-5.2, 11-54-6 to 11-54-9, 11-54-9.1 and 11-54-10 |
| 21) | HAR §§ 11-54-1, 11-54-5.1, 11-54-6, and 11-54-8 |
| 22) | HAR §§ 11-55-01, 11-55-04, 11-55-19, 11-55-34.02(b), 11-55-34.04 and 11-55-34.08 |
| 23) | HAR § 11-55-01, 11-55-04, 11-55-15, 11-55-34.02, 11-55-34.04(b), 11-55-34.06, 11-55-34.08(j), 11-55-34.09(d) and (e), 11-55-34.11, 11-55-40, Appendices A through L |
| 24) | HAR § 11-55-40 |
| 25) | HAR §§ 11-62-03, 11-62-05, 11-62-06, 11-62-07.1, 11-62-08, 11-62-09, 11-62-11, 11-62-24, 11-62-26, 11-62-27, 11-62-28, 11-62-31.1, 11-62-31.2, 11-62-32, 11-62-33.1, 11-62-34, 11-62-36, 11-62-37, 11-62-41, 11-62-42, 11-62-43, 11-62-44, 11-62-54.08, 11-62-55.03, 11-62-56, 11-62-57.02, 11-62-57.04, 11-62-82, and 11-62-83 |
| 26) | HAR §§ 13-124-2, 13-124-3, 13-124-4, 13-124-7, 13-124-8 and Exhibits 1-5 |
| 27) | HAR §§ 13-231-2 to 13-231-6, 13-231-8, 13-231-11, 13-231-13, 13-231-15, §§ 13-231-21 to 13-231-27, § 13-231-45, §§ 13-231-55 to 13-231-67, § 13-231-70, and §§ 13-231-85.5 to 13-231-89 |
| 28) | HAR §§ 13-251-36 to 13-251-46, §§ 13-251-48 to 13-251-52, §§ 13-251-57 to 13-251-58, and § 13-251-76 |
| 29) | HAR §§ 13-256-3 to 13-256-4 |
| 30) | HAR § 13-256-73.13 |
| Deleted (Attachment-III) | |
| 31) | HAR Chapter 13-60.3 |
| 32) | HAR § 13-126-22 |
| 33) | HAR Chapter 13-190 |
| 34) | HAR § 13-231-72, § 13-231-76, and § 13-231-90 |
| 35) | HAR §§ 13-251-31 to 13-251-32, § 13-251-47, § 13-251-56, §§ 13-251-59 to 13-251-60, and § 13-251-68 |

Modified

**19) Kauai County Ordinance 979, Article 27, Chapter 8, Kauai
County Code (KCC) 1987**

Relating to Shoreline Setback and Coastal Protection

**A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8,
KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO
THE COMPREHENSIVE ZONING ORDINANCE**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

SECTION 1. The Council finds that Kaua'i's coastline is subject to a wide variety of natural hazards, such as tsunamis, high surf, sea level rise, hurricanes, coastal flooding, and coastal erosion that pose dangers to people and property located near the shoreline. Proper siting of structures based on hazard recognition and long term planning principles is critical to the protection of life and property, the mitigation of coastal hazards, and the preservation of coastal resources.

Until recently, development and other improvements on coastal lands occurred without regard to erosion hazards. In some cases, chronically retreating shorelines eventually threatened these improvements causing strong pressure to build shore protection structures such as seawalls and revetments. These structures distorted the natural shoreline environment, often leading to accelerated erosion on adjoining properties, beach loss, and reduced public access. This pattern of coastal zone development has seriously degraded the natural attributes of the Kaua'i coast as documented in the Kauai Shoreline Erosion Management Study (September, 1990).

On January 25, 2008, the first shoreline setback ordinance (Ordinance No. 863) was signed into law. The purpose of the ordinance was to properly site structures to protect life, property, and resources along Kauai's shorelines from a wide variety of natural hazards, including high surf, hurricanes, flooding, and erosion. The Council envisioned Ordinance No. 863 as an initial effort to establish shoreline setbacks while science-based coastal erosion hazards maps were being completed. On December 2, 2009, Ordinance No. 887 became effective, amending the original shoreline setback ordinance. The purpose of Ordinance No. 887 was to streamline permit procedures by removing unnecessary requirements for structures and activities permitted within the shoreline setback area.

In 2010, the University of Hawai'i Coastal Geology Group completed the Kaua'i Coastal Erosion Study that mapped historical shoreline positions to calculate shoreline change data along most of Kaua'i's sandy shorelines, thus making available documented rates of shoreline erosion.

The Council finds that the shoreline environment is one of Kaua'i's most important economic and natural resources. Kaua'i's beaches provide scenic beauty and recreational opportunities for residents and visitors. They are culturally important to the people of Hawai'i. Beaches, dunes, and offshore topographic features also help to minimize risks from coastal hazards by dissipating wave energy, which could otherwise cause significant damage to coastal property. Beaches provide important habitat for seabirds, turtles, monk seals, and other animals and plants. In all of the abovementioned ways, beaches and coastal areas are part of the public trust, and it is government's fiduciary responsibility to protect beaches and coastal areas.

The Council also finds that it is important that information regarding natural hazards such as coastal erosion data be incorporated into the planning process at the early stage of development, i.e., at the time of subdivision before lot sizes and shapes are established, so as to give landowners more environmentally sound options and to save decision makers from the agonizing dilemma of choosing between protection of one owner to the detriment of another owner and/or the public.

The purpose of this bill is to:

(1) To protect life and property and to ensure the longevity and integrity of Kaua'i's coastal and beach resources along Kaua'i's shoreline.

(2) To strengthen shoreline setback requirements in Chapter 8, Article 27 of the Kaua'i County Code, 1987, as amended, by incorporating science-based erosion rates established in the Kaua'i Coastal Erosion Study and current coastal hazard mitigation best practices and strategies.

(3) To align the Shoreline Setback Ordinance with the County Flood Ordinance to improve coordination between the Departments of Planning and Public Works.

(4) To protect against episodic shoreline erosion that is not accounted for in the Kauai Coastal Erosion Study until such time as studies providing additional guidance and information are completed.

(5) To create consistency with recent amendments to Hawai'i Revised Statutes, Chapter 205A, as prescribed in Act 120 of the 2013 State Legislature.

(6) To give the Planning Director flexibility in applying this law to large parcels that abut the shoreline where the proposed improvement is sited in a location that will not increase erosion or impact natural shoreline processes.

The County is authorized to protect the coastal area pursuant to Public Law No. 92-583, as amended, ("Coastal Zone Management Act"), Chapter 205A, Hawai'i Revised Statutes, as amended, ("Shoreline Protection Act"), Article XI Section 1 of the Hawai'i State Constitution, Public Law 92-583, and the County's police powers to protect public health and safety. This ordinance shall be known as the "Shoreline Setback and Coastal Protection Ordinance."

SECTION 2. Chapter 8, Article 27 of the Kaua'i County Code 1987, as amended, is hereby amended as follows:

"ARTICLE 27. SHORELINE SETBACK AND COASTAL PROTECTION

[Sec. 8-27.1 Applicability.

This Article shall be applicable to all lands within the County of Kaua'i, State of Hawai'i, that are:

- (a) abutting the shoreline, or
- (b) not abutting the shoreline but located within five hundred (500) feet of the shoreline unless the applicant can demonstrate to the satisfaction of the Planning Director that the applicant's proposed improvement will not be affected by

coastal erosion or hazards, excluding natural catastrophes. Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, and the history of coastal hazards in the area.

Sec. 8-27.2 Definitions.

For purposes of this article, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein shall be defined as follows:

"Adversely affect beach processes" means to pose a potential immediate or future adverse effect on beach processes as a result of a structure or activity located within the coastal erosion hazard zone, or to create an immediate or future need to artificially fix the shoreline.

"Annual coastal erosion rate" means the annual rate of coastal erosion calculated by following a procedure established in the Hawai'i Coastal Hazard Mitigation Guidebook, (January 2005), which was prepared for the State of Hawai'i, Department of Land and Natural Resources, Coastal Zone Management Program, University of Hawai'i Sea Grant College Program and the Pacific Services Center and Coastal Services Center of the National Oceanic and Atmospheric Administration at section 4.1.

"Average lot depth" means the measurement obtained by adding the lengths of the two sides of a lot which are at or near right angles with the shoreline, or the seaward boundary of the lot that runs roughly parallel to the shoreline if the property is not abutting the shoreline, to the length of a line obtained by drawing a line from a point in the center of the makai side of the lot to a point in the center of the mauka side of the lot and dividing the resulting sum by three. For irregularly shaped lots including flag lots, triangular parcels, lots on peninsulas, and/or lots having ocean on two or more sides of the lot, the average lot depth will be determined by the Director.

"Board" shall mean the Board of Land and Natural Resources, State of Hawai'i.

"Building footprint" shall mean all parts of a main building (excluding roof overhangs) that rest, directly or indirectly, on the ground, including those portions of the building that are supported by posts, piers, or columns. Building footprint also includes attached garages, covered carports, bay windows with floor space, lanais, decks, cantilevered decks, spas, and in-ground swimming pools.

"Certified Shoreline" means the shoreline established by Board pursuant to HRS 205A-42, as amended.

"Coastal Dune" means one of possibly several continuous or nearly continuous mounds or ridges of unconsolidated sand contiguous and parallel to the beach, situated so that it may be accessible to storm waves and seasonal high waves for release to the beach or offshore waters.

"Coastal erosion" means the natural loss of coastal lands, usually by wave attack, tidal or littoral currents, or wind. Coastal erosion is synonymous with shoreline retreat.

"Coastal erosion hazard zone" shall include all of the land between the shoreline and the shoreline setback line.

"Coastal erosion study" means a quantitative study of historical shoreline behavior utilizing orthorectified aerial photographs or other imagery to carry out high-resolution mapping of historical shoreline positions to obtain a statistically valid annual erosion rate of the Shoreline Change Reference Feature (SCRF) and vegetation line. The coastal erosion study shall be carried out by a qualified

professional consultant as defined in this article following procedures described in Section 4.1 of the Hawai'i Coastal Hazard Mitigation Guidebook, (January 2005). The coastal erosion study shall include but not be limited to:

(1) Mapping of the historical shoreline positions including both the SCRF and the vegetation line for the subject parcel, as well as the local and regional littoral cell;

(2) The method resulting in the larger erosion rate (SCRF/toe of beach vs. vegetation line) shall be used to establish the erosion rate unless there is clear evidence to indicate another method is a more accurate representation of historic shoreline change.

(3) Uncertainty or error calculation of the data and the annual erosion rate;

(4) Additional information relevant to the erosion study shall include: a current certified shoreline survey, construction plans, if any, existing and finished contours; photographs of the shoreline setback area, analysis of the coastal erosion rates and shoreline processes.

(5) Where a coastal erosion study is required to be done or is done voluntarily by an applicant, an application for a shoreline setback determination shall not be deemed complete unless the coastal erosion study has been accepted by the Director.

(6) Any non-governmental study shall be valid for no longer than a period of five (5) years from the date of its acceptance by the Director which shall be by certified letter issued by the Planning Department.

(7) The coastal erosion study shall consider the purpose of the study-to safely site structures away from hazards such as erosion so that shoreline hardening will not be required to protect the property during its useful life.

"Coastal hazard" means natural processes in the coastal zone that are generated by geologic, oceanographic, and/or meteorological processes that place people and/or improvements at risk for injury and/or damage.

"Commission" means the Planning Commission of the County of Kaua'i.

"Department" means the Planning Department of the County of Kaua'i.

"Director" means the Planning Director of the Planning Department of the County of Kaua'i.

"Dwelling Unit" means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by a person living alone, and provides complete living facilities within the unit for sleeping, recreation, eating and sanitary facilities, including installed equipment for only one (1) kitchen.

"FEMA" means the Federal Emergency Management Agency.

"FIRM" means the Flood Insurance Rate Map.

"Hazard Assessment" means assessment for erosion, wave, flood, and inland zone following the standards in Section 4.3 of the Hawai'i Coastal Mitigation Guidebook, (January 2005).

"Lot" means a portion of land shown as a unit on an approved and recorded subdivision map.

"Makai" means seaward or in a seaward direction.

"Mauka" means landward or in a landward direction.

"Minimum buildable footprint" means the building footprint of 2,100 square feet or as allowed in Section 8-27.10(a).

"Minor activity" means an activity that:

- (1) costs less than \$125,000; and
- (2) does not adversely affect beach processes, does not artificially fix the shoreline, does not interfere significantly with public access or public views to and along the shoreline; and
- (3) does not impede the natural processes and/or movement of the shoreline or sand dunes, and does not alter the grade of the shoreline setback area, except for landscaping, clearing (grubbing) of vegetation, and grading, which are exempt from HRS Chapter 343; and
- (4) is consistent with the purposes of this article and HRS Chapter 205A, as amended.

“Minor structure” means:

- (1) a structure that costs less than \$125,000 and provides temporary emergency protective measures for a legally habitable structure that is imminently threatened by coastal hazards provided that the protective measure has received approval in accordance with the Special Management Area Rules of the Kaua‘i Planning Commission and/or the State Department of Land and Natural Resources (as may be the case), relocation of the endangered structure has been considered and is not reasonable given the nature of the emergency, the protective measure is removed within one hundred eighty (180) days of its installation, and given the significance of the emergency, the protection is the best management alternative with respect to beach, shoreline, and/or coastal resource conservation, or

- (2) a structure that:

- (A) costs less than \$125,000; and
- (B) does not adversely affect beach processes, does not artificially fix the shoreline, and does not interfere with public access or public views to and along the shoreline; and

- (C) does not impede the natural processes and/or movement of the shoreline and/or sand dunes, and does not alter the grade of the shoreline setback area; and

- (D) is consistent with the purposes of this article and HRS Chapter 205A, as amended; and

- (E) includes, but is not limited to, lighting in conformance with HRS Chapter 205A, landscape features, barbecues, picnic tables, benches, chairs, borders, wooden trellis, bird feeders, signs, safety improvements, movable lifeguard stands, walkways for access, outdoor showers and water faucets, public utility lines, utility poles and accessory structures along existing corridors, temporary tents for special events not exceeding fourteen (14) consecutive days in duration during any three-month period, walls and fences that are located more than forty (40) feet from the shoreline, landscape planting and irrigation systems provided that they are directed away from a valid certified shoreline and do not artificially extend the shoreline or shoreline setback area seaward; and

- (F) excludes, but is not limited to, any in-ground swimming pools or spas, garages, carports, concrete walkways that are reinforced, concrete walkways that are not saw-cut at a minimum of three (3) foot intervals, and concrete steps.

“Natural catastrophe” is a natural disaster qualifying for a governor's declaration of emergency pursuant to Hawai‘i Revised Statutes Chapter 128, or a presidential declaration of emergency of a major disaster pursuant to 42USC5170, including those caused by episodic coastal hazards such as tsunamis and

hurricanes, and not the result of other coastal hazards or processes such as erosion or sea level rise.

“Nonconforming structure or activity” means a structure or activity which is lawfully existing within the shoreline setback area because it:

- (1) Was completely built, in its present form, prior to June 22, 1970; or
- (2) Received either a building permit, board approval, or shoreline setback area variance prior to June 16, 1989; or
- (3) Was outside the shoreline setback area when it received either a building permit or board approval; or

“Plan” or “site plan” means a detailed construction plan drawn to scale of 1" =20' 0" that shows the design of a structure proposed to be built within the shoreline setback area. The plan shall be based on an accurate instrument by a surveyor licensed in the State of Hawai'i and shall consist of data including but not limited to:

- (1) Property boundaries;
- (2) Natural features such as large trees, rock outcroppings, and any primary or secondary coastal dunes;
- (3) Topography in and around the proposed construction;
- (4) Any and all shoreline hardening;
- (5) Flood zones, where applicable;
- (6) Existing and proposed structures and their proximity to the shoreline and shoreline setback area;
- (7) Fences, walls, and any other structures in the shoreline setback area and any potential hindrances to lateral access along the shoreline;
- (8) A geo-referenced survey of the site; and
- (9) Any other information which identifies the existing condition of the subject parcel of land."

“Primary Coastal Dune” means the first dune encountered mauka of the beach. “Qualified professional consultant” means a coastal scientist with a masters of science degree or doctorate in geology, geography, or other appropriate physical science relating to coastal processes, or an engineer licensed in the State of Hawai'i that has experience in coastal processes.

“Qualified professional consultant” means a coastal scientist with a masters of science degree or doctorate in geology, geography, or other appropriate physical science relating to coastal processes, or an engineer licensed in the State of Hawai'i that has experience in coastal processes.

“Qualified Demolition” means the demolition of a structure or structures where such demolition:

- (1) Will not adversely affect beach processes;
- (2) Will not artificially fix the shoreline;
- (3) Will not interfere with public access, except for public safety reasons during demolition operations;
- (4) Will not interfere with public views to and along the shoreline, except during demolition operations;
- (5) Will be consistent with the intent of open space enhancement as reflected in these rules and HRS 205A; and
- (6) Will comply with applicable County Codes.

“Rebuilding” means reconstruction of a lawfully existing dwelling unit when the reconstruction is valued by a licensed professional engineer or architect at fifty percent (50%) or more of the current replacement cost of the structure.

“Repair” means the fixing of damages to a structure where the cost thereof is valued by a licensed professional engineer or architect at less than fifty percent (50 %) of the current replacement cost of the structure.

“Revetment” shall mean a facing of stone, concrete, blocks, or other similar materials built to protect a scarp, embankment, or shore structure against erosion by wave action or currents.

“Rocky Shoreline” means a shoreline segment acting as the primary interface between marine dominated processes and terrestrial dominated processes that is composed of hard, non-dynamic, non-erodible material such as basalt, fossil limestone, beach rock, or other natural non-dynamic material, not to include cobble or gravel beaches that are dynamic in nature, or erodible cliffed shorelines composed dominantly of dirt or clay.

“Shoreline” is as defined in Section 205A-1, Hawai‘i Revised Statutes, as amended, and as established pursuant to Section 205A-42, Hawai‘i Revised Statutes, as amended.

“Shoreline Change Reference Feature (SCRF)” means a morphologic feature commonly referred to as the “toe” of the beach, which represents the base of the foreshore or approximating the Mean Lower Low Water (MLLW).

“Shoreline setback area” means “shoreline area” as defined in Section 205A-41, Hawai‘i Revised Statutes, as amended.

“Shoreline setback line” is as defined in Section 205A-41, Hawai‘i Revised Statutes, as amended.

“Storm buffer zone” is the first forty feet (40') of the shoreline setback area as measured from the shoreline.

“Structure” is as defined in Section 205A-41, Hawai‘i Revised Statutes, as amended.

“Substantial construction” means that one hundred percent (100%) of the foundation has been laid, or that one hundred percent (100%) of the foundation of the active phase of a project has been laid where the project is being done in phases.

“Temporary structures or activities” means structures or activities that will exist for no longer than six (6) months and will not irreversibly and adversely affect beach processes, public access, or public views nor artificially fix the shoreline in an irreversible way, and from which there will be a public benefit.

“Use” means the purpose for which land or building is arranged, designed, or intended, or for which either land or building is or may be occupied or maintained.

Sec. 8-27.3 Shoreline Setback Determination: Establishment of the Shoreline Setback Line.

(a) No shoreline setback line shall be established for any lot subject to this Article unless the application for a shoreline setback line includes a shoreline survey certified not more than six (6) months prior to submission of the application.

(b) For lots with an average depth of one hundred sixty (160) feet or less, the shoreline setback line shall be established based on the average depth of the lot as provided in Table 1, or at the option of the applicant, upon a coastal erosion study as provided in Table 2.

Table 1: The distance in feet of the shoreline setback line as measured from the certified shoreline based on the average lot depth in feet. See attached table and substitute for below:

| | | | | | | | |
|------------------------------|------------------|-----------------|-----------------|-----------------|-----------------|-----------------|--------------------|
| If the average lot depth is: | 100 feet or less | 101 to 120 feet | 121 to 140 feet | 141 to 160 feet | 161 to 180 feet | 181 to 200 feet | More than 200 feet |
| Then the minimum setback is: | 40 feet | 50 feet | 60 feet | 70 feet | 80 feet | 90 feet | 100 feet |

(c) for lots with an average depth of more than one hundred sixty (160) feet, the shoreline setback line shall be established based on a coastal erosion study as provided in Table 2 and shall be no less than the setback distances set forth in Table 1 as applicable.

Table 2: The distance in feet of the shoreline setback line as measured from the certified shoreline based on the building footprint and a coastal erosion study.

| | | |
|---------------------------------------------------|-------------------------------------------------------|--------------------------------------------------------|
| For structures with a building footprint that is: | Less than or equal to 5,000 square feet | Greater than 5,000 square feet |
| Then the Setback distance is: | 40 feet plus 70 times the annual coastal erosion rate | 40 feet plus 100 times the annual coastal erosion rate |

(d) No zoning amendment, general plan amendment, development plan amendment, or subdivision, any of which involves lands, or any portion of land, subject to this Article, shall be approved without a coastal erosion study and a shoreline setback line established in accordance with Table 1 and Table 2. In cases where these methods result in lines that cross or intersect each other, the most mauka (landward) segments of each line shall form the shoreline setback line.

(e) When an application for a Shoreline Setback Determination has been certified complete by the Director on a form prescribed by the Director, the Director shall, within one hundred twenty (120) days of the completed application, issue a Shoreline Setback Determination which shall conform to the delineation of the shoreline setback line on a site plan pursuant to Section 8-27.3.

(f) The Director shall notify the commission at the Commission's next regularly scheduled meeting of the following:

(1) any newly completed applications for shoreline setback determination.

(2) any new shoreline setback determinations made by the Director including, but not limited to, the name of the applicant, the average lot depth calculations, the location of any proposed structures or activities depicted on a plan drawn to scale, the purpose of the proposed structures and/or activities, the current certified shoreline, the setback calculations and setback line drawn on the plan, and copies of the coastal erosion study, if applicable.

(g) The Director's shoreline setback determinations shall not be final until accepted by the Commission. Notwithstanding Commission acceptance, if there is an appeal of the Director's decision, the shoreline setback determinations shall not be final until the Commission completes its decision-making on the appeal.

(h) Prior to commencement of grubbing, grading, or construction activities, the shoreline and shoreline setback line shall be identified on the ground and posted

with markers, posts, or other appropriate reference marks by a surveyor licensed in the State of Hawai'i.

(i) The application of Section 8-27.3 by itself shall not make a dwelling unit nonconforming.

Sec. 8-27.4 Minimum Shoreline Setback Requirements

Except as provided for in this article, no lot shall have a shoreline setback line of less than forty (40) feet.

Sec. 8-27.5 Structures and Activities Subject to These Rules.

All structures and activities located or proposed to be located within the shoreline setback area shall conform to the requirements of this article. The requirements of this article shall not abrogate the requirements of any other applicable statutes, codes, ordinances, rules and regulations, or other law. Construction immediately mauka of the shoreline setback area shall also be subject to these rules unless a certified and confirmed survey map, prepared in accordance with the provisions of section 8-27.3, is filed with the department showing that the construction is mauka of the shoreline setback area.

Sec. 8-27.6 Prohibited Activities in the Shoreline Setback Area.

(a) Pursuant to HRS 205A-44, as amended, the mining or taking of sand, dead coral or coral rubble, rocks, soils, or other beach or marine deposits from the shoreline setback area is prohibited with the following exceptions:

(1) The taking from the shoreline setback area of the materials, not in excess of one gallon per person per day, for reasonable, personal noncommercial use; or

(2) Where the mining or taking is authorized by a variance pursuant to these rules; or

(3) The clearing of these materials from existing drainage pipes and canals and from the mouths of streams, including clearing for the purposes under HRS section 46-11.5; provided that, the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity; or

(4) The cleaning of the shoreline setback area for state or county maintenance purposes, including the clearing of seaweed, limu, and debris under HRS section 46-12; provided that, the sand removed shall be placed on adjacent areas unless the placement would result in significant turbidity.

(b) Any primary coastal dune, which lies wholly or partially in the setback area, shall not be altered, graded, or filled in any way except for the addition of sand of compatible quality and character unless the application of this section renders the build-out of allowable density unfeasible. In such case, modifications, alterations, grading, or filling may be allowed through a variance, but only for that portion of the primary dune located mauka (landward) of the shoreline setback area, and only to the extent necessary to construct on a minimum building footprint. This exception shall apply only to lots in existence on the date of enactment of this ordinance. Non-native vegetation may be removed only if done in conjunction with a dune restoration and re-vegetation program approved by the Director that uses naturally occurring historical endemic plant species.

Sec 8-27.7 Permitted Structures and Activities Within the Shoreline Setback Area.

(a) The following structures and activities are permitted in the shoreline setback area. All structures and activities not specifically permitted in this section are prohibited without a variance.

(1) Existing conforming and nonconforming structures/activities.

(2) Structure or activity that received a shoreline variance or administrative approval prior to January 1, 2010.

(3) A structure or activity that is necessary for, or ancillary to, continuation of agriculture or aquaculture existing in the shoreline setback area on June 16, 1989.

(4) "Temporary structures or activities" as defined in Section 8-27.2. To ensure that there will be no irreversible or long-term adverse affects, the Director shall require as a condition of a permit the restoration of the site to its original condition or better, and the director may require a bond to ensure such restoration.

(5) A structure or activity that consists of maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or water sports recreational facilities, which are publicly owned, and which result in no interference with natural beach processes; provided that permitted structures may be repaired, but shall not be enlarged within the shoreline setback area without a variance.

(6) Repairs to a lawfully existing structure, including nonconforming structures, provided that:

(A) The repairs do not enlarge the structure nor intensify the use of the structure or its impact on coastal processes;

(B) The repairs are valued by a licensed professional engineer or architect at less than fifty percent (50%) of the current replacement cost of the structure; and

(C) The repairs are permitted by building code, flood hazard regulations, and special management area requirements under HRS Chapter 205A.

(7) Beach nourishment or dune restoration projects approved by all applicable governmental agencies.

(8) A structure or activity approved by the Director as a minor structure or activity.

(9) Qualified demolition of existing structures.

(10) Unmanned civil defense facilities installed for the primary purposes of: (i) warning the public of emergencies and disasters; or (ii) measuring and/or monitoring geological, meteorological and other events.

(11) Scientific studies and surveys, including archaeological surveys.

(12) Structures built to address an emergency as declared by the Governor of the State of Hawai'i, the Mayor of the County of Kaua'i or any other public official authorized by law to declare an emergency.

(b) The following conditions shall apply to any new structure or activity permitted in the shoreline setback area:

(1) All new structures shall be constructed in accordance with the standards for development in Chapter 15, Article 1, Flood Plain Management, Kaua'i County Code, relating to coastal high hazard districts and FEMA guidelines regarding construction in areas mapped on Flood Insurance Rate Maps as flood hazard areas.

(2) The applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Kaua'i harmless from and against any and all loss, liability, claim

or demand arising out of damages to said structures or activities from any coastal natural hazard and coastal erosion.

(3) The applicant shall agree in writing for itself, its successors and assigns that the construction of any erosion-control or shoreline hardening structure or activity shall not to be allowed to protect the permitted structure or activity during its life, with the exception of approved beach or dune nourishment fill activities, and landscape planting and irrigation.

(4) All new structures or activities shall not (i) adversely affect beach processes, (ii) artificially fix the shoreline, (iii) interfere with public access or public views to and along the shoreline, (iv) impede the natural processes and/or movement of the shoreline and/or sand dunes, or (v) alter the grade and/or shoreline setback area.

(5) All new structures shall be consistent with the purposes of this article and HRS Chapter 205A, as amended.

(6) The requirements of this subsection 8-27.7(b) shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the bureau of conveyances or land court, whichever is applicable, no later than thirty (30) days after the date of final shoreline approval of the structure or activity under Section 8-27.8. A copy of the recorded unilateral agreement shall be filed with the Director and the County Engineer no later than forty-five (45) days after the date of the final shoreline determination and approval of the structure or activity and the filing of such with the Director shall be a prerequisite to the issuance of any related building permit.

Sec. 8-27.8 Structure and Activity Determinations.

(a) Any structure or activity proposed in the shoreline setback area shall first obtain a determination from the Director in accordance with this article.

(b) A proposed structure and activity in the shoreline setback area shall not be allowed by the Director unless it is consistent with this Article and HRS Chapter 205A, as amended.

(c) Procedure:

(1) A request for determination for a structure or activity within the shoreline setback area shall be submitted to the department on a form prescribed by the Director.

(2) For public improvements and facilities whose valuation does not exceed \$125,000.00, and repairs to lawfully existing private structures as delineated in Section 8-27.7(a)(6), the request shall include construction and site plans, and a written text addressing compliance with the criteria set forth in this article.

The Director may also require additional information, including, but not limited to a current shoreline setback determination or a current certified shoreline surveyor shoreline survey stamped by a licensed surveyor, registered in the State of Hawai'i and coastal erosion information, a list of proposed plants and their growth, existing and final contours, photographs, and an environmental assessment.

(3) For public improvements and facilities whose valuation exceeds \$125,000.00, and private improvements and facilities that are not repairs to lawfully existing structures as delineated in Section 8 27.7(a)(6), the request shall include relevant information, which shall include, but is not limited to, a current shoreline setback determination as set forth in Section 8-27.3 or a current certified shoreline survey and coastal erosion

information, construction and site plans, a list of proposed plants and their growth, existing and final contours, photographs, an environmental assessment, and a written text addressing compliance with the criteria set forth in this article.

(4) Within one hundred twenty (120) days from the day the application is deemed complete by the Director, the Director shall make a determination in accordance with the criteria set forth in this Article that the proposed activity or structure is:

- (A) Permitted under Section 8-27.7:
- (B) Permitted under Section 8-27.7 and subject to conditions:
- (C) Not permitted under Section 8-27.7: or
- (D) Outside of the shoreline setback area.

(5) The Director shall notify the commission at the commission's next regularly scheduled meeting of the following:

- (A) any newly completed applications for approval for a structure or activity proposed within the shoreline setback area; and
- (B) any new approvals or denials by the Director of structures or activities and the reasons therefore, including, but not limited to, the name of the applicant, the location and purpose of the structure or activity, and a discussion of the factors considered in making the decisions.

(6) The Director's structure and activity determinations shall not be final until accepted by the Commission. Notwithstanding Commission acceptance, if there is an appeal from the Director's decision, the determinations shall not be final until the Commission completes its decision-making on the appeal.

(7) Minor structures or activities shall be completed or in operation respectively within one year from the final shoreline approval or within one year from the date of approval of the last discretionary permit, whichever comes later.

(8) For any non-minor structures or activities allowed within the shoreline setback area and any structures outside the shoreline setback area based on the shoreline setback line, substantial construction of the structure shall be achieved within three (3) years from the date of final shoreline setback determination and approval, and construction thereof shall be completed (as evidenced by a certificate of occupancy in the case of buildings for habitation) within four (4) years from said date.

(A) An extension of no more than one year may be granted by the director to the deadline for substantial construction only for properties with a stable shoreline such as rocky or accreting shorelines or shorelines exhibiting no coastal erosion per a coastal erosion study. In all other cases where substantial construction has not occurred by the deadline, a new shoreline determination shall be required.

(B) In case of failure to complete construction by the four-year deadline, the Planning Commission shall determine a remedy based on a review of the specific circumstances, including but not limited to, the stability of the shoreline, the extent of the completion and the reason for delay.

(C) These requirements for substantial construction and completion shall run with the land and shall be written in a unilateral agreement that is recorded in the Bureau of Conveyances or Land Court, as applicable, prior to application for a building permit. A copy

of the recorded unilateral agreement shall be submitted to the Planning Department prior to application for a building permit.

(d) Nothing in this section shall be deemed to amend, modify or supersede any provision of the Special Management Area Rules and Regulations of the County of Kaua'i.

Sec. 8-27.9 Variance application.

(a) A written application for variance shall be made in a form prescribed by the Director and shall be filed with the Director. The application shall include plans, site plans, photographs, and any other plans, drawings, maps, or data determined by the Director to be necessary to evaluate the application. The application shall also include:

(1) An administrative fee of \$300.00. The administrative fee shall be seventy-five hundred dollars (\$7,500) if the application is made after the structure is partially or fully built without the required approvals.

(2) Certification from the owner or lessee of the lot which authorizes the application for variance;

(3) An environmental assessment prepared in accordance with HRS chapter 343, and the environmental impact statement rules and applicable guidelines of the State of Hawai'i;

(4) The names, addresses, and the tax map key identification of owners of real property situated adjacent to and abutting the boundaries of the land on which the proposed use, activity, or operation is to occur;

(5) A site plan of the shoreline setback area, drawn to scale,

(A) Existing natural and man-made features and conditions within;

(B) Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements;

(C) The certified shoreline and the shoreline setback line;

(D) Contours at a minimum interval of two (2) feet unless waived by the director; and

(E) Proposed development and improvements showing new conditions with a typical section (if a structure).

(6) A copy of the certified shoreline survey map of the property;

(7) Detailed justification of the proposed project, which addresses the purpose and intent of these rules and the criteria for approval of a variance;

(8) Analysis and report of coastal erosion rates and coastal processes; and

(9) Any other information required by the director.

(b) Upon a determination by the director that the application is complete and in compliance with HRS Chapter 205A, part II and this article, the Director shall submit the application to the commission. If the application is determined to be incomplete by the Director, the Director shall return the application to the applicant with a written description identifying the portions of the application determined to be incomplete. The Director shall submit a written report, a copy of the application, and all other documents submitted on the application to the commission prior to the matter appearing on an agenda of the commission.

(c) Except as otherwise provided in this section, all applications for variances shall be heard, noticed, and processed as public hearing matters. Not less than thirty (30) calendar days before the public hearing date, the applicant for a

variance shall mail notices of public hearing by certified or registered mail, postage prepaid, to owners of real property which abut the parcel that is the subject of the application. Not less than thirty (30) days prior to the public hearing date, the Director shall publish a notice of hearing once in a newspaper that is printed and issued at least twice weekly in the County and which is generally circulated throughout the County. The notice shall state the nature of the proposed development, the date, time, and place of the hearing, and all other matters required by law.

(d) Exceptions. Prior to action on a variance application, the commission may waive a public hearing on the application for:

(1) Stabilization of shoreline erosion by the moving of sand entirely on public lands;

(2) Protection of a legal structure costing more than \$20,000; provided that, the structure is at risk of immediate damage from shoreline erosion;

(3) Other structures or activities; provided that, no person or agency has requested a public hearing within twenty-five calendar days after public notice of the application. For the purposes of this section "public notice of the application" shall be publication of a notice of the application in a newspaper which is printed and issued at least twice weekly in the County of Kāua'i, which informs the public of the subject matter of the application and which identifies the date and time by which a written request for a public hearing must be received by the commission; or

(4) Maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime or watersports recreational facilities, which result in little or no interference with natural shoreline processes.

Sec. 8-27.10 Criteria for approval of a variance.

(a) A shoreline setback area variance may be considered for a structure or activity otherwise prohibited by this Article, if the commission finds in writing, based on the record presented, that the proposed structure or activity is necessary for or ancillary to:

(1) Cultivation of crops;

(2) Aquaculture;

(3) Major landscaping; provided that, the commission finds that the proposed structure or activity will not adversely affect beach processes, public access or public views and will not artificially fix the shoreline;

(4) Drainage;

(5) Boating, maritime, or water sports recreational facilities;

(6) Facilities or improvements by public agencies or public utilities regulated under HRS chapter 269;

(7) Private and public facilities or improvements that are clearly in the public interest;

(8) Private and public facilities or improvements which will neither adversely affect beach processes nor artificially fix the shoreline; provided that, the commission also finds that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline setback area;

(9) Private and public facilities or improvements that may artificially fix the shoreline but not adversely affect beach processes; provided that, the commission also finds that shoreline erosion is likely to cause severe hardship to the applicant if the facilities or improvements are not allowed

within the shoreline setback area and all alternative erosion control measures, including retreat, have been considered;

(10) The commission may consider granting a variance for the protection of a dwelling unit or public infrastructure; provided that, the structure is at imminent risk of damage from coastal erosion, such damage poses a danger to the health, safety, and welfare of the public, and the proposed protection is the best shoreline management option in accordance with relevant state policy on shoreline hardening.

(11) Construction of a new dwelling unit. In the case where the applicable shoreline setback line does not allow for the minimum buildable footprint for a new dwelling unit, the commission may consider granting a variance under the following guidelines:

(A) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(B) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(C) The minimum buildable footprint may be reduced to 1500 square feet.

(D) If the foregoing approaches (a), (b), and (c) are done to the maximum extent practicable, the calculated shoreline setback may be reduced, provided that under no circumstance shall the shoreline setback line be less than forty (40) feet;

(12) Rebuilding of an existing dwelling unit.

(A) Rebuilding of a lawfully existing dwelling unit under this section shall only be allowed if the rebuilding does not enlarge the structure beyond its previous building footprint nor intensify the use of the structure or its impacts on coastal processes, and the rebuilding is not prohibited by Article 13, Chapter 8, Kaua'i County Code, 1987 as amended.

(B) In the case where the applicable shoreline setback line does not allow for the rebuilding of a lawfully existing dwelling unit upon a minimum building footprint, the commission may consider granting a variance under the following guidelines only:

(i) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(ii) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(iii) The buildable footprint may be reduced to below 2100 square feet.

(iv) If the foregoing approaches (a), (b) and (c) are done to the maximum extent practicable and a buildable footprint of 1500 is not feasible, the shoreline setback may be reduced provided that under no circumstances shall the shoreline setback line be less than twenty (20) feet from the certified shoreline, and for any reduction below thirty (30) feet, a qualified professional consultant must certify that the property is not subject to undue risk from erosion, high wave action, or flooding.

(b) A structure or activity may be considered for a variance upon grounds of hardship if:

(1) The applicant would be deprived of all reasonable use of the land if required to fully comply with the shoreline setback rules;

(2) The applicant's proposal is due to unique circumstances and does not draw into question the reasonableness of the shoreline setback rules; and

(3) The proposal is the best practicable alternative which best conforms to the purpose of the shoreline setback rules.

(c) Before granting a hardship variance, the commission must determine that the applicant's proposal is a reasonable use of the land. Because of the dynamic nature of the shoreline environment, inappropriate development may easily pose a risk to individuals or to the public health and safety or to the coastal zone management and resources. For this reason, the determination of the reasonableness of the use of land should properly consider factors such as shoreline conditions, erosion, surf and flood conditions and the geography of the lot.

(d) For purposes of this section, hardship shall not include economic hardship to the applicant resulting from: (1) county zoning or setback changes, planned development permits, cluster permits, or subdivision approvals after June 16, 1989; (2) any other permit or approval which may have been issued by the commission, or (3) actions by the applicant.

(e) No variance shall be granted unless appropriate conditions are imposed:

(1) To maintain and require safe lateral access to and along the shoreline for public use or adequately compensate for its loss;

(2) To minimize and mitigate risk of adverse impacts on beach processes;

(3) To minimize and mitigate risk of structures failing and becoming loose rocks or rubble on public property; and

(4) To minimize adverse impacts on public views to, from, and along the shoreline; and

(5) To comply with County Code provisions relating to flood plain management, Chapter 15, Article 1, Kaua'i County Code, and Drainage, Chapter 22, Article 16, Kaua'i County Code, respectively.

(f) Any structure approved within the shoreline setback area by variance shall not be eligible for protection by shoreline hardening during the life of the structure, and this limitation and the fact that the structure does not meet setback requirements under Section 8-27.3 and could be subject to coastal erosion and high wave action shall be written into a unilateral agreement that is recorded by the Bureau of Conveyances of Land Court, as the case may be. A copy of the unilateral agreement shall be submitted to the Planning Department prior to the issuance of the required zoning and/or shoreline setback variance. Failure of the grantor to record these deed restrictions shall constitute a violation of this section and the grantor shall be subject to the penalties set forth in this article.

(g) For any structure approved within the shoreline setback area by variance, the applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify and hold the County of Kaua'i harmless from and against any and all loss, liability, claim, or demand arising out of damages to said structure and this indemnification shall be included in the unilateral agreement required above.

(h) The applicant may apply to the department for an amendment to the variance in a manner consistent with the procedures of the special management area rules of the Kaua'i Planning Commission.

(i) No variance shall be granted for structures within the shoreline setback area that are unpermitted, unless the Commission determines that a structure is necessary to protect public health and safety, and/or that removal of the structure would cause a greater public harm.

Sec. 8-27.11 Enforcement.

(a) The Director shall enforce this article in accordance with Section 8-3.5(a) of the County of Kaua'i Comprehensive zoning Ordinance, HRS Chapter 205A, and the rules of Practice and Procedure of the County of Kaua'i Planning Commission.

(b) Removal of an unpermitted structure.

(1) In determining the disposition of a unpermitted structure, the Director shall follow the procedures outlined in Chapter 12 of the Rules of Practice and Procedure of the County of Kaua'i Planning Commission based on the nature of the unpermitted structure. If the structure would have required Class I, II, or III permits as well as shoreline setback determination and approval or variance, the procedure shall be that required under Section 1-12-4 of said rules. If a Class IV permit would have been required, the procedure would be that outlined in Sections 1-12-5 through 1-12-8 of said rules.

(2) Following the relevant procedures described in Section 8-27.11(b)(1), the Director or the Commission, as the case may be, shall order the removal of an unpermitted structure unless it is determined that removal shall cause a greater public harm than allowing the structure to remain.

(3) If the Director or Commission determines that removal would be inappropriate, the property owner or perpetrator shall obtain a variance under Sec. 8-27.10 and shall pay penalties as specified in Section 8-27.12.

(c) Judicial Enforcement of Order. The director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section.

Where the civil action has been instituted to enforce the civil fine imposed by such order, the director need only show that a notice of violation and order was served, a hearing was held or the time allowed for requesting a hearing had expired without such a request, that a civil fine was imposed and that the fine imposed has not been paid.

The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of any provision of this Chapter, any rule adopted thereunder, any permit issued pursuant thereto or any condition of any shoreline setback approval in addition to any other remedy provided for under this chapter.

(d) Nonexclusiveness of Remedies. The remedies provided in this chapter for enforcement of the provisions of this chapter, or any rule adopted thereunder, shall be in addition any other remedy as may be provided by law.

(e) Appeal in Accordance with Statute. If any person is aggrieved by the order issued by the director pursuant to this section, the person may appeal the order in the manner provided in HRS Chapter 91, provided that no provision of such order shall be stayed on appeal unless specifically ordered by a court of competent jurisdiction

(f) The Director shall enforce this article in accordance with Section 8-3.5(a) of the County of Kaua'i Comprehensive Zoning Ordinance and HRS Chapter 205A.

Sec. 8-27.12 Civil fines.

(a) Any person who violates any provision of this Article shall be subject to the penalties provided for in HRS Section 205A-32. Where a structure is built without permits and the Director, in following the procedures outlined in Section 8-27.11(a), determines that removal of the structure would cause a greater public harm, a mandatory penalty of one thousand dollars (\$1,000) shall be imposed, plus, in the discretion of the Director, between ten percent (10%) to one hundred percent (100%) of the estimated construction cost of the unpermitted structure shall be imposed as a penalty, considering factors such as percentage of completion, scope of work, and number of offenses.

(b) Any penalty paid pursuant to this section shall be deposited by the Director of Finance into the Planning Department's budget and shall be used for the enforcement and/or education relating to this Article.

Sec. 8-27.13 Appeal of Director's decision.

Any person who can show that a direct probable harm to his or her person or his or her property interest, or probable public harm could occur from the decision may appeal any Shoreline Setback Determination, Approval or Denial by the Director to the Commission. The potential appellant shall file a notice of appeal with the Director and the Commission within fifteen (15) days after the adverse decision. Within twenty (20) days of said filing, the commission shall determine the potential appellant's standing to appeal. If the commission grants standing to appeal, the commission shall follow the procedure outlined in Chapter 9 of The Rules of Practice and Procedure of the County of Kaua'i Planning Commission. The Planning Commission's decision may be appealed to the Circuit Court pursuant to HRS Chapter 91 and the aforementioned rules.

Sec. 8-27.14 Promulgation of Rules and Regulations.

This ordinance shall supersede the Shoreline Setback Rules and Regulations of the Planning Department of the County of Kaua'i in existence at the time of adoption of this ordinance. Pursuant to HRS Chapter 91, as amended, the Planning Commission may promulgate rules and regulations consistent with this Article as may be necessary to implement any of the provisions of this Article.]

“Sec. 8-27.0 Purpose. The purpose of this Article is to protect life and property, ensure the longevity and integrity of Kaua'i's coastal and beach resources along Kaua'i's shoreline and to strengthen shoreline setback requirements in this Article by incorporating science-based erosion rates established in the Kaua'i Coastal Erosion Study and current coastal hazard mitigation best practices and strategies.

Sec. 8-27.1 Applicability.

This Article shall be applicable to all lands within the County of Kaua'i, that are:

(a) Abutting the shoreline where structures and/or prohibited activities are proposed within five hundred (500) feet of the shoreline, or

(b) Not abutting the shoreline where structures and/or prohibited activities are proposed within approximately five hundred fifty (550) feet of the shoreline.

Sec. 8-27.2 Definitions.

For purposes of this Article unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein shall be defined as follows:

“Adversely affect beach processes” means to pose a potential immediate or future adverse effect on beach processes as a result of a structure and/or landscaping located within the coastal erosion hazard zone, or to create an immediate or future need to artificially fix the shoreline.

“Annual coastal erosion rate” means the long-term average annual rate of coastal erosion calculated by following the methodology outlined in the National Assessment of Shoreline Change: Historical Shoreline Changes in the Hawaiian Islands (Fletcher, et al., 2012). Annual coastal erosion rates are available for all lots on Kaua'i fronted by a sandy beach from the Kaua'i Planning Department. These rates were calculated by the University of Hawaii's Coastal Geology Group for the Kaua'i Coastal Erosion Study (2010). The Planning Director may designate a qualified professional to review and, subject to the Planning Director's approval, update annual coastal erosion rates.

“Average lot depth” means the measurement obtained by adding the lengths of the two sides of a lot which are at or near right angles with the shoreline, or the seaward boundary of the lot that runs roughly parallel to the shoreline if the property is not abutting the shoreline, to the length of a line obtained by drawing a line from a point in the center of the makai side of the lot to a point in the center of the mauka side of the lot and dividing the resulting sum by three. For irregularly shaped lots including flag lots, triangular parcels, lots on peninsulas, and/or lots having ocean on two or more sides of the lot, the average lot depth will be determined by the Director.

“Board” shall mean the Board of Land and Natural Resources, State of Hawai'i.

“Building footprint” shall mean all parts of a main building (excluding roof overhangs) that rest, directly or indirectly, on the ground, including those portions of the building that are supported by posts, piers, or columns. Building footprint also includes attached garages, covered carports, bay windows with floor space, lanais, decks, cantilevered decks, spas, and in-ground swimming pools.

“Certified Shoreline” means the shoreline established by Board pursuant to HRS 205A-42, as amended.

“Coastal Dune” means one of possibly several continuous or nearly continuous mounds or ridges of unconsolidated sand contiguous and parallel to the beach, situated so that it may be accessible to storm waves and seasonal high waves for release to the beach or offshore waters.

“Coastal erosion” means the natural loss of coastal lands, usually by wave attack, tidal or littoral currents, or wind. Coastal erosion is synonymous with shoreline retreat.

“Coastal erosion hazard zone” shall include all of the land between the shoreline and the shoreline setback line.

“Coastal hazard” means natural processes in the coastal zone that are generated by geologic, oceanographic, and/or meteorological processes that place people and/or improvements at risk for injury and/or damage.

“Commission” means the Planning Commission of the County of Kaua‘i.

“Department” means the Planning Department of the County of Kaua‘i.

“Director” means the Planning Director of the Planning Department of the County of Kaua‘i.

“Dwelling Unit” means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by a person living alone, and provides complete living facilities within the unit for sleeping, recreation, eating and sanitary facilities, including installed equipment for only one (1) kitchen.

“FEMA” means the Federal Emergency Management Agency.

“FIRM” means the Flood Insurance Rate Map.

“Hazard Assessment” means assessment for erosion, wave, flood, and inland zone following the standards in Section 4.3 of the Hawai‘i Coastal Mitigation Guidebook, (January 2005), which was prepared for the State of Hawai‘i, Department of Land and Natural Resources, Coastal Zone Management Program, University of Hawai‘i Sea Grant College Program and the Pacific Services Center and Coastal Services Center of the National Oceanic and Atmospheric Administration.

“Kaua‘i Coastal Erosion Study” means a quantitative study of Kaua‘i and Ni‘ihau’s historical shoreline behavior utilizing orthorectified aerial photographs or other imagery to carry out high-resolution mapping of historical shoreline positions to obtain a statistically valid annual erosion rate of the Shoreline Change Reference Feature (SCRF). The study was conducted by the University of Hawai‘i’s Coastal Geology Group for the County of Kaua‘i. The shoreline change data and shoreline change posters produced by this study are on file with the Kaua‘i Planning

Department. The study followed procedures described in the ‘National Assessment of Shoreline Change: Historic Shoreline Changes in the Hawaiian Islands (Fletcher, et al., 2010) available from the Kaua’i Planning Department.

“Landscaping” means the modification of landscape for an aesthetic or functional purpose that includes the planting of vegetation; the installation of irrigation, rock or water features; grading or grubbing.

“Makai” means seaward or in a seaward direction.

“Mauka” means landward or in a landward direction.

“Minimum buildable footprint” means a building footprint of one thousand five hundred (1,500) square feet.

“Minor structure” means:

(1) a structure that costs less than \$125,000 and provides temporary emergency protective measures for a legally habitable structure that is imminently threatened by coastal hazards provided that the protective measure has received approval in accordance with the Special Management Area Rules of the Kaua’i Planning Commission and/or the State Department of Land and Natural Resources (as may be the case), relocation of the endangered structure has been considered and is not reasonable given the nature of the emergency, the protective measure is removed within one hundred eighty (180) days of its installation, and given the significance of the emergency, the protection is the best management alternative with respect to beach, shoreline, and/or coastal resource conservation, or

(2) a structure that:

(A) costs less than \$125,000; and

(B) does not adversely affect beach processes, does not artificially fix the shoreline, and does not interfere with public access or public views to and along the shoreline; and

(C) does not impede the natural processes and/or movement of the shoreline and/or sand dunes, and does not alter the grade of the shoreline setback area; and

(D) is consistent with the purposes of this article and HRS Chapter 205A, as amended; and

(E) includes, but is not limited to, lighting in conformance with HRS Chapter 205A, landscape features, barbeques, picnic tables, benches, chairs, borders, wooden trellis, bird feeders, signs, safety improvements, lifesaving devices, movable lifeguard stands, walkways for access, outdoor showers and water faucets, public utility lines, utility poles and accessory structures along existing corridors, temporary tents for special events not exceeding fourteen (14) consecutive days in duration during any three-month period, walls and fences that are located more than forty (40) feet from the shoreline, landscape planting and irrigation systems provided that they are located more than forty (40) feet away from the shoreline and do not artificially extend the shoreline or shoreline setback area seaward; and

(F) excludes, but is not limited to, any in-ground swimming pools or spas, garages, carports, concrete walkways that are reinforced,

concrete walkways that are not saw-cut at a minimum of three (3) foot intervals, and concrete steps.

“Natural catastrophe” is a natural disaster qualifying for a governor’s declaration of emergency pursuant to Hawai’i Revised Statutes Chapter 128, or a presidential declaration of emergency of a major disaster pursuant to 42 USC 5170, including those caused by episodic coastal hazards such as tsunamis and hurricanes, and not the result of other coastal hazards or processes such as erosion or sea level rise.

“Nonconforming structure or activity” means a structure or activity which is lawfully existing within the shoreline setback area because it:

- (1) Was completely built, in its present form, prior to June 22, 1970;
- or
- (2) Received either a building permit, board approval, or shoreline setback area variance prior to June 16, 1989; or
- (3) Was outside the shoreline setback area when it received either a building permit or board approval; or

“Plan” or “site plan” means a detailed construction plan drawn to scale of 1” = 20’ 0” that shows the design of a structure proposed to be built within the shoreline setback area. The plan shall be based on an accurate instrument by a surveyor licensed in the State of Hawaii and shall consist of data including but not limited to:

- (1) Property boundaries;
- (2) Natural features such as large trees, rock outcroppings, and any primary or secondary coastal dunes;
- (3) Topography in and around the proposed construction;
- (4) Any and all shoreline hardening;
- (5) Flood zones, where applicable;
- (6) Existing and proposed structures and their proximity to the shoreline and shoreline setback area;
- (7) Fences, walls, and any other structures in the shoreline setback area and any potential hindrances to lateral access along the shoreline;
- (8) A geo-referenced survey of the site; and
- (9) Any other information which identifies the existing condition of the subject parcel of land.

“Primary Coastal Dune” means the first dune encountered mauka of the beach.

“Prohibited Activities” means those activities prohibited in the shoreline setback area as provided in Section 8-27.6 of this Article. All other activities shall be regulated by the Special Management Area Rules and Regulations of the County of Kaua’i and the requirements of HRS Chapter 343-5 regarding environmental assessments for any proposed uses within a shoreline area as defined in Section 205A-41.

“Qualified consultant” means a coastal scientist with a master of science degree or doctorate in geology, geography, or other appropriate physical science relating to coastal processes, or an engineer licensed in the State of Hawai’i that

has experience in coastal processes. If a dune restoration project is proposed, the qualified consultant shall have experience and expertise with dune restoration.”

“Qualified Demolition” means the demolition of a structure or structures where such demolition:

- (1) Will not adversely affect beach processes;
- (2) Will not artificially fix the shoreline;
- (3) Will not interfere with public access, except for public safety reasons during demolition operations;
- (4) Will not interfere with public views to and along the shoreline, except during demolition operations;
- (5) Will be consistent with the intent of open space enhancement as reflected in these rules and HRS 205A; and
- (6) Will comply with applicable County Codes.

“Rebuilding” means reconstruction of a lawfully existing dwelling unit when the reconstruction is valued by a licensed professional engineer, or-architect at fifty percent (50%) or more of the current replacement cost of the structure.

“Repair” means the fixing or regular maintenance of a lawfully existing structure that does not result in an addition to, or enlargement or expansion of, the lawfully existing structure. A “substantial improvement” as defined herein shall not be considered a repair.

“Revetment” shall mean a facing of stone, concrete, blocks, or other similar materials built to protect a scarp, embankment, or shore structure against erosion by wave action or currents.

“Rocky Shoreline” means a shoreline segment acting as the primary interface between marine dominated processes and terrestrial dominated processes that is composed of hard, non-dynamic, non-erodible material such as basalt, fossil limestone, beach rock, or other natural non-dynamic material, not to include cobble or gravel beaches that are dynamic in nature, or erodible cliffed shorelines composed dominantly of dirt or clay.

“Shoreline” is as defined in Section 205A-1, Hawai‘i Revised Statutes, as amended, and as established pursuant to Section 205A-42, Hawai‘i Revised Statutes, as amended.

“Shoreline Hardening” means the process of fortifying the shoreline or shoreline setback area with hard structures including, but not limited to, seawall and revetments.

“Shoreline Change Reference Feature (SCRF)” means a morphologic feature commonly referred to as the “toe” of the beach, which represents the base of the foreshore or approximating the Mean Lower Low Water (MLLW).

“Shoreline setback area” means “shoreline area” as defined in Section 205A-41, Hawai‘i Revised Statutes, as amended.

“Shoreline setback line” is as defined in Section 205A-41, Hawai‘i Revised Statutes, as amended.

“Storm buffer zone” is the first forty feet (40’) of the shoreline setback area as measured from the shoreline.

“Structure” is as defined in Section 205A-41, Hawai‘i Revised Statutes, as amended.

“Substantial construction” means that one hundred percent (100%) of the foundation has been laid, or that one hundred percent (100%) of the foundation of the active phase of a project has been laid where the project is being done in phases.

“Substantial improvement” means any cumulative series of repairs, reconstruction, improvements, or additions to a structure over a ten (10) year period, where the cumulative cost equals or exceeds fifty percent (50%) of the market value of the structure before the start of construction of the first improvement during that ten (10) year period. For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The value of any substantial improvement shall be determined by the County Engineer or his/her authorized representative. The term does not, however, include either: (1) any project for improvement of a structure to correct existing violations of a State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

“Temporary structures” means structures that will exist for no longer than six (6) months and will not irreversibly and adversely affect beach processes, public access, or public views nor artificially fix the shoreline in an irreversible way, and from which there will be a public benefit.

“Use” means the purpose for which land or building is arranged, designed, or intended, or for which either land or building is or may be occupied or maintained.

Sec. 8-27.3 Shoreline Setback Determination: Establishment of the Shoreline Setback Line.

Shoreline setback determinations shall be issued based on the following procedures:

(a) Except in either of the following two cases and except as permitted in Section 8-27.7, a shoreline setback determination shall be required for all structures and subdivisions proposed on lands covered by this Article.

(1) In cases where the proposed structure or subdivision satisfies the following four criteria:

(A) In cases where the proposed structure or subdivision is located outside of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) V or VE flood zones;

(B) The proposed structure or subdivision is located at an elevation which is thirty (30) feet above mean sea level or greater;

(C) The applicant can demonstrate to the satisfaction of the Planning Director that the property is clearly adjacent to a rocky shoreline and that it will not affect or be affected by coastal erosion or hazards; and

(D) The shoreline setback shall be sixty (60) feet from the certified shoreline which has been established not more than twelve (12) months from the date of the application for the exception under this section.

(2) In cases where the applicant can demonstrate to the satisfaction of the Planning Director that the applicant's proposed structure or subdivision will not affect beach processes, impact public beach access, or be affected by or contribute to coastal erosion or hazards, excluding natural disasters. Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, and the history of coastal hazards in the area.

(b) Unless otherwise provided in subsection (a) above, no shoreline setback line shall be established for any lot subject to this Article unless the application for a shoreline setback line includes a certified shoreline issued within twelve (12) months prior to submission of the application.

(c) Lots Included in the Kaua'i Coastal Erosion Study. For all structures on lots subject to the Kaua'i Coastal Erosion Study, the setback shall be calculated as follows:

(1) For lots with an average lot depth of less than one hundred forty (140) feet, the setback line shall be forty (40) feet plus seventy (70) times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, for all applicable lots subject to the Kaua'i Coastal Erosion Study a mandatory twenty (20) foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards.

(2) For lots with an average lot depth of one hundred forty (140) feet to two hundred twenty (220) feet, the greater setback of the following shall apply:

(A) Forty (40) feet plus seventy (70) times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, for all applicable lots subject to the Kaua'i Coastal Erosion Study a mandatory twenty (20) foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards; or

(B) A shoreline setback determined by taking the average lot depth, subtracting one hundred (100) feet, dividing by two and adding forty (40) feet.

(3) For all lots with an average lot depth of over two hundred twenty (220) feet, the greater setback of the following shall apply:

(A) Forty feet (40) plus seventy (70) times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, for all applicable lots subject to the Kaua'i Coastal Erosion Study a mandatory twenty (20) foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards; or

(B) A shoreline setback line of one hundred (100) feet from the certified shoreline.

Table 1. (This table is included for illustrative purposes only.) Lots Included in the Kaua'i Coastal Erosion Study. The distance in feet of the shoreline setback line as measured from the certified shoreline based on the average lot depth in feet.

| <u>Average Lot Depth</u> | <u>Setback Line</u> |
|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>Less than 140 feet</u> | <u>40 feet plus (70 X annual coastal erosion rate) plus 20 feet</u> |
| <u>140 feet to 220 feet</u> | <u>Greater of: 40 feet plus (70 X annual coastal erosion rate) plus 20 feet -or- (Average Lot Depth minus 100 feet) ÷ by 2 plus 40 feet</u> |
| <u>Greater than 220 feet</u> | <u>Greater of: 40 feet plus (70 X annual coastal erosion rate) plus 20 feet -or- 100 feet from the certified shoreline</u> |

(d) Lots Not Included in the Kaua'i Coastal Erosion Study. For all structures on lots that were not included in the Kaua'i Coastal Erosion Study, the setback shall be calculated by the following formula, (Average Lot Depth -100)/2 +40), subject to the following:

(1) For lots with naturally occurring rocky shorelines, the shoreline setback line shall be no less than 40 feet.

(2) For all other lots, the shoreline setback line shall be no less than 60 feet.

(3) For all lots, the maximum setback that can be required shall be 100 feet.

(e) Non-abutting Lots. If an applicant is unable to secure permission from the abutting owner to complete a certified shoreline for a non-abutting lot within approximately five hundred fifty (550) feet of the shoreline, the Planning Director may, pursuant to Sec. 8-4.3, impose conditions to zoning permits to increase setbacks where evidence exists that a proposed structure may be affected by coastal hazards or erosion.

(f) No subdivision which involves a lot, or any portion of a lot that would be subject to this Article, shall be approved without a coastal erosion study, a certified shoreline, and a shoreline setback line established in accordance with this Article, unless the subdivision is initiated by the County.

(g) Any subdivision with lots abutting the shoreline approved pursuant to Chapter 9 of the Kaua'i County Code, 1987, as amended, after the adoption of this Ordinance shall have a shoreline setback line of forty (40) feet plus seventy (70) times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, a mandatory twenty (20) foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards.

(h) Each lot abutting the shoreline in a subdivision approved after the effective date of this ordinance shall be designed to achieve a building footprint of five thousand (5,000) square feet of buildable area mauka of the shoreline setback line established in accordance with subsections (f) and (g), above.

(i) Prior to commencement of grubbing, grading, or construction activities, the shoreline and shoreline setback line shall be identified on the ground and posted with markers, posts, or other appropriate reference marks by a surveyor licensed in the State of Hawai'i.

(j) The application of Section 8-27.3 by itself shall not make a dwelling unit nonconforming.

Sec. 8-27.4 Minimum Shoreline Setback Requirements.

Except as provided for in this article, no lot shall have a shoreline setback line of less than forty (40) feet.

Sec. 8-27.5 Applicable Laws.

The requirements of this Article shall not abrogate the requirements of Hawai'i Revised Statutes Chapter 205A, Hawai'i Revised Statutes Chapter 343-5, the Special Management Area Rules and Regulations of the County of Kaua'i, or any other applicable statutes, codes, ordinances, rules and regulations, or other law.

Sec. 8-27.6 Prohibited Activities in the Shoreline Setback Area.

(a) Pursuant to HRS 205A-44, as amended, the mining or taking of sand, dead coral or coral rubble, rocks, soils, or other beach or marine deposits from the shoreline setback area is prohibited with the following exceptions:

(1) The inadvertent taking from the shoreline setback area of the materials, such as those inadvertently carried away on the body, and on clothes, toys, recreational equipment, and bags;

(2) Where the mining or taking is authorized by a variance pursuant to Section 205A-46 of the Hawai'i Revised Statutes;

(3) The clearing of these materials from existing drainage pipes and canals and from the mouths of streams, including clearing for the purposes under HRS section 46-11.5; provided that, the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity;

(4) The cleaning of the shoreline setback area for state or county maintenance purposes, including the clearing of seaweed, limu, and debris under HRS section 46-12; provided that, the sand removed shall be placed on adjacent areas unless the placement would result in significant turbidity;

(5) The taking of driftwood, shells, beach glass, glass floats, or seaweed;

(6) The exercise of traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawai'i State Constitution; or

(7) For the response to a public emergency or a state or local disaster.

(b) Any primary coastal dune, which lies wholly or partially in the setback area, shall not be altered, graded, or filled in any way except for the addition of sand of compatible quality and character unless the application of this section renders the build-out of allowable density unfeasible. In such case, modifications, alterations, grading, or filling may be allowed through a variance, but only for that portion of the primary dune located mauka (landward) of the shoreline setback area, and only to the extent necessary to construct on a minimum building footprint. This exception shall apply only to lots in existence on the date of enactment of this ordinance.

(c) The following are prohibited in the shoreline setback area:

(1) Individual wastewater system or subsurface improvement unless the applicant demonstrates to the satisfaction of the Director that no feasible alternative exists, including a redesign of the improvement or structure to accommodate the system outside of the setback line, and the system or improvement complies with all statutory and Department of Health requirements.

(2) Landscaping that artificially fixes the shoreline.

(3) Shoreline hardening unless it is approved by the State of Hawai'i's Office of Conservation and Coastal Lands.

(4) Expansion of the footprint of a non-conforming structure, unless otherwise provided by law.

Sec. 8-27.7 Permitted structures within the shoreline setback area.

(a) The following structures are permitted in the shoreline setback area. All structures and/or landscaping not specifically permitted in this section are prohibited without a variance.

- (1) Existing conforming and nonconforming structures/activities.
- (2) Structure or activity that received a shoreline variance or administrative approval prior to February 26, 2008.
- (3) A structure or activity that is necessary for, or ancillary to, continuation of agriculture or aquaculture existing in the shoreline setback area on June 16, 1989.
- (4) "Temporary structures" as defined in Section 8-27.2. To ensure that there will be no irreversible or long-term adverse effects, the Director shall require as a condition of a permit the restoration of the site to its original condition or better, and the Director may require a bond to ensure such restoration.
- (5) A structure that consists of maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or water sports recreational facilities, which are publicly owned, and which result in no interference with natural beach processes; provided that permitted structures may be repaired, but shall not be enlarged within the shoreline setback area without a variance.
- (6) Repairs to a lawfully existing structure, including nonconforming structures, provided that:
- (A) The repairs do not enlarge, add to or expand the structure; increase the size or degree of non-conformity; or intensify the use of the structure or its impact on coastal processes;
- (B) The repairs do not constitute a substantial improvement of the structure; and
- (C) The repairs are permitted by the Comprehensive Zoning Ordinance, Development Plans, building code, floodplain management regulations, special management area requirements under HRS Chapter 205A and any other applicable rule or law.
- (7) Beach nourishment or dune restoration projects approved by all applicable governmental agencies.
- (8) A structure approved by the Director as a minor structure.
- (9) Qualified demolition of existing structures.
- (10) Unmanned civil defense facilities installed for the primary purposes of: (i) warning the public of emergencies and disasters; or (ii) measuring and/or monitoring geological, meteorological and other events.
- (11) Scientific studies and surveys, including archaeological surveys.
- (12) Structures built by a governmental agency to address an emergency as declared by the Governor of the State of Hawai'i, the Mayor of the County of Kaua'i or any other public official authorized by law to declare an emergency.

(13) Structures relating to film productions that have received a County Revocable Film Permit. Structures undertaken for film productions must be removed within thirty (30) days following the completion of the film production.

(14) Structures required for remedial and removal actions undertaken pursuant to Chapter 128D of the Hawai'i Revised Statutes.

(b) The following conditions shall apply to any new structure permitted in the shoreline setback area:

(1) All new structures shall be constructed in accordance with the standards for development in Chapter 15, Article 1, Flood Plain Management, Kaua'i County Code 1987, as amended, relating to coastal high hazard districts and FEMA guidelines regarding construction in areas mapped on Flood Insurance Rate Maps as flood hazard areas.

(2) The applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Kaua'i harmless from and against any and all loss, liability, claim or demand arising out of damages to said structures from any coastal natural hazard and coastal erosion.

(3) The applicant shall agree in writing for itself, its successors and assigns that the construction of any erosion-control or shoreline hardening structure and/or landscaping shall not be allowed to protect the permitted structure during its life, with the exception of approved beach or dune nourishment fill activities, and landscape planting and irrigation located more than forty feet (40') from the shoreline.

(4) Unless otherwise provided, all new structures and/or landscaping shall not (i) adversely affect beach processes, (ii) artificially fix the shoreline, (iii) interfere with public access or public views to and along the shoreline, (iv) impede the natural processes and/or movement of the shoreline and/or sand dunes, or (v) alter the grade of the shoreline setback area.

(5) All new structures shall be consistent with the purposes of this article and HRS Chapter 205A, as amended, and shall be designed and located to minimize the alteration of natural landforms and existing public views to and along the shoreline.

(6) The requirements of this Subsection (b) shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the Bureau of Conveyances or the Land Court, whichever is applicable, no later than thirty (30) days after the date of final shoreline approval of the structure under Section 8-27.8. A copy of the recorded unilateral agreement shall be filed with the Director and the County Engineer no later than forty-five (45) days after the date of the final shoreline determination and approval of the structure and the filing of such with the Director shall be a prerequisite to the issuance of any related building permit.

Sec. 8-27.8 Procedures For Obtaining Determinations.

(a) Unless as otherwise provided in this Article, any structure proposed in the shoreline setback area shall first obtain a determination from the Director in accordance with this Article.

(b) A proposed structure in the shoreline setback area or within five hundred feet (500') of the shoreline shall not be allowed by the Director unless it is consistent with this Article and HRS Chapter 205A, as amended.

(c) Procedure.

(1) A request for determination for a proposed structure within the shoreline setback area or within five hundred (500) feet of the shoreline shall be submitted to the Department on a form prescribed by the Director.

(2) For public structures whose valuation does not exceed \$125,000.00 and repairs to lawfully existing private structures as delineated in Section 8-27.7(a), the request shall include construction and site plans, and written text addressing compliance with the criteria set forth in this Article.

The Director may also require additional information, including, but not limited to a current shoreline setback determination or a current certified shoreline survey or shoreline survey stamped by a licensed surveyor, registered in the State of Hawai'i and coastal erosion information, a list of proposed plants and their growth, existing and final contours, photographs, and an environmental assessment.

(3) For public structures whose valuation exceeds one hundred twenty-five thousand dollars (\$125,000.00) and private structures unless delineated in Sec. 8-27.7(a), the request shall include relevant information, which shall include, but is not limited to, a current shoreline setback determination as set forth in Sec. 8-27.3 or a current certified shoreline survey and coastal erosion information, construction and site plans, existing and final contours, photographs, and a written text addressing compliance with the criteria set forth in this Article. The Director may also require a hazard assessment.

(4) Within sixty (60) days from the day the application is deemed complete by the Director, the Director shall make a decision in accordance with the criteria set forth in this Article that the proposed structure is:

- (A) Permitted under Section 8-27.7;
- (B) Permitted under Section 8-27.7 and subject to conditions;
- (C) Not permitted under Section 8-27.7;
- (D) Outside of the shoreline setback area; or
- (E) Not subject to Section 8-27.3.

(5) All applications for a shoreline setback determination or determination of exemption deemed complete by the Director shall be posted

within ten (10) working days to a publicized website maintained by the Department.

(6) The Director shall notify the Commission at the Commission's next regularly scheduled meeting of the following:

(A) any shoreline setback determinations for approval of a structure proposed within the shoreline setback area or within five hundred (500) feet of the shoreline;

(B) any approvals or denials by the Director of structures and the reasons therefore, including, but not limited to, the name of the applicant, the location and purpose of the structure, and a discussion of the factors considered in making the decisions; and

(C) any decision by the Director to not require a shoreline setback determination pursuant to Section 8-27.3, except with regard to repairs to structures permitted pursuant to Section 8-27.7(a)(6).

(7) All shoreline setback determinations made by the Director shall include, but are not limited to, the name of the applicant, the average lot depth calculations, the location of any proposed structures depicted on a plan drawn to scale, the purpose of the proposed structures, the current certified shoreline (if required), the setback calculations and setback line drawn on the plan, and copies of a coastal erosion study, if applicable. If the Director, pursuant to Section 8-27.3, make a determination of exemption, the Director shall state the justification in writing.

(8) Except with regard to repairs to structures permitted pursuant to Section 8-27.7(a)(6), the Director's decisions pursuant to Section 8-27.8(c)(4) shall not be final until posted on the Commission's agenda. Notwithstanding the posting of the decision, if there is an appeal from the Director's decision, the decision shall not be final until the Commission completes its decision-making on the appeal.

(9) Minor structures shall be completed within one year from the final shoreline approval or within one year from the date of approval of the last discretionary permit, whichever comes later.

(10) For any non-minor structures allowed within the shoreline setback area and any structures outside the shoreline setback area based on the shoreline setback line, substantial construction of the structure shall be achieved within three (3) years from the date of final shoreline setback determination and approval, and construction thereof shall be completed (as evidenced by a certificate of occupancy in the case of buildings for habitation) within four (4) years from said date.

(A) An extension of no more than one year may be granted by the Director to the deadline for substantial construction only for properties with a stable shoreline such as rocky or accreting shorelines or shorelines exhibiting no coastal erosion per shoreline change rates as provided in the Kaua'i Coastal Erosion Study. In all other cases where substantial construction has not occurred by the deadline, a new certified shoreline and setback determination shall be required.

(B) In case of failure to complete construction by the four-year deadline, the Planning Commission shall determine a remedy based on

a review of the specific circumstances, including but not limited to, the stability of the shoreline, the extent of the completion and the reason for delay.

(C) These requirements for substantial construction and completion shall run with the land and shall be written in a unilateral agreement that is recorded in the Bureau of Conveyances or Land Court, as applicable, prior to application for a building permit. A copy of the recorded unilateral agreement shall be submitted to the Planning Department prior to application for a building permit.

(d) Nothing in this section shall be deemed to amend, modify or supersede any provision of the Special Management Area Rules and Regulations of the County of Kaua'i, HRS Chapter 205A, as amended, or HRS Chapter 343-5, as amended.

(e) Fees. A nonrefundable processing fee of one hundred dollars (\$100.00) shall accompany a request for determination.

Sec. 8-27.9 Variance application.

(a) A written application for variance shall be made in a form prescribed by the Director and shall be filed with the Director. The application shall include plans, site plans, photographs, and any other plans, drawings, maps, or data determined by the Director to be necessary to evaluate the application. The application shall also include:

(1) A non-refundable administrative application fee of three hundred dollars (\$300.00).

(2) Certification from the owner or lessee of the lot which authorizes the application for variance;

(3) An environmental assessment prepared in accordance with HRS Chapter 343, and the environmental impact statement rules and applicable guidelines of the State of Hawai'i;

(4) The names, addresses, and the tax map key identification of owners of real property situated adjacent to and abutting the boundaries of the land on which the proposed structure and/or landscaping is to be located;

(5) A site plan of the shoreline setback area, drawn to scale, showing:

(A) Existing natural and man-made features and conditions within;

(B) Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements;

(C) The certified shoreline and the shoreline setback line;

(D) Contours at a minimum interval of two (2) feet unless waived by the director; and

(E) Proposed development and improvements showing new conditions with a typical section (if a structure).

(6) A copy of the certified shoreline survey map of the property;

(7) Detailed justification of the proposed project, which addresses the purpose and intent of these rules and the criteria for approval of a variance;

(8) Analysis and report of coastal erosion rates and coastal processes; and

(9) Any other information required by the Director.

(b) Upon a determination by the Director that the application is complete and in compliance with HRS Chapter 205A, part II and this article, the Director shall submit the application to the Commission. If the application is determined to be incomplete by the Director, the Director shall return the application to the applicant with a written description identifying the portions of the application determined to be incomplete. The Director shall submit a written report, a copy of the application, and all other documents submitted on the application to the Commission prior to the matter appearing on an agenda of the Commission.

(c) Except as otherwise provided in this section, all applications for variances shall be heard, noticed, and processed as public hearing matters. Not less than thirty (30) calendar days before the public hearing date, the applicant for a variance shall mail notices of public hearing by certified or registered mail, postage prepaid, to owners of real property which abut the parcel that is the subject of the application. Not less than thirty (30) days prior to the public hearing date, the Director shall publish a notice of hearing once in a newspaper that is printed and issued at least twice weekly in the County and which is generally circulated throughout the County. The notice shall state the nature of the proposed development, the date, time, and place of the hearing, and all other matters required by law.

(d) Exceptions. Prior to action on a variance application, the Commission may waive a public hearing on the application for:

(1) Stabilization of shoreline erosion by the moving of sand entirely on public lands;

(2) Protection of a legal structure costing more than \$20,000; provided that, the structure is at risk of immediate damage from shoreline erosion;

(3) Other structures or activities; provided that, no person or agency has requested a public hearing within twenty-five (25) calendar days after public notice of the application. For the purposes of this section "public notice of the application" shall be publication of a notice of the application in a newspaper which is printed and issued at least twice weekly in the County of Kaua'i, which informs the public of the subject matter of the application and which identifies the date and time by which a written request for a public hearing must be received by the Commission; or

(4) Maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime or watersports recreational facilities, which result in little or no interference with natural shoreline processes.

Sec. 8-27.10 Criteria for approval of a variance.

(a) A shoreline setback area variance may be considered for a structure otherwise prohibited by this Article, if the Commission finds in writing, based on the record presented, that the proposed structure meets those standards established under Section 8-3.3 and is necessary for or ancillary to:

(1) Cultivation of crops;

(2) Aquaculture;

(3) Landscaping; provided that, the commission finds that the proposed structure will not adversely affect beach processes, public access or public views and will not artificially fix the shoreline and is in compliance with HRS Section 115-5;

(4) Drainage;

(5) Boating, maritime, or water sports recreational facilities;

(6) Structures by public agencies or public utilities regulated under HRS Chapter 269;

(7) Private and public structures that are clearly in the public interest;

(8) Private and public structures which will neither adversely affect beach processes nor artificially fix the shoreline; provided that, the Commission also finds that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline setback area;

(9) Private and public structures that may artificially fix the shoreline but not adversely affect beach processes; provided that, the Commission also finds that shoreline erosion is likely to cause severe hardship to the applicant if the facilities or improvements are not allowed within the shoreline setback area and all alternative erosion control measures, including retreat, have been considered;

(10) The Commission may consider granting a variance for the protection of a dwelling unit or public infrastructure; provided that, the structure is at imminent risk of damage from coastal erosion, such damage poses a danger to the health, safety, and welfare of the public, and the proposed protection is the best shoreline management option in accordance with relevant state policy on shoreline hardening.

(11) Construction of a new dwelling unit. In the case where the minimum buildable footprint does not allow for a setback in accordance with this Article, the Commission may consider granting a variance under the following guidelines:

(A) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(B) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(C) If the foregoing approaches are done to the maximum extent practicable and a dwelling cannot be sited mauka of the shoreline setback, the minimum buildable footprint shall be reduced to no less than one thousand (1,000) square feet.

(D) If the foregoing approaches in subsections (A), (B) and (C) are done to the maximum extent practicable, the calculated shoreline setback may be reduced to the minimum extent required to permit the construction of a house within the reduced footprint, provided that a qualified consultant must certify that the property is not subject to undue risk from erosion, high wave action, or flooding. Under no circumstance shall the shoreline setback line be less than forty (40) feet.

(12) Rebuilding of an existing dwelling unit.

(A) Rebuilding of a lawfully existing dwelling unit under this section shall only be allowed if the rebuilding is not prohibited by Article 13, Chapter 8, Kaua'i County Code 1987, as amended and does not:

(i) enlarge the structure beyond its previous building footprint, and

(ii) intensify the use of the structure or its impacts on coastal processes.

(B) In the case where the minimum buildable footprint does not allow for a setback of forty (40) feet, the Commission may consider granting a variance under the following guidelines only:

(i) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(ii) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(iii) If the foregoing approaches are done to the maximum extent practicable and a dwelling cannot be sited mauka of the shoreline setback, the minimum buildable footprint may be reduced to the lesser of one thousand (1,000) square feet or the actual footprint of the house.

(b) A structure may be considered for a variance upon grounds of hardship if:

(1) The applicant would be deprived of all reasonable use of the land if required to fully comply with the provisions of the provisions of this Article;

(2) The applicant's proposal is due to unique circumstances and does not draw into question the reasonableness of the provisions of this Article; and

(3) The proposal is the best practicable alternative which best conforms to the purpose of the provisions of this Article.

(c) Before granting a hardship variance, the Commission shall find that the applicant's proposal is a reasonable use of the land. Because of the dynamic nature of the shoreline environment, inappropriate development may easily pose a risk to individuals or to the public health and safety or to the coastal zone management and resources. The Commission shall consider factors such as coastal hazards, shoreline conditions, erosion, surf inundation, flood conditions and the geography of the lot in determining whether the proposal is a reasonable use of the applicant's land. The Commission shall give due consideration to the long-term average annual rate of coastal erosion calculated by following the methodology outlined in the National Assessment of Shoreline Change: Historical Shoreline Changes in the Hawaiian Islands (Fletcher, et al., 2012) and any amendments thereto, or Section 4.1 of the Hawai'i Coastal Hazard Mitigation Guidebook (Hwang, 2005) and any subsequent amendments thereto.

(d) For purposes of this section, hardship shall not include economic hardship to the applicant resulting from: (1) county zoning or setback changes, planned development permits, cluster permits, or subdivision approvals after June 16, 1989; (2) any other permit or approval which may have been issued by the commission, or (3) actions by the applicant.

(e) No variance shall be granted unless appropriate conditions are imposed:

(1) To maintain and require safe lateral access to and along the shoreline for public use or adequately compensate for its loss;

(2) To minimize and mitigate risk of adverse impacts on beach processes;

(3) To minimize and mitigate risk of structures failing and becoming loose rocks or rubble on public property; and

(4) To minimize adverse impacts on public views to, from, and along the shoreline; and

(5) To comply with County Code provisions relating to flood plain management, Chapter 15, Article 1, Kaua'i County Code 1987, as amended, and Drainage, Chapter 22, Article 16, Kaua'i County Code 1987, as amended, respectively.

(f) Any structure approved within the shoreline setback area by variance shall not be eligible for protection by shoreline hardening during the life of the structure, and this limitation and the fact that the structure does not meet setback requirements under Section 8-27.3 and could be subject to coastal erosion and high wave action shall be written into a unilateral agreement that is recorded by the

Bureau of Conveyances of Land Court, as the case may be. A copy of the unilateral agreement shall be submitted to the Planning Department prior to the issuance of the required zoning and/or shoreline setback variance. Failure of the grantor to record these deed restrictions shall constitute a violation of this section and the grantor shall be subject to the penalties set forth in this article.

(g) For any structure approved within the shoreline setback area by variance, the applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify and hold the County of Kaua'i harmless from and against any and all loss, liability, claim, or demand arising out of damages to said structure and this indemnification shall be included in the unilateral agreement required above.

(h) The applicant may apply to the department for an amendment to the variance in a manner consistent with the procedures of the special management area rules of the Kaua'i Planning Commission.

(i) No variance shall be granted for structures within the shoreline setback area that are unpermitted, unless the Commission determines that a structure is necessary to protect public health and safety, and/or that removal of the structure would cause a greater public harm.

(j) In no case shall the Commission grant a shoreline setback variance for structures constructed without valid permits.

Sec. 8-27.11 Enforcement.

(a) The Director shall enforce this article in accordance with Article 24 of the County of Kaua'i Comprehensive zoning Ordinance, HRS Chapter 205A, and the rules of Practice and Procedure of the County of Kaua'i Planning Commission.

(b) Removal of an unpermitted structure.

(1) In determining the disposition of a unpermitted structure, the Director shall follow the procedures outlined in Chapter 12 of the Rules of Practice and Procedure of the County of Kaua'i Planning Commission based on the nature of the unpermitted structure. If the structure would have required Class I, II, or III permits as well as shoreline setback determination and approval or variance, the procedure shall be that required under Section 1-12-4 of said rules. If a Class IV permit would have been required, the procedure would be that outlined in Sections 1-12-5 through 1-12-8 of said rules.

(2) Following the relevant procedures described in Sec. 8-27.11(b)(1), the Director or the Commission, as the case may be, shall order the removal of an unpermitted structure unless it is determined that removal shall cause a greater harm to the ecosystem and/or public improvements than allowing the structure to remain.

(3) If the Director or Commission determines that removal would be inappropriate, the property owner or perpetrator shall obtain a variance under Sec. 8-27.10 and shall pay penalties as specified in Section 8-27.12.

(c) Judicial Enforcement of Order. The Director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section.

Where the civil action has been instituted to enforce the civil fine imposed by such order, the Director need only show that a notice of violation and order was served, a hearing was held or the time allowed for requesting a hearing had expired without such a request, that a civil fine was imposed and that the fine imposed has not been paid.

The Director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of any provision of this Chapter, any rule adopted there under, any permit issued pursuant thereto or any condition of any shoreline setback approval in addition to any other remedy provided for under this chapter.

(d) Nonexclusiveness of Remedies. The remedies provided in this chapter for enforcement of the provisions of this chapter, or any rule adopted thereunder, shall be in addition any other remedy as may be provided by law.

(e) Appeal in Accordance with Statute. If any person is aggrieved by the order issued by the director pursuant to this section, the person may appeal the order in the manner provided in HRS Chapter 91, provided that no provision of such order shall be stayed on appeal unless specifically ordered by a court of competent jurisdiction

(f) The Director shall enforce this article in accordance with Article 24 of the County of Kaua'i Comprehensive Zoning Ordinance and HRS Chapter 205A.

Sec. 8-27.12 Civil fines.

Any person who violates any provision of this Article shall be subject to the penalties provided for in HRS Section 205A-32 and Section 8-3.5 of this Chapter.

Sec. 8-27.13 Appeal of the Director's Determination.

Any person who can show that a direct probable harm to his or her person or his or her property interest, or probable public harm could occur from the decision may appeal any Shoreline Setback Determination, Approval, Denial or Determination of Inapplicability by the Director to the Commission in accordance with the Commission's Rules of Practice and Procedure.

Sec. 8-27.14 Promulgation of Rules and Regulations.

Pursuant to HRS Chapter 91, as amended, the Planning Commission may promulgate rules and regulations consistent with this Article as may be necessary to implement any of the provisions of this Article."

SECTION 3. If any provision of this ordinance or application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this ordinance which can be given effect

without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

SECTION 4. Ordinance material to be repealed is bracketed. New ordinance material is underscored. When revising, compiling or printing this ordinance for inclusion in the Kaua'i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 5. This ordinance shall take effect upon approval. The requirements of this ordinance shall not affect any application which has been approved by the Commission prior to the effective date of this ordinance, unless there is a subsequent approval required prior to a building permit, in which case, that subsequent application shall be subject to the relevant requirements of this ordinance, excluding subdivisions which have received tentative approval prior to the approval date of this ordinance.

Introduced by: /s/ NADINE K. NAKAMURA
(By Request)

DATE OF INTRODUCTION:

December 19, 2012

Līhu'e, Kaua'i, Hawai'i

V:\Bills\2012-2014 Term\Bill No.2461, Draft 5-NN-PM_lc.doc

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2461, Draft 5, which was adopted on second and final reading by the Council of the County of Kaua'i at its meeting held on November 19, 2014, by the following vote:

| | | |
|-----------------------|-----------------------------------|------------|
| FOR ADOPTION: | Kagawa, Rapozo, Yukimura, Furfaro | TOTAL - 4, |
| AGAINST ADOPTION: | Bynum, Chock, Hooser | TOTAL - 3, |
| EXCUSED & NOT VOTING: | None | TOTAL - 0, |
| RECUSED & NOT VOTING: | None | TOTAL - 0. |

Līhu'e, Hawai'i
November 20, 2014



Ricky Watanabe
County Clerk, County of Kaua'i

ATTEST:

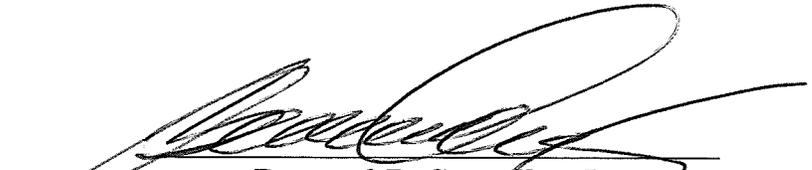

Jay Furfaro
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

November 21, 2014

Approved this 5th day of

December, 2014.



Bernard P. Carvalho, Jr.,
Mayor
County of Kaua'i

Modified

20) HAR §§ 11-54-1, 11-54-1.1, 11-54-4(b), 11-54-5.1, 11-54-5.2, 11-54-6 to 11-54-9, 11-54-9.1, and 11-54-10

Relating to Water Quality Standards

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-54
Hawaii Administrative Rules

(insert adoption date)

1. Chapter 54 of Title 11,
Hawaii Administrative Rules, titled "Water Quality
Standards," is amended and compiled to read as
follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 54

WATER QUALITY STANDARDS

| | |
|------------|-----------------------------------------------------------------|
| §11-54-1 | Definitions |
| §11-54-1.1 | General policy of water quality antidegradation |
| §11-54-2 | Classification of state waters |
| §11-54-3 | Classification of water uses |
| §11-54-4 | Basic water quality criteria applicable to all waters |
| §11-54-5 | Uses and specific criteria applicable to inland waters |
| §11-54-5.1 | Inland water areas to be protected |
| §11-54-5.2 | Inland water criteria |
| §11-54-6 | Uses and specific criteria applicable to marine waters |
| §11-54-7 | Uses and specific criteria applicable to marine bottom types |
| §11-54-8 | Specific criteria for recreational areas |

§11-54-1

| | |
|---------------|----------------------------------------------------------------------------------|
| §11-54-9 | Zones of mixing |
| §11-54-9.1 | Water quality certification |
| §11-54-9.1.01 | Water quality certification; contents of certification |
| §11-54-9.1.02 | Water quality certification; contents of water quality certification application |
| §11-54-9.1.03 | Water quality certification; notice and hearing |
| §11-54-9.1.04 | Water quality certification; waiver |
| §11-54-9.1.05 | Water quality certification; adoption of new water quality standards |
| §11-54-9.1.06 | Water quality certification; inspection of facility or activity before operation |
| §11-54-9.1.07 | Water quality certification; notification to licensing or permitting agency |
| §11-54-9.1.08 | Water quality certification; termination or suspension |
| §11-54-9.1.09 | Water quality certification; review and advice |
| §11-54-10 | Water quality analyses |
| §11-54-11 | Revision |
| §11-54-12 | Severability |

§11-54-1 Definitions. As used in this chapter:

"Ambient conditions" means the water quality conditions that would occur in the receiving waters if these waters were not influenced by the proposed new human activity.

"Amphidromous" means aquatic life that migrate to and from the sea, but not specifically for reproductive purposes. Amphidromous aquatic life in [Hawai'ian] Hawaiian streams are confined to fresh waters as adults, but their larval stages are partially or entirely spent in the ocean as part of the zooplankton.

"Anchialine pools" means coastal bodies of standing waters that have no surface connections to the ocean but display both tidal fluctuations and salinity ranges characteristic of fresh and brackish waters, indicating the presence of subsurface connections to the watertable and ocean. Anchialine pools are located in porous substrata (recent lava or limestone) and often contain a distinctive assemblage of native aquatic life. Deeper anchialine pools may display salinity stratification, and some shallow pools may contain standing water only on the highest tides.

"Aquatic life" means "any type or species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or offspring thereof; or freshwater or marine plants, including, seeds, roots, products, and other parts thereof" (section 187A-1, HRS).

"Best degree of treatment or control" means that treatment or control which is required by applicable statutes and regulations of the State of Hawai'i and the Federal Water Pollution Control Act, as amended, (33 [USC 1251,] U.S.C. §1251, et seq.) or which is otherwise specified by the director considering technology or management practices currently available in relation to the public interest.

"Brackish waters" means waters with dissolved inorganic ion concentrations (salinity) greater than 0.5 parts per thousand, but less than thirty-two parts per thousand.

"Coastal waters[,]" means "all waters surrounding the islands of the State from the coast of any island to a point three miles seaward from the coast, and, in the case of streams, rivers, and drainage ditches, to a point three miles seaward from their point of discharge into the sea and includes those brackish waters, fresh waters and salt waters that are subject to the ebb and flow of the tide" (section 342D-1, HRS).

"Coastal wetlands" means natural or man-made ponds and marshes having variable salinity, basin limits, and permanence. These wetlands usually adjoin the coastline and may be subject to tidal, seasonal, or perennial flooding. Coastal wetlands are generally maintained by surface and subterranean sources of fresh and salt water. Many natural coastal wetlands have been modified significantly by man and are characterized by introduced aquatic life. Coastal wetlands include, but are not limited to, salt marshes, open ponds, mudflats, man-made or natural waterbird refuges, isolated seasonal lakes and mangrove flats.

"Department" means department of health, State of Hawai'i.

"Developed estuaries" means volumes of brackish coastal waters in well-defined basins constructed by man or otherwise highly modified from their natural state. Developed estuaries include, but are not limited to, dredged and revetted stream termini.

"Director" means the director of health, State of Hawai'i, or the director's duly authorized agent.

"Ditches and flumes" means fresh waters flowing continuously in artificial channels. They are used mainly for the purpose of irrigation and usually receive water from stream diversions. Ditches and flumes may be inflowing (carry water to reservoirs or user areas) or outflowing (drain water from reservoirs or user areas).

"Drainage basin" or "watershed" means the region or area drained by a stream or river system.

"Elevated wetlands" means natural freshwater wetlands located above 100 m (330 ft) elevation. They are generally found in undisturbed areas, mainly in remote uplands and forest reserves with high rainfall. Elevated wetlands include upland bogs, marshes, swamps, and associated ponds and pools.

"Estuaries" means characteristically brackish coastal waters in well-defined basins with a continuous or seasonal surface connection to the ocean

that allows entry of marine fauna. Estuaries may be either natural or developed.

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

"Flowing springs and seeps" means perennial, relatively constant fresh water flows not in distinct channels, in which the water emanates from elevated aquifers as wet films or trickles over rock surfaces. They are found typically as natural occurrences along rock faces or banks of deeply incised streams, and artificially along road cuts.

"Flowing waters" means fresh waters flowing unidirectionally down altitudinal gradients. These waters may or may not be confined in distinct channels. Flowing waters include streams, flowing springs and seeps and ditches and flumes.

"Fresh waters" means all waters with a dissolved inorganic ion concentration of less than 0.5 parts per thousand.

"Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded and develops conditions that favor the growth and regeneration of hydrophytic vegetation.

"Hydrophytic vegetation" or "hydrophytes" means plants adapted to growing in seasonally or permanently flooded conditions.

"Intermittent streams" means fresh waters flowing in definite natural channels only during part of the year or season. Intermittent streams include many tributaries of perennial streams.

"Introduced aquatic life" means those species of aquatic organisms that are not native to a given area or water body and whose populations were established (deliberately or accidentally) by human activity. "Introduced" organisms are also referred to as "alien" or "exotic".

"Low wetlands" means freshwater wetlands located below 100 m (330 ft) elevation that may be natural or artificial in origin and are usually found near coasts

or in valley termini. Low wetlands are maintained by either stream, well, or ditch influent water, or by exposure of the natural water table. Low wetlands include, but are not limited to, natural lowland marshes, riparian wetlands, littoral zones of standing waters (including lakes, reservoirs, ponds and fishponds) and agricultural wetlands such as taro lo'i.

"Native aquatic life" means those species or higher taxa of aquatic organisms that occur naturally in a given area or water body and whose populations were not established as a result of human activity.

"Natural estuaries" means volumes of brackish coastal waters in well-defined basins of natural origin, found mainly at the mouths of streams or rivers. Natural estuaries can be either stream-fed (drowned stream mouths fed by perennial stream runoff) or spring-fed (nearshore basins with subterranean fresh water sources). Stream-fed estuaries serve as important migratory pathways for larval and juvenile amphidromous stream fauna.

"Natural freshwater lakes" means standing water that is always fresh, in well-defined natural basins, with a surface area usually greater than 0.1 ha (0.25 acres), and in which rooted emergent hydrophytes, if present, occupy no more than [30%] thirty per cent of the surface area. Natural freshwater lakes in Hawai'i occur at high, intermediate, and low elevations. Lowland freshwater lakes characteristically lack a natural oceanic connection (surface or subsurface) of a magnitude sufficient to cause demonstrable tidal fluctuations.

"Perennial streams" means fresh waters flowing year-round in all or part of natural channels, portions of which may be modified by humans. Flow in perennial streams may vary seasonally. Perennial streams may be subdivided into longitudinal zones, based on elevation and gradient: [(1)Headwater zone (elevation above 800 m [2600 ft] or gradient above 30 per cent or both); (2)Mid-zone (elevation between 50 800 m [165-2600 ft], or gradient between 5 and 30 per

cent or both); and (3) Terminal zone (elevation below 50 m [165 ft] or gradient below 5 per cent or both).]

- (1) Headwater zone (elevation above 800 m (2600 ft) or gradient above 30 per cent or both);
- (2) Mid-zone (elevation between 50-800 m (165-2600 ft), or gradient between 5 and 30 per cent or both); and
- (3) Terminal zone (elevation below 50 m (165 ft) or gradient below 5 per cent or both).

Perennial streams may be either continuous or interrupted. Continuous perennial streams discharge continuously to the ocean in their natural state, and contain water in the entire length of the stream channel year-round. Interrupted perennial streams usually flow perennially in their upper reaches but only seasonally in parts of their middle or lower reaches, due to either downward seepage of surface flow (naturally interrupted) or to man-made water diversions (artificially interrupted).

"Reservoirs" means standing water that is always fresh, in well-defined artificially created impoundments.

"Saline or salt waters" means waters with dissolved inorganic ion concentrations greater than thirty-two parts per thousand.

"Saline lakes" means standing waters of salinities ranging from brackish to hypersaline, located in well-defined natural basins, and lacking a natural surface connection to the ocean. Saline lakes may be present as high-island shoreline or near-shoreline features (e.g. Lake Nomilu, Kauai; Salt Lake, Oahu; Lake Kauhako, Molokai) or as low-island closed lagoons (Lake Laysan, Laysan). They are usually, but not always, fed by seawater seepage and may be diluted by rainwater, overland runoff, or ground water, or concentrated by evaporation.

"Springs and seeps" means small, perennial, relatively constant freshwater flow not in distinct channels, such as wet films or trickles over rock surfaces, in which the water emanates from elevated aquifers. Springs and seeps may be either stream

associated, occurring in deeply cut valleys and contributing to stream flow; or coastal, occurring on coastal cliffs and usually flowing into the ocean.

"Standing waters" refers to waters of variable size, depth, and salinity, that have little or no flow and that are usually contained in well-defined basins. Standing water bodies include natural freshwater lakes, reservoirs or impoundments, saline lakes, and anchialine pools.

"State waters", as defined by section 342D-1, HRS, means all waters, fresh, brackish, or salt around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, ground waters, and lakes; provided that drainage ditches, ponds, and reservoirs required as part of a water pollution control system are excluded. This chapter applies to all state waters, including wetlands, subject to the following exceptions: [(1)This chapter does not apply to groundwater. (2)This chapter does not apply to ditches, flumes, ponds and reservoirs that are required as part of a water pollution control system. (3) This chapter does not apply to ditches, flumes, ponds, and reservoirs that are used solely for irrigation and do not overflow into any other state waters, unless such ditches, flumes, ponds, and reservoirs are waters of the United States as defined at 40 C.F.R. 122.2. The State of Hawai'i has those boundaries stated in Hawai'i Constitution, art. XV, §1.]

- (1) This chapter does not apply to groundwater.
- (2) This chapter does not apply to ditches, flumes, ponds and reservoirs that are required as part of a water pollution control system.
- (3) This chapter does not apply to ditches, flumes, ponds, and reservoirs that are used solely for irrigation and do not overflow into any other state waters, unless such ditches, flumes, ponds, and reservoirs are waters of the United States as defined in 40

C.F.R. 122.2. The State of Hawai'i has those boundaries stated in the Hawai'i Constitution, art. XV, §1.

"Streams" means seasonal or continuous water flowing unidirectionally down altitudinal gradients in all or part of natural or modified channels as a result of either surface water runoff or ground water influx, or both. Streams may be either perennial or intermittent and include all natural or modified watercourses.

"Stream channel" means a natural or modified watercourse with a definite bed and banks which periodically or continuously contains flowing water.

"Stream system[,]" means the aggregate of water features comprising or associated with a stream, including the stream itself and its tributaries, headwaters, ponds, wetlands, and estuary. A stream system is geographically delimited by the boundaries of its drainage basin or watershed.

"Surface water" means both contained surface water (that is, water upon the surface of the earth in well-defined basins created naturally or artificially including, but not limited to, streams, other watercourses, lakes, and reservoirs) and diffused surface water (that is, water occurring upon the surface of the ground other than in contained basins). Water from natural springs and seeps is surface water when it exits from the spring onto the earth's surface.

"Wetlands" means land that is transitional between terrestrial and aquatic ecosystems where the water table is usually at or near the surface or the land is covered by shallow water. A wetland shall have one or more of the following attributes: [1) at least periodically the land supports predominantly hydrophytic vegetation; 2) the substratum is predominantly undrained hydric soil; or 3) the substratum is nonsoil (gravel or rocks) and is at least periodically saturated with water or covered by shallow water.]

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

Wetlands may be fresh, brackish, or saline and generally include swamps, marshes, bogs, and associated ponds and pools, mud flats, isolated seasonal ponds, littoral zones of standing water bodies, and alluvial floodplains. For the purpose of applying for water quality certifications under Clean Water Act Section 401, and for National Pollutant Discharge Elimination System (NPDES) permit purposes, the identification and delineation of wetland boundaries shall be done following the procedures described in the U.S. Army Corps of Engineers' Wetlands Delineation Manual (USACE 1987). [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/02/04; comp 06/15/09; comp 10/21/12; am and comp] (Auth: HRS §187A-1, §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5; 40 C.F.R. §§ 122.2, 130.2, 131.3, 131.12; 22 U.S.C. §1362(14))

§11-54-1.1 General policy of water quality antidegradation. (a) Existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(b) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the director finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the state's continuing planning process, that allowing lower water quality is

necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the director shall assure water quality adequate to protect existing uses fully. Further, the director shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(c) Where existing high quality waters constitute an outstanding resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(d) In those areas where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Clean Water Act. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp] (Auth: HRS §§342D-1, 342D-4, 342D-5; 40 C.F.R. 131.12) (Imp: HRS §§342D-4, 342D-5)

§11-54-2 Classification of state waters. (a) State waters are classified as either inland waters or marine waters.

(b) Inland waters may be fresh, brackish, or saline.

(1) All inland fresh waters are classified as follows, based on their ecological characteristics and other natural criteria:

(A) Flowing waters.

(i) Streams (perennial and intermittent);

(ii) Flowing springs and seeps; and

- (iii) Ditches and flumes that discharge into any other waters of the State;
- (B) Standing waters.
 - (i) Natural freshwater lakes; and Reservoirs (impoundments);
- (C) Wetlands.
 - (i) Elevated wetlands (bogs, marshes, swamps, and associated ponds); and
 - (ii) Low wetlands (marshes, swamps, and associated ponds).
- (2) All inland brackish or saline waters are classified as follows, based on their ecological characteristics and other natural criteria:
 - (A) Standing waters.
 - (i) Anchialine pools; and
 - (ii) Saline lakes.
 - (B) Wetlands.
 - (i) Coastal wetlands (marshes, swamps, and associated ponds).
 - (C) Estuaries.
 - (i) Natural estuaries (stream-fed estuaries and spring-fed estuaries); and
 - (ii) Developed estuaries.
- (c) Marine waters
 - (1) All marine waters are either embayments, open coastal, or oceanic waters;
 - (2) All marine waters which are embayments or open coastal waters are also classified according to the following bottom subtypes:
 - (A) Sand beaches;
 - (B) Lava rock shorelines and solution benches;
 - (C) Marine pools and protected coves;
 - (D) Artificial basins;
 - (E) Reef flats; and
 - (F) Soft bottoms. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp

10/29/92, am and comp 04/17/00; am and
 comp 10/2/04; comp 06/15/09; comp
 10/21/12; am and comp]
 (Auth: HRS §§342D-1, 342D-4, 342D-
 5) (Imp: HRS §§342D-4, 342D-5)

§11-54-3 Classification of water uses. (a) The following use categories classify inland and marine waters for purposes of applying the standards set forth in this chapter, and for the selection or definition of appropriate quality parameters and uses to be protected in these waters. Storm water discharge into State waters shall be allowed provided it meets the requirements specified in this section and the basic water quality criteria specified in section 11-54-4.

(b) Inland waters.

(1) Class 1.

It is the objective of class 1 waters that these waters remain in their natural state as nearly as possible with an absolute minimum of pollution from any human-caused source. To the extent possible, the wilderness character of these areas shall be protected. Waste discharge into these waters is prohibited, except as provided in section 11-54-4(e). Any conduct which results in a demonstrable increase in levels of point or nonpoint source contamination in class 1 waters is prohibited.

(A) Class 1.a.

The uses to be protected in class 1.a waters are scientific and educational purposes, protection of native breeding stock, baseline references from which human-caused changes can be measured, compatible recreation, aesthetic enjoyment, and other nondegrading uses which are compatible with the

protection of the ecosystems associated with waters of this class;

(B) Class 1.b.

The uses to be protected in class 1.b waters are domestic water supplies, food processing, protection of native breeding stock, the support and propagation of aquatic life, baseline references from which human-caused changes can be measured, scientific and educational purposes, compatible recreation, and aesthetic enjoyment. Public access to these waters may be restricted to protect drinking water supplies;

(2) Class 2

The objective of class 2 waters is to protect their use for recreational purposes, the support and propagation of aquatic life, agricultural and industrial water supplies, shipping, and navigation. The uses to be protected in this class of waters are all uses compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation in and on these waters. These waters shall not act as receiving waters for any discharge which has not received the best degree of treatment or control compatible with the criteria established for this class. No new treated sewage discharges shall be permitted within estuaries. No new industrial discharges shall be permitted within estuaries, with the exception of:

(A) Acceptable non-contact thermal and drydock or marine railway discharges within Pearl Harbor, Oahu;

(B) Stormwater discharges associated with industrial activities (defined in 40 C.F.R. [Section] section 122.26(b) (14) and(b) (15), except

- (b) (15) (i) (A) and (b) (15) (i) (B)) which meet, at the minimum, the basic water quality criteria applicable to all waters as specified in section 11-54-4(a), and all applicable requirements specified in chapter 11-55, titled "Water Pollution Control"; and
- (C) Discharges covered by a National Pollutant Discharge Elimination System general permit, approved by the U.S. Environmental Protection Agency and issued by the Department in accordance with 40 C.F.R. [Section] section 122.28 and all applicable requirements specified in chapter 11-55, titled "Water Pollution Control[.]".
- (c) Marine waters.
- (1) Class AA.
It is the objective of class AA waters that these waters remain in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-caused source or actions. To the extent practicable, the wilderness character of these areas shall be protected. No zones of mixing shall be permitted in this class:
- (A) Within a defined reef area, in waters of a depth less than 18 meters (ten fathoms); or
- (B) In waters up to a distance of 300 meters (one thousand feet) off shore if there is no defined reef area and if the depth is greater than 18 meters (ten fathoms).

The uses to be protected in this class of waters are oceanographic research, the support and propagation of shellfish and other marine life, conservation of coral reefs and wilderness areas, compatible recreation, and aesthetic enjoyment. The

classification of any water area as Class AA shall not preclude other uses of the waters compatible with these objectives and in conformance with the criteria applicable to them;

(2) Class A.

It is the objective of class A waters that their use for recreational purposes and aesthetic enjoyment be protected. Any other use shall be permitted as long as it is compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation in and on these waters. These waters shall not act as receiving waters for any discharge which has not received the best degree of treatment or control compatible with the criteria established for this class. No new sewage discharges will be permitted within embayments. No new industrial discharges shall be permitted within embayments, with the exception of:

- (A) Acceptable non-contact thermal and drydock or marine railway discharges, in the following water bodies:
 - (i) Honolulu Harbor, Oahu;
 - (ii) Barbers Point Harbor, Oahu;
 - (iii) Keehi Lagoon Marina Area, Oahu;
 - (iv) Ala Wai Boat Harbor, Oahu; and
 - (v) Kahului Harbor, Maui.
- (B) Storm water discharges associated with industrial activities (defined in 40 C.F.R. Section 122.26(b)(14) and (b)(15), except (b)(15)(i)(A) and (b)(15)(i)(B)) which meet, at the minimum, the basic water quality criteria applicable to all waters as specified in section 11-54-4, and all applicable requirements specified in the chapter 11-55, titled "Water Pollution Control[;]"; and

- (C) Discharges covered by a National Pollutant Discharge Elimination System general permit, approved by the U.S. Environmental Protection Agency and issued by the Department in accordance with 40 C.F.R. Section 122.28 and all applicable requirements specified in chapter 11-55, titled "Water Pollution Control[.]".
- (d) Marine bottom ecosystems.
- (1) Class I.
It is the objective of class I marine bottom ecosystems that they remain as nearly as possible in their natural pristine state with an absolute minimum of pollution from any human-induced source. Uses of marine bottom ecosystems in this class are passive human uses without intervention or alteration, allowing the perpetuation and preservation of the marine bottom in a most natural state, such as for nonconsumptive scientific research (demonstration, observation or monitoring only), nonconsumptive education, aesthetic enjoyment, passive activities, and preservation;
- (2) Class II.
It is the objective of class II marine bottom ecosystems that their use for protection including propagation of fish, shellfish, and wildlife, and for recreational purposes not be limited in any way. The uses to be protected in this class of marine bottom ecosystems are all uses compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation. Any action which may permanently or completely modify, alter, consume, or degrade marine bottoms, such as structural flood control channelization[,] (dams); landfill and

reclamation; navigational structures (harbors, ramps); structural shore protection (seawalls, revetments); and wastewater effluent outfall structures may be allowed upon securing approval in writing from the director, considering the environmental impact and the public interest pursuant to sections 342D-4, 342D-5, 342D-6, and 342D-50, HRS in accordance with the applicable provisions of chapter 91, HRS. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; am and comp 10/21/12; am and comp] (Auth: HRS §174C, §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-4 Basic water quality criteria applicable to all waters. (a) All waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants, including:

- (1) Materials that will settle to form objectionable sludge or bottom deposits;
- (2) Floating debris, oil, grease, scum, or other floating materials;
- (3) Substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts sufficient to produce objectionable color, turbidity or other conditions in the receiving waters;
- (4) High or low temperatures[;]_, biocides[;]_, pathogenic organisms[;]_, toxic[;]_, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in

amounts sufficient to interfere with any beneficial use of the water;

- (5) Substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life; and
- (6) Soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways; subdivisions; recreational, commercial, or industrial developments; or the cultivation and management of agricultural lands.

(b) To ensure compliance with paragraph (a) (4), all state waters are subject to monitoring and to the following standards for acute and chronic toxicity and the protection of human health.

(1) As used in this section:

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

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

[(C)] "Dilution" means, for discharges through submerged outfalls, the average and minimum values calculated using the models in the EPA publication, Initial Mixing Characteristics of Municipal Ocean Discharges (EPA/600/3-85/073, November, 1985), or in the EPA publication, Expert System for Hydrodynamic Mixing Zone Analysis of Conventional and Toxic Submerged Single Port Discharges (Cormix 1) (EPA/600/3-90/[073]012), February, 1990.

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

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

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

(2) Narrative toxicity and human health standards.

(A) Acute Toxicity Standards: All state waters shall be free from pollutants in concentrations which exceed the acute standards listed in paragraph (3). All state waters shall also be free from acute toxicity as measured using the toxicity tests listed in [section 11] Section 11-54-10, or other methods specified by the director.

- (B) Chronic Toxicity Standards: All state waters shall be free from pollutants in concentrations which on average during any twenty-four hour period exceed the chronic standards listed in paragraph (3). All state waters shall also be free from chronic toxicity as measured using the toxicity tests listed in section 11-54-10, or other methods specified by the director.
 - (C) Human Health Standards: All state waters shall be free from pollutants in concentrations which, on average during any thirty day period, exceed the "fish consumption" standards for non-carcinogens in paragraph (3). All state waters shall also be free from pollutants in concentrations, which on average during any 12 month period, exceed the "fish consumption" standards for pollutants identified as carcinogens in paragraph (3).
- (3) Numeric standards for toxic pollutants applicable to all waters. The freshwater standards apply where the dissolved inorganic ion concentration is less than 0.5 parts per thousand; saltwater standards apply above 0.5 parts per thousand. Values for metals refer to the dissolved fraction. All values are expressed in micrograms per liter.

| <u>Pollutant</u> | <u>Freshwater</u> | | <u>Saltwater</u> | | <u>Fish</u> |
|---------------------|-------------------|----------------|------------------|----------------|--------------------|
| | <u>Acute</u> | <u>Chronic</u> | <u>Acute</u> | <u>Chronic</u> | <u>Consumption</u> |
| [Acenaphthene] | 570 | ns | 320 | ns | [N]ns |
| <u>Acenaphthene</u> | | | | | |
| Acrolein | 23 | ns | 18 | ns | 250 |
| Acrylonitrile* | 2,500 | ns | ns | ns | 0.21 |
| Aldrin* | 3.0 | ns | 1.3 | ns | 0.000026 |

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| <u>Pollutant</u> | <u>Freshwater</u> | | <u>Saltwater</u> | | <u>Fish Consumption</u> |
|--------------------------------------------|-------------------|----------------|------------------|----------------|-----------------------------|
| | <u>Acute</u> | <u>Chronic</u> | <u>Acute</u> | <u>Chronic</u> | |
| Aluminum | 750 | 260 | ns | ns | ns |
| Antimony | 3,000 | ns | ns | ns | 15,000 |
| Arsenic | 360 | 190 | 69 | 36 | ns |
| Benzene* | 1,800 | ns | 1,700 | ns | 13 |
| Benzidine* | 800 | ns | ns | ns | 0.00017 |
| Beryllium* | 43 | ns | ns | ns | 0.038 |
| Cadmium | 3+ | 3+ | 43 | 9.3 | ns |
| Carbon tetra- chloride* | 12,000 | ns | 16,000 | ns | 2.3 |
| Chlordane* | 2.4 | 0.0043 | 0.09 | 0.004 | 0.00016 |
| Chlorine | 19 | 11 | 13 | 7.5 | ns |
| Chloroethers- [ethyl]ethyl (bis- 2)* | ns | ns | ns | ns | 0.44 |
| [isopropyl] isopropyl methyl (bis)* | ns | ns | ns | ns | 1,400 |
| Chloroform* | 9,600 | ns | ns | ns | 5.1 |
| Chlorophenol (2) | 1,400 | ns | ns | ns | ns |
| Chlorpyrifos | 0.083 | 0.041 | 0.011 | 0.0056 | ns |
| Chromium (VI) | 16 | 11 | 1,100 | 50 | ns |
| Copper | 6+ | 6+ | 2.9 | 2.9 | ns |
| Cyanide | 22 | 5.2 | 1 | 1 | ns |
| DDT* | 1.1 | 0.001 | 0.013 | 0.001 | 0.000008 |
| metabolite TDE* | 0.03 | ns | 1.2 | ns | ns |
| Demeton | <u>ns</u> | 0.1 | ns | 0.1 | ns |
| Dichloro- | | | | | |

| <u>Pollutant</u> | <u>Freshwater</u> | | <u>Saltwater</u> | | <u>Fish Consumption</u> |
|-------------------------------------|-------------------|----------------|------------------|----------------|-----------------------------|
| | <u>Acute</u> | <u>Chronic</u> | <u>Acute</u> | <u>Chronic</u> | |
| benzenes* | 370 | ns | 660 | ns | 850 |
| benzidine* | ns | ns | ns | ns | 0.007 |
| ethane(1,2)* | 39,000 | ns | 38,000 | ns | 79 |
| [ehenol]phenol(2, 4) | 670 | ns | ns | ns | ns |
| propanes | 7,700 | ns | 3,400 | ns | ns |
| propene(1,3) | 2,000 | ns | 260 | ns | 4.6 |
| Dieldrin* | 2.5 | 0.0019 | 0.71 | 0.0019 | 0.000025 |
| Dinitro o-cresol[(2,4)] (4,6) | ns | ns | ns | ns | 250 |
| toluenes* | 110 | ns | 200 | ns | 3.0 |
| Dioxin* | 0.003 | ns | ns | ns | 5.0x10 ⁻⁹ |
| Diphenyl- hydrazine(1,2) | ns | ns | ns | ns | 0.018 |
| Endosulfan | 0.22 | 0.056 | 0.034 | 0.0087 | 52 |
| Endrin | 0.18 | 0.0023 | 0.037 | 0.0023 | ns |
| Ethylbenzene | 11,000 | ns | 140 | ns | 1,070 |
| Fluoranthene | 1,300 | ns | 13 | ns | 18 |
| Guthion | ns | 0.01 | ns | 0.01 | ns |
| Heptachlor* | 0.52 | 0.0038 | 0.053 | 0.0036 | 0.00009 |
| Hexachloro- benzene* | ns | ns | ns | ns | 0.00024 |
| butadiene* | 30 | ns | 11 | ns | 16 |
| cyclohexane- alpha* | ns | ns | ns | ns | 0.010 |
| beta* | ns | ns | ns | ns | 0.018 |

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| <u>Pollutant</u> | <u>Freshwater</u> | | <u>Saltwater</u> | | <u>Fish Consumption</u> |
|---------------------|-------------------|----------------|------------------|----------------|-----------------------------|
| | <u>Acute</u> | <u>Chronic</u> | <u>Acute</u> | <u>Chronic</u> | |
| technical* | ns | ns | ns | ns | 0.014 |
| cyclopentadiene | 2 | ns | 2 | ns | ns |
| ethane* | 330 | ns | 310 | ns | 2.9 |
| Isophorone | 39,000 | ns | 4,300 | ns | 170,000 |
| Lead | 29+ | 29+ | 140 | 5.6 | ns |
| Lindane* | 2.0 | 0.08 | 0.16 | ns | 0.020 |
| Malathion | ns | 0.1 | ns | 0.1 | ns |
| Mercury | 2.4 | 0.55 | 2.1 | 0.025 | 0.047 |
| Methoxychlor | ns | 0.03 | ns | 0.03 | ns |
| Mirex | ns | 0.001 | ns | 0.001 | ns |
| Naphthalene | 770 | ns | 780 | ns | ns |
| Nickel | 5+ | 5+ | 75 | 8.3 | 33 |
| Nitrobenzene | 9,000 | ns | 2,200 | ns | ns |
| Nitrophenols* | 77 | ns | 1,600 | ns | ns |
| Nitrosamines* | 1,950 | ns | ns | ns | 0.41 |
| Nitroso | | | | | |
| dibutylamine-N* | ns | ns | ns | ns | 0.19 |
| diethylamine-N* | ns | ns | ns | ns | 0.41 |
| dimethylamine-N* | ns | ns | ns | ns | 5.3 |
| diphenylamine-N* | ns | ns | ns | ns | 5.3 |
| pyrrolidine-N* | ns | ns | ns | ns | 30 |
| Parathion | 0.065 | 0.013 | ns | ns | ns |
| Pentachloro-ethanes | 2,400 | ns | 130 | ns | ns |

| <u>Pollutant</u> | <u>Freshwater</u> | | <u>Saltwater</u> | | <u>Fish Consumption</u> |
|------------------------------------------|-------------------|----------------|------------------|----------------|-----------------------------|
| | <u>Acute</u> | <u>Chronic</u> | <u>Acute</u> | <u>Chronic</u> | |
| benzene | ns | ns | ns | ns | 28 |
| phenol | 20 | 13 | 13 | ns | ns |
| Phenol | 3,400 | ns | 170 | ns | ns |
| 2,4-dimethyl | 700 | ns | ns | ns | ns |
| Phthalate esters | | | | | |
| dibutyl | ns | ns | ns | ns | 50,000 |
| diethyl | ns | ns | ns | ns | 590,000 |
| di-2-ethylhexyl | ns | ns | ns | ns | 16,000 |
| dimethyl | ns | ns | ns | ns | 950,000 |
| Polychlorinated biphenyls* | 2.0 | 0.014 | 10 | 0.03 | 0.000079 |
| Polynuclear aromatic hydrocarbons* | ns | ns | ns | ns | 0.01 |
| Selenium | 20 | 5 | 300 | 71 | ns |
| Silver | 1+ | 1+ | 2.3 | ns | ns |
| Tetrachloro- | | | | | |
| ethanes | 3,100 | ns | ns | ns | ns |
| benzene (1,2,4,5) | ns | ns | ns | ns | 16 |
| ethane (1,1,2,2)* | ns | ns | 3,000 | ns | 3.5 |
| ethylene* | 1,800 | ns | 3,400 | 145 | 2.9 |
| phenol (2,3,5,6) | ns | ns | ns | 440 | ns |
| Thallium | 470 | ns | 710 | ns | 16 |
| Toluene | 5,800 | ns | 2,100 | ns | 140,000 |
| Toxaphene* | 0.73 | 0.0002 | 0.21 | 0.0002 | 0.00024 |
| Tributyltin | ns | 0.026 | ns | 0.01 | ns |
| Trichloro- | | | | | |

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| <u>Pollutant</u> | <u>Freshwater</u> | | <u>Saltwater</u> | | <u>Fish</u> |
|------------------|-------------------|----------------|------------------|----------------|--------------------|
| | <u>Acute</u> | <u>Chronic</u> | <u>Acute</u> | <u>Chronic</u> | <u>Consumption</u> |
| ethane(1,1,1) | 6,000 | ns | 10,400 | ns | 340,000 |
| ethane(1,1,2)* | 6,000 | ns | ns | ns | 14 |
| ethylene* | 15,000 | ns | 700 | ns | 26 |
| phenol(2,4,6)* | ns | ns | ns | ns | 1.2 |
| Vinyl chloride* | ns | ns | ns | ns | 170 |
| Zinc | 22+ | 22+ | 95 | 86 | ns |

ns - No standard has been developed.

* - Carcinogen.

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

Note - Compounds listed in the plural in the "Pollutant" column represent complex mixtures of isomers.

Numbers listed to the right of these compounds refer to the total allowable concentration of any combination of isomers of the compound, not only to concentrations of individual isomers.

(4) The following are basic requirements applicable to discharges to state waters. These standards shall be enforced through effluent limitations or other conditions in discharge permits. The director may apply more stringent discharge requirements to any discharge if necessary to ensure compliance with all standards in paragraph (2).

(A) Continuous discharges through submerged outfalls. [The No Observed Effect Concentration (NOEC), expressed as percent effluent, of continuous discharges through submerged outfalls shall not be less than 100 divided by

the minimum dilution. In addition, such discharges shall not contain:

- (i) Pollutants in twenty-four hour average concentrations greater than the values obtained by multiplying the minimum dilution by the standards in paragraph (3) for the prevention of chronic toxicity.
 - (ii) Non-carcinogenic pollutants in thirty day average concentrations greater than the values obtained by multiplying the minimum dilution by the standards in paragraph (3) for fish consumption.
 - (iii) Carcinogenic pollutants in twelve month average concentrations greater than the values obtained by multiplying the average dilution by the standards in paragraph (3) for fish consumption.]
- (i) The No Observed Effect Concentration (NOEC), expressed as per cent effluent, of continuous discharges through submerged outfalls shall not be less than 100 divided by the minimum dilution; or,
- (ii) The Test of Significant Toxicity (TST), as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010), shall be used to demonstrate no unacceptable level of chronic toxicity at the In-stream Waste Concentration (IWC). The chronic toxicity criterion is expressed using a regulatory management decision (b value) of 0.75 for chronic

toxicity where, a 0.25 effect level (or more) at the IWC demonstrates an unacceptable level of chronic toxicity.

(B) Continuous discharges through submerged outfalls shall not contain:

(i) Pollutants in twenty four hour average concentrations greater than the values obtained by multiplying the minimum dilution by the standards in paragraph (3) for the prevention of chronic toxicity.

(ii) Non-carcinogenic pollutants in thirty day average concentrations greater than the values obtained by multiplying the minimum dilution by the standards in paragraph (3) for fish consumption.

(iii) Carcinogenic pollutants in twelve month average concentrations greater than the values obtained by multiplying the average dilution by the standards in paragraph (3) for fish consumption.

[(B)] (C) Discharges without submerged outfalls. [The survival of test organisms in an undiluted acute toxicity test of any discharge shall not be less than 80 per cent. In addition, no such discharge shall contain pollutants in concentrations greater than the standards in paragraph (3) for the prevention of acute toxicity to aquatic life. The director may make a limited allowance for dilution for a discharge in this category if it meets the following criteria: the discharge velocity is

greater than 3 meters per second; the discharge enters the receiving water horizontally, and; the receiving water depth at the discharge point is greater than zero.]

- (i) The survival of test organisms in an undiluted acute toxicity test of any discharge shall not be less than eighty per cent;
- (ii) Compliance with the acute toxicity NPDES effluent limit is demonstrated by using the Test of Significant Toxicity (TST) as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010). The acute toxicity criterion is expressed using a regulatory management decision (b value) of 0.80 for acute toxicity test methods listed in 11-54-10, where, in an undiluted acute toxicity test, a 0.20 effect level (or more) at the IWC demonstrates an unacceptable level of acute toxicity; or,
- (iii) The Test of Significant Toxicity (TST), as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010), shall be used to demonstrate no unacceptable level of chronic toxicity at the IWC. The chronic toxicity criterion is expressed using a regulatory management decision (b value) of 0.75 for chronic toxicity where, a 0.25 effect level (or more) at the IWC demonstrates an unacceptable level of chronic toxicity. Toxicity is considered significant if the mean response

in the IWC is greater than 0.75 multiplied by the mean response of the control.

No discharge shall contain pollutants in concentrations greater than the standards in paragraph (3) for the prevention of acute toxicity to aquatic life. The director may make a limited allowance for dilution for a discharge in this category if it meets the following criteria: the discharge velocity is greater than 3 meters per second; the discharge enters the receiving water horizontally, and; the receiving water depth at the discharge point is greater than zero.

(c) The requirements of paragraph (a) (6) shall be deemed met upon a showing that the land on which the erosion occurred or is occurring is being managed in accordance with soil conservation practices acceptable to the applicable soil and water conservation district and the director, and that a comprehensive conservation program is being actively pursued, or that the discharge has received the best degree of treatment or control, and that the severity of impact of the residual soil reaching the receiving body of water is deemed to be acceptable.

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

(e) Pesticide Application.

(1) As used in this section:

“Declared pest emergency situation” means an event defined by a public declaration by the

President of the United States, state governor or, with the concurrence of the director, county mayor of a pest problem determined to require control through application of a pesticide beginning less than ten days after identification of the need for pest control.

"Pest" means Any insect, rodent, nematode, fungus, weed, or

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

"Pesticide" means

- (A) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest;
- (B) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and
- (C) Any nitrogen stabilizer, except that the term "pesticide" shall not include any article that is a "new animal drug" within the meaning of 21 U.S.C. 321(w), that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of 21 U.S.C. 321(x) bearing or containing a new animal drug.

The term "pesticide" does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 201 of 21 U.S.C. §321. For purposes of the preceding sentence, the term "critical device" includes any

device which is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term "semi-critical device" includes any device which contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body. The term "pesticide" applies to insecticides, herbicides, fungicides, rodenticides, and various other substances used to control pests. The definition encompasses all uses of pesticides authorized under FIFRA including uses authorized under sections 3 (registration), 5 (experimental use permits), 18 (emergency exemptions), 24(c) (special local needs registrations), and 25(b) (exemptions from FIFRA).

Note: drugs used to control diseases of humans or animals (such as livestock, fishstock and pets) are not considered pesticides; such drugs are regulated by the Food and Drug Administration. Fertilizers, nutrients, and other substances used to promote plant survival and health are not considered plant growth regulators and thus are not pesticides. Biological control agents, except for certain microorganisms, are exempted from regulation under FIFRA. (Biological control agents include beneficial predators such as birds or ladybugs that eat insect pests, parasitic wasps, fish, etc).

- (2) Pesticide applications may be made to State waters if the pesticide applications are:
- (A) Registered by the U.S. Environmental Protection Agency and licensed by the state department of agriculture or other state agency regulating pesticides;
 - (B) Used for the purpose of controlling mosquito and other flying insect pests; controlling weed and algae pests; controlling animal pests; controlling

- forest canopy pests; or protecting public health or the environment in a declared pest emergency situation or as determined by the director
- (C) Applied in a manner consistent with the labeling of the pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act;
 - (D) Applied under permits issued pursuant to HRS chapter 342D, if the Director requires such permits under HRS Chapter 342D;
 - (E) Applied in a manner so applicable narrative and numeric state water quality criteria as required in chapter 11-54 are met. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; am and comp 06/15/09; am and comp 10/21/12; am and comp] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-5 Uses and specific criteria applicable to inland waters. Inland water areas to be protected are described in section 11-54-5.1, corresponding specific criteria are set forth in section 11-54-5.2; water body types are defined in section 11-54-1. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-5.1 Inland water areas to be protected.

(a) Freshwaters.

(1) Flowing waters: perennial streams and rivers, intermittent streams, springs and seeps, and man-made ditches and flumes that discharge into any other waters of the State.

[A] (A) Class 1.a.

(i) All flowing waters within the natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.

(ii) All flowing waters in national and state parks.

(iii) All flowing waters in state or federal fish and wildlife refuges.

(iv) All flowing waters which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.

(v) All flowing waters in [Wai-manu] Waimanu National Estuarine Research Reserve (Hawai'i).

(B) Class 1.b. All flowing waters in protective subzones designated under chapter 13-5 [of] by the state [board] department of land and natural resources.

(C) Class 2. All flowing waters in areas not otherwise classified.

All flowing waters in classes 1 and 2 in which water quality exceeds the standards specified in this chapter shall not be lowered in quality unless it has been affirmatively demonstrated to the director

that the change is justifiable as a result of important economic or social development and will not interfere with or become injurious to any assigned uses made of, or presently in, those waters. This statement of antidegradation policy does not limit the applicability of the policy in §11-54[.]_1.1 to the whole chapter.

- (2) Standing waters (natural freshwater lakes and reservoirs):
 - (A) Class 1.a.
 - (i) All standing waters within the natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.
 - (ii) All standing waters in national and state parks.
 - (iii) All standing waters in state or federal fish and wildlife refuges.
 - (iv) All standing waters which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.
 - (v) All standing waters in [Wai-manu] Waimanu National Estuarine Research Reserve (Hawai'i).
 - (B) Class 1.b. All standing waters in protective subzones designated under chapter 13-5 [of] by the state [board] department of land and natural resources.
 - (C) Class 2. All standing waters in areas not otherwise classified.
- (3) Elevated wetlands and low wetlands:
 - (A) Class 1.a.

- (i) All elevated and low wetlands within the natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.
 - (ii) All elevated and low wetlands in national and state parks.
 - (iii) All elevated and low wetlands in state or federal fish and wildlife refuges.
 - (iv) All elevated and low wetlands which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.
 - (v) All elevated and low wetlands in [Wai-manu] Waimanu National Estuarine Research Reserve (Hawai'i).
- (B) Class 1.b. All elevated and low wetlands in protective subzones designated under chapter 13-5 [of] by the state [board] department of land and natural resources.
- (C) Class 2. All elevated and low wetlands not otherwise classified.
- (b) Brackish or saline waters (anchialine pools, saline lakes, coastal wetlands, and estuaries).
- (1) Class 1.a.
- (A) All inland brackish or saline waters within natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of

- aquatic life established under chapter 195, HRS.
- (B) All inland brackish or saline waters in national and state parks.
 - (C) All inland brackish or saline waters in state or federal fish and wildlife refuges.
 - (D) All inland brackish or saline waters which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.
 - (E) All inland brackish and saline waters in [Wai-manu] Waimanu National Estuarine Research Reserve (Hawai'i).
 - (F) The following natural estuaries: Lumaha'i and [Ki-lau-ea] Kilauea estuaries (Kaua'i).
- (2) Class 1.b. All inland brackish or saline waters in protective subzones designated under chapter 13-5 [of] by the state [board] department of land and natural resources.
 - (3) Class 2. All inland brackish and saline waters not otherwise classified. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp](Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-5.2 Inland water criteria. (a) Criteria for springs and seeps, ditches and flumes, natural freshwater lakes, reservoirs, low wetlands, coastal wetlands, saline lakes, and anchialine pools. Only the basic criteria set forth in section 11-54-4 apply to springs and seeps, ditches and flumes, natural freshwater lakes, reservoirs, low wetlands, coastal

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wetlands, saline lakes, and anchialine pools. Natural freshwater lakes, saline lakes, and anchialine pools will be maintained in the natural state through Hawai'i's "no discharge" policy for these waters. Waste discharge into these waters is prohibited, except as provided in section 11-54-4(e) (see [paragraph] section 11-54-3(b)(1)).

(b) Specific criteria for streams. Water column criteria for streams shall be as provided in the following table:

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent of the time</u> | Not to Exceed the given value more than two per cent of <u>the time</u> |
|-------------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Total Nitrogen (ug N/L) | 250.0* 180.0** | 520.0* 380.0** | 800.0* 600.0** |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 70.0* 30.0** | 180.0* 90.0** | 300.0* 170.0** |
| Total Phosphorus (ug P/L) | 50.0* 30.0** | 100.0* 60.0** | 150.0* 80.0** |
| Total Suspended Solids (mg/L) | 20.0* 10.0** | 50.0* 30.0** | 80.0* 55.0** |
| Turbidity (N.T.U.) | 5.0* 2.0** | 15.0* 5.5** | 25.0* 10.0** |

* Wet season - November 1 through April 30.

** Dry season - May 1 through October 31.

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

pH Units - shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 5.5 nor higher than 8.0

Dissolved Oxygen - Not less than eighty per cent saturation, determined as a function of ambient water temperature.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Specific Conductance - Not more than three hundred micromhos/centimeter.

[(2)] (1) Bottom criteria for streams:

- (A) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding an equivalent thickness of five millimeters (0.20 [inch]) inches over hard bottoms twenty-four hours after a heavy rainstorm.
- (B) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding an equivalent thickness of ten millimeters (0.40 [inch]) inches over soft bottoms twenty-four hours after a heavy rainstorm.
- (C) In soft bottom material in pool sections of streams, oxidation-reduction potential (EH) in the top ten centimeters (four inches) shall not be less than +100 millivolts.
- (D) In soft bottom material in pool sections of streams, no more than fifty per cent of the grain size distribution of sediment shall be smaller than 0.125 [millimeter] millimeters (0.005 [inch]) inches in diameter.
- (E) The director shall prescribe the appropriate parameters, measures, and criteria for monitoring stream bottom biological communities including their habitat, which may be affected by proposed actions. Permanent benchmark stations may be required where

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necessary for monitoring purposes. The water quality criteria for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.

(c) Specific criteria for elevated wetlands: pH units shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 4.5 nor higher than 7.0.

(d) Specific criteria for estuaries.

(1) The following table is applicable to all estuaries except Pearl Harbor:

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent of the time</u> | Not to Exceed the given value more than two per cent of <u>the time</u> |
|----------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Total Nitrogen (ug N/L) | 200.00 | 350.00 | 500.00 |
| Ammonia Nitrogen (ug NH ₄ -N/L) | 6.00 | 10.00 | 20.00 |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 8.00 | 25.00 | 35.00 |
| Total Phosphorus (ug P/L) | 25.00 | 50.00 | 75.00 |
| Chlorophyll <u>a</u> (ug/L) | 2.00 | 5.00 | 10.00 |
| Turbidity (N.T.U.) | 1.5 | 3.00 | 5.00 |

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

pH Units - shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 7.0 nor higher than 8.6.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from ambient conditions.

Oxidation - reduction potential (EH) - Shall not be less than -100 millivolts in the uppermost ten centimeters (four inches) of sediment.

(2) The following table is applicable only to Pearl Harbor Estuary.

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent of the time</u> | Not to exceed the given value more than two per cent of <u>the time</u> |
|-------------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Total Nitrogen (ug N/L) | 300.00 | 550.00 | 750.00 |
| Ammonia Nitrogen (ug NH ₄ -N/L) | 10.00 | 20.00 | 30.00 |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 15.00 | 40.00 | 70.00 |
| Total Phosphorus (ug P/L) | 60.00 | 130.00 | 200.00 |

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| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent of the time</u> | Not to exceed the given value more than <u>two per cent of the time</u> |
|--------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Chlorophyll <u>a</u> (ug/L) | 3.50 | 10.00 | 20.00 |
| Turbidity (N.T.U.) | 4.00 | 8.00 | 15.00 |

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams.

pH Units - shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 6.8 nor higher than 8.8.

Dissolved Oxygen - Not less than sixty per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from ambient conditions.

Oxidation - Reduction potential (EH) - Shall not be less than -100 millivolts in the uppermost ten centimeters (four inches) of sediment. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; am and comp 10/21/12; comp] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-6 Uses and specific criteria applicable to marine waters. (a) Embayments.

- (1) As used in this [section:] subsection:
"Embayments" means land-confined and physically-protected marine waters with restricted openings to open coastal waters, defined by the ratio of total bay volume to the cross-sectional entrance area of seven hundred to one or greater.
"Total bay volume" is measured in cubic meters and "cross-sectional entrance area" is measured in square meters, and both are determined at mean lower low water.
- (2) Water areas to be protected.
 - (A) Class AA.
 - (i) Hawaii
Puako Bay
Waiulua Bay
Anaehoomalu Bay
Kiholo Bay
Kailua Harbor
Kealakekua Bay
Honaunau Bay

Oahu
Waialua Bay
Kahana Bay
Kaneohe Bay
Hanauma Bay

Kauai
Hanalei Bay
 - (ii) All embayments in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life established under chapter 190, HRS.

- (iii) All waters in state or federal fish and wildlife refuges and marine sanctuaries.
- (iv) All waters which have been officially identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.

(B) Class A.

Hawaii

Hilo Bay (inside breakwater)
Kawaihae Boat Harbor
Honokohau Boat Harbor
Keauhou Bay

Maui

Kahului Bay
Lahaina Boat Harbor
Maalaea Boat Harbor

Lanai

Manele Boat Harbor
Kaumalapau Harbor

Molokai

Hale o Lono Harbor
Kaunakakai Harbor
Kaunakakai Boat Harbor

Oahu

Kaiaka Bay
Paiko Peninsula to Koko Head
Ala Wai Boat Harbor
Kewalo Basin
Honolulu Harbor
Keehi Lagoon
Barbers Point Harbor
Pokai Bay
Heeia Kea Boat Harbor
Waianae Boat Harbor
Haleiwa Boat Harbor
Ko Olina

Kauai

Hanamaulu Bay

- Nawiliwili Bay
- Kukuiula Bay
- Wahiawa Bay
- Hanapepe Bay (inside breakwater)
- Kikiaola Boat Harbor
- Port Allen Boat Harbor

(3) The following criteria are specific for all embayments excluding those described in [section 11-54-06(d)] subsection (d). (Note that criteria for embayments differ based on fresh water inflow.)

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent of the time</u> | Not to Exceed the given value more than Two per cent of <u>The time</u> |
|-------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Total Nitrogen (ug N/L) | 200.00* 150.00** | 350.00* 250.00** | 500.00* 350.00** |
| Ammonia Nitrogen (ug NH ₄ -N/L) | 6.00* 3.50** | 13.00* 8.50** | 20.00* 15.00** |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 8.00* 5.00** | 20.00* 14.00** | 35.00* 25.00** |
| Total Phosphorus (ug P/L) | 25.00* 20.00** | 50.00* 40.00* | 75.00* 60.00** |
| Chlorophyll <u>a</u> (ug/L) | 1.50* 0.50** | 4.50** 1.50** | 8.50* 3.00** |
| Turbidity (N.T.U.) | 1.5* 0.40** | 3.00* 1.00** | 5.00* 1.50** |

* "Wet" criteria apply when the average fresh water inflow from the land equals or exceeds one per cent of the embayment volume per day.

** "Dry" criteria apply when the average fresh water inflow from the land is less than one per cent of the embayment volume per day.

Applicable to both "wet" and "dry" conditions:

pH Units - shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

(b) Open coastal waters.

(1) As used in this [section:] subsection:
"Open coastal waters" means marine waters bounded by the 183 meter or 600 foot (100 fathom) depth contour and the shoreline, excluding bays named in subsection (a) [;].

(2) Water areas to be protected (measured in a clockwise direction from the first-named to the second-named location, where applicable):

(A) Class AA.

(i) Hawaii - The open coastal waters from Leleiwi Point to Waiulaula Point [;].

(ii) Maui - The open coastal waters between Nakalele Point and Waihee Point and between Huelo Point and Puu Olai [;].

(iii) Kahoolawe - All open coastal water surrounding the island [;].

- (iv) Lanai - All open coastal waters surrounding the island[;].
- (v) Molokai - The open coastal waters between the westerly boundary of Hale o Lono Harbor to Lamaloa Head. Also, the open coastal waters from Cape Halawa to the easterly boundary of Kaunakakai Harbor[;].
- (vi) Oahu - Waimanalo Bay from the southerly boundary of Kaiona Beach Park, and including the waters surrounding Manana and Kaohikaipu Islands, to Makapuu Point. Also, Waialua Bay from Kaiaka Point to Puaena Point, and the open coastal waters along Kaena Point between a distance of 5.6 kilometers (3.5 miles) from Kaena Point towards Makua and 5.6 kilometers (3.5 miles) from Kaena Point toward Mokuleia[;].
- (vii) Kauai - The open coastal waters between Hikimoe Valley and Makahoa Point. Also, the open coastal waters between Makahuena Point and the westerly boundary of Hoai Bay[;].
- (viii) Niihau - All open coastal waters surrounding the island[;].
- (ix) All other islands of the state - All open coastal waters surrounding the islands not classified in this section[;].
- (x) All open waters in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS or similar reserves for the protection of

marine life established under chapter 190, HRS, as amended; or in the refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service[;].

- (B) Class A - All other open coastal waters not otherwise specified.
- (3) The following criteria are specific for all open coastal waters, excluding those described in [section 11-54-6(d)] subsection (d). (Note that criteria for open coastal waters differ, based on fresh water discharge.)

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent of the time</u> | Not to exceed the given value more than two per cent of <u>the time</u> |
|-------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Total Nitrogen (ug N/L) | 150.00* 110.00** | 250.00* 180.00** | 350.00* 250.00** |
| Ammonia Nitrogen (ug NH ₄ -N/L) | 3.50* 2.00** | 8.50* 5.00** | 15.00* 9.00** |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 5.00* 3.50** | 14.00* 10.00** | 25.00* 20.00** |
| Total Phosphorus (ug P/L) | 20.00* 16.00** | 40.00* 30.00** | 60.00* 45.00** |
| Light Extinction Coefficient (k units) | 0.20* 0.10** | 0.50* 0.30** | 0.85* 0.55** |
| Chlorophyll <u>a</u> (ug/L) | 0.30* 0.15** | 0.90* 0.50** | 1.75* 1.00** |
| Turbidity (N.T.U.) | 0.50* 0.20** | 1.25* 0.50** | 2.00* 1.00** |

* "Wet" criteria apply when the open coastal waters receive more than three million gallons per day of fresh water discharge per shoreline mile.

** "Dry" criteria apply when the open coastal waters receive less than three million gallons per day of fresh water discharge per shoreline mile.

Applicable to both "wet" and "dry" conditions:

pH Units - shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

k units = the ratio of light measured at the water's surface to light measured at a particular depth.

L = liter

Light Extinction Coefficient is only required for dischargers who have obtained a waiver pursuant to Section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251), as amended, and are required by EPA to monitor it.

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

(c) Oceanic waters.

(1) [Definition -] As used in this subsection:
 "Oceanic waters" means all other marine waters outside of the 183 meter (600 feet or 100 fathom) depth contour[;]_.

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- (2) Water areas to be protected [-]: Class A - All oceanic waters[;].
- (3) The following criteria are specific for oceanic waters:

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed The given value more than <u>ten per cent of the time</u> | Not to exceed the given value more than <u>two per cent of the time</u> |
|-------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Total Nitrogen (ug N/L) | 50.00 | 80.00 | 100.00 |
| Ammonia Nitrogen (ug NH ₄ -N/L) | 1.00 | 1.75 | 2.50 |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 1.50 | 2.50 | 3.50 |
| Total Phosphorus (ug P/L) | 10.00 | 18.00 | 25.00 |
| Chlorophyll <u>a</u> (ug/L) | 0.06 | 0.12 | 0.20 |
| Turbidity (N.T.U.) | 0.03 | 0.10 | 0.20 |

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

pH Units - shall not deviate more than 0.5 units from a value of 8.1.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

(d) Area-specific criteria for the Kona (west) coast of the island of Hawaii.

(1) For all marine waters of [Hawaii Island] the island of Hawaii from Loa Point, South Kona District, clockwise to Malae Point, North Kona District, excluding Kawaihae Harbor and Honokohau Harbor, and for all areas from the shoreline at mean lower low water to a distance 1000 m seaward:

[(i)] (A) [in] In areas where nearshore marine water salinity is greater than 32.00 parts per thousand the following specific criteria apply:

| <u>Parameter</u> | Geometric mean not to exceed the <u>given single value</u> |
|-------------------------------------------------------------------------|------------------------------------------------------------------|
| Total Dissolved Nitrogen (ug N/L) | 100.00 |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 4.50 |
| Total Dissolved Phosphorus (ug P/L) | 12.50 |
| Phosphate (ug PO ₄ - P/L) | 5.00 |
| Ammonia Nitrogen (ug NH ₄ - N/L) | 2.50 |
| Chlorophyll a (ug/L) | 0.30 |
| Turbidity (N.T.U.) | 0.10 |

* Specific criteria for Class A embayments apply to Honokohau Harbor and Kawaihae Harbor, see section 11-54-6(a) (3).

[(ii)](B) [if] If nearshore marine water salinity is less than or equal to 32.00 parts per thousand the following parameters shall be related to salinity on the basis of a linear least squares regression equation:

$$Y = MX + B$$

where:

Y = parameter concentration(in ug/L)

X = salinity (in ppt)

M = regression coefficient (or "slope")

B = constant (or "Y intercept").

The absolute value of the upper 95 per cent confidence limit for the calculated sample regression coefficient (M) shall not exceed the absolute value of the following values:

| <u>Parameter</u> | <u>M</u> |
|---------------------------------------------------------|----------|
| Nitrate and Nitrite Nitrogen (ug [NO3 + NO2]-N/L) | -31.92 |
| Total Dissolved Nitrogen (ug N/L) | -40.35 |
| Phosphate (ug PO4 - P/L) | -3.22 |
| Total Dissolved Phosphorus (ug P/L) | -2.86 |

The specific criteria for ammonia nitrogen, chlorophyll a, and turbidity given in [(i) above,] clause (i) also apply.

[(iii)](C) Parameter concentrations shall be determined along a horizontal transect extending seaward from a shoreline sample location using the following method: water samples shall be obtained at distances of 1, 10, 50, 100, and 500 meters from the shoreline sampling location. Samples shall be collected within one meter of the water surface and below the air-water interface. Dissolved nutrient samples shall be filtered through media with particle size retention of 0.7 um. This sampling protocol shall be replicated not less than three times on different days over a period not to exceed fourteen days during dry weather conditions. The geometric means of sample measurements for corresponding offshore distances shall be used for regression calculations.

pH Units - shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

L - liter

N.T.U. - Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the

same conditions. The higher the intensity of scattered light, the higher the turbidity. ug - microgram or 0.000001 grams. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-7 Uses and specific criteria applicable to marine bottom types. (a) Sand beaches.

- (1) As used in this [section] subsection:
"Sand beaches" means shoreline composed of the weathered calcareous remains of marine algae and animals (white sand), the weathered remains of volcanic tuff (olivine), or the weathered remains of lava (black sand). Associated animals are largely burrowers and are related to particle grain size, slope, and color of the beach[;].
- (2) Water areas to be protected:
 - (A) Class I - All beaches on the Northwestern Hawaiian Islands. These islands comprise that portion of the Hawaiian archipelago which lies northwest of the island of Kauai and is part of the State of Hawaii; including Nihoa Island, Necker Island, French Frigate Shoals, Brooks Banks, Gardiner Pinnacles, Dowsett and Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Atoll, Gambia Shoal, and Kure Atoll[;].
 - (B) Class II - All beaches not in Class I[;].
- (3) The following criteria are specific to sand beaches:

- (A) Episodic deposits of flood-borne sediment shall not occur in quantities exceeding an equivalent thickness of ten millimeters (0.40 [inch]) inches twenty-four hours after a heavy rainstorm[;].
 - (B) Oxidation - reduction potential (EH) in the uppermost ten centimeters (four inches of sediment shall not be less than +100 millivolts
 - (C) No more than fifty per cent of the grain size distribution of sediment shall be smaller than 0.125 millimeters in diameter.
- (b) Lava rock shoreline and solution benches.
- (1) As used in this [section] subsection:
 "Lava rock shorelines" means sea cliffs and other vertical rock faces, horizontal basalts, volcanic tuff beaches, and boulder beaches formed by rocks falling from above or deposited by storm waves. Associated plants and animals are adapted to the harsh physical environment and are distinctly zoned to the degree of wave exposure[;].
"Solution benches" means sea level platforms developed on upraised reef or solidified beach rock by the erosive action of waves and rains. Solution benches are distinguished by a thick algal turf and conspicuous zonation of plants and animals[;].
- (2) Water areas to be protected:
- (A) Class I - All lava rock shorelines and solution benches in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life established under chapter 190, HRS, as amended; or in refuges or sanctuaries established by the U.S.

Fish and Wildlife Service or the National Marine Fisheries Service[;].

(B) Class II

(i) All other lava rock shorelines not in Class I[;].

(ii) The following solution benches:

| <u>Maui</u> | <u>Oahu</u> |
|--------------------------------|---------------|
| Kihei | Diamond Head |
| Papaula Point | Manana Island |
| | Makapuu |
| <u>Kauai</u> | Laie |
| Near Hanapepe | Kahuku |
| Salt Ponds | Mokuleia |
| Milolii | Makua |
| Nualolo | Makaha |
| Makaha | Maile |
| Mahaulepu | Lualualei |
| Kuhio Beach Park (Kukuiula) | Barbers Point |

(3) The following criteria are specific to lava rock shorelines and solution benches:

(A) Episodic deposits of flood-borne sediment shall not occur in quantities exceeding an equivalent thickness of five millimeters (0.20 [inch] inches) for longer than twenty-four hours after a heavy rainstorm[;].

(B) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. The location and boundaries of each bottom-type class will be clarified when situations require their identification. For example, when a discharge permit is applied for or a waiver pursuant to [Section] section 301(h) of the Federal Water Pollution Control Act (33 U.S.C. Section 1311) is required. Permanent benchmark stations

may be required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.

- (c) Marine pools and protected coves.
 - (1) As used in this [section:] subsection:
 - "Marine pools" means waters which collect in depressions on sea level lava rock outcrops and solution benches and also behind large boulders fronting the sea. Pools farthest from the ocean have harsher environments and less frequent renewal of water and support fewer animals. Those closest to the ocean are frequently renewed with water, are essentially marine, and support more diverse fauna[;].
 - "Protected coves" means small inlets which are removed from heavy wave action or surge[;].
 - (2) Water areas to be protected[;].
 - (A) Class I.
 - (i) All marine pools and protected coves in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life established under chapter 190, HRS, as amended; or in refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the

National Fisheries
Service[;].

- (ii) Hawaii
Honaunau
Kiholo

[(A)] (B) Class II.

| | |
|----------------|----------------|
| <u>Hawaii</u> | <u>Maui</u> |
| Kalapana | Hana |
| Pohakuloa | Keanae |
| Kapalaoa | Napili |
| Kapoho | Puu Olai to |
| King's Landing | Cape |
| (Papai) | Hanamanioa |
| Hilo | Kipahulu |
| Leileiwi Point | |
| Wailua Bay | <u>Molokai</u> |
| | Cape Halawa |
| | Kalaupapa |
| | South Coast |

Oahu
Diamond Head
Halona Blowhole to Makapuu
Mokuleia
Kaena Point
Makua
Punaluu

Kauai
Kealia
Mahaulepu
Hanamaulu
Poipu
Puolo Point

- (3) The following criteria are specific to marine pools and protected coves:
 - (A) In marine pools and coves with sand bottoms, oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sediment shall not be less than +100 millivolts[;].

- (B) In marine pools and coves with sand bottoms, no more than fifty per cent of the grain size distribution of the sediment shall be smaller than 0.125 millimeters in diameter[;].
- [(F)] (C) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding equivalent thicknesses for longer than twenty-four hours following a heavy rainstorm according to the following:
- (i) No thicker than an equivalent of five millimeters (0.20 [inch]) inches on hard bottoms (other than living corals)[;].
 - (ii) No thicker than an equivalent of ten millimeters (0.40 [inch]) inches on soft bottoms[;].
- (D) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.
- (d) Artificial basins.
- (1) As used in this [section] subsection: "Artificial basins" means dredged or quarried channels or harbors, and harbor-associated submerged structures. Many organisms can attach to the vertical structures, but the soft, shifting sediment bottoms of harbors may only be colonized by a few hardy or transient species.

(2) Class II water areas to be protected are as follows:

(A) Shallow draft harbors:

Hawaii

Wailoa River Boat Harbor
Mahukona Harbor
Keauhou Harbor
Kailua-Kona Harbor
Honokohau Boat Harbor
Kawaihae Boat Harbor

Maui

Maalaea Boat Harbor
Lahaina Boat Harbor
Hana Harbor

Lanai

Manele Boat Harbor
Kaunalapau Harbor

Molokai

Kalaupapa Anchorage
Kaunakakai Small Boat Harbor
Hale o Lono Harbor

Oahu

Heeia Kea Boat Harbor
Kaneohe Marine Corps Air Station
Kaneohe Yacht Club
Hawaii Kai Marina (Kuapa Pond)
Pokai Bay
Waianae Boat Harbor
Keehi Marine Center
La Mariana Sailing Club
Haleiwa Harbor
Makani Kai Marina
Keehi Boat Harbor
Ala Wai Boat Harbor:
 Ala Wai Fuel Dock
 Hawaii Yacht Club
 Waikiki Yacht Club
Ko Olina

Kauai

Nawiliwili Small Boat Harbor
Kukuiula Boat Harbor
Kikiaola Boat Harbor
Port Allen Boat Harbor

(B) Deep draft commercial harbors:

Hawaii

Kuhio Bay (Hilo Harbor)
Kawaihae Deep Draft Harbor

Maui

Kahului Harbor

Molokai

Kaunakakai Barge Harbor

Oahu

Honolulu Harbor
Barbers Point Harbor
Kewalo Basin

Kauai

Nawiliwili Harbor
Port Allen Harbor

- (3) Specific criterion to be applied -
[Oxidation - reduction] Oxidation-reduction
potential (EH) in the uppermost ten
centimeters (four inches) of sediment shall
not be less than -100 millivolts.
- (e) Reef flats and reef communities.
- (1) As used in this [section:] subsection:
"Nearshore reef flats" means shallow
platforms of reef rock, rubble, and sand
extending from the shoreline. Smaller,
younger flats projected out as semicircular
aprons while older, larger flats form wide
continuous platforms. Associated animals
are mollusks, echinoderms, worms,
crustaceans (many living beneath the
surface), and reef-building corals.
"Offshore reef flats" means shallow,
submerged platforms of reef rock and sand

between depths of zero to three meters (zero to ten feet) which are separated from the shoreline of high volcanic islands by lagoons or ocean expanses. Dominant organisms are bottom-dwelling algae. Biological composition is extremely variable. There are three types: patch, barrier, and atoll reef flats; quite different from one another structurally. The presence of heavier wave action, water more oceanic in character, and the relative absence of terrigenous influences distinguish offshore reef flats.

"Protected reef communities" means hard bottom aggregations, including scattered sand channels and patches, dominated by living coral thickets, mounds, or platforms. They are found at depths of ten to thirty meters (thirty-two to ninety-six feet) along protected leeward coasts or in shallow water (up to sea level) in sheltered lagoons behind atoll or barrier reefs and in the calm reaches of bays or coves.

"Wave-exposed reef communities" means aggregations, including scattered sand channels and patches, dominated by corals. They may be found at depths up to forty meters (approximately one hundred thirty feet) along coasts subject to continuous or heavy wave action and surge. Wave-exposed reef communities are dominated biologically by benthic algae, reef-building corals, and echinoderms.

- (2) Water areas to be protected:
 - (A) [Class 1.] Class I.
 - (i) All reef flats and reef communities in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS,

or similar reserves for the protection of marine life under chapter 190, HRS, as amended; or in refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service;

(ii) Nearshore reef flats:

| | |
|-----------------------------|--------------------|
| <u>Hawaii</u> | <u>Maui</u> |
| Puako | Honolua |
| <u>Lanai</u> | <u>Oahu</u> |
| Northwest Lanai Reef | Hanauma Bay |
| <u>Molokai</u> | <u>Kauai</u> |
| Western Kalaupapa | Nualolokai |
| Southeast Molokai Reef | Hanalei |
| Honomuni Harbor | (Anini to |
| Kulaalamihi Fishpond | Haena) |

(iii) Offshore reef flats:

Moku o Loe (Coconut Island,
Kaneohe Bay, Oahu)
Kure Atoll
Pearl and Hermes Atoll
Lisianski Island
Laysan Island
Maro Reef
French Frigate Shoals

(iv) Wave exposed reef communities:

Hawaii
1823 Lava Flow (Punaluu)
1840 Lava Flow (North Puna)
1868 Lava Flow (South Point)
1887 Lava Flow (South Point)
1955 Lava Flow (South Puna)
1960 Lava Flow (Kapoho)
1969 Lava Flow (Apuna Point)
1970 Lava Flow (Apuna Point)
1971 Lava Flow (Apuna Point)
1972 Lava Flow (Apuna Point)
1973 Lava Flow (Apuna Point)

Maui

Hana Bay
Makuleia Bay (Honolua)

Molokini Island

All wave exposed reef communities

Molokai

Moanui Kahinapohaku Waikolu -
Kalawao
Halawa Bay

Oahu

Sharks Cove (Pupukea)
Moku Manu (Islands)
Outer Hanauma Bay
Waimea Bay
Kawela Bay
Kahana Bay

Kauai

Ke`e Beach
Poipu Beach
Kipu Beach

Niihau

All wave exposed communities

Lehua (off Niihau)

All wave exposed communities

(v) Protected reef communities:

Hawaii

Puako
Honaunau
Kealakekua
Kiholo
Anaehoomalu
Hapuna
Kahaluu Bay
Keaweula (North Kohala)

Milolii Bay to Keawaiki
Kailua-Kaiwi (Kona)
Onomea Bay
1801 Lava Flow (Keahole or Kiholo)
1850 Lava Flow (South Kona)
1859 Lava Flow (Kiholo)
1919 Lava Flow (Milolii)
1926 Lava Flow (Milolii)

Maui
Honolua

Ahihi-La Perouse (including 1790
Lava Flow at Cape Kinau)

Molokini Island
All protected reef communities

Lanai
Manele
Hulopoe

| | |
|-------------------|----------------------------------|
| <u>Molokai</u> | <u>Oahu</u> |
| Southeast Molokai | Hanauma Bay |
| Kalaupapa | Moku o Loe |
| Honomuni Harbor | (Coconut Island, Kaneohe Bay) |

Kauai
Hoai Bay (Poipu)

Northwestern Hawaiian Islands
Kure Atoll Lagoon
Pearl and Hermes Lagoon
Lisianski Lagoon
Maro Reef Lagoon
French Frigate Shoals Lagoon

(B) Class II.

- (i) Existing or planned harbors may be located within nearshore reef flats showing degraded habitats and only where feasible alternatives are lacking and

upon written approval by the director, considering environmental impact and the public interest pursuant to section 342D-6, HRS.

Hawaii

Blonde Reef (Hilo Harbor)
Kawaihae Small Boat Harbor

Maui

Lahaina Harbor
Kahului Harbor

Lanai

Manele

Molokai

Kaunakakai Harbor
Hale o Lono Harbor
Palaau (2.4 kilometers/1.5 mile,
east of Pakanaka Fishpond)

Oahu

Keehi Boat Harbor
Ala Moana Reef
Honolulu Harbor
Heeia Harbor
Kaneohe Yacht Club
Ala Wai Harbor
Haleiwa Boat Harbor
Maunalua Bay
Pearl Harbor
Kaneohe Bay
Kahe

All other nearshore reef flats not in Class I;

(ii) Offshore reef flats:

Oahu

Kapapa Barrier Reef
Kaneohe Patch Reefs (Kaneohe Bay)

(iii) All other wave exposed or protected reef communities not in Class I.

(3) Specific criteria to be applied to all reef flats and reef communities: No action shall

be undertaken which would substantially risk damage, impairment, or alteration of the biological characteristics of the areas named herein. When a determination of substantial risk is made by the director, the action shall be declared to be contrary to the public interest and no other permits shall be issued pursuant to chapter [342,] 342D, HRS.

- (A) Oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sand patches shall not be less than +100 millivolts;
- (B) No more than fifty per cent of the grain size distribution of sand patches shall be smaller than 0.125 millimeters in diameter;
- (C) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding equivalent thicknesses for longer than twenty-four hours after a heavy rainstorm as follows:
 - (i) No thicker than an equivalent of two millimeters (0.08 [inch] inches) on living coral surfaces;
 - (ii) No thicker than an equivalent of five millimeters (0.2 [inch] inches) on other hard bottoms;
 - (iii) No thicker than an equivalent of ten millimeters (0.4 [inch] inches) on soft bottoms;
- (D) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. The location and boundaries of each bottom-type class shall be clarified when situations require their identification. For example, the location and boundaries shall be clarified when a discharge permit is applied for or a waiver pursuant to

Section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251 et seq.) is required. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.

- (f) Soft bottom communities.
- (1) As used in this [section] subsection:
"Soft bottom communities" means poorly described and "patchy" communities, mostly of burrowing organisms, living in deposits at depths between two to forty meters (approximately six to one hundred thirty feet). The particle size of sediment, depth below sea level, and degree of water movement and associated sediment turnover dictate the composition of animals which rework the bottom with burrows, trails, tracks, ripples, hummocks, and depressions.
- (2) Water areas to be protected:
Class II - All soft bottom communities[;].
- (3) Specific criteria to be applied - Oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sediment should not be less than -100 millivolts. The location and boundaries of each bottom-type class shall be clarified when situations require their identification. For example, the location and boundaries shall be clarified when a discharge permit is applied for or a waiver pursuant to Section 301(h) of the Act is required. [Eff 11/12/82; am and comp 10/6/84; am and comp

04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-8 Specific criteria for recreational areas. (a) In inland recreational waters:

- (1) Enterococcus content shall not exceed a geometric mean of 33 per one hundred milliliters in not less than five samples which shall be spaced to cover a period between [25] twenty five and [30] thirty days. No single sample shall exceed the single sample maximum of 89 CFU per 100 milliliters or the site-specific one-sided 82 per cent confidence limit.
 - (2) Inland recreational waters in which enterococcus content does not exceed the standard shall not be lowered in quality.
 - (3) At locations where sampling is less frequent than five samples per twenty-five to thirty days, no single sample shall exceed the single sample maximum nor shall the geometric mean of these samples taken during the 30-day period exceed 33 CFU per 100 milliliters.
 - (4) Raw or inadequately treated sewage, sewage for which the degree of treatment is unknown, or other pollutants of public health significance, as determined by the director of health, shall not be present in natural public swimming, bathing or wading areas. Warning signs shall be posted at locations where human sewage has been identified as temporarily contributing to the enterococcus count.
- (b) In marine recreational waters:

- (1) Within 300 meters (one thousand feet) of the shoreline, including natural public bathing or wading areas, enterococcus content shall not exceed a geometric mean of 35 CFU per 100 milliliters in not less than five samples which shall be spaced to cover a period between twenty-five and thirty days. No single sample shall exceed the single sample maximum of 104 CFU per 100 milliliters or the site-specific one-sided 75 per cent confidence limit. Marine recreational waters along sections of coastline where enterococcus content does not exceed the standard, as shown by the geometric mean test described above, shall not be lowered in quality.
- (2) At locations where sampling is less frequent than five samples per twenty-five to thirty days, no single sample shall exceed the single sample maximum nor shall the geometric mean of these samples taken during the thirty-day period exceed 35 CFU per 100 milliliters.
- (3) Raw or inadequately treated sewage, sewage for which the degree of treatment is unknown, or other pollutants of public health significance, as determined by the director of health, shall not be present in natural public swimming, bathing or wading areas. Warning signs shall be posted at locations where human sewage has been identified as temporarily contributing to the enterococcus count. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; am and comp 06/15/09; comp 10/21/12; am and comp _____] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-9 Zones of mixing. (a) As used in this section, "zones of mixing" means limited areas around outfalls and other facilities to allow for the initial dilution of waste discharges.

(b) Zones of mixing for the assimilation of domestic, agricultural, and industrial discharges which have received the best degree of treatment or control are recognized as being necessary. It is the objective of these limited zones to provide for a current realistic means of control over the placement and manner of discharges or emissions so as to achieve the highest attainable level of water quality or otherwise to achieve the minimum environmental impact considering initial dilution, dispersion, and reactions from substances which may be considered to be pollutants.

(c) Establishment, renewal, and termination.

- (1) Application for establishment of a zone of mixing shall be made concurrently with any discharge permits whenever applicable and the conditions of a zone of mixing shall be incorporated as conditions of the discharge permits. Every application for a zone of mixing shall be made on forms furnished by the director and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and other information as the director may prescribe[;].
- (2) Each application for a zone of mixing shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information as may be submitted upon the request of the director, and in light of the effect or probable effect upon water quality standards established pursuant to this chapter[;].
- (3) Whenever an application is approved, the director shall establish the zone of mixing, taking into account the environmental impact, including but not limited to factors

such as the protected uses of the body of water, existing natural conditions of the receiving water, character of the effluent, and the adequacy of the design of the outfall and diffuser system to achieve maximum dispersion and assimilation of the treated or controlled waste with a minimum of undesirable or noticeable effect on the receiving water[;].

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

- has received (or in the case of a proposed discharge will receive) the best degree of treatment or control[;].
- (6) Any zone of mixing or renewal thereof shall be established within the requirements of this section and for time periods and under conditions consistent with the reasons therefore and within the following limitations:
- (A) If the zone of mixing is established on the grounds that there is no reasonable means known or available for the adequate prevention, control, or abatement of the discharge involved, it shall be allowed only until the necessary means for prevention, control or abatement become practicable, and subject to the taking of any substitute or alternative measures that the director may prescribe. No renewal of a zone of mixing established under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the discharge involved;
 - (B) The director may issue a zone of mixing for a period not exceeding five years;
 - (C) Every zone of mixing established under this section shall include, but not be limited to, conditions requiring the applicant to perform appropriate effluent and receiving water sampling including monitoring of bottom biological communities and report the results of each sampling to the director. A program of research to develop reasonable alternatives to the methods of treatment or control in use by the applicant may be required if research is deemed prudent by the director; and

- (D) In order to prevent high temperature discharges from violating section 11-54-04(a)(4), no new or increased domestic, industrial, or other controllable source shall discharge at a maximum temperature which will cause temperatures to exceed [3] three degrees Celsius above ambient, or [30] thirty degrees Celsius, whichever is less, within one meter of the bottom within a zone of mixing. For discharges with or without submerged outfalls, the director may make a limited allowance for higher discharge temperatures if there is satisfactory demonstration that the elevated temperature will not cause damage to the local aquatic community.
- (7) Any zone of mixing established pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial establishment of a zone of mixing, provided that the applicant for renewal had met all of the conditions specified in the immediately preceding mixing, and provided further that the renewal and the zone of mixing established in pursuance thereof shall provide for the discharge not greater in quantity of mass emissions than that attained pursuant to the terms of the immediately preceding zone of mixing at its expiration. Any new zones of mixing or requests for zone of mixing renewals for wastewater treatment plants (WWTP) performing primary treatment shall comply with [Section] section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251). No renewal shall be allowed except upon application. Any renewal application shall be made at least

- one hundred and eighty days prior to the expiration of the zone of mixing[;].
- (8) No zone of mixing established pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law[;].
- (9) The establishment of any zone of mixing shall be subject to the concurrence of the U.S. Environmental Protection Agency[;].
- (10) Each mixing zone may be subject to revocation, suspension, or modification if, after notice and opportunity for a hearing pursuant to chapter 91, HRS and the rules of practice and procedures of the department, the director determines that the terms specified in section 342D-6, HRS have been violated. In taking any action, the director may consider operating records, compliance investigations, or other information regarding discharge quality or impact on receiving waters. The action shall be effected by giving written notice to the permittee, which shall contain the reasons for the action[;].
- (11) The director shall be notified within thirty days of the permanent discontinuance of a discharge. The zone of mixing shall terminate thirty days after such notification has been received[;].
- (12) Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-9.1

§11-54-9.1 Water quality certification. As used in sections 11-54-9.1.01 to 11-54-9.1.10:

"33 CFR" means the Code of Federal Regulations, Title 33, Corps of Engineers, Department of the Army, Department of Defense, revised as of July 1, [1998] 2011, unless otherwise specified.

"40 CFR" means the Code of Federal Regulations, Title 40, Protection of the Environment, revised as of July 1, [1998][2001] 2011, unless otherwise specified.

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

"Agent" means a duly authorized representative of the owner as defined in section 11-55-7(b).

["Department" means the state department of health.

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

"Discharge" means the same thing as defined in Section 502(16) of the Act.

"Discharge of a pollutant" and "discharge of pollutants" means the same thing as defined in [Section] section 502(12) of the Act.

"Duly authorized representative" means a person or position as defined in 40 CFR [Section] section 122.22(b).

["HRS" means the Hawaii Revised Statutes.]

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

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

"Navigable waters" means the waters of the United States, including the territorial seas.

"Owner" means the person who owns any "facility" or "activity" which results in any discharge into navigable waters.

"Pollutant" means the same thing as defined in [Section] section 502(6) of the Act.

"Territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

"Water quality certification" or "certification" means a statement which asserts that a proposed discharge resulting from an activity will not violate applicable water quality standards and the applicable provisions of sections 301, 302, 303, 306 and 307 of the Act. A water quality certification is required by [Section] section 401 of the Act from any applicant for a federal license or permit to conduct any activity, including the construction or operation of facilities which may result in any discharge into navigable waters.

"Water quality certification application" means any forms provided by the director for use in obtaining the water quality certification.

"Water quality standards" means standards established pursuant to [Section] section 10(c) of the Act, and state-adopted water quality standards for navigable waters which are not interstate waters.

"Waters of the United States" or "waters of the U.S." means:

- (1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (2) All interstate waters, including interstate "wetlands";
- (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows,

playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

- (A) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - (B) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (C) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (4) All impoundments of waters otherwise defined as waters of the United States under this definition;
 - (5) Tributaries of waters identified in paragraphs (1) through (4) of this definition;
 - (6) The territorial sea; and
 - (7) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6) of this definition. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.01 Water quality certification; contents of certification. (a) A certification made by the department shall include:

- (1) The legal name(s), street address, contact person's name and position title, and telephone and fax numbers of the owner and, if applicable, its duly authorized representative;

- (2) A statement that the director has either:
 - (A) Examined the application made by the owner or its duly authorized representative to the licensing or permitting agency (specifically identifying the number or code affixed to the application) and bases its certification upon an evaluation of the information contained in the application which is relevant to water quality considerations; or
 - (B) Examined other information provided by the owner or its duly authorized representative sufficient to permit the director to make the statement described in paragraph (a) (3);
- (3) A statement that there is reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;
- (4) A statement of any conditions which the director considers necessary or desirable with respect to the discharge resulting from an activity; and
- (5) Other information the director determines to be appropriate.

(b) The director shall issue the certification after evaluating the complete water quality certification application, comments received during the public comment period, any record of a public hearing held pursuant to section 11-54-09.1.03, other information and data the director considers relevant, and after the director determines that there is reasonable assurance that applicable water quality standards will not be violated and the best practicable methods of control will be applied to a discharge resulting from an activity including the construction and operation of a facility

(c) The department shall process applications for permits and water quality certifications for the reconstruction, restoration, repair, or reuse of any Hawaiian fishpond that meets the requirements of

chapter 183B, HRS, before all other permits and certifications. The director shall render a decision on the completeness of any application for the permit or water quality certification within thirty days of receipt. Applications for fishpond reconstruction, restoration, or repair that are incomplete shall be denied without prejudice. The director shall render a decision on any complete application for a permit or water quality certification for any fishpond within one hundred fifty days.

(d) The director, at the director's discretion or after consideration of information presented by the owner or its duly authorized representative, the licensing or permitting agency, other government agencies, or interested parties, may modify or revoke an issued certification or waiver. [Eff and comp 4/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp]
(Auth: HRS §§342D-4, 342D-5, 342D6.5, 342D-53) (Imp: HRS §§342D-342D-6, 342D6.5, 342D-5)§11-54-09.1.02

§11-54-9.1.02 Water quality certification;
contents of water quality certification application.

(a) The owner or its duly authorized representative shall submit a complete water quality certification application for the discharge resulting from an activity. The water quality certification application shall include at a minimum:

- (1) The legal name(s), street address, contact person's name and position title, and telephone and fax numbers of the owner and, if applicable, its duly authorized representative;
- (2) The company or organization name, contact person's name and position title, and telephone and fax numbers of the emergency contact(s);

- (3) The name, street address, contact person's name and position title, telephone and fax numbers, island, and tax map key number(s) for the project;
- (4) Associated existing or pending federal and environmental permits and corresponding file numbers;
- (5) The name(s) of the navigable water where the discharge occurs, the latitude and longitude of the discharge point(s), the classification of the navigable water, and the associated existing recreational uses;
- (6) The scope of work or a description of the overall project including: the construction or operation of facilities which may result in discharges into navigable waters; the proposed discharge resulting from an activity; and specific biological, chemical, physical, thermal, and other pertinent characteristics of the discharge resulting from an activity;
- (7) If applicable, a description of the function and operation of equipment or facilities to control discharges, including specification of the methods of control to be used;
- (8) The estimated dates on which the activity will begin and end and the date or dates on which the discharge(s) will take place;
- (9) If applicable, a description of the methods and means being used or proposed to monitor the quality and characteristics of the discharge and the operation of equipment or facilities employed in the control of the proposed discharges and a map showing the location(s) of the monitoring point(s);
- (10) The statement of assurance, statement of choice for publication, and if applicable, an authorization statement, with the owner's original signature. Any signatures required for the water quality certification application shall be provided as described in 40 CFR Section 122.22(a);

- (11) Supporting documentation (e.g. maps, plans, specifications, copies of associated federal permits or licenses, federal applications, Environmental Assessments or Environmental Impact Statements, as applicable, etc.);
- (12) Additional information regarding any irregularities or unique features of the project; and
- (13) Additional information as required by the director.

(b) The director shall notify the owner or its duly authorized representative in writing if a water quality certification application is incomplete or otherwise deficient. A description of the additional information necessary to complete the water quality certification application or to correct the deficiency shall be included in the written notice. If a water quality certification application is incomplete or otherwise deficient, processing of the water quality certification application shall not be completed until the time the owner or its duly authorized representative has supplied the information or otherwise corrected the deficiency. Failure to provide additional information or to correct a deficiency shall be sufficient grounds for denial of the certification or termination of the processing of the water quality certification application.

(c) The director shall notify the owner or its duly authorized representative in writing when a water quality certification application is considered complete. The director shall act on a request for certification within a period which shall not exceed one year from the date when the water quality certification application was considered complete.

(d) The owner or its duly authorized representative shall notify the department in writing of changes which may affect the water quality certification application and certification process.

(e) Each owner who submits a water quality certification application shall pay a filing fee of \$1,000. This filing fee shall be submitted with the

water quality certification application and shall not be refunded nor applied to any subsequent water quality certification application following final action of denial or termination of the processing of the water quality certification application.

- (1) Fees shall be made payable to the "State of Hawaii" in the form of a cashier's check or money order;
- (2) Water quality certification application(s) submitted by the U.S. Army Corps of Engineers, Honolulu Engineer District, for the purpose of adopting regional or nationwide general permit(s), in accordance with 33 CFR Parts 325 and 330, respectively, shall be exempt from the payment of filing fees.

(f) If a project or activity requiring a federal permit or license involves or may involve the discharge of a pollutant or pollutants and is initiated or completed without a water quality certification, the director may process an [After the Fact] after-the-fact water quality certification application as follows: [After the Fact] after-the-fact water quality certification application may be accepted and processed only for the limited purpose of deeming projects or activities requiring federal permits or licenses to be properly permitted or licensed forward of the date of the water quality certification or waiver. No water quality certification or waiver shall be issued which allows the retroactive permitting or licensing of projects or activities before the date the water quality certification or waiver was issued. A water quality certification or waiver may be issued if the following criteria are met: [(1) The project or activity is not the subject of an on-going enforcement action by the federal, state or county government;(2) Any adverse impacts upon water quality resulting from the project or activity have been mitigated to the maximum extent feasible, and (3) The project or activity will not cause or contribute to any lack of attainment of water quality standards set forth in this chapter.]

- (1) The project or activity is not the subject of an ongoing enforcement action by the federal, state or county government;
- (2) Any adverse impacts upon water quality resulting from the project or activity have been mitigated to the maximum extent feasible; and
- (3) The project or activity will not cause or contribute to any lack of attainment of water quality standards set forth in this chapter.

(g) Written notification by the department under [section 11-54-9.1] subsection (b) is complete upon mailing or sending a facsimile transmission of the document or actual receipt of the document by the owner or its duly authorized representative. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.03 Water quality certification; notice and hearing. The director may provide the opportunity for public comment or hearing(s) or both to consider the issuance of a water quality certification. A notice shall be published in accordance with chapters 91 and 92, HRS. The director shall inform the owner or its duly authorized representative in writing that the action has been taken. All publication and mailing costs associated with the public notification of the director's tentative determinations with respect to the water quality certification application shall be paid by the owner to the appropriate newspaper agency or agencies determined by the director. Failure to provide and pay for public notification, as considered appropriate by the director, may result in a delay in the certification process. [Eff and comp 04/14/88; am and

comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.04 Water quality certification; waiver. (a) If the director fails or refuses to act on a request for certification within one year after receipt of a complete water quality certification application, then the certification requirements of section 11-54-9.1 shall be waived with respect to the federal application.

(b) If the discharge resulting from an activity receives a determination to be covered under a nationwide permit authorization, thereby fulfilling specific conditions of that permit pursuant to 33 CFR [Sections] sections 330.4, 330.5, and 330.6, then the director will determine, on a case-by-case basis, which projects are considered minor and non-controversial. Certification requirements of section 11-54-9.1 shall be waived for minor and non-controversial activities within one year of receipt of a complete water quality certification application. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.05 Water quality certification; adoption of new water quality standards. (a) The licensee or permittee shall comply with any new water quality standards as adopted by the department.

- (b) In any case where:
- (1) A certification or waiver was issued without applicable water quality standards;
 - (2) Water quality standards applicable to the waters into which the activity may discharge

§11-54-9.1.05

are subsequently established before the activity is completed; or

- (3) The director determines that the activity is violating new water quality standards;

The director shall then notify the licensee or permittee and the licensing or permitting agency of the violation.

(c) If the licensee or permittee fails within one hundred eighty days of the date of the notice to cease the violation, the director shall notify the licensing or permitting agency that the licensee or permittee has failed to comply with the standards. The director, at the director's discretion, shall also revoke the certification or waiver or recommend suspension of the applicable license or permit pursuant to [Section] section 401 of the Act.

(d) The director shall notify the licensing or permitting agency that, in the director's opinion, there is reasonable assurance that applicable water quality standards will not be violated because the licensee or permittee took appropriate action to comply with the applicable water quality standards after their license or permit was suspended pursuant to subsection (c).

(e) This section shall not preclude the department from taking other enforcement action authorized by law. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-53s) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.06 Water quality certification; inspection of facility or activity before operation. Where any facility or activity has received certification or waiver pursuant to sections 11-54-9.1.01 to 11-54-9.1.09 in connection with the issuance of a license or permit for construction, and where the

facility or activity is not required to obtain an operating license or permit, the director, prior to the initial operation of the facility or activity, shall be afforded the opportunity to inspect the facility or activity for the purpose of determining if the manner in which the facility or activity will be operated or conducted will violate applicable water quality standards. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp] Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.07 Water quality certification; notification to licensing or permitting agency. If the director, after an inspection pursuant to section 11-54-9.1.06 determines that operation of the proposed facility or activity will violate applicable water quality standards, the director shall so notify the owner or, if applicable, its duly authorized representative and the licensing or permitting agency. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.08 Water quality certification; termination or suspension. Where a licensing or permitting agency, following a public hearing, suspends a license or permit after receiving the director's notice and recommendation pursuant to section 11-54-9.1.07 the owner or its duly authorized representative may submit evidence to the director, that the facility or activity has been modified so as not to violate applicable water quality standards. If

the director determines that the applicable water quality standards have not been and will not be violated, the director shall so notify the licensing or permitting agency. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.09 Water quality certification; review and advice. The director may, and upon request shall, provide licensing and permitting agencies with determinations, definitions, and interpretations to the meaning and content of state water quality standards. The director may, and upon request shall, also advise licensing and permitting agencies of the status of compliance by the owner(s) of a water quality certification with the conditions and requirements of applicable water quality standards. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-10 Water quality analyses. (a) Laboratory analysis shall be performed by a laboratory approved by the department.

(b) Where applicable, analysis to determine compliance with these rules shall be by:

| <u>Parameter</u> | <u>Reference</u> |
|-----------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sample Collection (Phytoplankton and other Bioassays) | Standard Methods for the Examination of Water and Waste Water, [twentieth] <u>twenty first</u> edition, APHA |
| Sample Preservation and Holding Time, Bacteriological and Chemical Methodology | ["Guidelines Establishing Test Procedures for Analysis of Pollutants," Federal Register, July 1, 1998 (40 CFR 136) and "Technical Amendments," [Federal Register, July 1, 1998 (40 CFR 136).] <u>40 CFR 136,</u> <u>revised as of July 1,</u> <u>2001.]]</u> |
| | <u>"Guidelines Establishing Test Procedures for the Analysis of Pollutants," Federal Register, July 1, 2011 (40 CFR 136)"</u> |
| | "A Manual of Chemical and Biological Methods for Seawater Analysis" T.R. Parsons, Y. Maita, and C.M. Lalli, 1984, Pergamon Press, New York. |
| | "Methods of Seawater Analysis", 2nd, Revised and Extended Edition, ed. by K. Grashof, M. Erhardt, K. Kremling, 1983. Verlag Chemie, Weinheim, Germany. |

Toxicity Test

[EPA/600/4-91/002 Short-Term Methods For Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, July 1994.]

EPA 821-R-02-031, Short-Term Methods For Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, 4th edition, October 2002,

or:

[EPA/600/4-91/027F Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms. Cincinnati, Ohio, EMSL, August 1995.]

EPA 821-R-02-012, Methods For Measuring the Acute Toxicity of Effluents and Receiving waters to Freshwater and Marine Organisms, 5th edition, October 2002.

or:

[EPA-600/4-91/003, Short-Term methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. ORD, Cincinnati, Ohio, July

1994.]

EPA 821-R-02-014, Short-Term Methods For Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, 3rd edition, October 2002.

or:

EPA 833-R-10-003, National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document, June 2010.

or:

EPA 833-R-10-004, National Pollutant Discharge Elimination System Test of Significant Toxicity Technical Document, June 2010.

or:

EPA/600/R-12/022, Tropical Collector Urchin, *Tripneustes gratilla*, Fertilization Test Method, April 2012.

§11-54-10

Quality Control
(Bacteriological and
Biology) and Chemistry

EPA/600/4-79-019, Handbook
for Analytical Quality
Control in Water and
Wastewater Laboratories,
March 1979.

Kona Coast Area Specific
Standards

Rationale for the
Development of Area-
Specific Water Quality
Criteria for the West Coast
of The Island of Hawaii and
Procedures for Their Use.
Hawaii State Department of
Health. March 1997.

[or:

As otherwise previously
specified or approved by
the director.]

or as otherwise previously specified or approved by
the director. [Eff 11/12/82; am and comp 10/6/84; am
and comp 04/14/88; am and comp 01/18/90; am and comp
10/29/92, am and comp 04/17/00; am and comp 10/2/04;
comp 06/15/09; comp 10/21/12; am and comp
] (Auth: HRS §§342D-1, 342D-4, 342D-5)
(Imp: HRS §§342D-4, 342D-5)

§11-54-11 Revision. These water quality
criteria are based upon the best currently available
data. Studies made in connection with the
implementation program may suggest improvements to
this chapter. For this reason, the chapter will be
subject to periodic review and, where necessary, to
change. Any change will be made only after public

hearing, held in compliance with chapter 91, HRS and the rules of practice and procedures of the department. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-12 Severability. If any provisions of this chapter, or the application thereof to any person or circumstances, is held invalid, the invalidity does not affect other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable." [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

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

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

4. These amendments to and compilation of chapter 11-54, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

LORETTA J. FUDDY, A.S.C.W., M.P.H.
Director of Health

APPROVED AS TO FORM:

EDWARD G. BOHLEN
Deputy Attorney General

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-54

Hawaii Administrative Rules

DEC 06 2013

SUMMARY

1. §11-54-1 is amended.
2. §11-54-01.1 is amended.
3. §11-54-2 is amended.
4. §11-54-3 is amended.
5. §11-54-4 is amended.
6. §11-54-5.1 is amended.
7. §11-54-5.2 is amended.
8. §11-54-6 is amended.
9. §11-54-7 is amended.
10. §11-54-8 is amended.
11. §11-54-9 is amended.
12. §11-54-9.1 is amended.
13. §11-54-9.1.01 is amended.
14. §11-54-9.1.02 is amended.
15. §11-54-9.1.04 is amended.
16. §11-54-9.1.05 is amended.
17. §11-54-10 is amended.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 54

WATER QUALITY STANDARDS

- §11-54-1 Definitions
- §11-54-1.1 General policy of water quality antidegradation
- §11-54-2 Classification of state waters
- §11-54-3 Classification of water uses
- §11-54-4 Basic water quality criteria applicable to all waters
- §11-54-5 Uses and specific criteria applicable to inland waters
- §11-54-5.1 Inland water areas to be protected
- §11-54-5.2 Inland water criteria
- §11-54-6 Uses and specific criteria applicable to marine waters
- §11-54-7 Uses and specific criteria applicable to marine bottom types
- §11-54-8 Specific criteria for recreational areas
- §11-54-9 Zones of mixing
- §11-54-9.1 Water quality certification
- §11-54-9.1.01 Water quality certification; contents of certification
- §11-54-9.1.02 Water quality certification; contents of water quality certification application
- §11-54-9.1.03 Water quality certification; notice and hearing
- §11-54-9.1.04 Water quality certification; waiver
- §11-54-9.1.05 Water quality certification; adoption of new water quality standards
- §11-54-9.1.06 Water quality certification; inspection

§11-54-1

- of facility or activity before
operation
- §11-54-9.1.07 Water quality certification;
notification to licensing or
permitting agency
- §11-54-9.1.08 Water quality certification;
termination or suspension
- §11-54-9.1.09 Water quality certification; review and
advice
- §11-54-10 Water quality analyses
- §11-54-11 Revision
- §11-54-12 Severability

§11-54-1 Definitions. As used in this chapter:
"Ambient conditions" means the water quality
conditions that would occur in the receiving waters if
these waters were not influenced by the proposed new
human activity.

"Amphidromous" means aquatic life that migrate to
and from the sea, but not specifically for
reproductive purposes. Amphidromous aquatic life in
Hawaiian streams are confined to fresh waters as
adults, but their larval stages are partially or
entirely spent in the ocean as part of the
zooplankton.

"Anchialine pools" means coastal bodies of
standing waters that have no surface connections to
the ocean but display both tidal fluctuations and
salinity ranges characteristic of fresh and brackish
waters, indicating the presence of subsurface
connections to the watertable and ocean. Anchialine
pools are located in porous substrata (recent lava or
limestone) and often contain a distinctive assemblage
of native aquatic life. Deeper anchialine pools may
display salinity stratification, and some shallow
pools may contain standing water only on the highest
tides.

"Aquatic life" means "any type or species of
mammal, fish, amphibian, reptile, mollusk, crustacean,

arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or offspring thereof; or freshwater or marine plants, including, seeds, roots, products, and other parts thereof" (section 187A-1, HRS).

"Best degree of treatment or control" means that treatment or control which is required by applicable statutes and regulations of the State of Hawai'i and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251, et seq.) or which is otherwise specified by the director considering technology or management practices currently available in relation to the public interest.

"Brackish waters" means waters with dissolved inorganic ion concentrations (salinity) greater than 0.5 parts per thousand, but less than thirty-two parts per thousand.

"Coastal waters" means "all waters surrounding the islands of the State from the coast of any island to a point three miles seaward from the coast, and, in the case of streams, rivers, and drainage ditches, to a point three miles seaward from their point of discharge into the sea and includes those brackish waters, fresh waters and salt waters that are subject to the ebb and flow of the tide" (section 342D-1, HRS).

"Coastal wetlands" means natural or man-made ponds and marshes having variable salinity, basin limits, and permanence. These wetlands usually adjoin the coastline and may be subject to tidal, seasonal, or perennial flooding. Coastal wetlands are generally maintained by surface and subterranean sources of fresh and salt water. Many natural coastal wetlands have been modified significantly by man and are characterized by introduced aquatic life. Coastal wetlands include, but are not limited to, salt marshes, open ponds, mudflats, man-made or natural waterbird refuges, isolated seasonal lakes and mangrove flats.

"Department" means department of health, State of Hawai'i.

"Developed estuaries" means volumes of brackish coastal waters in well-defined basins constructed by man or otherwise highly modified from their natural state. Developed estuaries include, but are not limited to, dredged and revetted stream termini.

"Director" means the director of health, State of Hawai'i, or the director's duly authorized agent.

~~"Ditches and flumes" means fresh waters flowing~~ continuously in artificial channels. They are used mainly for the purpose of irrigation and usually receive water from stream diversions. Ditches and flumes may be inflowing (carry water to reservoirs or user areas) or outflowing (drain water from reservoirs or user areas).

"Drainage basin" or "watershed" means the region or area drained by a stream or river system.

"Elevated wetlands" means natural freshwater wetlands located above 100 m (330 ft) elevation. They are generally found in undisturbed areas, mainly in remote uplands and forest reserves with high rainfall. Elevated wetlands include upland bogs, marshes, swamps, and associated ponds and pools.

"Estuaries" means characteristically brackish coastal waters in well-defined basins with a continuous or seasonal surface connection to the ocean that allows entry of marine fauna. Estuaries may be either natural or developed.

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

"Flowing springs and seeps" means perennial, relatively constant fresh water flows not in distinct channels, in which the water emanates from elevated aquifers as wet films or trickles over rock surfaces. They are found typically as natural occurrences along rock faces or banks of deeply incised streams, and artificially along road cuts.

"Flowing waters" means fresh waters flowing unidirectionally down altitudinal gradients. These waters may or may not be confined in distinct channels. Flowing waters include streams, flowing springs and seeps and ditches and flumes.

"Fresh waters" means all waters with a dissolved inorganic ion concentration of less than 0.5 parts per thousand.

"Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded and develops conditions that favor the growth and regeneration of hydrophytic vegetation.

"Hydrophytic vegetation" or "hydrophytes" means plants adapted to growing in seasonally or permanently flooded conditions.

"Intermittent streams" means fresh waters flowing in definite natural channels only during part of the year or season. Intermittent streams include many tributaries of perennial streams.

"Introduced aquatic life" means those species of aquatic organisms that are not native to a given area or water body and whose populations were established (deliberately or accidentally) by human activity.

"Introduced" organisms are also referred to as "alien" or "exotic".

"Low wetlands" means freshwater wetlands located below 100 m (330 ft) elevation that may be natural or artificial in origin and are usually found near coasts or in valley termini. Low wetlands are maintained by either stream, well, or ditch influent water, or by exposure of the natural water table. Low wetlands include, but are not limited to, natural lowland marshes, riparian wetlands, littoral zones of standing waters (including lakes, reservoirs, ponds and fishponds) and agricultural wetlands such as taro lo'i.

"Native aquatic life" means those species or higher taxa of aquatic organisms that occur naturally in a given area or water body and whose populations were not established as a result of human activity.

"Natural estuaries" means volumes of brackish coastal waters in well-defined basins of natural origin, found mainly at the mouths of streams or rivers. Natural estuaries can be either stream-fed (drowned stream mouths fed by perennial stream runoff) or spring-fed (nearshore basins with subterranean fresh water sources). Stream-fed estuaries serve as important migratory pathways for larval and juvenile amphidromous stream fauna.

~~"Natural freshwater lakes" means standing water~~ that is always fresh, in well-defined natural basins, with a surface area usually greater than 0.1 ha (0.25 acres), and in which rooted emergent hydrophytes, if present, occupy no more than thirty per cent of the surface area. Natural freshwater lakes in Hawai'i occur at high, intermediate, and low elevations. Lowland freshwater lakes characteristically lack a natural oceanic connection (surface or subsurface) of a magnitude sufficient to cause demonstrable tidal fluctuations.

"Perennial streams" means fresh waters flowing year-round in all or part of natural channels, portions of which may be modified by humans. Flow in perennial streams may vary seasonally. Perennial streams may be subdivided into longitudinal zones, based on elevation and gradient:

- (1) Headwater zone (elevation above 800 m (2600 ft) or gradient above 30 per cent or both);
- (2) Mid-zone (elevation between 50-800 m (165-2600 ft), or gradient between 5 and 30 per cent or both); and
- (3) Terminal zone (elevation below 50 m (165 ft) or gradient below 5 per cent or both).

Perennial streams may be either continuous or interrupted. Continuous perennial streams discharge continuously to the ocean in their natural state, and contain water in the entire length of the stream channel year-round. Interrupted perennial streams usually flow perennially in their upper reaches but only seasonally in parts of their middle or lower reaches, due to either downward seepage of surface

flow (naturally interrupted) or to man-made water diversions (artificially interrupted).

"Reservoirs" means standing water that is always fresh, in well-defined artificially created impoundments.

"Saline or salt waters" means waters with dissolved inorganic ion concentrations greater than thirty-two parts per thousand.

"Saline lakes" means standing waters of salinities ranging from brackish to hypersaline, located in well-defined natural basins, and lacking a natural surface connection to the ocean. Saline lakes may be present as high-island shoreline or near-shoreline features (e.g. Lake Nomilu, Kauai; Salt Lake, Oahu; Lake Kauhako, Molokai) or as low-island closed lagoons (Lake Laysan, Laysan). They are usually, but not always, fed by seawater seepage and may be diluted by rainwater, overland runoff, or ground water, or concentrated by evaporation.

"Springs and seeps" means small, perennial, relatively constant freshwater flow not in distinct channels, such as wet films or trickles over rock surfaces, in which the water emanates from elevated aquifers. Springs and seeps may be either stream associated, occurring in deeply cut valleys and contributing to stream flow; or coastal, occurring on coastal cliffs and usually flowing into the ocean.

"Standing waters" refers to waters of variable size, depth, and salinity, that have little or no flow and that are usually contained in well-defined basins. Standing water bodies include natural freshwater lakes, reservoirs or impoundments, saline lakes, and anchialine pools.

"State waters", as defined by section 342D-1, HRS, means all waters, fresh, brackish, or salt around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, ground waters, and lakes; provided that drainage ditches, ponds, and reservoirs required as part of a water pollution control system are excluded. This chapter applies to all state

waters, including wetlands, subject to the following exceptions:

- (1) This chapter does not apply to groundwater.
- (2) This chapter does not apply to ditches, flumes, ponds and reservoirs that are required as part of a water pollution control system.
- (3) This chapter does not apply to ditches, flumes, ponds, and reservoirs that are used solely for irrigation and do not overflow into any other state waters, unless such ditches, flumes, ponds, and reservoirs are waters of the United States as defined in 40 C.F.R. 122.2. The State of Hawai'i has those boundaries stated in the Hawai'i Constitution, art. XV, §1.

"Streams" means seasonal or continuous water flowing unidirectionally down altitudinal gradients in all or part of natural or modified channels as a result of either surface water runoff or ground water influx, or both. Streams may be either perennial or intermittent and include all natural or modified watercourses.

"Stream channel" means a natural or modified watercourse with a definite bed and banks which periodically or continuously contains flowing water.

"Stream system" means the aggregate of water features comprising or associated with a stream, including the stream itself and its tributaries, headwaters, ponds, wetlands, and estuary. A stream system is geographically delimited by the boundaries of its drainage basin or watershed.

"Surface water" means both contained surface water (that is, water upon the surface of the earth in well-defined basins created naturally or artificially including, but not limited to, streams, other watercourses, lakes, and reservoirs) and diffused surface water (that is, water occurring upon the surface of the ground other than in contained basins). Water from natural springs and seeps is surface water

when it exits from the spring onto the earth's surface.

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

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

Wetlands may be fresh, brackish, or saline and generally include swamps, marshes, bogs, and associated ponds and pools, mud flats, isolated seasonal ponds, littoral zones of standing water bodies, and alluvial floodplains. For the purpose of applying for water quality certifications under Clean Water Act Section 401, and for National Pollutant Discharge Elimination System (NPDES) permit purposes, the identification and delineation of wetland boundaries shall be done following the procedures described in the U.S. Army Corps of Engineers' Wetlands Delineation Manual (USACE 1987). [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/02/04; comp 06/15/09; comp 10/21/12; am and comp **DEC 06 2013**] (Auth: HRS §187A-1, §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5; 40 C.F.R. §§ 122.2, 130.2, 131.3, 131.12; 22 U.S.C. §1362(14))

§11-54-1.1 General policy of water quality antidegradation. (a) Existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(b) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the director finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the state's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the director shall assure water quality adequate to protect existing uses fully. Further, the director shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(c) Where existing high quality waters constitute an outstanding resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(d) In those areas where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Clean Water Act. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp **DEC 06 2013**] (Auth: HRS §§342D-1, 342D-4, 342D-5; 40 C.F.R. 131.12) (Imp: HRS §§342D-4, 342D-5)

§11-54-2 Classification of state waters. (a) State waters are classified as either inland waters or marine waters.

- (b) Inland waters may be fresh, brackish, or saline.
- (1) All inland fresh waters are classified as follows, based on their ecological characteristics and other natural criteria:
 - (A) Flowing waters.
 - (i) Streams (perennial and intermittent);
 - (ii) Flowing springs and seeps; and
 - (iii) Ditches and flumes that discharge into any other waters of the State;
 - (B) Standing waters.
 - (i) Natural freshwater lakes; and Reservoirs (impoundments);
 - (C) Wetlands.
 - (i) Elevated wetlands (bogs, marshes, swamps, and associated ponds); and
 - (ii) Low wetlands (marshes, swamps, and associated ponds).
- (2) All inland brackish or saline waters are classified as follows, based on their ecological characteristics and other natural criteria:
 - (A) Standing waters.
 - (i) Anchialine pools; and
 - (ii) Saline lakes.
 - (B) Wetlands.
 - (i) Coastal wetlands (marshes, swamps, and associated ponds).
 - (C) Estuaries.
 - (i) Natural estuaries (stream-fed estuaries and spring-fed estuaries); and
 - (ii) Developed estuaries.
- (c) Marine waters
 - (1) All marine waters are either embayments, open coastal, or oceanic waters;
 - (2) All marine waters which are embayments or open coastal waters are also classified according to the following bottom subtypes:

- (A) Sand beaches;
- (B) Lava rock shorelines and solution benches;
- (C) Marine pools and protected coves;
- (D) Artificial basins;
- (E) Reef flats; and
- (F) Soft bottoms. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp **DEC 06 2013**]
(Auth: HRS §§342D-1, 342D-4, 342D-5)(Imp: HRS §§342D-4, 342D-5)

§11-54-3 Classification of water uses. (a) The following use categories classify inland and marine waters for purposes of applying the standards set forth in this chapter, and for the selection or definition of appropriate quality parameters and uses to be protected in these waters. Storm water discharge into State waters shall be allowed provided it meets the requirements specified in this section and the basic water quality criteria specified in section 11-54-4.

- (b) Inland waters.
 - (1) Class 1.

It is the objective of class 1 waters that these waters remain in their natural state as nearly as possible with an absolute minimum of pollution from any human-caused source. To the extent possible, the wilderness character of these areas shall be protected. Waste discharge into these waters is prohibited, except as provided in section 11-54-4(e). Any conduct which results in a demonstrable increase in levels

of point or nonpoint source contamination in class 1 waters is prohibited.

(A) Class 1.a.

The uses to be protected in class 1.a waters are scientific and educational purposes, protection of native breeding stock, baseline references from which human-caused changes can be measured, compatible recreation, aesthetic enjoyment, and other nondegrading uses which are compatible with the protection of the ecosystems associated with waters of this class;

(B) Class 1.b.

The uses to be protected in class 1.b waters are domestic water supplies, food processing, protection of native breeding stock, the support and propagation of aquatic life, baseline references from which human-caused changes can be measured, scientific and educational purposes, compatible recreation, and aesthetic enjoyment. Public access to these waters may be restricted to protect drinking water supplies;

(2) Class 2

The objective of class 2 waters is to protect their use for recreational purposes, the support and propagation of aquatic life, agricultural and industrial water supplies, shipping, and navigation. The uses to be protected in this class of waters are all uses compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation in and on these waters. These waters shall not act as receiving waters for any discharge which has not received the best degree of treatment or control compatible with the criteria established for this class. No new treated

sewage discharges shall be permitted within estuaries. No new industrial discharges shall be permitted within estuaries, with the exception of:

- (A) Acceptable non-contact thermal and drydock or marine railway discharges within Pearl Harbor, Oahu;
 - (B) Stormwater discharges associated with industrial activities (defined in 40 C.F.R. section 122.26(b)(14) and (b)(15), except (b)(15)(i)(A) and (b)(15)(i)(B)) which meet, at the minimum, the basic water quality criteria applicable to all waters as specified in section 11-54-4(a), and all applicable requirements specified in chapter 11-55, titled "Water Pollution Control"; and
 - (C) Discharges covered by a National Pollutant Discharge Elimination System general permit, approved by the U.S. Environmental Protection Agency and issued by the Department in accordance with 40 C.F.R. section 122.28 and all applicable requirements specified in chapter 11-55, titled "Water Pollution Control".
- (c) Marine waters.
- (1) Class AA.
- It is the objective of class AA waters that these waters remain in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-caused source or actions. To the extent practicable, the wilderness character of these areas shall be protected. No zones of mixing shall be permitted in this class:
- (A) Within a defined reef area, in waters of a depth less than 18 meters (ten fathoms); or

- (B) In waters up to a distance of 300 meters (one thousand feet) off shore if there is no defined reef area and if the depth is greater than 18 meters (ten fathoms).

The uses to be protected in this class of waters are oceanographic research, the support and propagation of shellfish and other marine life, conservation of coral reefs and wilderness areas, compatible recreation, and aesthetic enjoyment. The classification of any water area as Class AA shall not preclude other uses of the waters compatible with these objectives and in conformance with the criteria applicable to them;

(2) Class A.

It is the objective of class A waters that their use for recreational purposes and aesthetic enjoyment be protected. Any other use shall be permitted as long as it is compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation in and on these waters. These waters shall not act as receiving waters for any discharge which has not received the best degree of treatment or control compatible with the criteria established for this class. No new sewage discharges will be permitted within embayments. No new industrial discharges shall be permitted within embayments, with the exception of:

- (A) Acceptable non-contact thermal and drydock or marine railway discharges, in the following water bodies:
- (i) Honolulu Harbor, Oahu;
 - (ii) Barbers Point Harbor, Oahu;
 - (iii) Keehi Lagoon Marina Area, Oahu;
 - (iv) Ala Wai Boat Harbor, Oahu; and
 - (v) Kahului Harbor, Maui.

- (B) Storm water discharges associated with industrial activities (defined in 40 C.F.R. Section 122.26(b)(14) and (b)(15), except (b)(15)(i)(A) and (b)(15)(i)(B)) which meet, at the minimum, the basic water quality criteria applicable to all waters as specified in section 11-54-4, and all applicable requirements specified in the chapter 11-55, titled "Water Pollution Control"; and
 - (C) Discharges covered by a National Pollutant Discharge Elimination System general permit, approved by the U.S. Environmental Protection Agency and issued by the Department in accordance with 40 C.F.R. Section 122.28 and all applicable requirements specified in chapter 11-55, titled "Water Pollution Control".
- (d) Marine bottom ecosystems.
- (1) Class I.
It is the objective of class I marine bottom ecosystems that they remain as nearly as possible in their natural pristine state with an absolute minimum of pollution from any human-induced source. Uses of marine bottom ecosystems in this class are passive human uses without intervention or alteration, allowing the perpetuation and preservation of the marine bottom in a most natural state, such as for nonconsumptive scientific research (demonstration, observation or monitoring only), nonconsumptive education, aesthetic enjoyment, passive activities, and preservation;
 - (2) Class II.
It is the objective of class II marine bottom ecosystems that their use for protection including propagation of fish,

shellfish, and wildlife, and for recreational purposes not be limited in any way. The uses to be protected in this class of marine bottom ecosystems are all uses compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation. Any action which may permanently or completely modify, alter, consume, or degrade marine bottoms, such as structural flood control channelization(dams); landfill and reclamation; navigational structures (harbors, ramps); structural shore protection (seawalls, revetments); and wastewater effluent outfall structures may be allowed upon securing approval in writing from the director, considering the environmental impact and the public interest pursuant to sections 342D-4, 342D-5, 342D-6, and 342D-50, HRS in accordance with the applicable provisions of chapter 91, HRS. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; am and comp 10/21/12; am and comp **DEC 06 2013**] (Auth: HRS §174C, §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-4 Basic water quality criteria applicable to all waters. (a) All waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants, including:

- (1) Materials that will settle to form objectionable sludge or bottom deposits;
- (2) Floating debris, oil, grease, scum, or other floating materials;
- (3) Substances in amounts sufficient to produce taste in the water or detectable off-flavor

in the flesh of fish, or in amounts sufficient to produce objectionable color, turbidity or other conditions in the receiving waters;

- (4) High or low temperatures, biocides, pathogenic organisms, toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, ~~or aquatic life, or in amounts sufficient to~~ interfere with any beneficial use of the water;
- (5) Substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life; and
- (6) Soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways; subdivisions; recreational, commercial, or industrial developments; or the cultivation and management of agricultural lands.

(b) To ensure compliance with paragraph (a)(4), all state waters are subject to monitoring and to the following standards for acute and chronic toxicity and the protection of human health.

(1) As used in this section:

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

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

"Dilution" means, for discharges through submerged outfalls, the average and minimum values calculated using the models in the EPA publication, Initial Mixing Characteristics of Municipal Ocean Discharges (EPA/600/3-85/073, November, 1985), or in the EPA publication, Expert System for Hydrodynamic Mixing Zone Analysis of Conventional and Toxic Submerged Single Port Discharges (Cormix 1) (EPA/600/3-90/012), February, 1990.

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

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

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

(2) Narrative toxicity and human health standards.

- (A) Acute Toxicity Standards: All state waters shall be free from pollutants in concentrations which exceed the acute standards listed in paragraph (3). All state waters shall also be free from acute toxicity as measured using the toxicity tests listed in section 11-54-10, or other methods specified by the director.
- ~~(B) Chronic Toxicity Standards: All state waters shall be free from pollutants in concentrations which on average during any twenty-four hour period exceed the chronic standards listed in paragraph (3). All state waters shall also be free from chronic toxicity as measured using the toxicity tests listed in section 11-54-10, or other methods specified by the director.~~
- (C) Human Health Standards: All state waters shall be free from pollutants in concentrations which, on average during any thirty day period, exceed the "fish consumption" standards for non-carcinogens in paragraph (3). All state waters shall also be free from pollutants in concentrations, which on average during any 12 month period, exceed the "fish consumption" standards for pollutants identified as carcinogens in paragraph (3).
- (3) Numeric standards for toxic pollutants applicable to all waters. The freshwater standards apply where the dissolved inorganic ion concentration is less than 0.5 parts per thousand; saltwater standards apply above 0.5 parts per thousand. Values for metals refer to the dissolved fraction. All values are expressed in micrograms per liter.

| <u>Pollutant</u> | <u>Freshwater</u> | | <u>Saltwater</u> | | <u>Fish Consumption</u> |
|--------------------------------|-------------------|----------------|------------------|----------------|-----------------------------|
| | <u>Acute</u> | <u>Chronic</u> | <u>Acute</u> | <u>Chronic</u> | |
| Acenaphthene | 570 | ns | 320 | ns | ns |
| Acrolein | 23 | ns | 18 | ns | 250 |
| Acrylonitrile* | 2,500 | ns | ns | ns | 0.21 |
| Aldrin* | 3.0 | ns | 1.3 | ns | 0.000026 |
| Aluminum | 750 | 260 | ns | ns | ns |
| Antimony | 3,000 | ns | ns | ns | 15,000 |
| Arsenic | 360 | 190 | 69 | 36 | ns |
| Benzene* | 1,800 | ns | 1,700 | ns | 13 |
| Benzidine* | 800 | ns | ns | ns | 0.00017 |
| Beryllium* | 43 | ns | ns | ns | 0.038 |
| Cadmium | 3+ | 3+ | 43 | 9.3 | ns |
| Carbon tetra- chloride* | 12,000 | ns | 16,000 | ns | 2.3 |
| Chlordane* | 2.4 | 0.0043 | 0.09 | 0.004 | 0.00016 |
| Chlorine | 19 | 11 | 13 | 7.5 | ns |
| Chloroethers- ethyl(bis-2)* | ns | ns | ns | ns | 0.44 |
| isopropyl | ns | ns | ns | ns | 1,400 |
| methyl(bis)* | ns | ns | ns | ns | 0.00060 |
| Chloroform* | 9,600 | ns | ns | ns | 5.1 |
| Chlorophenol(2) | 1,400 | ns | ns | ns | ns |
| Chlorpyrifos | 0.083 | 0.041 | 0.011 | 0.0056 | ns |
| Chromium (VI) | 16 | 11 | 1,100 | 50 | ns |

| <u>Pollutant</u> | <u>Freshwater</u> | | <u>Saltwater</u> | | <u>Fish Consumption</u> |
|------------------|-------------------|----------------|------------------|----------------|-----------------------------|
| | <u>Acute</u> | <u>Chronic</u> | <u>Acute</u> | <u>Chronic</u> | |
| Copper | 6+ | 6+ | 2.9 | 2.9 | ns |
| Cyanide | 22 | 5.2 | 1 | 1 | ns |
| DDT* | 1.1 | 0.001 | 0.013 | 0.001 | 0.000008 |
| metabolite TDE* | 0.03 | ns | 1.2 | ns | ns |
| Demeton | ns | 0.1 | ns | 0.1 | ns |
| Dichloro- | | | | | |
| benzenes* | 370 | ns | 660 | ns | 850 |
| benzidine* | ns | ns | ns | ns | 0.007 |
| ethane(1,2)* | 39,000 | ns | 38,000 | ns | 79 |
| phenol(2,4) | 670 | ns | ns | ns | ns |
| propanes | 7,700 | ns | 3,400 | ns | ns |
| propene(1,3) | 2,000 | ns | 260 | ns | 4.6 |
| Dieldrin* | 2.5 | 0.0019 | 0.71 | 0.0019 | 0.000025 |
| Dinitro | | | | | |
| o-cresol(4,6) | ns | ns | ns | ns | 250 |
| toluenes* | 110 | ns | 200 | ns | 3.0 |
| Dioxin* | 0.003 | ns | ns | ns | 5.0x10 ⁻⁹ |
| Diphenyl- | | | | | |
| hydrazine(1,2) | ns | ns | ns | ns | 0.018 |
| Endosulfan | 0.22 | 0.056 | 0.034 | 0.0087 | 52 |
| Endrin | 0.18 | 0.0023 | 0.037 | 0.0023 | ns |
| Ethylbenzene | 11,000 | ns | 140 | ns | 1,070 |
| Fluoranthene | 1,300 | ns | 13 | ns | 18 |
| Guthion | ns | 0.01 | ns | 0.01 | ns |
| Heptachlor* | 0.52 | 0.0038 | 0.053 | 0.0036 | 0.00009 |

| <u>Pollutant</u> | <u>Freshwater</u> | | <u>Saltwater</u> | | <u>Fish Consumption</u> |
|----------------------------|-------------------|----------------|------------------|----------------|-----------------------------|
| | <u>Acute</u> | <u>Chronic</u> | <u>Acute</u> | <u>Chronic</u> | |
| Hexachloro- benzene* | ns | ns | ns | ns | 0.00024 |
| butadiene* | 30 | ns | 11 | ns | 16 |
| cyclohexane- alpha* | ns | ns | ns | ns | 0.010 |
| beta* | ns | ns | ns | ns | 0.018 |
| technical* | ns | ns | ns | ns | 0.014 |
| cyclopentadiene | 2 | ns | 2 | ns | ns |
| ethane* | 330 | ns | 310 | ns | 2.9 |
| Isophorone | 39,000 | ns | 4,300 | ns | 170,000 |
| Lead | 29+ | 29+ | 140 | 5.6 | ns |
| Lindane* | 2.0 | 0.08 | 0.16 | ns | 0.020 |
| Malathion | ns | 0.1 | ns | 0.1 | ns |
| Mercury | 2.4 | 0.55 | 2.1 | 0.025 | 0.047 |
| Methoxychlor | ns | 0.03 | ns | 0.03 | ns |
| Mirex | ns | 0.001 | ns | 0.001 | ns |
| Naphthalene | 770 | ns | 780 | ns | ns |
| Nickel | 5+ | 5+ | 75 | 8.3 | 33 |
| Nitrobenzene | 9,000 | ns | 2,200 | ns | ns |
| Nitrophenols* | 77 | ns | 1,600 | ns | ns |
| Nitrosamines* | 1,950 | ns | ns | ns | 0.41 |
| Nitroso dibutylamine-N* | ns | ns | ns | ns | 0.19 |
| diethylamine-N* | ns | ns | ns | ns | 0.41 |

| <u>Pollutant</u> | <u>Freshwater</u> | | <u>Saltwater</u> | | <u>Fish Consumption</u> |
|------------------------------------|-------------------|----------------|------------------|----------------|-----------------------------|
| | <u>Acute</u> | <u>Chronic</u> | <u>Acute</u> | <u>Chronic</u> | |
| dimethylamine-N* | ns | ns | ns | ns | 5.3 |
| diphenylamine-N* | ns | ns | ns | ns | 5.3 |
| pyrrolidine-N* | ns | ns | ns | ns | 30 |
| Parathion | 0.065 | 0.013 | ns | ns | ns |
| <hr/> | | | | | |
| Pentachloro-ethanes | 2,400 | ns | 130 | ns | ns |
| benzene | ns | ns | ns | ns | 28 |
| phenol | 20 | 13 | 13 | ns | ns |
| Phenol | 3,400 | ns | 170 | ns | ns |
| 2,4-dimethyl | 700 | ns | ns | ns | ns |
| Phthalate esters | | | | | |
| dibutyl | ns | ns | ns | ns | 50,000 |
| diethyl | ns | ns | ns | ns | 590,000 |
| di-2-ethylhexyl | ns | ns | ns | ns | 16,000 |
| dimethyl | ns | ns | ns | ns | 950,000 |
| Polychlorinated biphenyls* | 2.0 | 0.014 | 10 | 0.03 | 0.000079 |
| Polynuclear aromatic hydrocarbons* | ns | ns | ns | ns | 0.01 |
| Selenium | 20 | 5 | 300 | 71 | ns |
| Silver | 1+ | 1+ | 2.3 | ns | ns |
| Tetrachloro- | | | | | |
| ethanes | 3,100 | ns | ns | ns | ns |
| benzene (1,2,4,5) | ns | ns | ns | ns | 16 |
| ethane (1,1,2,2)* | ns | ns | 3,000 | ns | 3.5 |
| ethylene* | 1,800 | ns | 3,400 | 145 | 2.9 |

| <u>Pollutant</u> | <u>Freshwater</u> | | <u>Saltwater</u> | | <u>Fish Consumption</u> |
|------------------|-------------------|----------------|------------------|----------------|-----------------------------|
| | <u>Acute</u> | <u>Chronic</u> | <u>Acute</u> | <u>Chronic</u> | |
| phenol(2,3,5,6) | ns | ns | ns | 440 | ns |
| Thallium | 470 | ns | 710 | ns | 16 |
| Toluene | 5,800 | ns | 2,100 | ns | 140,000 |
| Toxaphene* | 0.73 | 0.0002 | 0.21 | 0.0002 | 0.00024 |
| Tributyltin | ns | 0.026 | ns | 0.01 | ns |
| Trichloro- | | | | | |
| ethane(1,1,1) | 6,000 | ns | 10,400 | ns | 340,000 |
| ethane(1,1,2)* | 6,000 | ns | ns | ns | 14 |
| ethylene* | 15,000 | ns | 700 | ns | 26 |
| phenol(2,4,6)* | ns | ns | ns | ns | 1.2 |
| Vinyl chloride* | ns | ns | ns | ns | 170 |
| Zinc | 22+ | 22+ | 95 | 86 | ns |

ns - No standard has been developed.

* - Carcinogen.

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

Note - Compounds listed in the plural in the "Pollutant" column represent complex mixtures of isomers.

Numbers listed to the right of these compounds refer to the total allowable concentration of any combination of isomers of the compound, not only to concentrations of individual isomers.

- (4) The following are basic requirements applicable to discharges to state waters. These standards shall be enforced through effluent limitations or other conditions in discharge permits. The director may apply more stringent discharge requirements to any

discharge if necessary to ensure compliance with all standards in paragraph (2).

(A) Continuous discharges through submerged outfalls.

- (i) The No Observed Effect Concentration (NOEC), expressed as per cent effluent, of continuous discharges through submerged outfalls shall not be less than 100 divided by the minimum dilution; or,
- (ii) The Test of Significant Toxicity (TST), as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010), shall be used to demonstrate no unacceptable level of chronic toxicity at the In-stream Waste Concentration (IWC). The chronic toxicity criterion is expressed using a regulatory management decision (b value) of 0.75 for chronic toxicity where, a 0.25 effect level (or more) at the IWC demonstrates an unacceptable level of chronic toxicity.

(B) Continuous discharges through submerged outfalls shall not contain:

- (i) Pollutants in twenty four hour average concentrations greater than the values obtained by multiplying the minimum dilution by the standards in paragraph (3) for the prevention of chronic toxicity.
- (ii) Non-carcinogenic pollutants in thirty day average concentrations greater than the values obtained by multiplying the minimum dilution by the standards in

- paragraph (3) for fish consumption.
- (iii) Carcinogenic pollutants in twelve month average concentrations greater than the values obtained by multiplying the average dilution by the standards in paragraph (3) for fish consumption.
- (C) Discharges without submerged outfalls.
- (i) The survival of test organisms in an undiluted acute toxicity test of any discharge shall not be less than eighty per cent;
 - (ii) Compliance with the acute toxicity NPDES effluent limit is demonstrated by using the Test of Significant Toxicity (TST) as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010). The acute toxicity criterion is expressed using a regulatory management decision (*b* value) of 0.80 for acute toxicity test methods listed in 11-54-10, where, in an undiluted acute toxicity test, a 0.20 effect level (or more) at the IWC demonstrates an unacceptable level of acute toxicity; or,
 - (iii) The Test of Significant Toxicity (TST), as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010), shall be used to demonstrate no unacceptable level of chronic toxicity at the IWC. The chronic toxicity criterion is expressed using a regulatory management decision (*b* value) of 0.75 for chronic toxicity where, a 0.25 effect

level (or more) at the IWC demonstrates an unacceptable level of chronic toxicity. Toxicity is considered significant if the mean response in the IWC is greater than 0.75 multiplied by the mean response of the control.

No discharge shall contain pollutants in concentrations greater than the standards in paragraph (3) for the prevention of acute toxicity to aquatic life. The director may make a limited allowance for dilution for a discharge in this category if it meets the following criteria: the discharge velocity is greater than 3 meters per second; the discharge enters the receiving water horizontally, and; the receiving water depth at the discharge point is greater than zero.

(c) The requirements of paragraph (a)(6) shall be deemed met upon a showing that the land on which the erosion occurred or is occurring is being managed in accordance with soil conservation practices acceptable to the applicable soil and water conservation district and the director, and that a comprehensive conservation program is being actively pursued, or that the discharge has received the best degree of treatment or control, and that the severity of impact of the residual soil reaching the receiving body of water is deemed to be acceptable.

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

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

(e) Pesticide Application.

(1) As used in this section:

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

"Pest" means any insect, rodent, nematode, fungus, weed, or

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

"Pesticide" means

- (A) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest;
- (B) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and
- (C) Any nitrogen stabilizer, except that the term "pesticide" shall not include any article that is a "new animal drug" within the meaning of 21 U.S.C. 321(w), that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of 21 U.S.C. 321(x) bearing or containing a new animal drug.

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

Note: drugs used to control diseases of humans or animals (such as livestock, fishstock and pets) are not considered pesticides; such drugs are regulated by the Food and Drug Administration. Fertilizers, nutrients, and other substances used to promote plant survival and health are not considered plant growth regulators and thus are not pesticides. Biological control agents, except for certain microorganisms, are exempted from regulation under FIFRA. (Biological control agents include beneficial predators such as birds or ladybugs that eat insect pests, parasitic wasps, fish, etc.).

- (2) Pesticide applications may be made to State waters if the pesticide applications are:
- (A) Registered by the U.S. Environmental Protection Agency and licensed by the

- state department of agriculture or other state agency regulating pesticides;
- (B) Used for the purpose of controlling mosquito and other flying insect pests; controlling weed and algae pests; controlling animal pests; controlling forest canopy pests; or protecting public health or the environment in a declared pest emergency situation or as determined by the director;
 - (C) Applied in a manner consistent with the labeling of the pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act;
 - (D) Applied under permits issued pursuant to HRS chapter 342D, if the Director requires such permits under HRS Chapter 342D;
 - (E) Applied in a manner so applicable narrative and numeric state water quality criteria as required in chapter 11-54 are met. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; am and comp 06/15/09; am and comp 10/21/12; am and comp **DEC 06 2013**] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-5 Uses and specific criteria applicable to inland waters. Inland water areas to be protected are described in section 11-54-5.1, corresponding specific criteria are set forth in section 11-54-5.2; water body types are defined in section 11-54-1. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

11-54-05

§11-54-5.1 Inland water areas to be protected.

(a) Freshwaters.

(1) Flowing waters: perennial streams and rivers, intermittent streams, springs and seeps, and man-made ditches and flumes that discharge into any other waters of the State.

(A) Class 1.a.

(i) All flowing waters within the natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.

(ii) All flowing waters in national and state parks.

(iii) All flowing waters in state or federal fish and wildlife refuges.

(iv) All flowing waters which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.

(v) All flowing waters in Waimanu National Estuarine Research Reserve (Hawai'i).

(B) Class 1.b. All flowing waters in protective subzones designated under chapter 13-5 by the state department of land and natural resources.

(C) Class 2. All flowing waters in areas not otherwise classified.

All flowing waters in classes 1 and 2 in which water quality exceeds the standards specified in this chapter shall not be lowered in quality unless it has been affirmatively demonstrated to the director that the change is justifiable as a result of important economic or social development and will not interfere with or become injurious to any assigned uses made of, or presently in, those waters. This statement of antidegradation policy does not limit the applicability of the policy in §11-54-1.1 to the whole chapter.

- (2) Standing waters (natural freshwater lakes and reservoirs):
- (A) Class 1.a.
 - (i) All standing waters within the natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.
 - (ii) All standing waters in national and state parks.
 - (iii) All standing waters in state or federal fish and wildlife refuges.
 - (iv) All standing waters which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.
 - (v) All standing waters in Waimanu National Estuarine Research Reserve (Hawai'i).
 - (B) Class 1.b. All standing waters in protective subzones designated under chapter 13-5 by the state department of land and natural resources.

- (C) Class 2. All standing waters in areas not otherwise classified.
- (3) Elevated wetlands and low wetlands:
 - (A) Class 1.a.
 - (i) All elevated and low wetlands within the natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.
 - (ii) All elevated and low wetlands in national and state parks.
 - (iii) All elevated and low wetlands in state or federal fish and wildlife refuges.
 - (iv) All elevated and low wetlands which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.
 - (v) All elevated and low wetlands in Waimanu National Estuarine Research Reserve (Hawai'i).
 - (B) Class 1.b. All elevated and low wetlands in protective subzones designated under chapter 13-5 by the state department of land and natural resources.
 - (C) Class 2. All elevated and low wetlands not otherwise classified.
- (b) Brackish or saline waters (anchialine pools, saline lakes, coastal wetlands, and estuaries).
 - (1) Class 1.a.
 - (A) All inland brackish or saline waters within natural reserves, preserves, sanctuaries, and refuges established by

- the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.
- (B) All inland brackish or saline waters in national and state parks.
 - (C) All inland brackish or saline waters in state or federal fish and wildlife refuges.
 - (D) All inland brackish or saline waters which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.
 - (E) All inland brackish and saline waters in Waimanu National Estuarine Research Reserve (Hawai'i).
 - (F) The following natural estuaries:
Lumaha'i and Kilauea estuaries
(Kaua'i).
- (2) Class 1.b. All inland brackish or saline waters in protective subzones designated under chapter 13-5 by the state department of land and natural resources.
 - (3) Class 2. All inland brackish and saline waters not otherwise classified. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp **DEC 06 2013**] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-5.2 Inland water criteria. (a) Criteria for springs and seeps, ditches and flumes, natural freshwater lakes, reservoirs, low wetlands, coastal wetlands, saline lakes, and anchialine pools. Only

the basic criteria set forth in section 11-54-4 apply to springs and seeps, ditches and flumes, natural freshwater lakes, reservoirs, low wetlands, coastal wetlands, saline lakes, and anchialine pools. Natural freshwater lakes, saline lakes, and anchialine pools will be maintained in the natural state through Hawai'i's "no discharge" policy for these waters. Waste discharge into these waters is prohibited, except as provided in section 11-54-4(e) (see section 11-54-3(b)(1)).

(b) Specific criteria for streams. Water column criteria for streams shall be as provided in the following table:

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent of the time</u> | Not to Exceed the given value more than two per cent of <u>the time</u> |
|-------------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Total Nitrogen (ug N/L) | 250.0* 180.0** | 520.0* 380.0** | 800.0* 600.0** |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 70.0* 30.0** | 180.0* 90.0** | 300.0* 170.0** |
| Total Phosphorus (ug P/L) | 50.0* 30.0** | 100.0* 60.0** | 150.0* 80.0** |
| Total Suspended Solids (mg/L) | 20.0* 10.0** | 50.0* 30.0** | 80.0* 55.0** |
| Turbidity (N.T.U.) | 5.0* 2.0** | 15.0* 5.5** | 25.0* 10.0** |

* Wet season - November 1 through April 30.

** Dry season - May 1 through October 31.

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the

same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

pH Units - shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 5.5 nor higher than 8.0

Dissolved Oxygen - Not less than eighty per cent saturation, determined as a function of ambient water temperature.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Specific Conductance - Not more than three hundred micromhos/centimeter.

(1) Bottom criteria for streams:

- (A) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding an equivalent thickness of five millimeters (0.20 inches) over hard bottoms twenty-four hours after a heavy rainstorm.
- (B) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding an equivalent thickness of ten millimeters (0.40 inches) over soft bottoms twenty-four hours after a heavy rainstorm.
- (C) In soft bottom material in pool sections of streams, oxidation-reduction potential (EH) in the top ten centimeters (four inches) shall not be less than +100 millivolts.
- (D) In soft bottom material in pool sections of streams, no more than fifty per cent of the grain size distribution of sediment shall be smaller than 0.125 millimeters (0.005 inches) in diameter.
- (E) The director shall prescribe the appropriate parameters, measures, and criteria for monitoring stream bottom biological communities including their habitat, which may be affected by

proposed actions. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality criteria for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.

(c) Specific criteria for elevated wetlands: pH units shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 4.5 nor higher than 7.0.

(d) Specific criteria for estuaries.

(1) The following table is applicable to all estuaries except Pearl Harbor:

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent of the time</u> | Not to Exceed the given value more than <u>two per cent of the time</u> |
|----------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Total Nitrogen (ug N/L) | 200.00 | 350.00 | 500.00 |
| Ammonia Nitrogen (ug NH ₄ -N/L) | 6.00 | 10.00 | 20.00 |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 8.00 | 25.00 | 35.00 |
| Total Phosphorus (ug P/L) | 25.00 | 50.00 | 75.00 |
| Chlorophyll a (ug/L) | 2.00 | 5.00 | 10.00 |

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent of the time</u> | Not to exceed the given value more than <u>two per cent of the time</u> |
|--------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Turbidity (N.T.U.) | 1.5 | 3.00 | 5.00 |

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

pH Units - shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 7.0 nor higher than 8.6.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from ambient conditions.

Oxidation - reduction potential (EH) - Shall not be less than -100 millivolts in the uppermost ten centimeters (four inches) of sediment.

(2) The following table is applicable only to Pearl Harbor Estuary.

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent of the time</u> | Not to exceed the given value more than <u>two per cent of the time</u> |
|------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
|------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent of the time</u> | Not to exceed the given value more than <u>two per cent of the time</u> |
|----------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Total Nitrogen (ug N/L) | 300.00 | 550.00 | 750.00 |
| Ammonia Nitrogen (ug NH ₄ -N/L) | 10.00 | 20.00 | 30.00 |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 15.00 | 40.00 | 70.00 |
| Total Phosphorus (ug P/L) | 60.00 | 130.00 | 200.00 |
| Chlorophyll a (ug/L) | 3.50 | 10.00 | 20.00 |
| Turbidity (N.T.U.) | 4.00 | 8.00 | 15.00 |

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams.

pH Units - shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 6.8 nor higher than 8.8.

Dissolved Oxygen - Not less than sixty per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from ambient conditions.

Oxidation - Reduction potential (EH) - Shall not be less than -100 millivolts in the uppermost ten centimeters (four inches) of sediment. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; am and comp 10/21/12; am and comp **DEC 06 2013**] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-6 Uses and specific criteria applicable to marine waters. (a) Embayments.

(1) As used in this subsection:

"Embayments" means land-confined and physically-protected marine waters with restricted openings to open coastal waters, defined by the ratio of total bay volume to the cross-sectional entrance area of seven hundred to one or greater.

"Total bay volume" is measured in cubic meters and "cross-sectional entrance area" is measured in square meters, and both are determined at mean lower low water.

(2) Water areas to be protected.

(A) Class AA.

(i) Hawaii

Puako Bay
Waiulua Bay
Anaehoomalu Bay
Kiholo Bay
Kailua Harbor
Kealakekua Bay
Honaunau Bay

Oahu

Waiialua Bay
Kahana Bay
Kaneohe Bay

Hanauma Bay

Kauai

Hanalei Bay

- (ii) All embayments in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life established under chapter 190, HRS.
- (iii) All waters in state or federal fish and wildlife refuges and marine sanctuaries.
- (iv) All waters which have been officially identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.

(B) Class A.

Hawaii

Hilo Bay (inside breakwater)

Kawaihae Boat Harbor

Honokohau Boat Harbor

Keauhou Bay

Maui

Kahului Bay

Lahaina Boat Harbor

Maalaea Boat Harbor

Lanai

Manele Boat Harbor

Kaumalapau Harbor

Molokai

Hale o Lono Harbor

Kaunakakai Harbor

Kaunakakai Boat Harbor

Oahu

Kaiaka Bay

Paiko Peninsula to Koko Head

Ala Wai Boat Harbor
 Kewalo Basin
 Honolulu Harbor
 Keehi Lagoon
 Barbers Point Harbor
 Pokai Bay
 Heeia Kea Boat Harbor
 Waianae Boat Harbor
 Haleiwa Boat Harbor
 Ko Olina

Kauai
 Hanamaulu Bay
 Nawiliwili Bay
 Kukuiula Bay
 Wahiawa Bay
 Hanapepe Bay (inside breakwater)
 Kikiaola Boat Harbor
 Port Allen Boat Harbor

- (3) The following criteria are specific for all embayments excluding those described in subsection (d). (Note that criteria for embayments differ based on fresh water inflow.)

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent of the time</u> | Not to Exceed the given value more than <u>Two per cent of The time</u> |
|-------------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Total Nitrogen (ug N/L) | 200.00* 150.00** | 350.00* 250.00** | 500.00* 350.00** |
| Ammonia Nitrogen (ug NH ₄ -N/L) | 6.00* 3.50** | 13.00* 8.50** | 20.00* 15.00** |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 8.00* 5.00** | 20.00* 14.00** | 35.00* 25.00** |
| Total Phosphorus (ug P/L) | 25.00* 20.00** | 50.00* 40.00* | 75.00* 60.00** |

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent of the time</u> | Not to Exceed the given value more than <u>Two per cent of The time</u> |
|------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Chlorophyll a ug/L) | 1.50* 0.50** | 4.50** 1.50** | 8.50* 3.00** |
| Turbidity (N.T.U.) | 1.5* 0.40** | 3.00* 1.00** | 5.00* 1.50** |

* "Wet" criteria apply when the average fresh water inflow from the land equals or exceeds one per cent of the embayment volume per day.

** "Dry" criteria apply when the average fresh water inflow from the land is less than one per cent of the embayment volume per day.

Applicable to both "wet" and "dry" conditions:

pH Units - shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

(b) Open coastal waters.

(1) As used in this subsection:

"Open coastal waters" means marine waters bounded by the 183 meter or 600 foot (100 fathom) depth contour and the shoreline, excluding bays named in subsection (a).

- (2) Water areas to be protected (measured in a clockwise direction from the first-named to the second-named location, where applicable):

(A) Class AA.

- (i) Hawaii - The open coastal waters from Leleiwi Point to Waiulaula Point.
- (ii) Maui - The open coastal waters between Nakalele Point and Waihee Point and between Huelo Point and Puu Olai.
- (iii) Kahoolawe - All open coastal water surrounding the island.
- (iv) Lanai - All open coastal waters surrounding the island.
- (v) Molokai - The open coastal waters between the westerly boundary of Hale o Lono Harbor to Lamaloa Head. Also, the open coastal waters from Cape Halawa to the easterly boundary of Kaunakakai Harbor.
- (vi) Oahu - Waimanalo Bay from the southerly boundary of Kaiona Beach Park, and including the waters surrounding Manana and Kaohikaipu Islands, to Makapuu Point. Also, Waialua Bay from Kaiaka Point to Puaena Point, and the open coastal waters along Kaena Point between a distance of 5.6 kilometers (3.5 miles) from Kaena Point towards Makua and 5.6 kilometers (3.5 miles) from Kaena Point toward Mokuleia.

- (vii) Kauai - The open coastal waters between Hikimoe Valley and Makahoa Point. Also, the open coastal waters between Makahuena Point and the westerly boundary of Hoai Bay.
 - (viii) Niihau - All open coastal waters surrounding the island.
 - (ix) All other islands of the state - All open coastal waters surrounding the islands not classified in this section.
 - (x) All open waters in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS or similar reserves for the protection of marine life established under chapter 190, HRS, as amended; or in the refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service.
- (B) Class A - All other open coastal waters not otherwise specified.
- (3) The following criteria are specific for all open coastal waters, excluding those described in subsection (d). (Note that criteria for open coastal waters differ, based on fresh water discharge.)

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent</u> of the time | Not to exceed the given value more than two per cent of <u>the time</u> |
|-------------------------------------------------------------------------------|--------------------------------------------------------------|-------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|
| Total Nitrogen (ug N/L) | 150.00* 110.00** | 250.00* 180.00** | 350.00* 250.00** |
| Ammonia Nitrogen (ug NH ₄ -N/L) | 3.50* 2.00** | 8.50* 5.00** | 15.00* 9.00** |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 5.00* 3.50** | 14.00* 10.00** | 25.00* 20.00** |
| Total Phosphorus (ug P/L) | 20.00* 16.00** | 40.00* 30.00** | 60.00* 45.00** |
| Light Extinction Coefficient (k units) | 0.20* 0.10** | 0.50* 0.30** | 0.85* 0.55** |
| Chlorophyll a ug/L) | 0.30* 0.15** | 0.90* 0.50** | 1.75* 1.00** |
| Turbidity (N.T.U.) | 0.50* 0.20** | 1.25* 0.50** | 2.00* 1.00** |

* "Wet" criteria apply when the open coastal waters receive more than three million gallons per day of fresh water discharge per shoreline mile.

** "Dry" criteria apply when the open coastal waters receive less than three million gallons per day of fresh water discharge per shoreline mile.

Applicable to both "wet" and "dry" conditions:

pH Units - shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

k units = the ratio of light measured at the water's surface to light measured at a particular depth.

L = liter

Light Extinction Coefficient is only required for dischargers who have obtained a waiver pursuant to section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251), as amended, and are required by EPA to monitor it.

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

(c) Oceanic waters.

(1) As used in this subsection: "Oceanic waters" means all other marine waters outside of the 183 meter (600 feet or 100 fathom) depth contour.

(2) Water areas to be protected: Class A - All oceanic waters.

(3) The following criteria are specific for oceanic waters:

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed The given value more than <u>ten per cent of the time</u> | Not to exceed the given value more than <u>two per cent of the time</u> |
|-----------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Total Nitrogen (ug N/L) | 50.00 | 80.00 | 100.00 |
| Ammonia Nitrogen (ug NH ₄ -N/L) | 1.00 | 1.75 | 2.50 |

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed The given value more than <u>ten per cent of the time</u> | Not to exceed the given value more than two per cent of <u>the time</u> |
|----------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 1.50 | 2.50 | 3.50 |
| Total Phosphorus (ug P/L) | 10.00 | 18.00 | 25.00 |
| Chlorophyll a (ug/L) | 0.06 | 0.12 | 0.20 |
| Turbidity (N.T.U.) | 0.03 | 0.10 | 0.20 |

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

pH Units - shall not deviate more than 0.5 units from a value of 8.1.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

(d) Area-specific criteria for the Kona (west) coast of the island of Hawaii.

- (1) For all marine waters of the island of Hawaii from Loa Point, South Kona District, clockwise to Malae Point, North Kona District, excluding Kawaihae Harbor and

Honokohau Harbor, and for all areas from the shoreline at mean lower low water to a distance 1000 m seaward:

- (A) In areas where nearshore marine water salinity is greater than 32.00 parts per thousand the following specific criteria apply:

| <u>Parameter</u> | <u>Geometric mean not to exceed the given single value</u> |
|-------------------------------------------------------------------------|--------------------------------------------------------------------|
| Total Dissolved Nitrogen (ug N/L) | 100.00 |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 4.50 |
| Total Dissolved Phosphorus (ug P/L) | 12.50 |
| Phosphate (ug PO ₄ - P/L) | 5.00 |
| Ammonia Nitrogen (ug NH ₄ - N/L) | 2.50 |
| Chlorophyll a (ug/L) | 0.30 |
| Turbidity (N.T.U.) | 0.10 |

* Specific criteria for Class A embayments apply to Honokohau Harbor and Kawaihae Harbor, see section 11-54-6(a)(3).

- (B) If nearshore marine water salinity is less than or equal to 32.00 parts per thousand the following parameters shall be related to salinity on the basis of a linear least squares regression equation:

$$Y = MX + B$$

where:

Y = parameter concentration (in ug/L)

X = salinity (in ppt)

M = regression coefficient (or "slope")

B = constant (or "Y intercept").

The absolute value of the upper 95 per cent confidence limit for the calculated sample regression coefficient (M) shall not exceed the absolute value of the following values:

| <u>Parameter</u> | <u>M</u> |
|------------------------------------------------------|----------|
| Nitrate and Nitrite Nitrogen (ug [NO3 + NO2]-N/L) | -31.92 |
| Total Dissolved Nitrogen (ug N/L) | -40.35 |
| Phosphate (ug PO4 - P/L) | -3.22 |
| Total Dissolved Phosphorus (ug P/L) | -2.86 |

The specific criteria for ammonia nitrogen, chlorophyll a, and turbidity given in clause (i) also apply.

- (C) Parameter concentrations shall be determined along a horizontal transect extending seaward from a shoreline sample location using the following method: water samples shall be obtained at distances of 1, 10, 50, 100, and 500 meters from the shoreline sampling location. Samples shall be collected within one meter of the water surface and below the air-water interface. Dissolved nutrient samples shall be filtered through media with particle

size retention of 0.7 um. This sampling protocol shall be replicated not less than three times on different days over a period not to exceed fourteen days during dry weather conditions. The geometric means of sample measurements for corresponding offshore distances shall be used for regression calculations.

pH Units - shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

L - liter

N.T.U. - Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug - microgram or 0.000001 grams. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp **DEC 06 2013**] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-7 Uses and specific criteria applicable to marine bottom types. (a) Sand beaches.

- (1) As used in this subsection:
 "Sand beaches" means shoreline composed of the weathered calcareous remains of marine algae and animals (white sand), the weathered remains of volcanic tuff (olivine), or the weathered remains of lava (black sand). Associated animals are largely burrowers and are related to particle grain size, slope, and color of the beach.
- (2) Water areas to be protected:
- (A) Class I - All beaches on the Northwestern Hawaiian Islands. These islands comprise that portion of the Hawaiian archipelago which lies northwest of the island of Kauai and is part of the State of Hawaii; including Nihoa Island, Necker Island, French Frigate Shoals, Brooks Banks, Gardiner Pinnacles, Dowsett and Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Atoll, Gambia Shoal, and Kure Atoll.
- (B) Class II - All beaches not in Class I.
- (3) The following criteria are specific to sand beaches:
- (A) Episodic deposits of flood-borne sediment shall not occur in quantities exceeding an equivalent thickness of ten millimeters (0.40 inches) twenty-four hours after a heavy rainstorm.
- (B) Oxidation - reduction potential (EH) in the uppermost ten centimeters (four inches of sediment shall not be less than +100 millivolts
- (C) No more than fifty per cent of the grain size distribution of sediment shall be smaller than 0.125 millimeters in diameter.
- (b) Lava rock shoreline and solution benches.
- (1) As used in this subsection:

"Lava rock shorelines" means sea cliffs and other vertical rock faces, horizontal basalts, volcanic tuff beaches, and boulder beaches formed by rocks falling from above or deposited by storm waves. Associated plants and animals are adapted to the harsh physical environment and are distinctly zoned to the degree of wave exposure.

"Solution benches" means sea level platforms developed on upraised reef or solidified beach rock by the erosive action of waves and rains. Solution benches are distinguished by a thick algal turf and conspicuous zonation of plants and animals.

- (2) Water areas to be protected:
- (A) Class I - All lava rock shorelines and solution benches in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life established under chapter 190, HRS, as amended; or in refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service.
 - (B) Class II
 - (i) All other lava rock shorelines not in Class I.
 - (ii) The following solution benches:

| <u>Maui</u> | <u>Oahu</u> |
|--------------------------------|---------------|
| Kihei | Diamond Head |
| Papaula Point | Manana Island |
| | Makapuu |
| <u>Kauai</u> | Laie |
| Near Hanapepe | Kahuku |
| Salt Ponds | Mokuleia |
| Milolii | Makua |
| Nualolo | Makaha |
| Makaha | Maile |
| Mahaulepu | Lualualei |
| Kuhio Beach Park (Kukuiula) | Barbers Point |

- (3) The following criteria are specific to lava rock shorelines and solution benches:
- (A) Episodic deposits of flood-borne sediment shall not occur in quantities exceeding an equivalent thickness of five millimeters (0.20 inches) for longer than twenty-four hours after a heavy rainstorm.
- (B) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. The location and boundaries of each bottom-type class will be clarified when situations require their identification. For example, when a discharge permit is applied for or a waiver pursuant to section 301(h) of the Federal Water Pollution Control Act (33 U.S.C. Section 1311) is required. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological

communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.

(c) Marine pools and protected coves.

(1) As used in this subsection:

"Marine pools" means waters which collect in depressions on sea level lava rock outcrops and solution benches and also behind large boulders fronting the sea. Pools farthest from the ocean have harsher environments and less frequent renewal of water and support fewer animals. Those closest to the ocean are frequently renewed with water, are essentially marine, and support more diverse fauna.

"Protected coves" means small inlets which are removed from heavy wave action or surge.

(2) Water areas to be protected.

(A) Class I.

(i) All marine pools and protected coves in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life established under chapter 190, HRS, as amended; or in refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Fisheries Service.

(ii) Hawaii
Honaunau
Kiholo

(B) Class II.

| | |
|----------------|----------------|
| <u>Hawaii</u> | <u>Maui</u> |
| Kalapana | Hana |
| Pohakuloa | Keanae |
| Kapalaoa | Napili |
| Kapoho | Puu Olai to |
| King's Landing | Cape |
| (Papai) | Hanamanioa |
| Hilo | Kipahulu |
| Leileiwi Point | |
| Wailua Bay | <u>Molokai</u> |
| | Cape Halawa |
| | Kalaupapa |
| | South Coast |

Oahu
Diamond Head
Halona Blowhole to Makapuu
Mokuleia
Kaena Point
Makua
Punaluu

Kauai
Kealia
Mahaulepu
Hanamaulu
Poipu
Puolo Point

- (3) The following criteria are specific to marine pools and protected coves:
- (A) In marine pools and coves with sand bottoms, oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sediment shall not be less than +100 millivolts.
 - (B) In marine pools and coves with sand bottoms, no more than fifty per cent of the grain size distribution of the sediment shall be smaller than 0.125 millimeters in diameter.

- (C) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding equivalent thicknesses for longer than twenty-four hours following a heavy rainstorm according to the following:
 - (i) No thicker than an equivalent of five millimeters (0.20 inches) on hard bottoms (other than living corals).
 - (ii) No thicker than an equivalent of ten millimeters (0.40 inches) on soft bottoms.
 - (D) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.
- (d) Artificial basins.
 - (1) As used in this subsection: "Artificial basins" means dredged or quarried channels or harbors, and harbor-associated submerged structures. Many organisms can attach to the vertical structures, but the soft, shifting sediment bottoms of harbors may only be colonized by a few hardy or transient species.
 - (2) Class II water areas to be protected are as follows:
 - (A) Shallow draft harbors:

Hawaii

Wailoa River Boat
Harbor
Mahukona Harbor
Keauhou Harbor
Kailua-Kona Harbor
Honokohau Boat Harbor
Kawaihae Boat Harbor

Maui

Maalaea Boat
Harbor
Lahaina Boat
Harbor
Hana Harbor

Lanai

Manele Boat
Harbor
Kaunalapau
Harbor

Molokai

Kalaupapa Anchorage
Kaunakakai Small Boat Harbor
Hale o Lono Harbor

Oahu

Heeia Kea Boat Harbor
Kaneohe Marine Corps Air Station
Kaneohe Yacht Club
Hawaii Kai Marina (Kuapa Pond)
Pokai Bay
Waianae Boat Harbor
Keehi Marine Center
La Mariana Sailing Club
Haleiwa Harbor
Makani Kai Marina
Keehi Boat Harbor
Ala Wai Boat Harbor:
 Ala Wai Fuel Dock
 Hawaii Yacht Club
 Waikiki Yacht Club
Ko Olina

Kauai

Nawiliwili Small Boat Harbor
Kukuiula Boat Harbor
Kikiaola Boat Harbor
Port Allen Boat Harbor

(B) Deep draft commercial harbors:

Hawaii

Kuhio Bay (Hilo Harbor)
Kawaihae Deep Draft Harbor

Maui

Kahului Harbor

Molokai

Kaunakakai Barge Harbor

Oahu

Honolulu Harbor
Barbers Point Harbor
Kewalo Basin

Kauai

Nawiliwili Harbor
Port Allen Harbor

- (3) Specific criterion to be applied -
Oxidation-reduction potential (EH) in the
uppermost ten centimeters (four inches) of
sediment shall not be less than -100
millivolts.
- (e) Reef flats and reef communities.
- (1) As used in this subsection:
"Nearshore reef flats" means shallow
platforms of reef rock, rubble, and sand
extending from the shoreline. Smaller,
younger flats projected out as semicircular
aprons while older, larger flats form wide
continuous platforms. Associated animals
are mollusks, echinoderms, worms,
crustaceans (many living beneath the
surface), and reef-building corals.
"Offshore reef flats" means shallow,
submerged platforms of reef rock and sand
between depths of zero to three meters (zero
to ten feet) which are separated from the
shoreline of high volcanic islands by

lagoons or ocean expanses. Dominant organisms are bottom-dwelling algae. Biological composition is extremely variable. There are three types: patch, barrier, and atoll reef flats; quite different from one another structurally. The presence of heavier wave action, water more oceanic in character, and the relative absence of terrigenous influences distinguish offshore reef flats.

"Protected reef communities" means hard bottom aggregations, including scattered sand channels and patches, dominated by living coral thickets, mounds, or platforms. They are found at depths of ten to thirty meters (thirty-two to ninety-six feet) along protected leeward coasts or in shallow water (up to sea level) in sheltered lagoons behind atoll or barrier reefs and in the calm reaches of bays or coves.

"Wave-exposed reef communities" means aggregations, including scattered sand channels and patches, dominated by corals. They may be found at depths up to forty meters (approximately one hundred thirty feet) along coasts subject to continuous or heavy wave action and surge. Wave-exposed reef communities are dominated biologically by benthic algae, reef-building corals, and echinoderms.

(2) Water areas to be protected:

(A) Class I.

- (i) All reef flats and reef communities in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life under chapter 190, HRS, as amended; or

in refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service;

(ii) Nearshore reef flats:

| | |
|------------------------|--------------|
| <u>Hawaii</u> | <u>Maui</u> |
| Puako | Honolua |
| <u>Lanai</u> | <u>Oahu</u> |
| Northwest Lanai Reef | Hanauma Bay |
| <u>Molokai</u> | <u>Kauai</u> |
| Western Kalaupapa | Nualolokai |
| Southeast Molokai Reef | Hanalei |
| Honomuni Harbor | (Anini to |
| Kulaalamihī Fishpond | Haena) |

(iii) Offshore reef flats:

Moku o Loe (Coconut Island,
Kaneohe Bay, Oahu)
Kure Atoll
Pearl and Hermes Atoll
Lisianski Island
Laysan Island
Maro Reef
French Frigate Shoals

(iv) Wave exposed reef communities:

Hawaii
1823 Lava Flow (Punaluu)
1840 Lava Flow (North Puna)
1868 Lava Flow (South Point)
1887 Lava Flow (South Point)
1955 Lava Flow (South Puna)
1960 Lava Flow (Kapoho)
1969 Lava Flow (Apuna Point)
1970 Lava Flow (Apuna Point)
1971 Lava Flow (Apuna Point)
1972 Lava Flow (Apuna Point)
1973 Lava Flow (Apuna Point)

Maui
Hana Bay

Makuleia Bay (Honolua)

Molokini Island

All wave exposed reef communities

Molokai

Moanui Kahinapohaku Waikolu -

Kalawao

Halawa Bay

Oahu

Sharks Cove (Pupukea)

Moku Manu (Islands)

Outer Hanauma Bay

Waimea Bay

Kawela Bay

Kahana Bay

Kauai

Ke`e Beach

Poipu Beach

Kipu Beach

Niihau

All wave exposed communities

Lehua (off Niihau)

All wave exposed communities

(v) Protected reef communities:

Hawaii

Puako

Honaunau

Kealakekua

Kiholo

Anaehoomalu

Hapuna

Kahaluu Bay

Keaweula (North Kohala)

Milolii Bay to Keawaiki

Kailua-Kaiwi (Kona)

Onomea Bay
1801 Lava Flow (Keahole or Kiholo)
1850 Lava Flow (South Kona)
1859 Lava Flow (Kiholo)
1919 Lava Flow (Milolii)
1926 Lava Flow (Milolii)

Maui
Honolua

Ahihi-La Perouse (including 1790
Lava Flow at Cape Kinau)

Molokini Island
All protected reef communities

Lanai
Manele
Hulopoe

| | |
|-------------------|----------------------------------|
| <u>Molokai</u> | <u>Oahu</u> |
| Southeast Molokai | Hanauma Bay |
| Kalaupapa | Moku o Loe |
| Honomuni Harbor | (Coconut Island, Kaneohe Bay) |

Kauai
Hoai Bay (Poipu)

Northwestern Hawaiian Islands
Kure Atoll Lagoon
Pearl and Hermes Lagoon
Lisianski Lagoon
Maro Reef Lagoon
French Frigate Shoals Lagoon

(B) Class II.

- (i) Existing or planned harbors may be located within nearshore reef flats showing degraded habitats and only where feasible alternatives are lacking and upon written approval by the director,

considering environmental impact and the public interest pursuant to section 342D-6, HRS.

Hawaii

Blonde Reef (Hilo Harbor)
Kawaihae Small Boat Harbor

Maui

Lahaina Harbor
Kahului Harbor

Lanai

Manele

Molokai

Kaunakakai Harbor
Hale o Lono Harbor
Palaau (2.4 kilometers/1.5 mile,
east of Pakanaka Fishpond)

Oahu

Keehi Boat Harbor
Ala Moana Reef
Honolulu Harbor
Heeia Harbor
Kaneohe Yacht Club
Ala Wai Harbor
Haleiwa Boat Harbor
Maunalua Bay
Pearl Harbor
Kaneohe Bay
Kahe

All other nearshore reef flats not in Class I;

(ii) Offshore reef flats:

Oahu

Kapapa Barrier Reef
Kaneohe Patch Reefs (Kaneohe Bay)

(iii) All other wave exposed or protected reef communities not in Class I.

(3) Specific criteria to be applied to all reef flats and reef communities: No action shall be undertaken which would substantially risk

damage, impairment, or alteration of the biological characteristics of the areas named herein. When a determination of substantial risk is made by the director, the action shall be declared to be contrary to the public interest and no other permits shall be issued pursuant to chapter 342D, HRS.

- (A) Oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sand patches shall not be less than +100 millivolts;
- (B) No more than fifty per cent of the grain size distribution of sand patches shall be smaller than 0.125 millimeters in diameter;
- (C) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding equivalent thicknesses for longer than twenty-four hours after a heavy rainstorm as follows:
 - (i) No thicker than an equivalent of two millimeters (0.08 inches) on living coral surfaces;
 - (ii) No thicker than an equivalent of five millimeters (0.2 inches) on other hard bottoms;
 - (iii) No thicker than an equivalent of ten millimeters (0.4 inches) on soft bottoms;
- (D) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. The location and boundaries of each bottom-type class shall be clarified when situations require their identification. For example, the location and boundaries shall be clarified when a discharge permit is applied for or a waiver pursuant to

Section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251 et seq.) is required. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.

- (f) Soft bottom communities.
- (1) As used in this subsection: "Soft bottom communities" means poorly described and "patchy" communities, mostly of burrowing organisms, living in deposits at depths between two to forty meters (approximately six to one hundred thirty feet). The particle size of sediment, depth below sea level, and degree of water movement and associated sediment turnover dictate the composition of animals which rework the bottom with burrows, trails, tracks, ripples, hummocks, and depressions.
- (2) Water areas to be protected: Class II - All soft bottom communities.
- (3) Specific criteria to be applied - Oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sediment should not be less than -100 millivolts. The location and boundaries of each bottom-type class shall be clarified when situations require their identification. For example, the location and boundaries shall be clarified when a discharge permit is applied for or a waiver pursuant to Section 301(h) of the Act is required. [Eff 11/12/82; am and comp 10/6/84; am and comp

04/14/88; am and comp 01/18/90; am and comp
10/29/92, am and comp 04/17/00; am and comp
10/2/04; comp 06/15/09; comp 10/21/12; am
and comp](Auth: HRS
§§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-
4, 342D-5)

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§11-54-8 Specific criteria for recreational areas. (a) In inland recreational waters:

- (1) Enterococcus content shall not exceed a geometric mean of 33 per one hundred milliliters in not less than five samples which shall be spaced to cover a period between twenty five and thirty days. No single sample shall exceed the single sample maximum of 89 CFU per 100 milliliters or the site-specific one-sided 82 per cent confidence limit.
 - (2) Inland recreational waters in which enterococcus content does not exceed the standard shall not be lowered in quality.
 - (3) At locations where sampling is less frequent than five samples per twenty-five to thirty days, no single sample shall exceed the single sample maximum nor shall the geometric mean of these samples taken during the 30-day period exceed 33 CFU per 100 milliliters.
 - (4) Raw or inadequately treated sewage, sewage for which the degree of treatment is unknown, or other pollutants of public health significance, as determined by the director of health, shall not be present in natural public swimming, bathing or wading areas. Warning signs shall be posted at locations where human sewage has been identified as temporarily contributing to the enterococcus count.
- (b) In marine recreational waters:

- (1) Within 300 meters (one thousand feet) of the shoreline, including natural public bathing or wading areas, enterococcus content shall not exceed a geometric mean of 35 CFU per 100 milliliters in not less than five samples which shall be spaced to cover a period between twenty-five and thirty days. No single sample shall exceed the single sample maximum of 104 CFU per 100 milliliters or the site-specific one-sided 75 per cent confidence limit. Marine recreational waters along sections of coastline where enterococcus content does not exceed the standard, as shown by the geometric mean test described above, shall not be lowered in quality.
- (2) (2) At locations where sampling is less frequent than five samples per twenty-five to thirty days, no single sample shall exceed the single sample maximum nor shall the geometric mean of these samples taken during the thirty-day period exceed 35 CFU per 100 milliliters.
- (3) Raw or inadequately treated sewage, sewage for which the degree of treatment is unknown, or other pollutants of public health significance, as determined by the director of health, shall not be present in natural public swimming, bathing or wading areas. Warning signs shall be posted at locations where human sewage has been identified as temporarily contributing to the enterococcus count. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; am and comp 06/15/09; comp 10/21/12; am and comp **DEC 06 2013**] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-9 Zones of mixing. (a) As used in this section, "zones of mixing" means limited areas around outfalls and other facilities to allow for the initial dilution of waste discharges.

(b) Zones of mixing for the assimilation of domestic, agricultural, and industrial discharges which have received the best degree of treatment or control are recognized as being necessary. It is the objective of these limited zones to provide for a current realistic means of control over the placement and manner of discharges or emissions so as to achieve the highest attainable level of water quality or otherwise to achieve the minimum environmental impact considering initial dilution, dispersion, and reactions from substances which may be considered to be pollutants.

(c) Establishment, renewal, and termination.

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

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

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

- areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control.
- (6) Any zone of mixing or renewal thereof shall be established within the requirements of this section and for time periods and under conditions consistent with the reasons therefore and within the following limitations:
- (A) If the zone of mixing is established on the grounds that there is no reasonable means known or available for the adequate prevention, control, or abatement of the discharge involved, it shall be allowed only until the necessary means for prevention, control or abatement become practicable, and subject to the taking of any substitute or alternative measures that the director may prescribe. No renewal of a zone of mixing established under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the discharge involved;
 - (B) The director may issue a zone of mixing for a period not exceeding five years;
 - (C) Every zone of mixing established under this section shall include, but not be limited to, conditions requiring the applicant to perform appropriate effluent and receiving water sampling including monitoring of bottom biological communities and report the results of each sampling to the director. A program of research to develop reasonable alternatives to the methods of treatment or control in use by the applicant may be required if

- research is deemed prudent by the director; and
- (D) In order to prevent high temperature discharges from violating section 11-54-04(a)(4), no new or increased domestic, industrial, or other controllable source shall discharge at a maximum temperature which will cause temperatures to exceed three degrees Celsius above ambient, or thirty degrees Celsius, whichever is less, within one meter of the bottom within a zone of mixing. For discharges with or without submerged outfalls, the director may make a limited allowance for higher discharge temperatures if there is satisfactory demonstration that the elevated temperature will not cause damage to the local aquatic community.
- (7) Any zone of mixing established pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial establishment of a zone of mixing, provided that the applicant for renewal had met all of the conditions specified in the immediately preceding mixing, and provided further that the renewal and the zone of mixing established in pursuance thereof shall provide for the discharge not greater in quantity of mass emissions than that attained pursuant to the terms of the immediately preceding zone of mixing at its expiration. Any new zones of mixing or requests for zone of mixing renewals for wastewater treatment plants (WWTP) performing primary treatment shall comply with section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251). No renewal shall be allowed

- except upon application. Any renewal application shall be made at least one hundred and eighty days prior to the expiration of the zone of mixing.
- (8) No zone of mixing established pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.
 - (9) The establishment of any zone of mixing shall be subject to the concurrence of the U.S. Environmental Protection Agency.
 - (10) Each mixing zone may be subject to revocation, suspension, or modification if, after notice and opportunity for a hearing pursuant to chapter 91, HRS and the rules of practice and procedures of the department, the director determines that the terms specified in section 342D-6, HRS have been violated. In taking any action, the director may consider operating records, compliance investigations, or other information regarding discharge quality or impact on receiving waters. The action shall be effected by giving written notice to the permittee, which shall contain the reasons for the action.
 - (11) The director shall be notified within thirty days of the permanent discontinuance of a discharge. The zone of mixing shall terminate thirty days after such notification has been received.
 - (12) Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp **DEC 06 2013**] (Auth: HRS

§§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-9.1 Water quality certification. As used in sections 11-54-9.1.01 to 11-54-9.1.10:

"33 CFR" means the Code of Federal Regulations, Title 33, Corps of Engineers, Department of the Army, Department of Defense, revised as of July 1, 2011, unless otherwise specified.

"40 CFR" means the Code of Federal Regulations, Title 40, Protection of the Environment, revised as of July 1, 2011, unless otherwise specified.

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

"Agent" means a duly authorized representative of the owner as defined in section 11-55-7(b).

"Discharge" means the same thing as defined in Section 502(16) of the Act.

"Discharge of a pollutant" and "discharge of pollutants" means the same thing as defined in section 502(12) of the Act.

"Duly authorized representative" means a person or position as defined in 40 CFR section 122.22(b).

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

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

"Navigable waters" means the waters of the United States, including the territorial seas.

"Owner" means the person who owns any "facility" or "activity" which results in any discharge into navigable waters.

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

"Territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

"Water quality certification" or "certification" means a statement which asserts that a proposed discharge resulting from an activity will not violate applicable water quality standards and the applicable provisions of sections 301, 302, 303, 306 and 307 of the Act. A water quality certification is required by section 401 of the Act from any applicant for a federal license or permit to conduct any activity, including the construction or operation of facilities which may result in any discharge into navigable waters.

"Water quality certification application" means any forms provided by the director for use in obtaining the water quality certification.

"Water quality standards" means standards established pursuant to section 10(c) of the Act, and state-adopted water quality standards for navigable waters which are not interstate waters.

"Waters of the United States" or "waters of the U.S." means:

- (1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (2) All interstate waters, including interstate "wetlands";
- (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would

affect or could affect interstate or foreign commerce including any such waters:

- (A) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - (B) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (C) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (4) All impoundments of waters otherwise defined as waters of the United States under this definition;
 - (5) Tributaries of waters identified in paragraphs (1) through (4) of this definition;
 - (6) The territorial sea; and
 - (7) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6) of this definition. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.01 Water quality certification; contents of certification. (a) A certification made by the department shall include:

- (1) The legal name(s), street address, contact person's name and position title, and telephone and fax numbers of the owner and, if applicable, its duly authorized representative;
- (2) A statement that the director has either:

- (A) Examined the application made by the owner or its duly authorized representative to the licensing or permitting agency (specifically identifying the number or code affixed to the application) and bases its certification upon an evaluation of the information contained in the application which is relevant to water quality considerations; or
 - (B) Examined other information provided by the owner or its duly authorized representative sufficient to permit the director to make the statement described in paragraph (a) (3);
- (3) A statement that there is reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;
 - (4) A statement of any conditions which the director considers necessary or desirable with respect to the discharge resulting from an activity; and
 - (5) Other information the director determines to be appropriate.
- (b) The director shall issue the certification after evaluating the complete water quality certification application, comments received during the public comment period, any record of a public hearing held pursuant to section 11-54-09.1.03, other information and data the director considers relevant, and after the director determines that there is reasonable assurance that applicable water quality standards will not be violated and the best practicable methods of control will be applied to a discharge resulting from an activity including the construction and operation of a facility
- (c) The department shall process applications for permits and water quality certifications for the reconstruction, restoration, repair, or reuse of any Hawaiian fishpond that meets the requirements of

chapter 183B, HRS, before all other permits and certifications. The director shall render a decision on the completeness of any application for the permit or water quality certification within thirty days of receipt. Applications for fishpond reconstruction, restoration, or repair that are incomplete shall be denied without prejudice. The director shall render a decision on any complete application for a permit or water quality certification for any fishpond within one hundred fifty days.

(d) The director, at the director's discretion or after consideration of information presented by the owner or its duly authorized representative, the licensing or permitting agency, other government agencies, or interested parties, may modify or revoke an issued certification or waiver. [Eff and comp 4/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp **DEC 06 2013**]
 (Auth: HRS §§342D-4, 342D-5, 342D6.5, 342D-53) (Imp: HRS §§342D-342D-6, 342D6.5, 342D-5)§11-54-09.1.02

§11-54-9.1.02 Water quality certification; contents of water quality certification application.

(a) The owner or its duly authorized representative shall submit a complete water quality certification application for the discharge resulting from an activity. The water quality certification application shall include at a minimum:

- (1) The legal name(s), street address, contact person's name and position title, and telephone and fax numbers of the owner and, if applicable, its duly authorized representative;
- (2) The company or organization name, contact person's name and position title, and telephone and fax numbers of the emergency contact(s);

- (3) The name, street address, contact person's name and position title, telephone and fax numbers, island, and tax map key number(s) for the project;
- (4) Associated existing or pending federal and environmental permits and corresponding file numbers;
- (5) The name(s) of the navigable water where the discharge occurs, the latitude and longitude of the discharge point(s), the classification of the navigable water, and the associated existing recreational uses;
- (6) The scope of work or a description of the overall project including: the construction or operation of facilities which may result in discharges into navigable waters; the proposed discharge resulting from an activity; and specific biological, chemical, physical, thermal, and other pertinent characteristics of the discharge resulting from an activity;
- (7) If applicable, a description of the function and operation of equipment or facilities to control discharges, including specification of the methods of control to be used;
- (8) The estimated dates on which the activity will begin and end and the date or dates on which the discharge(s) will take place;
- (9) If applicable, a description of the methods and means being used or proposed to monitor the quality and characteristics of the discharge and the operation of equipment or facilities employed in the control of the proposed discharges and a map showing the location(s) of the monitoring point(s);
- (10) The statement of assurance, statement of choice for publication, and if applicable, an authorization statement, with the owner's original signature. Any signatures required for the water quality certification

- application shall be provided as described in 40 CFR Section 122.22(a);
- (11) Supporting documentation (e.g. maps, plans, specifications, copies of associated federal permits or licenses, federal applications, Environmental Assessments or Environmental Impact Statements, as applicable, etc.);
 - (12) Additional information regarding any irregularities or unique features of the project; and
 - (13) Additional information as required by the director.

(b) The director shall notify the owner or its duly authorized representative in writing if a water quality certification application is incomplete or otherwise deficient. A description of the additional information necessary to complete the water quality certification application or to correct the deficiency shall be included in the written notice. If a water quality certification application is incomplete or otherwise deficient, processing of the water quality certification application shall not be completed until the time the owner or its duly authorized representative has supplied the information or otherwise corrected the deficiency. Failure to provide additional information or to correct a deficiency shall be sufficient grounds for denial of the certification or termination of the processing of the water quality certification application.

(c) The director shall notify the owner or its duly authorized representative in writing when a water quality certification application is considered complete. The director shall act on a request for certification within a period which shall not exceed one year from the date when the water quality certification application was considered complete.

(d) The owner or its duly authorized representative shall notify the department in writing of changes which may affect the water quality certification application and certification process.

(e) Each owner who submits a water quality certification application shall pay a filing fee of \$1,000. This filing fee shall be submitted with the water quality certification application and shall not be refunded nor applied to any subsequent water quality certification application following final action of denial or termination of the processing of the water quality certification application.

- (1) Fees shall be made payable to the "State of Hawaii" in the form of a cashier's check or money order;
- (2) Water quality certification application(s) submitted by the U.S. Army Corps of Engineers, Honolulu Engineer District, for the purpose of adopting regional or nationwide general permit(s), in accordance with 33 CFR Parts 325 and 330, respectively, shall be exempt from the payment of filing fees.

(f) If a project or activity requiring a federal permit or license involves or may involve the discharge of a pollutant or pollutants and is initiated or completed without a water quality certification, the director may process an after-the-fact water quality certification application as follows: after-the-fact water quality certification application may be accepted and processed only for the limited purpose of deeming projects or activities requiring federal permits or licenses to be properly permitted or licensed forward of the date of the water quality certification or waiver. No water quality certification or waiver shall be issued which allows the retroactive permitting or licensing of projects or activities before the date the water quality certification or waiver was issued. A water quality certification or waiver may be issued if the following criteria are met:

- (1) The project or activity is not the subject of an ongoing enforcement action by the federal, state or county government;

- (2) Any adverse impacts upon water quality resulting from the project or activity have been mitigated to the maximum extent feasible; and
- (3) The project or activity will not cause or contribute to any lack of attainment of water quality standards set forth in this chapter.

(g) Written notification by the department under subsection (b) is complete upon mailing or sending a facsimile transmission of the document or actual receipt of the document by the owner or its duly authorized representative. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.03 Water quality certification; notice and hearing. The director may provide the opportunity for public comment or hearing(s) or both to consider the issuance of a water quality certification. A notice shall be published in accordance with chapters 91 and 92, HRS. The director shall inform the owner or its duly authorized representative in writing that the action has been taken. All publication and mailing costs associated with the public notification of the director's tentative determinations with respect to the water quality certification application shall be paid by the owner to the appropriate newspaper agency or agencies determined by the director. Failure to provide and pay for public notification, as considered appropriate by the director, may result in a delay in the certification process. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp

10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.04 Water quality certification; waiver. (a) If the director fails or refuses to act on a request for certification within one year after receipt of a complete water quality certification application, then the certification requirements of section 11-54-9.1 shall be waived with respect to the federal application.

(b) If the discharge resulting from an activity receives a determination to be covered under a nationwide permit authorization, thereby fulfilling specific conditions of that permit pursuant to 33 CFR sections 330.4, 330.5, and 330.6, then the director will determine, on a case-by-case basis, which projects are considered minor and non-controversial. Certification requirements of section 11-54-9.1 shall be waived for minor and non-controversial activities within one year of receipt of a complete water quality certification application. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.05 Water quality certification; adoption of new water quality standards. (a) The licensee or permittee shall comply with any new water quality standards as adopted by the department.

- (b) In any case where:
- (1) A certification or waiver was issued without applicable water quality standards;
 - (2) Water quality standards applicable to the waters into which the activity may discharge

are subsequently established before the activity is completed; or

- (3) The director determines that the activity is violating new water quality standards;

The director shall then notify the licensee or permittee and the licensing or permitting agency of the violation.

(c) If the licensee or permittee fails within one hundred eighty days of the date of the notice to cease the violation, the director shall notify the licensing or permitting agency that the licensee or permittee has failed to comply with the standards. The director, at the director's discretion, shall also revoke the certification or waiver or recommend suspension of the applicable license or permit pursuant to section 401 of the Act.

(d) The director shall notify the licensing or permitting agency that, in the director's opinion, there is reasonable assurance that applicable water quality standards will not be violated because the licensee or permittee took appropriate action to comply with the applicable water quality standards after their license or permit was suspended pursuant to subsection (c).

(e) This section shall not preclude the department from taking other enforcement action authorized by law. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-53s) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.06 Water quality certification; inspection of facility or activity before operation.
Where any facility or activity has received certification or waiver pursuant to sections 11-54-9.1.01 to 11-54-9.1.09 in connection with the issuance of a license or permit for construction, and where the

facility or activity is not required to obtain an operating license or permit, the director, prior to the initial operation of the facility or activity, shall be afforded the opportunity to inspect the facility or activity for the purpose of determining if the manner in which the facility or activity will be operated or conducted will violate applicable water quality standards. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp **DEC 06 2013**] Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.07 Water quality certification; notification to licensing or permitting agency. If the director, after an inspection pursuant to section 11-54-9.1.06 determines that operation of the proposed facility or activity will violate applicable water quality standards, the director shall so notify the owner or, if applicable, its duly authorized representative and the licensing or permitting agency. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.08 Water quality certification; termination or suspension. Where a licensing or permitting agency, following a public hearing, suspends a license or permit after receiving the director's notice and recommendation pursuant to section 11-54-9.1.07 the owner or its duly authorized representative may submit evidence to the director, that the facility or activity has been modified so as

not to violate applicable water quality standards. If the director determines that the applicable water quality standards have not been and will not be violated, the director shall so notify the licensing or permitting agency. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.09 Water quality certification; review and advice. The director may, and upon request shall, provide licensing and permitting agencies with determinations, definitions, and interpretations to the meaning and content of state water quality standards. The director may, and upon request shall, also advise licensing and permitting agencies of the status of compliance by the owner(s) of a water quality certification with the conditions and requirements of applicable water quality standards. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-10 Water quality analyses. (a) Laboratory analysis shall be performed by a laboratory approved by the department.

(b) Where applicable, analysis to determine compliance with these rules shall be by:

Parameter

Sample Collection
(Phytoplankton and other
Bioassays)

Sample Preservation and
Holding Time,
Bacteriological and
Chemical Methodology

Reference

Standard Methods for the
Examination of Water and
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Extended Edition, ed. by K.
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Collector Urchin,
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Fertilization Test Method,
April 2012.

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for Analytical Quality
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of The Island of Hawaii and
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Hawaii State Department of
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or as otherwise previously specified or approved by
the director. [Eff 11/12/82; am and comp 10/6/84; am
and comp 04/14/88; am and comp 01/18/90; am and comp
10/29/92, am and comp 04/17/00; am and comp 10/2/04;
comp 06/15/09; comp 10/21/12; am and comp
DEC 06 2013] (Auth: HRS §§342D-1, 342D-4, 342D-5)
(Imp: HRS §§342D-4, 342D-5)

§11-54-11 Revision. These water quality criteria are based upon the best currently available data. Studies made in connection with the implementation program may suggest improvements to this chapter. For this reason, the chapter will be subject to periodic review and, where necessary, to change. Any change will be made only after public hearing, held in compliance with chapter 91, HRS and the rules of practice and procedures of the department. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-12 Severability. If any provisions of this chapter, or the application thereof to any person or circumstances, is held invalid, the invalidity does not affect other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

DEPARTMENT OF HEALTH
 DIVISION OF WATER RESOURCES

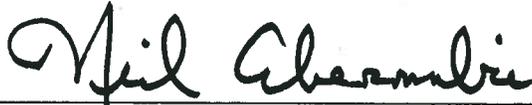
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Amendments and compilation of chapter 54, title 11, Hawaii Administrative Rules, on the Summary Page dated **DEC 06 2013** were adopted on **DEC 06 2013** following a public hearing held on August 21, 2013, after public notice was given in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Isle on July 12, 2013.

The adoption of chapter 11-54 shall take effect ten days after filing with the Office of the Lieutenant Governor



LORETTA J. FURRY,
A.S.C.W., M.P.H.
Director of Health



NEIL ABERCROMBIE
Governor
State of Hawaii

Dated: 11.26.13

Filed

APPROVED AS TO FORM:



EDWARD G. BOHLEN
Deputy Attorney General

54-92

13 NOV 26 P3:16

LIEUTENANT GOVERNOR'S
OFFICE

Modified

21) HAR §§ 11-54-1, 11-54-5.1, 11-54-6, 11-54-8 amended

Relating to Definitions; Inland water areas to be protected; Uses and specific criteria applicable to marine waters; Recreational criteria for state waters

Department of Health

Rules Amending Title 11
Hawaii Administrative Rules

(insert adoption date)

1. Chapter 54 of Title 11, Hawaii Administrative Rules, entitled "Water Quality Standards" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 54

WATER QUALITY STANDARDS

| | |
|------------|---------------------------------------------------------------|
| §11-54-1 | Definitions |
| §11-54-1.1 | General policy of water quality antidegradation |
| §11-54-2 | Classification of State waters |
| §11-54-3 | Classification of water uses |
| §11-54-4 | Basic water quality criteria applicable to all waters |
| §11-54-5 | Uses and specific criteria applicable to inland waters |
| §11-54-5.1 | Inland water areas to be protected |
| §11-54-5.2 | Inland water criteria |
| §11-54-6 | Uses and specific criteria applicable to marine waters |
| §11-54-7 | Uses and specific criteria applicable to marine bottom types |
| §11-54-8 | Recreational criteria for all State waters |
| §11-54-9 | Zones of mixing |
| §11-54-9.1 | Water quality certification |

§11-54-1

- §11-54-9.1.01 Water quality certification; contents of certification
- §11-54-9.1.02 Water quality certification; contents of water quality certification application
- §11-54-9.1.03 Water quality certification; notice and hearing
- §11-54-9.1.04 Water quality certification; waiver
- §11-54-9.1.05 Water quality certification; adoption of new water quality standards
- §11-54-9.1.06 Water quality certification; inspection of facility or activity before operation
- §11-54-9.1.07 Water quality certification; notification to licensing or permitting agency
- §11-54-9.1.08 Water quality certification; termination or suspension
- §11-54-9.1.09 Water quality certification; review and advice
- §11-54-10 Water quality analyses
- §11-54-11 Schedule of compliance
- §11-54-12 Intake credits
- §11-54-13 Revision
- §11-54-14 Severability
- §11-54-15 Field citations; non-compliance

§11-54-1 Definitions. As used in this chapter:

"Ambient conditions" means the water quality conditions that would occur in the receiving waters if these waters were not influenced by the proposed new human activity.

"Amphidromous" means aquatic life that migrate to and from the sea, but not specifically for reproductive purposes. Amphidromous aquatic life in Hawaiian streams are confined to fresh waters as adults, but their larval stages are partially or entirely spent in the ocean as part of the zooplankton.

"Anchialine pools" means coastal bodies of standing waters that have no surface connections to the ocean but display both tidal fluctuations and salinity ranges characteristic of fresh and brackish waters, indicating the presence of subsurface connections to the watertable and ocean. Anchialine pools are located in porous substrata (recent lava or limestone) and often contain a distinctive assemblage of native aquatic life. Deeper anchialine pools may display salinity stratification, and some shallow pools may contain standing water only on the highest tides.

"Aquatic life" means "any type or species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or offspring thereof; or freshwater or marine plants, including, seeds, roots, products, and other parts thereof" (section 187A-1, HRS).

"Best degree of treatment or control" means that treatment or control which is required by applicable statutes and regulations of the State of Hawai'i and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251, et seq.) or which is otherwise specified by the director considering technology or management practices currently available in relation to the public interest.

"Best management practices" or "BMPs" means schedules of activities, prohibitions or designations of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of State waters. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs include methods, measures or practices selected by the department to meet nonpoint source pollution control needs. BMPs also include but are not limited to structural and nonstructural controls. BMPs can be

applied before, during, and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving State waters.

"Brackish waters" means waters with dissolved inorganic ion concentrations (salinity) greater than 0.5 parts per thousand, but less than thirty-two parts per thousand.

"Coastal waters" means "all waters surrounding the islands of the State from the coast of any island to a point three miles seaward from the coast, and, in the case of streams, rivers, and drainage ditches, to a point three miles seaward from their point of discharge into the sea and includes those brackish waters, fresh waters and salt waters that are subject to the ebb and flow of the tide" (section 342D-1, HRS).

"Coastal wetlands" means natural or man-made ponds and marshes having variable salinity, basin limits, and permanence. These wetlands usually adjoin the coastline and may be subject to tidal, seasonal, or perennial flooding. Coastal wetlands are generally maintained by surface and subterranean sources of fresh and salt water. Many natural coastal wetlands have been modified significantly by man and are characterized by introduced aquatic life. Coastal wetlands include, but are not limited to, salt marshes, open ponds, mudflats, man-made or natural waterbird refuges, isolated seasonal lakes and mangrove flats.

"Department" means department of health, State of Hawai'i.

"Developed estuaries" means volumes of brackish coastal waters in well-defined basins constructed by man or otherwise highly modified from their natural state. Developed estuaries include, but are not limited to, dredged and revetted stream termini.

"Director" means the director of health, State of Hawai'i, or the director's duly authorized agent.

"Discharge" means the discharge of a water pollutant.

"Ditches and flumes" means fresh waters flowing continuously in artificial channels. They are used mainly for the purpose of irrigation and usually receive water from stream diversions. Ditches and flumes may be inflowing (carry water to reservoirs or user areas) or outflowing (drain water from reservoirs or user areas).

"Drainage basin" or "watershed" means the region or area drained by a stream or river system.

"Drainage ditch" means that facility used to carry storm runoff only, not sanitary sewage.

"Elevated wetlands" means natural freshwater wetlands located above 100 m (330 ft) elevation. They are generally found in undisturbed areas, mainly in remote uplands and forest reserves with high rainfall. Elevated wetlands include upland bogs, marshes, swamps, and associated ponds and pools.

"Estuaries" means characteristically brackish coastal waters in well-defined basins with a continuous or seasonal surface connection to the ocean that allows entry of marine fauna. Estuaries may be either natural or developed.

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

"Flowing springs and seeps" means perennial, relatively constant fresh water flows not in distinct channels, in which the water emanates from elevated aquifers as wet films or trickles over rock surfaces. They are found typically as natural occurrences along rock faces or banks of deeply incised streams, and artificially along road cuts.

"Flowing waters" means fresh waters flowing unidirectionally down altitudinal gradients. These waters may or may not be confined in distinct channels. Flowing waters include streams, flowing springs and seeps and ditches and flumes.

"Fresh waters" means all waters with a dissolved inorganic ion concentration of less than 0.5 parts per thousand.

"Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded and develops conditions that favor the growth and regeneration of hydrophytic vegetation.

"Hydrophytic vegetation" or "hydrophytes" means plants adapted to growing in seasonally or permanently flooded conditions.

"Intermittent streams" means fresh waters flowing in definite natural channels only during part of the year or season. Intermittent streams include many tributaries of perennial streams.

"Introduced aquatic life" means those species of aquatic organisms that are not native to a given area or water body and whose populations were established (deliberately or accidentally) by human activity. "Introduced" organisms are also referred to as "alien" or "exotic".

"Low wetlands" means freshwater wetlands located below 100 m (330 ft) elevation that may be natural or artificial in origin and are usually found near coasts or in valley termini. Low wetlands are maintained by either stream, well, or ditch influent water, or by exposure of the natural water table. Low wetlands include, but are not limited to, natural lowland marshes, riparian wetlands, littoral zones of standing waters (including lakes, reservoirs, ponds and fishponds) and agricultural wetlands such as taro lo'i.

"Native aquatic life" means those species or higher taxa of aquatic organisms that occur naturally in a given area or water body and whose populations were not established as a result of human activity.

"Natural estuaries" means volumes of brackish coastal waters in well-defined basins of natural origin, found mainly at the mouths of streams or rivers. Natural estuaries can be either stream-fed (drowned stream mouths fed by perennial stream runoff) or spring-fed (nearshore basins with subterranean fresh water sources). Stream-fed estuaries serve as important migratory pathways for larval and juvenile amphidromous stream fauna.

"Natural freshwater lakes" means standing water that is always fresh, in well-defined natural basins, with a surface area usually greater than 0.1 ha (0.25 acres), and in which rooted emergent hydrophytes, if present, occupy no more than thirty per cent of the surface area. Natural freshwater lakes in Hawai'i occur at high, intermediate, and low elevations. Lowland freshwater lakes characteristically lack a natural oceanic connection (surface or subsurface) of a magnitude sufficient to cause demonstrable tidal fluctuations.

"Nonpoint source pollution" has the meaning defined in section 342E-1, HRS.

"Perennial streams" means fresh waters flowing year-round in all or part of natural channels, portions of which may be modified by humans. Flow in perennial streams may vary seasonally. Perennial streams may be subdivided into longitudinal zones, based on elevation and gradient:

- (1) Headwater zone (elevation above 800 m (2600 ft) or gradient above 30 per cent or both);
- (2) Mid-zone (elevation between 50-800 m (165-2600 ft), or gradient between 5 and 30 per cent or both); and
- (3) Terminal zone (elevation below 50 m (165 ft) or gradient below 5 per cent or both).

Perennial streams may be either continuous or interrupted. Continuous perennial streams discharge continuously to the ocean in their natural state, and contain water in the entire length of the stream channel year-round. Interrupted perennial streams usually flow perennially in their upper reaches but only seasonally in parts of their middle or lower reaches, due to either downward seepage of surface flow (naturally interrupted) or to man-made water diversions (artificially interrupted).

"Person" has the same meaning as defined in section 342D-1, HRS.

"Point source" has the same meaning as defined in section 11-55-01.

"Pollution" means "water pollution" as defined in section 342D-1, HRS.

"Reservoirs" means standing water that is always fresh, in well-defined artificially created impoundments.

"Saline or salt waters" means waters with dissolved inorganic ion concentrations greater than thirty-two parts per thousand.

"Saline lakes" means standing waters of salinities ranging from brackish to hypersaline, located in well-defined natural basins, and lacking a natural surface connection to the ocean. Saline lakes may be present as high-island shoreline or near-shoreline features (e.g. Lake Nomilu, Kauai; Salt Lake, Oahu; Lake Kauhako, Molokai) or as low-island closed lagoons (Lake Laysan, Laysan). They are usually, but not always, fed by seawater seepage and may be diluted by rainwater, overland runoff, or ground water, or concentrated by evaporation.

"Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

"Springs and seeps" means small, perennial, relatively constant freshwater flow not in distinct channels, such as wet films or trickles over rock surfaces, in which the water emanates from elevated aquifers. Springs and seeps may be either stream associated, occurring in deeply cut valleys and contributing to stream flow; or coastal, occurring on coastal cliffs and usually flowing into the ocean.

"Standing waters" refers to waters of variable size, depth, and salinity, that have little or no flow and that are usually contained in well-defined basins. Standing water bodies include natural freshwater lakes, reservoirs or impoundments, saline lakes, and anchialine pools.

"State waters", as defined by section 342D-1, HRS, means all waters, fresh, brackish, or salt around and within the State, including, but not limited to,

coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, ground waters, and lakes; provided that drainage ditches, ponds, and reservoirs required as part of a water pollution control system are excluded. This chapter applies to all [state]State waters, including wetlands, subject to the following exceptions:

- (1) This chapter does not apply to groundwater[.], except the director may in the director's discretion take appropriate actions when the director believes that the discharge of pollutants to the ground or groundwater has adversely affected, is adversely affecting, or will adversely affect the quality of any State water other than groundwater.
- (2) This chapter does not apply to drainage ditches, flumes, ponds and reservoirs that are required as part of a water pollution control system.
- (3) This chapter does not apply to drainage ditches, flumes, ponds, and reservoirs that are used solely for irrigation and do not overflow into or otherwise adversely affect the quality of any other [state]State waters, unless such ditches, flumes, ponds, and reservoirs are waters of the United States as defined in 40 C.F.R. section 122.2. The State of Hawai'i has those boundaries stated in the Hawai'i Constitution, art. XV, §1.

"Streams" means seasonal or continuous water flowing unidirectionally down altitudinal gradients in all or part of natural or modified channels as a result of either surface water runoff or ground water influx, or both. Streams may be either perennial or intermittent and include all natural or modified watercourses.

"Stream channel" means a natural or modified watercourse with a definite bed and banks which periodically or continuously contains flowing water.

"Stream system" means the aggregate of water features comprising or associated with a stream,

including the stream itself and its tributaries, headwaters, ponds, wetlands, and estuary. A stream system is geographically delimited by the boundaries of its drainage basin or watershed.

"Surface water" means both contained surface water (that is, water upon the surface of the earth in well-defined basins created naturally or artificially including, but not limited to, streams, other watercourses, lakes, and reservoirs) and diffused surface water (that is, water occurring upon the surface of the ground other than in contained basins). Water from natural springs and seeps is surface water when it exits from the spring onto the earth's surface.

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

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

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

Wetlands may be fresh, brackish, or saline and generally include swamps, marshes, bogs, and associated ponds and pools, mud flats, isolated seasonal ponds, littoral zones of standing water bodies, and alluvial floodplains. For the purpose of applying for water quality certifications under Clean Water Act Section 401, and for National Pollutant Discharge Elimination System (NPDES) permit purposes, the identification and delineation of wetland boundaries shall be done following the procedures

described in the U.S. Army Corps of Engineers' Wetlands Delineation Manual (USACE 1987). [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/02/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp] (Auth: HRS §187A-1, §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E; 40 C.F.R. §§ 122.2, 130.2, 131.3, 131.12; 22 U.S.C. §1362(14))

§11-54-1.1 General policy of water quality antidegradation. (a) Existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(b) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the director finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the state's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the director shall assure water quality adequate to protect existing uses fully. Further, the director shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

am and comp 01/18/90; am and comp 10/29/92, am and
comp 04/17/00; am and comp 10/2/04; comp 06/15/09;
comp 10/21/12; comp 12/6/13; comp]
(Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp:
HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-5.1 Inland water areas to be protected.

(a) Freshwaters.

(1) Flowing waters: perennial streams and rivers,
intermittent streams, springs and seeps, and
man-made ditches and flumes that discharge
into any other waters of the State.

(A) Class 1.a.:

- (i) All flowing waters within the
natural reserves, preserves,
sanctuaries, and refuges
established by the department of
land and natural resources under
chapter 195, HRS, or similar
reserves for the protection of
aquatic life established under
chapter 195, HRS.
- (ii) All flowing waters in national
and state parks.
- (iii) All flowing waters in state or
federal fish and wildlife
refuges.
- (iv) All flowing waters which have
been identified as a unique or
critical habitat for threatened
or endangered species by the U.S.
Fish and Wildlife Service.
- (v) All flowing waters in Waimanu
National Estuarine Research
Reserve (Hawai'i).

As listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.

- (B) Class 1.b.: All flowing waters in protective subzones designated under chapter 13-5 by the state department of land and natural resources[.] as listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.
- (C) Class 2.: All flowing waters in areas not otherwise classified.

All flowing waters in classes 1 and 2 in which water quality exceeds the standards specified in this chapter shall not be lowered in quality unless it has been affirmatively demonstrated to the director that the change is justifiable as a result of important economic or social development and will not interfere with or become injurious to any assigned uses made of, or presently in, those waters. This statement of antidegradation policy does not limit the applicability of the policy in section 11-54-1.1 to the whole chapter.

- (2) Standing waters (natural freshwater lakes and reservoirs):
 - (A) Class 1.a.:
 - (i) All standing waters within the natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.
 - (ii) All standing waters in national and state parks.
 - (iii) All standing waters in state or federal fish and wildlife refuges.

- (iv) All standing waters which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.
- (v) All standing waters in Waimanu National Estuarine Research Reserve (Hawai'i).

As listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.

- (B) Class 1.b.: All standing waters in protective subzones designated under chapter 13-5 by the state department of land and natural resources[.] as listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.
 - (C) Class 2.: All standing waters in areas not otherwise classified.
- (3) Elevated wetlands and low wetlands:
- (A) Class 1.a.:
 - (i) All elevated and low wetlands within the natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.
 - (ii) All elevated and low wetlands in national and state parks.
 - (iii) All elevated and low wetlands in state or federal fish and wildlife refuges.
 - (iv) All elevated and low wetlands which have been identified as a unique or critical habitat for

threatened or endangered species by the U.S. Fish and Wildlife Service.

- (v) All elevated and low wetlands in Waimanu National Estuarine Research Reserve (Hawai'i).

As listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.

- (B) Class 1.b.: All elevated and low wetlands in protective subzones designated under chapter 13-5 by the state department of land and natural resources[.] as listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.

- (C) Class 2.: All elevated and low wetlands not otherwise classified.

(b) Brackish or saline waters (anchialine pools, saline lakes, coastal wetlands, and estuaries).

- (1) Class 1.a.:

- (A) All inland brackish or saline waters within natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.
- (B) All inland brackish or saline waters in national and state parks.
- (C) All inland brackish or saline waters in state or federal fish and wildlife refuges.
- (D) All inland brackish or saline waters which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.

(E) All inland brackish and saline waters in Waimanu National Estuarine Research Reserve (Hawai'i).

(F) The following natural estuaries:
Lumaha'i and Kilauea estuaries
(Kaua'i).

As listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.

(2) Class 1.b.: All inland brackish or saline waters in protective subzones designated under chapter 13-5 by the state department of land and natural resources[.] as listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.

(3) Class 2.: All inland brackish and saline waters not otherwise classified. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp](Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-5.2 Inland water criteria. (a) Criteria for springs and seeps, ditches and flumes, natural freshwater lakes, reservoirs, low wetlands, coastal wetlands, saline lakes, and anchialine pools. Only the basic criteria set forth in section 11-54-4 apply to springs and seeps, ditches and flumes, natural freshwater lakes, reservoirs, low wetlands, coastal wetlands, saline lakes, and anchialine pools. Natural freshwater lakes, saline lakes, and anchialine pools will be maintained in the natural state through Hawai'i's "no discharge" policy for these waters. Waste discharge into these waters is prohibited,

§11-54-6 Uses and specific criteria applicable to marine waters. (a) Embayments.

(1) As used in this subsection:

"Embayments" means land-confined and physically-protected marine waters with restricted openings to open coastal waters, defined by the ratio of total bay volume to the cross-sectional entrance area of seven hundred to one or greater.

"Total bay volume" is measured in cubic meters and "cross-sectional entrance area" is measured in square meters, and both are determined at mean lower low water.

(2) Water areas to be protected.

(A) Class AA.

(i) [Hawaii

Puako Bay

Waiulua Bay

Anaehoomalu Bay

Kiholo Bay

Kailua Harbor

Kealakekua Bay

Honaunau Bay

Oahu

Waialua Bay

Kahana Bay

Kaneohe Bay

Hanauma Bay

Kauai

Hanalei Bay]Waters are listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter.

(ii) All embayments in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS,

as listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter, or similar reserves for the protection of marine life established under chapter 190, HRS[.] as listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter.

(iii) All waters in state or federal fish and wildlife refuges and marine sanctuaries[.] as listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter.

(iv) All waters which have been officially identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service[.] as listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter.

(B) Class A.

Hawaii

Hilo Bay (inside breakwater)

Kawaihae Boat Harbor

Honokohau Boat Harbor

Keauhou Bay

Maui

Kahului Bay

Lahaina Boat Harbor

Maalaea Boat Harbor

Lanai

Manele Boat Harbor

Kaumalapau Harbor

Molokai

Hale o Lono Harbor
 Kaunakakai Harbor
 Kaunakakai Boat Harbor

Oahu

Kaiaka Bay
 Paiko Peninsula to Koko Head
 Ala Wai Boat Harbor
 Kewalo Basin
 Honolulu Harbor
 Keehi Lagoon
 Barbers Point Harbor
 Pokai Bay
 Heeia Kea Boat Harbor
 Waianae Boat Harbor
 Haleiwa Boat Harbor
 Ko Olina

Kauai

Hanamaulu Bay
 Nawiliwili Bay
 Kukuiula Bay
 Wahiawa Bay
 Hanapepe Bay (inside breakwater)
 Kikiaola Boat Harbor

Port Allen Boat Harbor] Waters are listed in Appendix C dated July 1, 2014, entitled "Class A, Marine Waters and Embayments", located at the end of this chapter.

- (3) The following criteria are specific for all embayments excluding those described in subsection (d). (Note that criteria for embayments differ based on fresh water inflow.)

| | | | |
|------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent of the time</u> | Not to Exceed the given value more than Two per cent of <u>The time</u> |
|------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent of the time</u> | Not to Exceed the given value more than Two per cent of <u>The time</u> |
|----------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Total Nitrogen (ug N/L) | 200.00* 150.00** | 350.00* 250.00** | 500.00* 350.00** |
| Ammonia Nitrogen (ug NH ₄ -N/L) | 6.00* 3.50** | 13.00* 8.50** | 20.00* 15.00** |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 8.00* 5.00** | 20.00* 14.00** | 35.00* 25.00** |
| Total Phosphorus (ug P/L) | 25.00* 20.00** | 50.00* 40.00** | 75.00* 60.00** |
| Chlorophyll a (ug/L) | 1.50* 0.50** | 4.50*[*] 1.50** | 8.50* 3.00** |
| Turbidity (N.T.U.) | 1.5* 0.40** | 3.00* 1.00** | 5.00* 1.50** |

* "Wet" criteria apply when the average fresh water inflow from the land equals or exceeds one per cent of the embayment volume per day.

** "Dry" criteria apply when the average fresh water inflow from the land is less than one per cent of the embayment volume per day.

Applicable to both "wet" and "dry" conditions:

pH Units - shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

- (b) Open coastal waters.
- (1) As used in this subsection:
 - "Open coastal waters" means marine waters bounded by the 183 meter or 600 foot (100 fathom) depth contour and the shoreline, excluding bays named in subsection (a).
- (2) Water areas to be protected: [(measured in a clockwise direction from the first-named to the second-named location, where applicable):]
 - (A) Class AA[.]as listed in Appendix D dated July 1, 2014, entitled "Class AA, Open Coastal Waters", located at the end of this chapter.
 - [(i) Hawaii - The open coastal waters from Leleiwi Point to Waiulaula Point.
 - (ii) Maui - The open coastal waters between Nakalele Point and Waihee Point and between Huelo Point and Puu Olai.
 - (iii) Kahoolawe - All open coastal water surrounding the island.
 - (iv) Lanai - All open coastal waters surrounding the island.
 - (v) Molokai - The open coastal waters between the westerly boundary of Hale o Lono Harbor to Lamaloa Head. Also, the open coastal waters from Cape Halawa to the

- easterly boundary of Kaunakakai Harbor.
- (vi) Oahu - Waimanalo Bay from the southerly boundary of Kaiona Beach Park, and including the waters surrounding Manana and Kaohikaipu Islands, to Makapuu Point. Also, Waialua Bay from Kaiaka Point to Puaena Point, and the open coastal waters along Kaena Point between a distance of 5.6 kilometers (3.5 miles) from Kaena Point towards Makua and 5.6 kilometers (3.5 miles) from Kaena Point toward Mokuleia.
 - (vii) Kauai - The open coastal waters between Hikimoe Valley and Makahoa Point. Also, the open coastal waters between Makahuena Point and the westerly boundary of Hoai Bay.
 - (viii) Niihau - All open coastal waters surrounding the island.
 - (ix) All other islands of the state - All open coastal waters surrounding the islands not classified in this section.]
 - [(x)]All open waters in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS as listed in Appendix D dated July 1, 2014, entitled "Class AA, Open Coastal Waters", located at the end of this chapter, or similar reserves for the protection of marine life established under chapter 190, HRS, as amended as listed in Appendix D dated July 1, 2014, entitled "Class AA, Open Coastal Waters", located at the end of this

chapter; or in the refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service[.]as listed in Appendix D dated July 1, 2014, entitled "Class AA, Open Coastal Waters", located at the end of this chapter.

- (B) Class A - All other open coastal waters not otherwise specified.
- (3) The following criteria are specific for all open coastal waters, excluding those described in subsection (d). (Note that criteria for open coastal waters differ, based on fresh water discharge.)

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent of the time</u> | Not to exceed the given value more than two per cent of <u>the time</u> |
|----------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Total Nitrogen (ug N/L) | 150.00* 110.00** | 250.00* 180.00** | 350.00* 250.00** |
| Ammonia Nitrogen (ug NH ₄ -N/L) | 3.50* 2.00** | 8.50* 5.00** | 15.00* 9.00** |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 5.00* 3.50** | 14.00* 10.00** | 25.00* 20.00** |
| Total Phosphorus (ug P/L) | 20.00* 16.00** | 40.00* 30.00** | 60.00* 45.00** |
| Light Extinction Coefficient (k units) | 0.20* 0.10** | 0.50* 0.30** | 0.85* 0.55** |
| Chlorophyll a ug/L) | 0.30* 0.15** | 0.90* 0.50** | 1.75* 1.00** |
| Turbidity (N.T.U.) | 0.50* 0.20** | 1.25* 0.50** | 2.00* 1.00** |

* "Wet" criteria apply when the open coastal waters receive more than three million gallons per day of fresh water discharge per shoreline mile.

** "Dry" criteria apply when the open coastal waters receive less than three million gallons per day of fresh water discharge per shoreline mile.

Applicable to both "wet" and "dry" conditions:

pH Units - shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

k units = the ratio of light measured at the water's surface to light measured at a particular depth.

L = liter

Light Extinction Coefficient is only required for dischargers who have obtained a waiver pursuant to section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251), as amended, and are required by EPA to monitor it.

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

(c) Oceanic waters.

(1) As used in this subsection: "Oceanic waters" means all other marine waters outside of the 183 meter (600 feet or 100 fathom) depth contour.

- (2) Water areas to be protected: Class A - All oceanic waters.
- (3) The following criteria are specific for oceanic waters:

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed The given value more than <u>ten per cent of the time</u> | Not to exceed the given value more than <u>two per cent of the time</u> |
|----------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Total Nitrogen (ug N/L) | 50.00 | 80.00 | 100.00 |
| Ammonia Nitrogen (ug NH ₄ -N/L) | 1.00 | 1.75 | 2.50 |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 1.50 | 2.50 | 3.50 |
| Total Phosphorus (ug P/L) | 10.00 | 18.00 | 25.00 |
| Chlorophyll a (ug/L) | 0.06 | 0.12 | 0.20 |
| Turbidity (N.T.U.) | 0.03 | 0.10 | 0.20 |

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

pH Units - shall not deviate more than 0.5 units from a value of 8.1.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

(d) Area-specific criteria for the Kona (west) coast of the island of Hawaii.

(1) For all marine waters of the island of Hawaii from Loa Point, South Kona District, clockwise to Malae Point, North Kona District, excluding Kawaihae Harbor and Honokohau Harbor, and for all areas from the shoreline at mean lower low water to a distance 1000 m seaward:

(A) In areas where nearshore marine water salinity is greater than 32.00 parts per thousand the following specific criteria apply:

| <u>Parameter</u> | <u>Geometric mean not to exceed the given single value</u> |
|-------------------------------------------------------------------------------|--------------------------------------------------------------------|
| Total Dissolved Nitrogen (ug N/L) | 100.00 |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 4.50 |
| Total Dissolved Phosphorus (ug P/L) | 12.50 |
| Phosphate (ug PO ₄ - P/L) | 5.00 |
| Ammonia Nitrogen (ug NH ₄ - N/L) | 2.50 |
| Chlorophyll a (ug/L) | 0.30 |
| Turbidity (N.T.U.) | 0.10 |

* Specific criteria for Class A embayments apply to Honokohau Harbor and Kawaihae Harbor, see section 11-54-6(a)(3).

- (B) If nearshore marine water salinity is less than or equal to 32.00 parts per thousand the following parameters shall be related to salinity on the basis of a linear least squares regression equation:

$$Y = MX + B$$

where:

Y = parameter concentration(in ug/L)

X = salinity (in ppt)

M = regression coefficient (or "slope")

B = constant (or "Y intercept").

The absolute value of the upper 95 per cent confidence limit for the calculated sample regression coefficient (M) shall not exceed the absolute value of the following values:

| <u>Parameter</u> | <u>M</u> |
|------------------------------------------------------|----------|
| Nitrate and Nitrite Nitrogen (ug [NO3 + NO2]-N/L) | -31.92 |
| Total Dissolved Nitrogen (ug N/L) | -40.35 |
| Phosphate (ug PO4 - P/L) | -3.22 |
| Total Dissolved Phosphorus (ug P/L) | -2.86 |

- The specific criteria for ammonia nitrogen, chlorophyll a, and turbidity given in clause (i) also apply.
- (C) Parameter concentrations shall be determined along a horizontal transect extending seaward from a shoreline sample location using the following method: water samples shall be obtained at distances of 1, 10, 50, 100, and 500 meters from the shoreline sampling location. Samples shall be collected within one meter of the water surface and below the air-water interface. Dissolved nutrient samples shall be filtered through media with particle size retention of 0.7 μm . This sampling protocol shall be replicated not less than three times on different days over a period not to exceed fourteen days during dry weather conditions. The geometric means of sample measurements for corresponding offshore distances shall be used for regression calculations.

pH Units - shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

L - liter

N.T.U. - Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug - microgram or 0.000001 grams. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-7 Uses and specific criteria applicable to marine bottom types. (a) Sand beaches.

- (1) As used in this subsection:
"Sand beaches" means shoreline composed of the weathered calcareous remains of marine algae and animals (white sand), the weathered remains of volcanic tuff (olivine), or the weathered remains of lava (black sand). Associated animals are largely burrowers and are related to particle grain size, slope, and color of the beach.
- (2) Water areas to be protected:
 - (A) Class I - All beaches on the Northwestern Hawaiian Islands. These islands comprise that portion of the Hawaiian archipelago which lies northwest of the island of Kauai and is part of the State of Hawaii; including Nihoa Island, Necker Island, French Frigate Shoals, Brooks Banks, Gardiner Pinnacles, Dowsett and Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Atoll, Gambia Shoal, and Kure Atoll.

The location and boundaries of each bottom-type class shall be clarified when situations require their identification. For example, the location and boundaries shall be clarified when a discharge permit is applied for or a waiver pursuant to Section 301(h) of the Act is required. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp](Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-8 [Specific criteria for recreational areas]. Recreational criteria for all State waters.
 (a) These criteria are designed to protect the public from exposure to harmful levels of pathogens while participating in water-contact activities. The specific criteria for enterococcus shall be expressed in colony forming units (CFU) per one hundred milliliters or as a most probable number (MPN) per one hundred milliliters, as specified by the analytical method used.[In inland recreational waters:

- (1) Enterococcus content shall not exceed a geometric mean of 33 per one hundred milliliters in not less than five samples which shall be spaced to cover a period between twenty five and thirty days. No single sample shall exceed the single sample maximum of 89 CFU per 100 milliliters or the site-specific one-sided 82 per cent confidence limit.
- (2) Inland recreational waters in which enterococcus content does not exceed the standard shall not be lowered in quality.
- (3) At locations where sampling is less frequent than five samples per twenty-five to thirty

days, no single sample shall exceed the single sample maximum nor shall the geometric mean of these samples taken during the 30-day period exceed 33 CFU per 100 milliliters.

- (4) Raw or inadequately treated sewage, sewage for which the degree of treatment is unknown, or other pollutants of public health significance, as determined by the director of health, shall not be present in natural public swimming, bathing or wading areas. Warning signs shall be posted at locations where human sewage has been identified as temporarily contributing to the enterococcus count.
- (b) In marine recreational waters:
 - (1) Within 300 meters (one thousand feet) of the shoreline, including natural public bathing or wading areas, enterococcus content shall not exceed a geometric mean of 35 CFU per 100 milliliters in not less than five samples which shall be spaced to cover a period between twenty-five and thirty days. No single sample shall exceed the single sample maximum of 104 CFU per 100 milliliters or the site-specific one-sided 75 per cent confidence limit. Marine recreational waters along sections of coastline where enterococcus content does not exceed the standard, as shown by the geometric mean test described above, shall not be lowered in quality.
 - (2) (2) At locations where sampling is less frequent than five samples per twenty-five to thirty days, no single sample shall exceed the single sample maximum nor shall the geometric mean of these samples taken during the thirty-day period exceed 35 CFU per 100 milliliters.]

(b) Enterococcus content shall not exceed a geometric mean of 35 colony forming units per one hundred milliliters over any thirty day interval.

(c) A Statistical Threshold Value (STV) of 130 per one hundred milliliters shall be used for enterococcus. The STV shall not be exceeded by more than ten percent of samples taken within the same thirty day interval in which the geometric mean is calculated.

(d) State waters in which enterococcus content does not exceed the standard shall not be lowered in quality.

[(3)](e) Raw or inadequately treated sewage, sewage for which the degree of treatment is unknown, or other pollutants of public health significance, as determined by the director of health, shall not be present in natural public swimming, bathing or wading areas. Warning signs shall be posted at locations where human sewage has been identified as temporarily contributing to the enterococcus count. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; am and comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-9 Zones of mixing. (a) As used in this section, "zones of mixing" means limited areas around outfalls and other facilities to allow for the initial dilution of waste discharges.

(b) Zones of mixing for the assimilation of domestic, agricultural, and industrial discharges which have received the best degree of treatment or control are recognized as being necessary. It is the objective of these limited zones to provide for a current realistic means of control over the placement and manner of discharges or emissions so as to achieve

Appendix A

July 1, 2014

Class 1, Inland Waters

Hawaii

Akaka Falls State Park
Hakalau Forest National Wildlife Refuge
Hakalau Forest National Wildlife Refuge South Kona Section
Hamakua Forest Reserve (Hoea Kaa Section)
Hamakua Forest Reserve (Kainehe Section)
Hamakua Forest Reserve (Kalopa Section)
Hamakua Forest Reserve (Paauilo Section)
Hapuna Beach State Recreation Area
Hawaii Volcanoes National Park
Hilo Forest Reserve (Humuula Section)
Hilo Forest Reserve (Laupahoehoe Section)
Kahaualea Natural Area Reserve
Kalopa State Rec. Area
Keaoi Islet Sea Bird Sanctuary
Kekaha Kai State Park
Kipahoehoe Natural Area Reserve
Kohala Forest Reserve (Pololu Section)
Kohala Historical Sites State Monument
Kona Hema Preserve (Nature Conservancy)
Lapakahi State Historical Park
Laupahoehoe Natural Area Reserve
Lava Tree State Monument
Mackenzie State Recreation Area
Manowaialee Forest Reserve
Manuka Natural Area Reserve
Manuka State Wayside
Mauna Kea Ice Age Natural Area Reserve
Mauna Kea State Recreation Area/Mauna Kea Fr
Mokupuku Islet Sea Bird Sanctuary
Ookala Cooperative Game Management Area
Paokalani Islet Sea Bird Sanctuary
Puu Honau O Honaunau National Historical Park
Puu Waawaa Forest Bird Sanctuary
Puu Waawaa Forest Reserve
Puukohola Heiau National Historic Site
Wailoa River State Recreation Area
Wailuku River State Park

Kauai

Ahukini State Recreation Pier
Haena State Park
Hanalei National Wildlife Refuge
Kilauea Point National Wildlife Refuge
Kuia Natural Area Reserve
Mokuaeeae Rock Islet Sea Bird Sanctuary
Na Pali Coast State Wilderness Park
Polihale State Park
Russian Fort Elizabeth State Historical Park
Wailua River State Park
Waimea Canyon State Park
Waimea State Recreation Pier

Lanai

Moku Naio Sea Bird Sanctuary
Nanahoa Islets Sea Bird Sanctuary
Poopoo Islet Sea Bird Sanctuary
Puupehe Islet Sea Bird Sanctuary

Maui

Ahihi-Kinohiwa Natural Area Reserve
Alau Island Sea Bird Sanctuary
Haleakala National Park
Halekii-Pihana Heiaus State Monument
Hanawi Natural Area Reserve
Iao Valley State Monument
Kanaha Pond Wildlife Sanctuary
Kanaio Natural Area Reserve
Kaumahina State Wayside
Kealia Pond National Wildlife Refuge
Keopuka Islet Sea Bird Sanctuary
Makena State Park
Mokeehia Islet Sea Bird Sanctuary
Moku Hala Sea Bird Sanctuary
Moku Mana Islet Sea Bird Sanctuary
Molokini Sea Bird Sanctuary
Papanui O Kane Islet Sea Bird Sanctuary
Pauwulu Point Wildlife Sanctuary
Polipoli Spring State Recreation Area

Puaa Kaa State Wayside
Puuku Island Sea Bird Sanctuary
Waianapanapa State Park
Wailua Valley State Wayside
West Maui Natural Area Reserve (Honokowai Section)
West Maui Natural Area Reserve (Lihau Section)
West Maui Natural Area Reserve (Panaewa Section)

Molokai

Huelo Islet Sea Bird Sanctuary
Kakahaia National Wildlife Refuge
Kalaupapa National Historical Park
Kamiloloa Plant Sanctuary
Kanaha Rock Sea Bird Sanctuary
Mokapu Islet Sea Bird Sanctuary
Mokumanu Islet Sea Bird Sanctuary
Molokai Forest Reserve
Okala Islet Sea Bird Sanctuary

Niihau

Kaula Island Sea Bird Sanctuary
Lehua Island Sea Bird Sanctuary

Oahu

Aiea Bay State Recreation Area
Diamond Head State Monument
Hamakua Marsh Wildlife Sanctuary
James Campbell National Wildlife Refuge (Kii)
Kaohikaipu Island Sea Bird Sanctuary
Kawainui Marsh Wildlife Sanctuary (Proposed)
Keaiwa Heiau State Recreation Area
Kekepa Island Sea Bird Sanctuary
Kukaniloko Birthstones State Monument
Kukuihoolua Island Sea Bird Sanctuary
Makiki Valley State Recreation Area
Malaekahana State Recreation Area
Mokualai Island Sea Bird Sanctuary
Mokuauia Island Sea Bird Sanctuary
Mokulua Island Sea Bird Sanctuary
Mokumanu Islet Sea Bird Sanctuary
Oahu Forest National Wildlife Refuge

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Pahole Natural Area Reserve
Paiko Lagoon Wildlife Sanctuary
Pearl Harbor National Wildlife Refuge (Mid Loch)
Pearl Harbor National Wildlife Refuge (W Loch)
Pearl Harbor Nat'l Wildlife Refuge (Kalaeloa)
Popoia Island Sea Bird Sanctuary
Pouhala Marsh Wildlife Sanctuary
Pulemoku Rock Sea Bird Sanctuary
Puu Ualakaa State Park
Royal Mausoleum State Monument
Sacred Falls State Park
Sand Island State Recreation Area
Ulu Po Heiau State Monument
Waiahole Forest Reserve (Waiahole Section)
Waianae Kai Forest Reserve

Appendix B

July 1, 2014

Class AA, Marine Waters and Embayments

Hawaii

Puako Bay

Waiulua Bay

Anaehoomalu Bay

Kiholo Bay

Kailua Harbor

Kealakekua Bay

Honaunau Bay

Oahu

Waialua Bay

Kahana Bay

Kaneohe Bay

Hanauma Bay

Kauai

Hanalei Bay

Appendix C

July 1, 2014

Class A, Marine Waters and Embayments

Hawaii

Hilo Bay (inside breakwater)
Kawaihae Boat Harbor
Honokohau Boat Harbor
Keauhou Bay

Maui

Kahului Bay
Lahaina Boat Harbor
Maalaea Boat Harbor

Lanai

Manele Boat Harbor
Kaumalapau Harbor

Molokai

Hale o Lono Harbor
Kaunakakai Harbor
Kaunakakai Boat Harbor

Oahu

Kaiaka Bay
Paiko Peninsula to Koko Head
Ala Wai Boat Harbor
Kewalo Basin
Honolulu Harbor
Keehi Lagoon
Barbers Point Harbor
Pokai Bay
Heeia Kea Boat Harbor
Waianae Boat Harbor
Haleiwa Boat Harbor
Ko Olina

Kauai

Hanamaulu Bay
Nawiliwili Bay
Kukuiula Bay
Wahiawa Bay
Hanapepe Bay (inside breakwater)
Kikiaola Boat Harbor
Port Allen Boat Harbor

Appendix D

July 1, 2014

Class AA, Open Coastal Waters

Measured in a clockwise direction from the first-named to the second-named location, where applicable):

Hawaii

The open coastal waters from Leleiwi Point to Waiulaula Point.

Maui

The open coastal waters between Nakalele Point and Waihee Point and between Huelo Point and Puu Olai.

Kahoolawe

All open coastal water surrounding the island.

Lanai

All open coastal waters surrounding the island.

Molokai

The open coastal waters between the westerly boundary of Hale o Lono Harbor to Lamaloa Head. Also, the open coastal waters from Cape Halawa to the easterly boundary of Kaunakakai Harbor.

Oahu

Waimanalo Bay from the southerly boundary of Kaiona Beach Park, and including the waters surrounding Manana and Kaohikaipu Islands, to Makapuu Point. Also, Waialua Bay from Kaiaka Point to Puaena Point, and the open coastal waters along Kaena Point between a distance of 5.6 kilometers (3.5 miles) from Kaena Point towards Makua and 5.6 kilometers (3.5 miles) from Kaena Point toward Mokuleia.

Kauai

The open coastal waters between Hikimoe Valley and Makahoa Point. Also, the open coastal waters between Makahuena Point and the westerly boundary of Hoai Bay.

Niihau

All open coastal waters surrounding the island.

All other islands of the state

All open coastal waters surrounding the islands not classified in Appendix D or 11-54-6(b)(2)(A).

DEPARTMENT OF HEALTH
Amendment and Compilation of Chapter 11-54
Hawaii Administrative Rules

NOV 15 2014

SUMMARY

1. Title amended.
2. §11-54-2 is amended.
3. §11-54-3 is amended.
4. §11-54-4 is amended.
5. §11-54-5.1 is amended.
6. §11-54-6 is amended.
7. §11-54-8 is amended.
8. §11-54-11 is amended.
9. §11-54-12 is amended.
10. §11-54-13 is amended.
11. §11-54-14 is amended.

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HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 54

WATER QUALITY STANDARDS

- §11-54-1 Definitions
- §11-54-1.1 General policy of water quality antidegradation
- §11-54-2 Classification of State waters
- §11-54-3 Classification of water uses
- §11-54-4 Basic water quality criteria applicable to all waters
- §11-54-5 Uses and specific criteria applicable to inland waters
- §11-54-5.1 Inland water areas to be protected
- §11-54-5.2 Inland water criteria
- §11-54-6 Uses and specific criteria applicable to marine waters
- §11-54-7 Uses and specific criteria applicable to marine bottom types
- §11-54-8 Recreational criteria for all State waters
- §11-54-9 Zones of mixing
- §11-54-9.1 Water quality certification
- §11-54-9.1.01 Water quality certification; contents of certification
- §11-54-9.1.02 Water quality certification; contents of water quality certification application
- §11-54-9.1.03 Water quality certification; notice and hearing
- §11-54-9.1.04 Water quality certification; waiver
- §11-54-9.1.05 Water quality certification; adoption of new water quality standards
- §11-54-9.1.06 Water quality certification; inspection

- of facility or activity before operation
- §11-54-9.1.07 Water quality certification; notification to licensing or permitting agency
 - §11-54-9.1.08 Water quality certification; termination or suspension
 - §11-54-9.1.09 Water quality certification; review and advice
 - §11-54-10 Water quality analyses
 - §11-54-11 Schedule of compliance
 - §11-54-12 Intake credits
 - §11-54-13 Revision
 - §11-54-14 Severability
 - §11-54-15 Field citations; non-compliance

§11-54-1 Definitions. As used in this chapter:

"Ambient conditions" means the water quality conditions that would occur in the receiving waters if these waters were not influenced by the proposed new human activity.

"Amphidromous" means aquatic life that migrate to and from the sea, but not specifically for reproductive purposes. Amphidromous aquatic life in Hawaiian streams are confined to fresh waters as adults, but their larval stages are partially or entirely spent in the ocean as part of the zooplankton.

"Anchialine pools" means coastal bodies of standing waters that have no surface connections to the ocean but display both tidal fluctuations and salinity ranges characteristic of fresh and brackish waters, indicating the presence of subsurface connections to the watertable and ocean. Anchialine pools are located in porous substrata (recent lava or limestone) and often contain a distinctive assemblage of native aquatic life. Deeper anchialine pools may display salinity stratification, and some shallow

pools may contain standing water only on the highest tides.

"Aquatic life" means "any type or species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or offspring thereof; or freshwater or marine plants, including, seeds, roots, products, and other parts thereof" (section 187A-1, HRS).

"Best degree of treatment or control" means that treatment or control which is required by applicable statutes and regulations of the State of Hawai'i and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251, et seq.) or which is otherwise specified by the director considering technology or management practices currently available in relation to the public interest.

"Best management practices" or "BMPs" means schedules of activities, prohibitions or designations of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of State waters. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs include methods, measures or practices selected by the department to meet nonpoint source pollution control needs. BMPs also include but are not limited to structural and nonstructural controls. BMPs can be applied before, during, and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving State waters.

"Brackish waters" means waters with dissolved inorganic ion concentrations (salinity) greater than 0.5 parts per thousand, but less than thirty-two parts per thousand.

"Coastal waters" means "all waters surrounding the islands of the State from the coast of any island to a point three miles seaward from the coast, and, in

the case of streams, rivers, and drainage ditches, to a point three miles seaward from their point of discharge into the sea and includes those brackish waters, fresh waters and salt waters that are subject to the ebb and flow of the tide" (section 342D-1, HRS).

"Coastal wetlands" means natural or man-made ponds and marshes having variable salinity, basin limits, and permanence. These wetlands usually adjoin the coastline and may be subject to tidal, seasonal, or perennial flooding. Coastal wetlands are generally maintained by surface and subterranean sources of fresh and salt water. Many natural coastal wetlands have been modified significantly by man and are characterized by introduced aquatic life. Coastal wetlands include, but are not limited to, salt marshes, open ponds, mudflats, man-made or natural waterbird refuges, isolated seasonal lakes and mangrove flats.

"Department" means department of health, State of Hawai'i.

"Developed estuaries" means volumes of brackish coastal waters in well-defined basins constructed by man or otherwise highly modified from their natural state. Developed estuaries include, but are not limited to, dredged and revetted stream termini.

"Director" means the director of health, State of Hawai'i, or the director's duly authorized agent.

"Discharge" means the discharge of a water pollutant.

"Ditches and flumes" means fresh waters flowing continuously in artificial channels. They are used mainly for the purpose of irrigation and usually receive water from stream diversions. Ditches and flumes may be inflowing (carry water to reservoirs or user areas) or outflowing (drain water from reservoirs or user areas).

"Drainage basin" or "watershed" means the region or area drained by a stream or river system.

"Drainage ditch" means that facility used to carry storm runoff only, not sanitary sewage.

"Elevated wetlands" means natural freshwater wetlands located above 100 m (330 ft) elevation. They are generally found in undisturbed areas, mainly in remote uplands and forest reserves with high rainfall. Elevated wetlands include upland bogs, marshes, swamps, and associated ponds and pools.

"Estuaries" means characteristically brackish coastal waters in well-defined basins with a continuous or seasonal surface connection to the ocean that allows entry of marine fauna. Estuaries may be either natural or developed.

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

"Flowing springs and seeps" means perennial, relatively constant fresh water flows not in distinct channels, in which the water emanates from elevated aquifers as wet films or trickles over rock surfaces. They are found typically as natural occurrences along rock faces or banks of deeply incised streams, and artificially along road cuts.

"Flowing waters" means fresh waters flowing unidirectionally down altitudinal gradients. These waters may or may not be confined in distinct channels. Flowing waters include streams, flowing springs and seeps and ditches and flumes.

"Fresh waters" means all waters with a dissolved inorganic ion concentration of less than 0.5 parts per thousand.

"Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded and develops conditions that favor the growth and regeneration of hydrophytic vegetation.

"Hydrophytic vegetation" or "hydrophytes" means plants adapted to growing in seasonally or permanently flooded conditions.

"Intermittent streams" means fresh waters flowing in definite natural channels only during part of the year or season. Intermittent streams include many tributaries of perennial streams.

"Introduced aquatic life" means those species of aquatic organisms that are not native to a given area or water body and whose populations were established (deliberately or accidentally) by human activity. "Introduced" organisms are also referred to as "alien" or "exotic".

"Low wetlands" means freshwater wetlands located below 100 m (330 ft) elevation that may be natural or artificial in origin and are usually found near coasts or in valley termini. Low wetlands are maintained by either stream, well, or ditch influent water, or by exposure of the natural water table. Low wetlands include, but are not limited to, natural lowland marshes, riparian wetlands, littoral zones of standing waters (including lakes, reservoirs, ponds and fishponds) and agricultural wetlands such as taro lo'i.

"Native aquatic life" means those species or higher taxa of aquatic organisms that occur naturally in a given area or water body and whose populations were not established as a result of human activity.

"Natural estuaries" means volumes of brackish coastal waters in well-defined basins of natural origin, found mainly at the mouths of streams or rivers. Natural estuaries can be either stream-fed (drowned stream mouths fed by perennial stream runoff) or spring-fed (nearshore basins with subterranean fresh water sources). Stream-fed estuaries serve as important migratory pathways for larval and juvenile amphidromous stream fauna.

"Natural freshwater lakes" means standing water that is always fresh, in well-defined natural basins, with a surface area usually greater than 0.1 ha (0.25 acres), and in which rooted emergent hydrophytes, if present, occupy no more than thirty per cent of the surface area. Natural freshwater lakes in Hawai'i occur at high, intermediate, and low elevations. Lowland freshwater lakes characteristically lack a natural oceanic connection (surface or subsurface) of a magnitude sufficient to cause demonstrable tidal fluctuations.

"Nonpoint source pollution" has the meaning defined in section 342E-1, HRS.

"Perennial streams" means fresh waters flowing year-round in all or part of natural channels, portions of which may be modified by humans. Flow in perennial streams may vary seasonally. Perennial streams may be subdivided into longitudinal zones, based on elevation and gradient:

- (1) Headwater zone (elevation above 800 m (2600 ft) or gradient above 30 per cent or both);
- (2) Mid-zone (elevation between 50-800 m (165-2600 ft), or gradient between 5 and 30 per cent or both); and
- (3) Terminal zone (elevation below 50 m (165 ft) or gradient below 5 per cent or both).

Perennial streams may be either continuous or interrupted. Continuous perennial streams discharge continuously to the ocean in their natural state, and contain water in the entire length of the stream channel year-round. Interrupted perennial streams usually flow perennially in their upper reaches but only seasonally in parts of their middle or lower reaches, due to either downward seepage of surface flow (naturally interrupted) or to man-made water diversions (artificially interrupted).

"Person" has the same meaning as defined in section 342D-1, HRS.

"Point source" has the same meaning as defined in section 11-55-01.

"Pollution" means "water pollution" as defined in section 342D-1, HRS.

"Reservoirs" means standing water that is always fresh, in well-defined artificially created impoundments.

"Saline or salt waters" means waters with dissolved inorganic ion concentrations greater than thirty-two parts per thousand.

"Saline lakes" means standing waters of salinities ranging from brackish to hypersaline, located in well-defined natural basins, and lacking a natural surface connection to the ocean. Saline lakes

may be present as high-island shoreline or near-shoreline features (e.g. Lake Nomilu, Kauai; Salt Lake, Oahu; Lake Kauhako, Molokai) or as low-island closed lagoons (Lake Laysan, Laysan). They are usually, but not always, fed by seawater seepage and may be diluted by rainwater, overland runoff, or ground water, or concentrated by evaporation.

"Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

"Springs and seeps" means small, perennial, relatively constant freshwater flow not in distinct channels, such as wet films or trickles over rock surfaces, in which the water emanates from elevated aquifers. Springs and seeps may be either stream associated, occurring in deeply cut valleys and contributing to stream flow; or coastal, occurring on coastal cliffs and usually flowing into the ocean.

"Standing waters" refers to waters of variable size, depth, and salinity, that have little or no flow and that are usually contained in well-defined basins. Standing water bodies include natural freshwater lakes, reservoirs or impoundments, saline lakes, and anchialine pools.

"State waters", as defined by section 342D-1, HRS, means all waters, fresh, brackish, or salt around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, ground waters, and lakes; provided that drainage ditches, ponds, and reservoirs required as part of a water pollution control system are excluded. This chapter applies to all State waters, including wetlands, subject to the following exceptions:

- (1) This chapter does not apply to groundwater, except the director may in the director's discretion take appropriate actions when the director believes that the discharge of pollutants to the ground or groundwater has adversely affected, is adversely affecting, or will adversely affect the quality of any State water other than groundwater.
- (2) This chapter does not apply to drainage ditches, flumes, ponds and reservoirs that are required as part of a water pollution control system.
- (3) This chapter does not apply to drainage ditches, flumes, ponds, and reservoirs that are used solely for irrigation and do not overflow into or otherwise adversely affect the quality of any other State waters, unless such ditches, flumes, ponds, and reservoirs are waters of the United States as defined in 40 C.F.R. section 122.2. The State of Hawai'i has those boundaries stated in the Hawai'i Constitution, art. XV, §1.

"Streams" means seasonal or continuous water flowing unidirectionally down altitudinal gradients in all or part of natural or modified channels as a result of either surface water runoff or ground water influx, or both. Streams may be either perennial or intermittent and include all natural or modified watercourses.

"Stream channel" means a natural or modified watercourse with a definite bed and banks which periodically or continuously contains flowing water.

"Stream system" means the aggregate of water features comprising or associated with a stream, including the stream itself and its tributaries, headwaters, ponds, wetlands, and estuary. A stream system is geographically delimited by the boundaries of its drainage basin or watershed.

"Surface water" means both contained surface water (that is, water upon the surface of the earth in well-defined basins created naturally or artificially

including, but not limited to, streams, other watercourses, lakes, and reservoirs) and diffused surface water (that is, water occurring upon the surface of the ground other than in contained basins). Water from natural springs and seeps is surface water when it exits from the spring onto the earth's surface.

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

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

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

Wetlands may be fresh, brackish, or saline and generally include swamps, marshes, bogs, and associated ponds and pools, mud flats, isolated seasonal ponds, littoral zones of standing water bodies, and alluvial floodplains. For the purpose of applying for water quality certifications under Clean Water Act Section 401, and for National Pollutant Discharge Elimination System (NPDES) permit purposes, the identification and delineation of wetland boundaries shall be done following the procedures described in the U.S. Army Corps of Engineers' Wetlands Delineation Manual (USACE 1987). [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/02/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp NOV 15 2014] (Auth: HRS §187A-1, §§342D-1,

342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E; 40 C.F.R. §§ 122.2, 130.2, 131.3, 131.12; 22 U.S.C. §1362(14))

§11-54-1.1 General policy of water quality antidegradation. (a) Existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(b) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the director finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the state's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the director shall assure water quality adequate to protect existing uses fully. Further, the director shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(c) Where existing high quality waters constitute an outstanding resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(d) In those areas where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Clean Water Act. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp

10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp NOV 15 2014] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E; 40 C.F.R. §131.12) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-2 Classification of State waters. (a) State waters are classified as either inland waters or marine waters.

- (b) Inland waters may be fresh, brackish, or saline.
- (1) All inland fresh waters are classified as follows, based on their ecological characteristics and other natural criteria:
 - (A) Flowing waters.
 - (i) Streams (perennial and intermittent);
 - (ii) Flowing springs and seeps; and
 - (iii) Ditches and flumes that discharge into any other waters of the State;
 - (B) Standing waters.
 - (i) Natural freshwater lakes; and
 - Reservoirs (impoundments);
 - (C) Wetlands.
 - (i) Elevated wetlands (bogs, marshes, swamps, and associated ponds); and
 - (ii) Low wetlands (marshes, swamps, and associated ponds).
- (2) All inland brackish or saline waters are classified as follows, based on their ecological characteristics and other natural criteria:
 - (A) Standing waters.
 - (i) Anchialine pools; and
 - (ii) Saline lakes.
 - (B) Wetlands.
 - (i) Coastal wetlands (marshes, swamps, and associated ponds).

- (C) Estuaries.
 - (i) Natural estuaries (stream-fed estuaries and spring-fed estuaries); and
 - (ii) Developed estuaries.
- (c) Marine waters
 - (1) All marine waters are either embayments, open coastal, or oceanic waters;
 - (2) All marine waters which are embayments or open coastal waters are also classified according to the following bottom subtypes:
 - (A) Sand beaches;
 - (B) Lava rock shorelines and solution benches;
 - (C) Marine pools and protected coves;
 - (D) Artificial basins;
 - (E) Reef flats; and
 - (F) Soft bottoms. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp **NOV 15 2014**] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-3 Classification of water uses. (a) The following use categories classify inland and marine waters for purposes of applying the standards set forth in this chapter, and for the selection or definition of appropriate quality parameters and uses to be protected in these waters. Storm water discharge into State waters shall be allowed provided it meets the requirements specified in this section and the basic water quality criteria specified in section 11-54-4.

(b) Inland waters.

(1) Class 1.

It is the objective of class 1 waters that these waters remain in their natural state as nearly as possible with an absolute minimum of pollution from any human-caused source. To the extent possible, the wilderness character of these areas shall be protected. Waste discharge into these waters is prohibited, except as provided in section 11-54-4(e). Any conduct which results in a demonstrable increase in levels of point or nonpoint source contamination in class 1 waters is prohibited.

(A) Class 1.a.

The uses to be protected in class 1.a waters are scientific and educational purposes, protection of native breeding stock, baseline references from which human-caused changes can be measured, compatible recreation, aesthetic enjoyment, and other nondegrading uses which are compatible with the protection of the ecosystems associated with waters of this class;

(B) Class 1.b.

The uses to be protected in class 1.b waters are domestic water supplies, food processing, protection of native breeding stock, the support and propagation of aquatic life, baseline references from which human-caused changes can be measured, scientific and educational purposes, compatible recreation, and aesthetic enjoyment. Public access to these waters may be restricted to protect drinking water supplies;

(2) Class 2

The objective of class 2 waters is to protect their use for recreational purposes, the support and propagation of aquatic life,

agricultural and industrial water supplies, shipping, and navigation. The uses to be protected in this class of waters are all uses compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation in and on these waters. These waters shall not act as receiving waters for any discharge which has not received the best degree of treatment or control compatible with the criteria established for this class. No new treated sewage discharges shall be permitted within estuaries. No new industrial discharges shall be permitted within estuaries, with the exception of:

- (A) Acceptable non-contact thermal and drydock or marine railway discharges within Pearl Harbor, Oahu;
 - (B) Storm water discharges associated with industrial activities (defined in 40 C.F.R. sections 122.26(b)(14) and (b)(15), except (b)(15)(i)(A) and (b)(15)(i)(B)) which meet, at the minimum, the basic water quality criteria applicable to all waters as specified in section 11-54-4(a), and all applicable requirements specified in chapter 11-55, titled "Water Pollution Control"; and
 - (C) Discharges covered by a National Pollutant Discharge Elimination System (NPDES) general permit, approved by the U.S. Environmental Protection Agency and issued by the Department in accordance with 40 C.F.R. section 122.28 and all applicable requirements specified in chapter 11-55, titled "Water Pollution Control".
- (c) Marine waters.
(1) Class AA.

It is the objective of class AA waters that these waters remain in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-caused source or actions. To the extent practicable, the wilderness character of these areas shall be protected. No zones of mixing shall be permitted in this class:

- (A) Within a defined reef area, in waters of a depth less than 18 meters (ten fathoms); or
- (B) In waters up to a distance of 300 meters (one thousand feet) off shore if there is no defined reef area and if the depth is greater than 18 meters (ten fathoms).

The uses to be protected in this class of waters are oceanographic research, the support and propagation of shellfish and other marine life, conservation of coral reefs and wilderness areas, compatible recreation, and aesthetic enjoyment. The classification of any water area as Class AA shall not preclude other uses of the waters compatible with these objectives and in conformance with the criteria applicable to them;

(2) Class A.

It is the objective of class A waters that their use for recreational purposes and aesthetic enjoyment be protected. Any other use shall be permitted as long as it is compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation in and on these waters. These waters shall not act as receiving waters for any discharge which has not received the best degree of treatment or control compatible with the criteria established for this class. No new sewage

discharges will be permitted within embayments. No new industrial discharges shall be permitted within embayments, with the exception of:

- (A) Acceptable non-contact thermal and drydock or marine railway discharges, in the following water bodies:
 - (i) Honolulu Harbor, Oahu;
 - (ii) Barbers Point Harbor, Oahu;
 - (iii) Keehi Lagoon Marina Area, Oahu;
 - (iv) Ala Wai Boat Harbor, Oahu; and
 - (v) Kahului Harbor, Maui.
 - (B) Storm water discharges associated with industrial activities (defined in 40 C.F.R. sections 122.26(b)(14) and (b)(15), except (b)(15)(i)(A) and (b)(15)(i)(B)) which meet, at the minimum, the basic water quality criteria applicable to all waters as specified in section 11-54-4, and all applicable requirements specified in the chapter 11-55, titled "Water Pollution Control"; and
 - (C) Discharges covered by a NPDES general permit, approved by the U.S. Environmental Protection Agency and issued by the Department in accordance with 40 C.F.R. section 122.28 and all applicable requirements specified in chapter 11-55, titled "Water Pollution Control".
- (d) Marine bottom ecosystems.
- (1) Class I.
It is the objective of class I marine bottom ecosystems that they remain as nearly as possible in their natural pristine state with an absolute minimum of pollution from any human-induced source. Uses of marine bottom ecosystems in this class are passive human uses without intervention or alteration, allowing the perpetuation and

preservation of the marine bottom in a most natural state, such as for nonconsumptive scientific research (demonstration, observation or monitoring only), nonconsumptive education, aesthetic enjoyment, passive activities, and preservation;

(2) Class II.

It is the objective of class II marine bottom ecosystems that their use for protection including propagation of fish, shellfish, and wildlife, and for recreational purposes not be limited in any way. The uses to be protected in this class of marine bottom ecosystems are all uses compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation. Any action which may permanently or completely modify, alter, consume, or degrade marine bottoms, such as structural flood control channelization(dams); landfill and reclamation; navigational structures (harbors, ramps); structural shore protection (seawalls, revetments); and wastewater effluent outfall structures may be allowed upon securing approval in writing from the director, considering the environmental impact and the public interest pursuant to sections 342D-4, 342D-5, 342D-6, and 342D-50, HRS in accordance with the applicable provisions of chapter 91, HRS. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; am and comp 10/21/12; am and comp 12/6/13; am and comp **NOV 15 2014**](Auth: HRS §174C, §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-4 Basic water quality criteria applicable to all waters. (a) All waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants, including:

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

(b) The director is authorized to impose by order the penalties and fines and corrective measures as specified in chapters 342D and 342E, HRS, against any person who discharges or otherwise causes or allows water pollutants to enter State waters and cause violation of this chapter, unless that person acted in compliance with a permit or variance issued by the director pursuant to chapters 342D, HRS, for

that person's discharges. Each day that the person has caused each water quality standard not to be met shall constitute a separate offense.

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

(1) As used in this section:

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

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

"Dilution" means, for discharges through submerged outfalls, the average and minimum values calculated using the models in the EPA publication, Initial Mixing Characteristics of Municipal Ocean Discharges (EPA/600/3-85/073, November, 1985), or in the EPA publication, Expert System for Hydrodynamic Mixing Zone Analysis of Conventional and Toxic Submerged Single Port Discharges (Cormix 1) (EPA/600/3-90/012), February, 1990.

"In-Stream Waste Concentration" (IWC) means the concentration of a toxicant in the receiving water, or for a discharge, the concentration of the effluent after minimum dilution authorized by the department. A discharge of one hundred divided by the minimum dilution is the IWC when the dilution is authorized by the director. A discharge of one hundred per cent effluent is the

IWC when dilution is not authorized by the director.

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

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

(2) Narrative toxicity and human health standards.

(A) Acute Toxicity Standards: All State waters shall be free from pollutants in concentrations which exceed the acute standards listed in paragraph (3). All State waters shall also be free from acute toxicity as measured using the toxicity tests listed in section 11-54-10, or other methods specified by the director.

(B) Chronic Toxicity Standards: All State waters shall be free from pollutants in concentrations which on average during any twenty-four hour period exceed the chronic standards listed in paragraph (3). All State waters shall also be free from chronic toxicity as measured using the toxicity tests listed in section 11-54-10, or other methods specified by the director.

- (C) Human Health Standards: All State waters shall be free from pollutants in concentrations which, on average during any thirty day period, exceed the "fish consumption" standards for non-carcinogens in paragraph (3). All State waters shall also be free from pollutants in concentrations, which on average during any 12 month period, exceed the "fish consumption" standards for pollutants identified as carcinogens in paragraph (3).
- (3) Numeric standards for toxic pollutants applicable to all waters. The freshwater standards apply where the dissolved inorganic ion concentration is less than 0.5 parts per thousand; saltwater standards apply above 0.5 parts per thousand. Values for metals refer to the dissolved fraction. All values are expressed in micrograms per liter.

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

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

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

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

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

ns - No standard has been developed.

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

Note - Compounds listed in the plural in the "Pollutant" column represent complex mixtures of isomers.

Numbers listed to the right of these compounds refer to the total allowable concentration of any combination of isomers of the compound, not only to concentrations of individual isomers.

- (4) The following are basic requirements applicable to discharges to State waters. These standards shall be enforced through effluent limitations or other conditions in discharge permits. The director may apply more stringent discharge requirements to any discharge if necessary to ensure compliance with all standards in paragraph (2).
 - (A) Continuous discharges through submerged outfalls.
 - (i) The No Observed Effect Concentration (NOEC), expressed as per cent effluent, of continuous discharges through submerged outfalls shall not be less than 100 divided by the minimum dilution; or,
 - (ii) The Test of Significant Toxicity (TST), as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010), shall be used to demonstrate no unacceptable level of chronic toxicity at the In-stream Waste Concentration (IWC). The chronic toxicity criterion is expressed using a regulatory management decision (b value) of 0.75 for chronic toxicity where, a 0.25 effect

- level (or more) at the IWC demonstrates an unacceptable level of chronic toxicity.
- (B) Continuous discharges through submerged outfalls shall not contain:
- (i) Pollutants in twenty-four hour average concentrations greater than the values obtained by multiplying the minimum dilution by the standards in paragraph (3) for the prevention of chronic toxicity.
 - (ii) Non-carcinogenic pollutants in thirty day average concentrations greater than the values obtained by multiplying the minimum dilution by the standards in paragraph (3) for fish consumption.
 - (iii) Carcinogenic pollutants in twelve month average concentrations greater than the values obtained by multiplying the average dilution by the standards in paragraph (3) for fish consumption.
- (C) Discharges without submerged outfalls.
- (i) The survival of test organisms in an undiluted acute toxicity test of any discharge shall not be less than eighty per cent;
 - (ii) Compliance with the acute toxicity NPDES effluent limit is demonstrated by using the Test of Significant Toxicity (TST) as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010). The acute toxicity criterion is expressed using a regulatory management decision (*b* value) of 0.80 for acute toxicity

- test methods listed in 11-54-10, where, in an undiluted acute toxicity test, a 0.20 effect level (or more) at the IWC demonstrates an unacceptable level of acute toxicity; or,
- (iii) The Test of Significant Toxicity (TST), as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010), shall be used to demonstrate no unacceptable level of chronic toxicity at the IWC. The chronic toxicity criterion is expressed using a regulatory management decision (*b* value) of 0.75 for chronic toxicity where, a 0.25 effect level (or more) at the IWC demonstrates an unacceptable level of chronic toxicity. Toxicity is considered significant if the mean response in the IWC is greater than 0.75 multiplied by the mean response of the control.

No discharge shall contain pollutants in concentrations greater than the standards in paragraph (3) for the prevention of acute toxicity to aquatic life. The director may make a limited allowance for dilution for a discharge in this category if it meets the following criteria: the discharge velocity is greater than 3 meters per second; the discharge enters the receiving water horizontally, and; the receiving water depth at the discharge point is greater than zero.

- (d) The requirements of paragraph (a)(6) shall be deemed met upon a showing that the land on which the erosion occurred or is occurring is being managed

in accordance with soil conservation practices acceptable to the applicable soil and water conservation district and the director, and that a comprehensive conservation program is being actively pursued, or that the discharge has received the best degree of treatment or control, and that the severity of impact of the residual soil reaching the receiving body of water is deemed to be acceptable.

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

(f) Pesticide Application.

(1) As used in this section:

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

"Pest" means any insect, rodent, nematode, fungus, weed, or

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

"Pesticide" means

(A) Any substance or mixture of substances intended for preventing, destroying,

- repelling, or mitigating any pest;
- (B) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and
 - (C) Any nitrogen stabilizer, except that the term "pesticide" shall not include any article that is a "new animal drug" within the meaning of 21 U.S.C. 321(w), that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of 21 U.S.C. 321(x) bearing or containing a new animal drug.

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

Note: drugs used to control diseases of humans or animals (such as livestock, fishstock and pets) are not considered pesticides; such drugs are regulated by the Food and Drug Administration. Fertilizers, nutrients, and other substances used to promote plant survival and health are not considered plant growth regulators and thus are not pesticides. Biological control agents, except for certain microorganisms, are exempted from regulation under FIFRA. (Biological control agents include beneficial predators such as birds or ladybugs that eat insect pests, parasitic wasps, fish, etc.).

- (2) Pesticide applications may be made to State waters if the pesticide applications are:
- (A) Registered by the U.S. Environmental Protection Agency and licensed by the state department of agriculture or other state agency regulating pesticides;
 - (B) Used for the purpose of controlling mosquito and other flying insect pests; controlling weed and algae pests; controlling animal pests; controlling forest canopy pests; or protecting public health or the environment in a declared pest emergency situation or as determined by the director;
 - (C) Applied in a manner consistent with the labeling of the pesticide under FIFRA;
 - (D) Applied under permits issued pursuant to HRS chapter 342D, if the director requires such permits under chapter 342D, HRS;
 - (E) Applied in a manner so applicable narrative and numeric state water quality criteria as required in chapter 11-54 are met. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; am and comp 06/15/09; am and comp 10/21/12; am and comp 12/6/13; am and

comp NOV 15 2014] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-5 Uses and specific criteria applicable to inland waters. Inland water areas to be protected are described in section 11-54-5.1, corresponding specific criteria are set forth in section 11-54-5.2; water body types are defined in section 11-54-1. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp NOV 15 2014] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-5.1 Inland water areas to be protected.

(a) Freshwaters.

(1) Flowing waters: perennial streams and rivers, intermittent streams, springs and seeps, and man-made ditches and flumes that discharge into any other waters of the State.

(A) Class 1.a.:

- (i) All flowing waters within the natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.
- (ii) All flowing waters in national and state parks.

- (iii) All flowing waters in state or federal fish and wildlife refuges.
- (iv) All flowing waters which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.
- (v) All flowing waters in Waimanu National Estuarine Research Reserve (Hawai'i).

As listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.

- (B) Class 1.b.: All flowing waters in protective subzones designated under chapter 13-5 by the state department of land and natural resources as listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.
- (C) Class 2.: All flowing waters in areas not otherwise classified.

All flowing waters in classes 1 and 2 in which water quality exceeds the standards specified in this chapter shall not be lowered in quality unless it has been affirmatively demonstrated to the director that the change is justifiable as a result of important economic or social development and will not interfere with or become injurious to any assigned uses made of, or presently in, those waters. This statement of antidegradation policy does not limit the applicability of the policy in section 11-54-1.1 to the whole chapter.

- (2) Standing waters (natural freshwater lakes and reservoirs):
 - (A) Class 1.a.:
 - (i) All standing waters within the natural reserves, preserves,

sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.

- (ii) All standing waters in national and state parks.
- (iii) All standing waters in state or federal fish and wildlife refuges.
- (iv) All standing waters which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.
- (v) All standing waters in Waimanu National Estuarine Research Reserve (Hawai'i).

As listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.

- (B) Class 1.b.: All standing waters in protective subzones designated under chapter 13-5 by the state department of land and natural resources as listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.
 - (C) Class 2.: All standing waters in areas not otherwise classified.
- (3) Elevated wetlands and low wetlands:
- (A) Class 1.a.:
 - (i) All elevated and low wetlands within the natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the

protection of aquatic life established under chapter 195, HRS.

- (ii) All elevated and low wetlands in national and state parks.
- (iii) All elevated and low wetlands in state or federal fish and wildlife refuges.
- (iv) All elevated and low wetlands which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.
- (v) All elevated and low wetlands in Waimanu National Estuarine Research Reserve (Hawai'i).

As listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.

- (B) Class 1.b.: All elevated and low wetlands in protective subzones designated under chapter 13-5 by the state department of land and natural resources as listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.
 - (C) Class 2.: All elevated and low wetlands not otherwise classified.
- (b) Brackish or saline waters (anchialine pools, saline lakes, coastal wetlands, and estuaries).
- (1) Class 1.a.:
 - (A) All inland brackish or saline waters within natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of

aquatic life established under chapter 195, HRS.

- (B) All inland brackish or saline waters in national and state parks.
- (C) All inland brackish or saline waters in state or federal fish and wildlife refuges.
- (D) All inland brackish or saline waters which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.
- (E) All inland brackish and saline waters in Waimanu National Estuarine Research Reserve (Hawai'i).
- (F) The following natural estuaries:
Lumaha'i and Kilauea estuaries
(Kaua'i).

As listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.

- (2) Class 1.b.: All inland brackish or saline waters in protective subzones designated under chapter 13-5 by the state department of land and natural resources as listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.
- (3) Class 2.: All inland brackish and saline waters not otherwise classified. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp **NOV 15 2014**](Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-5.2 Inland water criteria. (a) Criteria for springs and seeps, ditches and flumes, natural freshwater lakes, reservoirs, low wetlands, coastal wetlands, saline lakes, and anchialine pools. Only the basic criteria set forth in section 11-54-4 apply to springs and seeps, ditches and flumes, natural freshwater lakes, reservoirs, low wetlands, coastal wetlands, saline lakes, and anchialine pools. Natural freshwater lakes, saline lakes, and anchialine pools will be maintained in the natural state through Hawai'i's "no discharge" policy for these waters. Waste discharge into these waters is prohibited, except as provided in section 11-54-4(e) (see section 11-54-3(b)(1)).

(b) Specific criteria for streams. Water column criteria for streams shall be as provided in the following table:

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent of the time</u> | Not to Exceed the given value more than two per cent of <u>the time</u> |
|-------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Total Nitrogen (ug N/L) | 250.0* 180.0** | 520.0* 380.0** | 800.0* 600.0** |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 70.0* 30.0** | 180.0* 90.0** | 300.0* 170.0** |
| Total Phosphorus (ug P/L) | 50.0* 30.0** | 100.0* 60.0** | 150.0* 80.0** |
| Total Suspended Solids (mg/L) | 20.0* 10.0** | 50.0* 30.0** | 80.0* 55.0** |
| Turbidity (N.T.U.) | 5.0* 2.0** | 15.0* 5.5** | 25.0* 10.0** |

* Wet season - November 1 through April 30.

** Dry season - May 1 through October 31.

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

pH Units - shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 5.5 nor higher than 8.0

Dissolved Oxygen - Not less than eighty per cent saturation, determined as a function of ambient water temperature.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Specific Conductance - Not more than three hundred micromhos/centimeter.

(1) Bottom criteria for streams:

- (A) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding an equivalent thickness of five millimeters (0.20 inches) over hard bottoms twenty-four hours after a heavy rainstorm.
- (B) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding an equivalent thickness of ten millimeters (0.40 inches) over soft bottoms twenty-four hours after a heavy rainstorm.
- (C) In soft bottom material in pool sections of streams, oxidation-reduction potential (EH) in the top ten centimeters (four inches) shall not be less than +100 millivolts.
- (D) In soft bottom material in pool sections of streams, no more than fifty per cent of the grain size distribution of sediment shall be smaller than 0.125 millimeters (0.005 inches) in diameter.

(E) The director shall prescribe the appropriate parameters, measures, and criteria for monitoring stream bottom biological communities including their habitat, which may be affected by proposed actions. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality criteria for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.

(c) Specific criteria for elevated wetlands: pH units shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 4.5 nor higher than 7.0.

(d) Specific criteria for estuaries.

(1) The following table is applicable to all estuaries except Pearl Harbor:

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent of the time</u> | Not to Exceed the given value more than <u>two per cent of the time</u> |
|----------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Total Nitrogen (ug N/L) | 200.00 | 350.00 | 500.00 |
| Ammonia Nitrogen (ug NH ₄ -N/L) | 6.00 | 10.00 | 20.00 |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 8.00 | 25.00 | 35.00 |
| Total Phosphorus (ug P/L) | 25.00 | 50.00 | 75.00 |

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent of the time</u> | Not to Exceed the given value more than two per cent of <u>the time</u> |
|----------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Chlorophyll a (ug/L) | 2.00 | 5.00 | 10.00 |
| Turbidity (N.T.U.) | 1.5 | 3.00 | 5.00 |

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

pH Units - shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 7.0 nor higher than 8.6.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from ambient conditions.

Oxidation - reduction potential (EH) - Shall not be less than -100 millivolts in the uppermost ten centimeters (four inches) of sediment.

(2) The following table is applicable only to Pearl Harbor Estuary.

§11-54-5.2

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent of the time</u> | Not to exceed the given value more than <u>two per cent of the time</u> |
|----------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Total Nitrogen (ug N/L) | 300.00 | 550.00 | 750.00 |
| Ammonia Nitrogen (ug NH ₄ -N/L) | 10.00 | 20.00 | 30.00 |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 15.00 | 40.00 | 70.00 |
| Total Phosphorus (ug P/L) | 60.00 | 130.00 | 200.00 |
| Chlorophyll a (ug/L) | 3.50 | 10.00 | 20.00 |
| Turbidity (N.T.U.) | 4.00 | 8.00 | 15.00 |

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams.

pH Units - shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 6.8 nor higher than 8.8.

Dissolved Oxygen - Not less than sixty per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from ambient conditions.

Oxidation - Reduction potential (EH) - Shall not be less than -100 millivolts in the uppermost ten centimeters (four inches) of sediment. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; am and comp 10/21/12; am and comp 12/6/13; comp **NOV 15 2014**]
 (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-6 Uses and specific criteria applicable to marine waters. (a) Embayments.

- (1) As used in this subsection:
 "Embayments" means land-confined and physically-protected marine waters with restricted openings to open coastal waters, defined by the ratio of total bay volume to the cross-sectional entrance area of seven hundred to one or greater.
 "Total bay volume" is measured in cubic meters and "cross-sectional entrance area" is measured in square meters, and both are determined at mean lower low water.
- (2) Water areas to be protected.
 (A) Class AA.
 (i) Waters are listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter.
 (ii) All embayments in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, as listed in Appendix B dated July 1, 2014, entitled "Class AA,

Marine Waters and Embayments", located at the end of this chapter, or similar reserves for the protection of marine life established under chapter 190, HRS as listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter.

(iii) All waters in state or federal fish and wildlife refuges and marine sanctuaries as listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter.

(iv) All waters which have been officially identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service as listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter.

(B) Class A.
Waters are listed in Appendix C dated July 1, 2014, entitled "Class A, Marine Waters and Embayments", located at the end of this chapter.

(3) The following criteria are specific for all embayments excluding those described in subsection (d). (Note that criteria for embayments differ based on fresh water inflow.)

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent of the time</u> | Not to Exceed the given value more than Two per cent of <u>The time</u> |
|-------------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Total Nitrogen (ug N/L) | 200.00* 150.00** | 350.00* 250.00** | 500.00* 350.00** |
| Ammonia Nitrogen (ug NH ₄ -N/L) | 6.00* 3.50** | 13.00* 8.50** | 20.00* 15.00** |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 8.00* 5.00** | 20.00* 14.00** | 35.00* 25.00** |
| Total Phosphorus (ug P/L) | 25.00* 20.00** | 50.00* 40.00** | 75.00* 60.00** |
| Chlorophyll a ug/L) | 1.50* 0.50** | 4.50* 1.50** | 8.50* 3.00** |
| Turbidity (N.T.U.) | 1.5* 0.40** | 3.00* 1.00** | 5.00* 1.50** |

* "Wet" criteria apply when the average fresh water inflow from the land equals or exceeds one per cent of the embayment volume per day.

** "Dry" criteria apply when the average fresh water inflow from the land is less than one per cent of the embayment volume per day.

Applicable to both "wet" and "dry" conditions:

pH Units - shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

(b) Open coastal waters.

(1) As used in this subsection:

"Open coastal waters" means marine waters bounded by the 183 meter or 600 foot (100 fathom) depth contour and the shoreline, excluding bays named in subsection (a).

(2) Water areas to be protected:

(A) Class AA as listed in Appendix D dated July 1, 2014, entitled "Class AA, Open Coastal Waters", located at the end of this chapter.

All open waters in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS as listed in Appendix D dated July 1, 2014, entitled "Class AA, Open Coastal Waters", located at the end of this chapter, or similar reserves for the protection of marine life established under chapter 190, HRS, as amended as listed in Appendix D dated July 1, 2014, entitled "Class AA, Open Coastal Waters", located at the end of this chapter; or in the refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service as listed in Appendix D dated July 1, 2014, entitled "Class AA, Open Coastal

Waters", located at the end of this chapter.

- (B) Class A - All other open coastal waters not otherwise specified.
- (3) The following criteria are specific for all open coastal waters, excluding those described in subsection (d). (Note that criteria for open coastal waters differ, based on fresh water discharge.)

| <u>Parameter</u> | Geometric mean not to exceed the <u>given value</u> | Not to exceed the given value more than <u>ten per cent of the time</u> | Not to exceed the given value more than <u>two per cent of the time</u> |
|----------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Total Nitrogen (ug N/L) | 150.00* 110.00** | 250.00* 180.00** | 350.00* 250.00** |
| Ammonia Nitrogen (ug NH ₄ -N/L) | 3.50* 2.00** | 8.50* 5.00** | 15.00* 9.00** |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 5.00* 3.50** | 14.00* 10.00** | 25.00* 20.00** |
| Total Phosphorus (ug P/L) | 20.00* 16.00** | 40.00* 30.00** | 60.00* 45.00** |
| Light Extinction Coefficient (k units) | 0.20* 0.10** | 0.50* 0.30** | 0.85* 0.55** |
| Chlorophyll a (ug/L) | 0.30* 0.15** | 0.90* 0.50** | 1.75* 1.00** |
| Turbidity (N.T.U.) | 0.50* 0.20** | 1.25* 0.50** | 2.00* 1.00** |

* "Wet" criteria apply when the open coastal waters receive more than three million gallons per day of fresh water discharge per shoreline mile.

** "Dry" criteria apply when the open coastal waters receive less than three million gallons per day of fresh water discharge per shoreline mile.

Applicable to both "wet" and "dry" conditions:

pH Units - shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

k units = the ratio of light measured at the water's surface to light measured at a particular depth.

L = liter

Light Extinction Coefficient is only required for dischargers who have obtained a waiver pursuant to section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251), as amended, and are required by EPA to monitor it.

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

(c) Oceanic waters.

(1) As used in this subsection: "Oceanic waters" means all other marine waters outside of the 183 meter (600 feet or 100 fathom) depth contour.

(2) Water areas to be protected: Class A - All oceanic waters.

(3) The following criteria are specific for oceanic waters:

| <u>Parameter</u> | <u>Geometric mean not to exceed the given value</u> | <u>Not to exceed The given value more than ten per cent of the time</u> | <u>Not to exceed the given value more than two per cent of the time</u> |
|-------------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Total Nitrogen (ug N/L) | 50.00 | 80.00 | 100.00 |
| Ammonia Nitrogen (ug NH ₄ -N/L) | 1.00 | 1.75 | 2.50 |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 1.50 | 2.50 | 3.50 |
| Total Phosphorus (ug P/L) | 10.00 | 18.00 | 25.00 |
| Chlorophyll a (ug/L) | 0.06 | 0.12 | 0.20 |
| Turbidity (N.T.U.) | 0.03 | 0.10 | 0.20 |

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

pH Units - shall not deviate more than 0.5 units from a value of 8.1.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

(d) Area-specific criteria for the Kona (west) coast of the island of Hawaii.

(1) For all marine waters of the island of Hawaii from Loa Point, South Kona District, clockwise to Malae Point, North Kona District, excluding Kawaihae Harbor and Honokohau Harbor, and for all areas from the shoreline at mean lower low water to a distance 1000 m seaward:

(A) In areas where nearshore marine water salinity is greater than 32.00 parts per thousand the following specific criteria apply:

| <u>Parameter</u> | <u>Geometric mean not to exceed the given single value</u> |
|-------------------------------------------------------------------------|--------------------------------------------------------------------|
| Total Dissolved Nitrogen (ug N/L) | 100.00 |
| Nitrate + Nitrite Nitrogen (ug [NO ₃ +NO ₂]-N/L) | 4.50 |
| Total Dissolved Phosphorus (ug P/L) | 12.50 |
| Phosphate (ug PO ₄ - P/L) | 5.00 |
| Ammonia Nitrogen (ug NH ₄ - N/L) | 2.50 |
| Chlorophyll a (ug/L) | 0.30 |
| Turbidity (N.T.U.) | 0.10 |

* Specific criteria for Class A embayments apply to Honokohau Harbor and Kawaihae Harbor, see section 11-54-6(a)(3).

- (B) If nearshore marine water salinity is less than or equal to 32.00 parts per thousand the following parameters shall be related to salinity on the basis of a linear least squares regression equation:

$$Y = MX + B$$

where:

Y = parameter concentration (in ug/L)

X = salinity (in ppt)

M = regression coefficient (or "slope")

B = constant (or "Y intercept").

The absolute value of the upper 95 per cent confidence limit for the calculated sample regression coefficient (M) shall not exceed the absolute value of the following values:

| <u>Parameter</u> | <u>M</u> |
|------------------------------------------------------|----------|
| Nitrate and Nitrite Nitrogen (ug [NO3 + NO2]-N/L) | -31.92 |
| Total Dissolved Nitrogen (ug N/L) | -40.35 |
| Phosphate (ug PO4 - P/L) | -3.22 |
| Total Dissolved Phosphorus (ug P/L) | -2.86 |

The specific criteria for ammonia nitrogen, chlorophyll a, and turbidity given in clause (i) also apply.

- (C) Parameter concentrations shall be determined along a horizontal transect extending seaward from a shoreline sample location using the following method: water samples shall be obtained

at distances of 1, 10, 50, 100, and 500 meters from the shoreline sampling location. Samples shall be collected within one meter of the water surface and below the air-water interface. Dissolved nutrient samples shall be filtered through media with particle size retention of 0.7 um. This sampling protocol shall be replicated not less than three times on different days over a period not to exceed fourteen days during dry weather conditions. The geometric means of sample measurements for corresponding offshore distances shall be used for regression calculations.

pH Units - shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

L - liter

N.T.U. - Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug - microgram or 0.000001 grams. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am

and comp 12/6/13; am and comp **NOV 15 2014**] (Auth:
 HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS
 §§342D-4, 342D-5, Ch. 342E)

§11-54-7 Uses and specific criteria applicable to marine bottom types. (a) Sand beaches.

- (1) As used in this subsection:
 "Sand beaches" means shoreline composed of the weathered calcareous remains of marine algae and animals (white sand), the weathered remains of volcanic tuff (olivine), or the weathered remains of lava (black sand). Associated animals are largely burrowers and are related to particle grain size, slope, and color of the beach.
- (2) Water areas to be protected:
 - (A) Class I - All beaches on the Northwestern Hawaiian Islands. These islands comprise that portion of the Hawaiian archipelago which lies northwest of the island of Kauai and is part of the State of Hawaii; including Nihoa Island, Necker Island, French Frigate Shoals, Brooks Banks, Gardiner Pinnacles, Dowsett and Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Atoll, Gambia Shoal, and Kure Atoll.
 - (B) Class II - All beaches not in Class I.
- (3) The following criteria are specific to sand beaches:
 - (A) Episodic deposits of flood-borne sediment shall not occur in quantities exceeding an equivalent thickness of ten millimeters (0.40 inches) twenty-four hours after a heavy rainstorm.
 - (B) Oxidation - reduction potential (EH) in the uppermost ten centimeters (four

- inches of sediment shall not be less than +100 millivolts
- (C) No more than fifty per cent of the grain size distribution of sediment shall be smaller than 0.125 millimeters in diameter.
- (b) Lava rock shoreline and solution benches.
- (1) As used in this subsection:
- "Lava rock shorelines" means sea cliffs and other vertical rock faces, horizontal basalts, volcanic tuff beaches, and boulder beaches formed by rocks falling from above or deposited by storm waves. Associated plants and animals are adapted to the harsh physical environment and are distinctly zoned to the degree of wave exposure.
- "Solution benches" means sea level platforms developed on upraised reef or solidified beach rock by the erosive action of waves and rains. Solution benches are distinguished by a thick algal turf and conspicuous zonation of plants and animals.
- (2) Water areas to be protected:
- (A) Class I - All lava rock shorelines and solution benches in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life established under chapter 190, HRS, as amended; or in refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service.
- (B) Class II
- (i) All other lava rock shorelines not in Class I.
- (ii) The following solution benches:

| <u>Maui</u> | <u>Oahu</u> |
|--------------------------------|---------------|
| Kihei | Diamond Head |
| Papaula Point | Manana Island |
| | Makapuu |
| <u>Kauai</u> | Laie |
| Near Hanapepe | Kahuku |
| Salt Ponds | Mokuleia |
| Milolii | Makua |
| Nualolo | Makaha |
| Makaha | Maile |
| Mahaulepu | Lualualei |
| Kuhio Beach Park (Kukuiula) | Barbers Point |

- (3) The following criteria are specific to lava rock shorelines and solution benches:
- (A) Episodic deposits of flood-borne sediment shall not occur in quantities exceeding an equivalent thickness of five millimeters (0.20 inches) for longer than twenty-four hours after a heavy rainstorm.
 - (B) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. The location and boundaries of each bottom-type class will be clarified when situations require their identification. For example, when a discharge permit is applied for or a waiver pursuant to section 301(h) of the Federal Water Pollution Control Act (33 U.S.C. Section 1311) is required. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological

communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.

(c) Marine pools and protected coves.

(1) As used in this subsection:

"Marine pools" means waters which collect in depressions on sea level lava rock outcrops and solution benches and also behind large boulders fronting the sea. Pools farthest from the ocean have harsher environments and less frequent renewal of water and support fewer animals. Those closest to the ocean are frequently renewed with water, are essentially marine, and support more diverse fauna.

"Protected coves" means small inlets which are removed from heavy wave action or surge.

(2) Water areas to be protected.

(A) Class I.

(i) All marine pools and protected coves in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life established under chapter 190, HRS, as amended; or in refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Fisheries Service.

(ii) Hawaii
Honaunau
Kiholo

(B) Class II.

| | |
|----------------|----------------|
| <u>Hawaii</u> | <u>Maui</u> |
| Kalapana | Hana |
| Pohakuloa | Keanae |
| Kapalaoa | Napili |
| Kapoho | Puu Olai to |
| King's Landing | Cape |
| (Papai) | Hanamanioa |
| Hilo | Kipahulu |
| Leileiwi Point | |
| Wailua Bay | <u>Molokai</u> |
| | Cape Halawa |
| | Kalaupapa |
| | South Coast |

Oahu
 Diamond Head
 Halona Blowhole to Makapuu
 Mokuleia
 Kaena Point
 Makua
 Punaluu

Kauai
 Kealia
 Mahaulepu
 Hanamaulu
 Poipu
 Puolo Point

- (3) The following criteria are specific to marine pools and protected coves:
- (A) In marine pools and coves with sand bottoms, oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sediment shall not be less than +100 millivolts.
 - (B) In marine pools and coves with sand bottoms, no more than fifty per cent of the grain size distribution of the sediment shall be smaller than 0.125 millimeters in diameter.

- (C) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding equivalent thicknesses for longer than twenty-four hours following a heavy rainstorm according to the following:
 - (i) No thicker than an equivalent of five millimeters (0.20 inches) on hard bottoms (other than living corals).
 - (ii) No thicker than an equivalent of ten millimeters (0.40 inches) on soft bottoms.
 - (D) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.
- (d) Artificial basins.
 - (1) As used in this subsection:

"Artificial basins" means dredged or quarried channels or harbors, and harbor-associated submerged structures. Many organisms can attach to the vertical structures, but the soft, shifting sediment bottoms of harbors may only be colonized by a few hardy or transient species.
 - (2) Class II water areas to be protected are as follows:
 - (A) Shallow draft harbors:

Hawaii

Wailoa River Boat
Harbor
Mahukona Harbor
Keauhou Harbor
Kailua-Kona Harbor
Honokohau Boat Harbor
Kawaihae Boat Harbor

Maui

Maalaea Boat
Harbor
Lahaina Boat
Harbor
Hana Harbor

Lanai

Manele Boat
Harbor
Kaunalapau
Harbor

Molokai

Kalaupapa Anchorage
Kaunakakai Small Boat Harbor
Hale o Lono Harbor

Oahu

Heeia Kea Boat Harbor
Kaneohe Marine Corps Air Station
Kaneohe Yacht Club
Hawaii Kai Marina (Kuapa Pond)
Pokai Bay
Waianae Boat Harbor
Keehi Marine Center
La Mariana Sailing Club
Haleiwa Harbor
Makani Kai Marina
Keehi Boat Harbor
Ala Wai Boat Harbor:
Ala Wai Fuel Dock
Hawaii Yacht Club
Waikiki Yacht Club
Ko Olina

Kauai

Nawiliwili Small Boat Harbor
Kukuiula Boat Harbor
Kikiaola Boat Harbor
Port Allen Boat Harbor

(B) Deep draft commercial harbors:

Hawaii

Kuhio Bay (Hilo Harbor)
Kawaihae Deep Draft Harbor

Maui

Kahului Harbor

Molokai

Kaunakakai Barge Harbor

Oahu

Honolulu Harbor
Barbers Point Harbor
Kewalo Basin

Kauai

Nawiliwili Harbor
Port Allen Harbor

- (3) Specific criterion to be applied -
Oxidation-reduction potential (EH) in the
uppermost ten centimeters (four inches) of
sediment shall not be less than -100
millivolts.
- (e) Reef flats and reef communities.
- (1) As used in this subsection:
"Nearshore reef flats" means shallow
platforms of reef rock, rubble, and sand
extending from the shoreline. Smaller,
younger flats projected out as semicircular
aprons while older, larger flats form wide
continuous platforms. Associated animals
are mollusks, echinoderms, worms,
crustaceans (many living beneath the
surface), and reef-building corals.
"Offshore reef flats" means shallow,
submerged platforms of reef rock and sand
between depths of zero to three meters (zero
to ten feet) which are separated from the
shoreline of high volcanic islands by

lagoons or ocean expanses. Dominant organisms are bottom-dwelling algae. Biological composition is extremely variable. There are three types: patch, barrier, and atoll reef flats; quite different from one another structurally. The presence of heavier wave action, water more oceanic in character, and the relative absence of terrigenous influences distinguish offshore reef flats.

"Protected reef communities" means hard bottom aggregations, including scattered sand channels and patches, dominated by living coral thickets, mounds, or platforms. They are found at depths of ten to thirty meters (thirty-two to ninety-six feet) along protected leeward coasts or in shallow water (up to sea level) in sheltered lagoons behind atoll or barrier reefs and in the calm reaches of bays or coves.

"Wave-exposed reef communities" means aggregations, including scattered sand channels and patches, dominated by corals. They may be found at depths up to forty meters (approximately one hundred thirty feet) along coasts subject to continuous or heavy wave action and surge. Wave-exposed reef communities are dominated biologically by benthic algae, reef-building corals, and echinoderms.

(2) Water areas to be protected:

(A) Class I.

- (i) All reef flats and reef communities in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life under chapter 190, HRS, as amended; or

in refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service;

(ii) Nearshore reef flats:

| | |
|------------------------|--------------|
| <u>Hawaii</u> | <u>Maui</u> |
| Puako | Honolua |
| <u>Lanai</u> | <u>Oahu</u> |
| Northwest Lanai Reef | Hanauma Bay |
| <u>Molokai</u> | <u>Kauai</u> |
| Western Kalaupapa | Nualolokai |
| Southeast Molokai Reef | Hanalei |
| Honomuni Harbor | (Anini to |
| Kulaalamihi Fishpond | Haena) |

(iii) Offshore reef flats:

Moku o Loe (Coconut Island,
Kaneohe Bay, Oahu)
Kure Atoll
Pearl and Hermes Atoll
Lisianski Island
Laysan Island
Maro Reef
French Frigate Shoals

(iv) Wave exposed reef communities:

Hawaii
1823 Lava Flow (Punaluu)
1840 Lava Flow (North Puna)
1868 Lava Flow (South Point)
1887 Lava Flow (South Point)
1955 Lava Flow (South Puna)
1960 Lava Flow (Kapoho)
1969 Lava Flow (Apuna Point)
1970 Lava Flow (Apuna Point)
1971 Lava Flow (Apuna Point)
1972 Lava Flow (Apuna Point)
1973 Lava Flow (Apuna Point)

Maui
Hana Bay

Makuleia Bay (Honolua)

Molokini Island

All wave exposed reef communities

Molokai

Moanui Kahinapohaku Waikolu -

Kalawao

Halawa Bay

Oahu

Sharks Cove (Pupukea)

Moku Manu (Islands)

Outer Hanauma Bay

Waimea Bay

Kawela Bay

Kahana Bay

Kauai

Ke`e Beach

Poipu Beach

Kipu Beach

Niihau

All wave exposed communities

Lehua (off Niihau)

All wave exposed communities

(v) Protected reef communities:

Hawaii

Puako

Honaunau

Kealakekua

Kiholo

Anaehoomalu

Hapuna

Kahaluu Bay

Keaweula (North Kohala)

Milolii Bay to Keawaiki

Kailua-Kaiwi (Kona)

Onomea Bay
1801 Lava Flow (Keahole or Kiholo)
1850 Lava Flow (South Kona)
1859 Lava Flow (Kiholo)
1919 Lava Flow (Milolii)
1926 Lava Flow (Milolii)

Maui
Honolua

Ahihi-La Perouse (including 1790
Lava Flow at Cape Kinau)

Molokini Island
All protected reef communities

Lanai
Manele
Hulopoe

| <u>Molokai</u> | <u>Oahu</u> |
|-------------------|----------------------------------|
| Southeast Molokai | Hanauma Bay |
| Kalaupapa | Moku o Loe |
| Honomuni Harbor | (Coconut Island, Kaneohe Bay) |

Kauai
Hoai Bay (Poipu)

Northwestern Hawaiian Islands
Kure Atoll Lagoon
Pearl and Hermes Lagoon
Lisianski Lagoon
Maro Reef Lagoon
French Frigate Shoals Lagoon

(B) Class II.

- (i) Existing or planned harbors may be located within nearshore reef flats showing degraded habitats and only where feasible alternatives are lacking and upon written approval by the director,

considering environmental impact and the public interest pursuant to section 342D-6, HRS.

Hawaii

Blonde Reef (Hilo Harbor)
Kawaihae Small Boat Harbor

Maui

Lahaina Harbor
Kahului Harbor

Lanai

Manele

Molokai

Kaunakakai Harbor
Hale o Lono Harbor
Palaau (2.4 kilometers/1.5 mile,
east of Pakanaka Fishpond)

Oahu

Keehi Boat Harbor
Ala Moana Reef
Honolulu Harbor
Heeia Harbor
Kaneohe Yacht Club
Ala Wai Harbor
Haleiwa Boat Harbor
Maunalua Bay
Pearl Harbor
Kaneohe Bay
Kahe

All other nearshore reef flats not in Class I;

(ii) Offshore reef flats:

Oahu

Kapapa Barrier Reef
Kaneohe Patch Reefs (Kaneohe Bay)

(iii) All other wave exposed or protected reef communities not in Class I.

(3) Specific criteria to be applied to all reef flats and reef communities: No action shall be undertaken which would substantially risk

damage, impairment, or alteration of the biological characteristics of the areas named herein. When a determination of substantial risk is made by the director, the action shall be declared to be contrary to the public interest and no other permits shall be issued pursuant to chapter 342D, HRS.

- (A) Oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sand patches shall not be less than +100 millivolts;
- (B) No more than fifty per cent of the grain size distribution of sand patches shall be smaller than 0.125 millimeters in diameter;
- (C) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding equivalent thicknesses for longer than twenty-four hours after a heavy rainstorm as follows:
 - (i) No thicker than an equivalent of two millimeters (0.08 inches) on living coral surfaces;
 - (ii) No thicker than an equivalent of five millimeters (0.2 inches) on other hard bottoms;
 - (iii) No thicker than an equivalent of ten millimeters (0.4 inches) on soft bottoms;
- (D) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. The location and boundaries of each bottom-type class shall be clarified when situations require their identification. For example, the location and boundaries shall be clarified when a discharge permit is applied for or a waiver pursuant to

Section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251 et seq.) is required.

Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.

- (f) Soft bottom communities.
 - (1) As used in this subsection:

"Soft bottom communities" means poorly described and "patchy" communities, mostly of burrowing organisms, living in deposits at depths between two to forty meters (approximately six to one hundred thirty feet). The particle size of sediment, depth below sea level, and degree of water movement and associated sediment turnover dictate the composition of animals which rework the bottom with burrows, trails, tracks, ripples, hummocks, and depressions.
 - (2) Water areas to be protected:

Class II - All soft bottom communities.
 - (3) Specific criteria to be applied - Oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sediment should not be less than -100 millivolts. The location and boundaries of each bottom-type class shall be clarified when situations require their identification. For example, the location and boundaries shall be clarified when a discharge permit is applied for or a waiver pursuant to Section 301(h) of the Act is required. [Eff 11/12/82; am and comp 10/6/84; am and comp

04/14/88; am and comp 01/18/90; am and comp
10/29/92, am and comp 04/17/00; am and comp
10/2/04; comp 06/15/09; comp 10/21/12; am
and comp 12/6/13; comp **NOV 1 5 2014**] (Auth:
HRS §§342D-1, 342D-4, 342D-5, Ch. 342E)
(Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-8 Recreational criteria for all State waters. (a) These criteria are designed to protect the public from exposure to harmful levels of pathogens while participating in water-contact activities. The specific criteria for enterococcus shall be expressed in colony forming units (CFU) per one hundred milliliters or as a most probable number (MPN) per one hundred milliliters, as specified by the analytical method used.

(b) Enterococcus content shall not exceed a geometric mean of 35 colony forming units per one hundred milliliters over any thirty day interval.

(c) A Statistical Threshold Value (STV) of 130 per one hundred milliliters shall be used for enterococcus. The STV shall not be exceeded by more than ten percent of samples taken within the same thirty day interval in which the geometric mean is calculated.

(d) State waters in which enterococcus content does not exceed the standard shall not be lowered in quality.

(e) Raw or inadequately treated sewage, sewage for which the degree of treatment is unknown, or other pollutants of public health significance, as determined by the director of health, shall not be present in natural public swimming, bathing or wading areas. Warning signs shall be posted at locations where human sewage has been identified as temporarily contributing to the enterococcus count. [Eff
11/12/82; am and comp 10/6/84; am and comp 04/14/88;
am and comp 01/18/90; am and comp 10/29/92, am and
comp 04/17/00; am and comp 10/2/04; am and comp
06/15/09; comp 10/21/12; am and comp 12/6/13; am and
comp **NOV 1 5 2014**] (Auth: HRS §§342D-1, 342D-4,

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

§11-54-9 Zones of mixing. (a) As used in this section, "zones of mixing" means limited areas around outfalls and other facilities to allow for the initial dilution of waste discharges.

(b) Zones of mixing for the assimilation of domestic, agricultural, and industrial discharges which have received the best degree of treatment or control are recognized as being necessary. It is the objective of these limited zones to provide for a current realistic means of control over the placement and manner of discharges or emissions so as to achieve the highest attainable level of water quality or otherwise to achieve the minimum environmental impact considering initial dilution, dispersion, and reactions from substances which may be considered to be pollutants.

(c) Establishment, renewal, and termination.

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

water quality standards established pursuant to this chapter.

- (3) Whenever an application is approved, the director shall establish the zone of mixing, taking into account the environmental impact, including but not limited to factors such as the protected uses of the body of water, existing natural conditions of the receiving water, character of the effluent, and the adequacy of the design of the outfall and diffuser system to achieve maximum dispersion and assimilation of the treated or controlled waste with a minimum of undesirable or noticeable effect on the receiving water.
- (4) Approval of a zone of mixing shall be made either after a public hearing is held by the director in the county where the source is situated, in accordance with chapters 91 and 92, HRS and the rules of practice and procedures of the department, or after the public notification and comment process duly established for a discharge permit in the case when the zone of mixing is being considered concurrently with the discharge permit.
- (5) No zone of mixing shall be established by the director unless the application and the supporting information clearly show that:
 - (A) The continuation of the function or operation involved in the discharge by the granting of the zone of mixing is in the public interest;
 - (B) The discharge occurring or proposed to occur does not substantially endanger human health or safety;
 - (C) Compliance with the existing water quality standards from which a zone of mixing is sought would produce serious hardships without equal or greater benefits to the public; and

- (D) The discharge occurring or proposed to occur does not violate the basic standards applicable to all waters, will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control.
- (6) Any zone of mixing or renewal thereof shall be established within the requirements of this section and for time periods and under conditions consistent with the reasons therefore and within the following limitations:
- (A) If the zone of mixing is established on the grounds that there is no reasonable means known or available for the adequate prevention, control, or abatement of the discharge involved, it shall be allowed only until the necessary means for prevention, control or abatement become practicable, and subject to the taking of any substitute or alternative measures that the director may prescribe. No renewal of a zone of mixing established under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the discharge involved;
 - (B) The director may issue a zone of mixing for a period not exceeding five years;
 - (C) Every zone of mixing established under this section shall include, but not be limited to, conditions requiring the applicant to perform appropriate effluent and receiving water sampling including monitoring of bottom biological communities and report the results of each sampling to the

director. A program of research to develop reasonable alternatives to the methods of treatment or control in use by the applicant may be required if research is deemed prudent by the director; and

- (D) In order to prevent high temperature discharges from violating section 11-54-04(a)(4), no new or increased domestic, industrial, or other controllable source shall discharge at a maximum temperature which will cause temperatures to exceed three degrees Celsius above ambient, or thirty degrees Celsius, whichever is less, within one meter of the bottom within a zone of mixing. For discharges with or without submerged outfalls, the director may make a limited allowance for higher discharge temperatures if there is satisfactory demonstration that the elevated temperature will not cause damage to the local aquatic community.
- (7) Any zone of mixing established pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial establishment of a zone of mixing, provided that the applicant for renewal had met all of the conditions specified in the immediately preceding mixing, and provided further that the renewal and the zone of mixing established in pursuance thereof shall provide for the discharge not greater in quantity of mass emissions than that attained pursuant to the terms of the immediately preceding zone of mixing at its expiration. Any new zones of mixing or requests for zone of mixing renewals for wastewater treatment plants

(WWTP) performing primary treatment shall comply with section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251). No renewal shall be allowed except upon application. Any renewal application shall be made at least one hundred and eighty days prior to the expiration of the zone of mixing.

- (8) No zone of mixing established pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.
- (9) The establishment of any zone of mixing shall be subject to the concurrence of the U.S. Environmental Protection Agency.
- (10) Each mixing zone may be subject to revocation, suspension, or modification if, after notice and opportunity for a hearing pursuant to chapter 91, HRS and the rules of practice and procedures of the department, the director determines that the terms specified in section 342D-6, HRS have been violated. In taking any action, the director may consider operating records, compliance investigations, or other information regarding discharge quality or impact on receiving waters. The action shall be effected by giving written notice to the permittee, which shall contain the reasons for the action.
- (11) The director shall be notified within thirty days of the permanent discontinuance of a discharge. The zone of mixing shall terminate thirty days after such notification has been received.
- (12) Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp

10/29/92, am and comp 04/17/00; am and comp
10/2/04; comp 06/15/09; comp 10/21/12; am
and comp 12/6/13; comp NOV 15 2014]
(Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp:
HRS §§342D-4, 342D-5)

§11-54-9.1 Water quality certification. As used
in sections 11-54-9.1.01 to 11-54-9.1.10:

"33 CFR" means the Code of Federal Regulations,
Title 33, Corps of Engineers, Department of the Army,
Department of Defense, revised as of July 1, 2011,
unless otherwise specified.

"40 CFR" means the Code of Federal Regulations,
Title 40, Protection of the Environment, revised as of
July 1, 2011, unless otherwise specified.

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

"Agent" means a duly authorized representative of
the owner as defined in section 11-55-7(b).

"Discharge" means the same thing as defined in
Section 502(16) of the Act.

"Discharge of a pollutant" and "discharge of
pollutants" means the same thing as defined in section
502(12) of the Act.

"Duly authorized representative" means a person
or position as defined in 40 CFR section 122.22(b).

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

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

"Navigable waters" means the waters of the United
States, including the territorial seas.

"Owner" means the person who owns any "facility" or "activity" which results in any discharge into navigable waters.

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

"Territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

"Water quality certification" or "certification" means a statement which asserts that a proposed discharge resulting from an activity will not violate applicable water quality standards and the applicable provisions of sections 301, 302, 303, 306 and 307 of the Act. A water quality certification is required by section 401 of the Act from any applicant for a federal license or permit to conduct any activity, including the construction or operation of facilities which may result in any discharge into navigable waters.

"Water quality certification application" means any forms provided by the director for use in obtaining the water quality certification.

"Water quality standards" means standards established pursuant to section 10(c) of the Act, and state-adopted water quality standards for navigable waters which are not interstate waters.

"Waters of the United States" or "waters of the U.S." means:

- (1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (2) All interstate waters, including interstate "wetlands";
- (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands,"

sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

- (A) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - (B) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (C) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (4) All impoundments of waters otherwise defined as waters of the United States under this definition;
 - (5) Tributaries of waters identified in paragraphs (1) through (4) of this definition;
 - (6) The territorial sea; and
 - (7) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6) of this definition. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp_ NOV 15 2014] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.01 Water quality certification; contents of certification. (a) A certification made by the department shall include:

- (1) The legal name(s), street address, contact person's name and position title, and telephone and fax numbers of the owner and,

if applicable, its duly authorized representative;

- (2) A statement that the director has either:
 - (A) Examined the application made by the owner or its duly authorized representative to the licensing or permitting agency (specifically identifying the number or code affixed to the application) and bases its certification upon an evaluation of the information contained in the application which is relevant to water quality considerations; or
 - (B) Examined other information provided by the owner or its duly authorized representative sufficient to permit the director to make the statement described in paragraph (a)(3);
- (3) A statement that there is reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;
- (4) A statement of any conditions which the director considers necessary or desirable with respect to the discharge resulting from an activity; and
- (5) Other information the director determines to be appropriate.

(b) The director shall issue the certification after evaluating the complete water quality certification application, comments received during the public comment period, any record of a public hearing held pursuant to section 11-54-09.1.03, other information and data the director considers relevant, and after the director determines that there is reasonable assurance that applicable water quality standards will not be violated and the best practicable methods of control will be applied to a discharge resulting from an activity including the construction and operation of a facility

(c) The department shall process applications for permits and water quality certifications for the reconstruction, restoration, repair, or reuse of any Hawaiian fishpond that meets the requirements of chapter 183B, HRS, before all other permits and certifications. The director shall render a decision on the completeness of any application for the permit or water quality certification within thirty days of receipt. Applications for fishpond reconstruction, restoration, or repair that are incomplete shall be denied without prejudice. The director shall render a decision on any complete application for a permit or water quality certification for any fishpond within one hundred fifty days.

(d) The director, at the director's discretion or after consideration of information presented by the owner or its duly authorized representative, the licensing or permitting agency, other government agencies, or interested parties, may modify or revoke an issued certification or waiver. [Eff and comp 4/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp NOV 1 5 2014] (Auth: HRS §§342D-4, 342D-5, 342D6.5, 342D-53) (Imp: HRS §§342D-342D-6, 342D6.5, 342D-5)§11-54-09.1.02

§11-54-9.1.02 Water quality certification;
contents of water quality certification application.

(a) The owner or its duly authorized representative shall submit a complete water quality certification application for the discharge resulting from an activity. The water quality certification application shall include at a minimum:

- (1) The legal name(s), street address, contact person's name and position title, and telephone and fax numbers of the owner and, if applicable, its duly authorized representative;

- (2) The company or organization name, contact person's name and position title, and telephone and fax numbers of the emergency contact(s);
- (3) The name, street address, contact person's name and position title, telephone and fax numbers, island, and tax map key number(s) for the project;
- (4) Associated existing or pending federal and environmental permits and corresponding file numbers;
- (5) The name(s) of the navigable water where the discharge occurs, the latitude and longitude of the discharge point(s), the classification of the navigable water, and the associated existing recreational uses;
- (6) The scope of work or a description of the overall project including: the construction or operation of facilities which may result in discharges into navigable waters; the proposed discharge resulting from an activity; and specific biological, chemical, physical, thermal, and other pertinent characteristics of the discharge resulting from an activity;
- (7) If applicable, a description of the function and operation of equipment or facilities to control discharges, including specification of the methods of control to be used;
- (8) The estimated dates on which the activity will begin and end and the date or dates on which the discharge(s) will take place;
- (9) If applicable, a description of the methods and means being used or proposed to monitor the quality and characteristics of the discharge and the operation of equipment or facilities employed in the control of the proposed discharges and a map showing the location(s) of the monitoring point(s);
- (10) The statement of assurance, statement of choice for publication, and if applicable,

an authorization statement, with the owner's original signature. Any signatures required for the water quality certification application shall be provided as described in 40 CFR Section 122.22(a);

- (11) Supporting documentation (e.g. maps, plans, specifications, copies of associated federal permits or licenses, federal applications, Environmental Assessments or Environmental Impact Statements, as applicable, etc.);
- (12) Additional information regarding any irregularities or unique features of the project; and
- (13) Additional information as required by the director.

(b) The director shall notify the owner or its duly authorized representative in writing if a water quality certification application is incomplete or otherwise deficient. A description of the additional information necessary to complete the water quality certification application or to correct the deficiency shall be included in the written notice. If a water quality certification application is incomplete or otherwise deficient, processing of the water quality certification application shall not be completed until the time the owner or its duly authorized representative has supplied the information or otherwise corrected the deficiency. Failure to provide additional information or to correct a deficiency shall be sufficient grounds for denial of the certification or termination of the processing of the water quality certification application.

(c) The director shall notify the owner or its duly authorized representative in writing when a water quality certification application is considered complete. The director shall act on a request for certification within a period which shall not exceed one year from the date when the water quality certification application was considered complete.

(d) The owner or its duly authorized representative shall notify the department in writing

of changes which may affect the water quality certification application and certification process.

(e) Each owner who submits a water quality certification application shall pay a filing fee of \$1,000. This filing fee shall be submitted with the water quality certification application and shall not be refunded nor applied to any subsequent water quality certification application following final action of denial or termination of the processing of the water quality certification application.

- (1) Fees shall be made payable to the "State of Hawaii" in the form of a cashier's check or money order;
- (2) Water quality certification application(s) submitted by the U.S. Army Corps of Engineers, Honolulu Engineer District, for the purpose of adopting regional or nationwide general permit(s), in accordance with 33 CFR Parts 325 and 330, respectively, shall be exempt from the payment of filing fees.

(f) If a project or activity requiring a federal permit or license involves or may involve the discharge of a pollutant or pollutants and is initiated or completed without a water quality certification, the director may process an after-the-fact water quality certification application as follows: after-the-fact water quality certification application.

may be accepted and processed only for the limited purpose of deeming projects or activities requiring federal permits or licenses to be properly permitted or licensed forward of the date of the water quality certification or waiver. No water quality certification or waiver shall be issued which allows the retroactive permitting or licensing of projects or activities before the date the water quality certification or waiver was issued. A water quality certification or waiver may be issued if the following criteria are met:

- (1) The project or activity is not the subject of an ongoing enforcement action by the federal, state or county government;
- (2) Any adverse impacts upon water quality resulting from the project or activity have been mitigated to the maximum extent feasible; and
- (3) The project or activity will not cause or contribute to any lack of attainment of water quality standards set forth in this chapter.

(g) Written notification by the department under subsection (b) is complete upon mailing or sending a facsimile transmission of the document or actual receipt of the document by the owner or its duly authorized representative. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp **NOV 15 2014**]
(Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.03 Water quality certification; notice and hearing. The director may provide the opportunity for public comment or hearing(s) or both to consider the issuance of a water quality certification. A notice shall be published in accordance with chapters 91 and 92, HRS. The director shall inform the owner or its duly authorized representative in writing that the action has been taken. All publication and mailing costs associated with the public notification of the director's tentative determinations with respect to the water quality certification application shall be paid by the owner to the appropriate newspaper agency or agencies determined by the director. Failure to provide and pay for public notification, as considered appropriate by the director, may result in a delay in the certification process. [Eff and comp 04/14/88; am and

comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp NOV 15 2014] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.04 Water quality certification; waiver. (a) If the director fails or refuses to act on a request for certification within one year after receipt of a complete water quality certification application, then the certification requirements of section 11-54-9.1 shall be waived with respect to the federal application.

(b) If the discharge resulting from an activity receives a determination to be covered under a nationwide permit authorization, thereby fulfilling specific conditions of that permit pursuant to 33 CFR sections 330.4, 330.5, and 330.6, then the director will determine, on a case-by-case basis, which projects are considered minor and non-controversial. Certification requirements of section 11-54-9.1 shall be waived for minor and non-controversial activities within one year of receipt of a complete water quality certification application. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp NOV 15 2014] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.05 Water quality certification; adoption of new water quality standards.

(a) The licensee or permittee shall comply with any new water quality standards as adopted by the department.

(b) In any case where:

- (1) A certification or waiver was issued without applicable water quality standards;
- (2) Water quality standards applicable to the waters into which the activity may discharge are subsequently established before the activity is completed; or
- (3) The director determines that the activity is violating new water quality standards;

The director shall then notify the licensee or permittee and the licensing or permitting agency of the violation.

(c) If the licensee or permittee fails within one hundred eighty days of the date of the notice to cease the violation, the director shall notify the licensing or permitting agency that the licensee or permittee has failed to comply with the standards. The director, at the director's discretion, shall also revoke the certification or waiver or recommend suspension of the applicable license or permit pursuant to section 401 of the Act.

(d) The director shall notify the licensing or permitting agency that, in the director's opinion, there is reasonable assurance that applicable water quality standards will not be violated because the licensee or permittee took appropriate action to comply with the applicable water quality standards after their license or permit was suspended pursuant to subsection (c).

(e) This section shall not preclude the department from taking other enforcement action authorized by law. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp NOV 15 2014] (Auth: HRS §§342D-4, 342D-5, 342D-53s) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.06 Water quality certification; inspection of facility or activity before operation.

Where any facility or activity has received certification or waiver pursuant to sections 11-54-9.1.01 to 11-54-9.1.09 in connection with the issuance of a license or permit for construction, and where the facility or activity is not required to obtain an operating license or permit, the director, prior to the initial operation of the facility or activity, shall be afforded the opportunity to inspect the facility or activity for the purpose of determining if the manner in which the facility or activity will be operated or conducted will violate applicable water quality standards. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp NOV 15 2014] Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.07 Water quality certification; notification to licensing or permitting agency. If the director, after an inspection pursuant to section 11-54-9.1.06 determines that operation of the proposed facility or activity will violate applicable water quality standards, the director shall so notify the owner or, if applicable, its duly authorized representative and the licensing or permitting agency. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp NOV 15 2014] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.08 Water quality certification; termination or suspension. Where a licensing or permitting agency, following a public hearing,

suspends a license or permit after receiving the director's notice and recommendation pursuant to section 11-54-9.1.07 the owner or its duly authorized representative may submit evidence to the director, that the facility or activity has been modified so as not to violate applicable water quality standards. If the director determines that the applicable water quality standards have not been and will not be violated, the director shall so notify the licensing or permitting agency. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp **NOV 15 2014**] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.09 Water quality certification; review and advice. The director may, and upon request shall, provide licensing and permitting agencies with determinations, definitions, and interpretations to the meaning and content of state water quality standards. The director may, and upon request shall, also advise licensing and permitting agencies of the status of compliance by the owner(s) of a water quality certification with the conditions and requirements of applicable water quality standards. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp **NOV 15 2014**] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-10 Water quality analyses. (a) Laboratory analysis shall be performed by a laboratory approved by the department.

(b) Where applicable, analysis to determine compliance with these rules shall be by:

Parameter

Sample Collection
(Phytoplankton and other
Bioassays)

Reference

Standard Methods for the
Examination of Water and
Waste Water, twenty first
edition, APHA

Sample Preservation and
Holding Time,
Bacteriological and
Chemical Methodology

"Guidelines Establishing
Test Procedures for the
Analysis of Pollutants,"
Federal Register, July 1,
2011 (40 CFR 136)

"A Manual of Chemical and
Biological Methods for
Seawater Analysis" T.R.
Parsons, Y. Maita, and C.M.
Lalli, 1984, Pergamon
Press, New York.

"Methods of Seawater
Analysis", 2nd, Revised and
Extended Edition, ed. by K.
Grashof, M. Erhardt, K.
Kremling, 1983. Verlag
Chemie, Weinheim, Germany.

Toxicity Test

EPA 821-R-02-031, Short-Term Methods For Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, 4th edition, October 2002.

or:

EPA 821-R-02-012, Methods For Measuring the Acute Toxicity of Effluents and Receiving waters to Freshwater and Marine Organisms, 5th edition, October 2002.

or:

EPA 821-R-02-014, Short-Term Methods For Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, 3rd edition, October 2002.

or:

EPA 833-R-10-003, National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document, June 2010.

or:

EPA 833-R-10-004, National Pollutant Discharge

Elimination System Test of
Significant Toxicity
Technical Document, June
2010.

or:

EPA/600/R-12/022, Tropical
Collector Urchin,
Tripneustes gratilla,
Fertilization Test Method,
April 2012.

Quality Control
(Bacteriological and
Biology) and Chemistry

EPA/600/4-79-019, Handbook
for Analytical Quality
Control in Water and
Wastewater Laboratories,
March 1979.

Kona Coast Area Specific
Standards

Rationale for the
Development of Area-
Specific Water Quality
Criteria for the West Coast
of The Island of Hawaii and
Procedures for Their Use.
Hawaii State Department of
Health. March 1997.

or as otherwise previously specified or approved by
the director. [Eff 11/12/82; am and comp 10/6/84; am
and comp 04/14/88; am and comp 01/18/90; am and comp
10/29/92, am and comp 04/17/00; am and comp 10/2/04;
comp 06/15/09; comp 10/21/12; am and comp 12/6/13;
comp **NOV 15 2014**] (Auth: HRS §§342D-1, 342D-4,
342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch.
342E)

§11-54-11 Schedule of compliance. (a) A schedule of compliance is an NPDES implementation tool that applies to the implementation of water quality standards through NPDES permits only.

(b) The director may issue a schedule of compliance in an individual NPDES permit for the implementation of effluent limits derived from the water quality criteria in this chapter if the director makes a finding that the discharger cannot immediately comply with the water quality based effluent limitations upon the effective grant of the permit.

(c) A schedule of compliance may be included in an individual NPDES permit issued by the director pursuant to chapter 342D, HRS.

(d) A schedule of compliance in an NPDES permit is allowed only for water quality-based effluent limits based upon a new, revised, or newly interpreted water quality standard and must:

- (1) Comply with the provisions in 40 CFR section 122.47, revised as of July 1, 2014, and;
- (2) Include an enforceable final effluent limitation that is within the timeframe allowed as specified in sections 11-55-08(a)(2)(B), 11-55-15(d), 11-55-21, 11-55-22, 11-55-23(10), and 11-55-34.07(3)(B).
- (3) Require compliance as soon as possible.

(e) A schedule of compliance that exceeds one year in duration must set forth interim requirements, specific dates to meet interim requirements, and a date by which the required water quality-based effluent limitation must be achieved. [Eff and comp NOV 1 5 2014] Auth: HRS §§342D-4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, 342D-6, Ch. 342E)

§11-54-12 Intake credits. (a) An intake credit is an NPDES implementation tool that applies to the implementation of water quality standards through NPDES permits only.

(b) As used in this section:

"Background pollutant concentration" means the water body concentration immediately upstream/upcurrent of a permitted discharge, regardless of whether those pollutants are natural or result from anthropogenic upstream activity.

"Intake pollutant" means the background pollutant concentration that is present in the intake water body, which must be the same water body as the receiving water for the discharge at the time it is withdrawn from such waters.

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

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

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

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

- (1) To the extent necessary to meet the applicable limitation or standard, up to a

maximum value equal to the intake pollutant value; and

- (2) If there is no net increase in the concentration of the intake pollutant for which the credit is given. A discharger may add to the mass of the background pollutant concentration if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water.

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

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

- (1) One hundred per cent of the intake water containing the intake pollutant is withdrawn from the same body of water into which the discharge is made;
- (2) The facility does not chemically or physically alter the intake pollutant in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutant was left in-stream;
- (3) The timing and location of the discharge would not cause adverse water quality impacts to occur that would not occur if the intake pollutant were left in-stream; and,
- (4) The director finds that the discharge of intake pollutants into the same body of water will not adversely impact narrative or numeric water quality criteria specified in this chapter.

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

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

- (1) Documentation showing a complete and detailed description of present conditions and how present conditions do not conform to standards; and
- (2) Documentation showing that the intake and discharge waterbodies are the "same body of water;" and
- (3) Documentation showing that pollutant(s) for which credits are being request actually come(s) from the intake water.

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

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

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

(j) All other water quality criteria established under this chapter continue to apply. [Eff and comp **NOV 15 2014**] Auth: HRS §§342D-4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, 342D-6, Ch. 342E)

§11-54-13 Revision. These water quality criteria are based upon the best currently available data. Studies made in connection with the implementation program may

suggest improvements to this chapter. For this reason, the chapter will be subject to periodic review and, where necessary, to change. Any change will be made only after public hearing, held in compliance with chapter 91, HRS and the rules of practice and procedures of the department. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; ren §11-54-11 and comp NOV 15 2014] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-14 Severability. If any provisions of this chapter, or the application thereof to any person or circumstances, is held invalid, the invalidity does not affect other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; ren §11-54-12 and comp NOV 15 2014] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-15 Field citations; non-compliance.
(a) This section authorizes field citations to effectively and quickly settle easily verifiable violations of chapter 342D, HRS, and this chapter. Settlements under this section are an additional remedy and do not supplant the director's authority to issue orders under section 342D-9, HRS.

- (b) Offer to settle.
 - (1) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director may, in the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to:
 - (A) Any person who discharges or otherwise causes or allows water pollutants to enter State waters and cause violation of this chapter, unless that person acted in compliance with a permit or variance issued by the director pursuant to chapter 342D for that person's discharges;
 - (B) Any person who fails to correctly install, implement, maintain, or repair site best management practices as called for in this chapter;
 - (C) Any person who violates monitoring requirements as required by the director;
 - (D) Any person who violates record keeping requirements as required by the director.
 - (2) A field citation shall indicate the following amounts for violations:
 - (A) \$500 for any person who violates paragraph (a)(1)(A), (B), or (C) for first violation, and \$2,000 for a subsequent violation; and
 - (B) \$100 for any person who violates paragraph (a)(1)(D) for first violation, and \$200 for a subsequent violation.
- (c) Resolution of field citation.
 - (1) A person issued a field citation may accept the citation by:
 - (A) Signing the field citation;

- (B) Paying the full amount indicated on the field citation. Payment shall be made to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director;
 - (C) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty days after the person receives the field citation; and
 - (D) Correction within seven (7) days, or unless otherwise specified on the field citation, of the violation of this chapter.
- (2) By signing the field citation, the person to whom it was issued agrees to:
- (A) Give up the right to a contested case hearing under chapter 91 or 342D, HRS, or otherwise challenge the field citation;
 - (B) Pay the full amount indicated; and
 - (C) Correct the violation.
- (3) If the field citation is not accepted in compliance with paragraph (1), the director may seek for that cited violation any remedies available under this chapter; chapter 342D, HRS; or any other law. For all other violations the director retains authority to seek any available remedies.
- (d) Form of citation. The department shall prescribe a field citation form." [Eff and compiled **NOV 15 2014**] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

Amendments and compilation of chapter 54, title 11, Hawaii Administrative Rules, on the Summary Page dated **NOV 15 2014** were adopted on **NOV 15 2014** following a public hearing held on October 2, 2014, after public notice was given in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Isle on August 28, 2014.

The adoption of chapter 11-54 shall take effect ten days after filing with the Office of the Lieutenant Governor

Linda Rosen M.D.

LINDA ROSEN, M.D.
M.P.H.
Director of Health

Neil Abercrombie

NEIL ABERCROMBIE
Governor
State of Hawaii

Dated: 11-5-14

Filed

APPROVED AS TO FORM:

Edward G. Bohlen

EDWARD G. BOHLEN
Deputy Attorney General

54-97

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LIEUTENANT GOVERNOR'S
OFFICE

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Appendix A

July 1, 2014

Class 1, Inland Waters

Hawaii

Akaka Falls State Park
Hakalau Forest National Wildlife Refuge
Hakalau Forest National Wildlife Refuge South Kona Section
Hamakua Forest Reserve (Hoea Kaa Section)
Hamakua Forest Reserve (Kainehe Section)
Hamakua Forest Reserve (Kalopa Section)
Hamakua Forest Reserve (Paauilo Section)
Hapuna Beach State Recreation Area
Hawaii Volcanoes National Park
Hilo Forest Reserve (Humuula Section)
Hilo Forest Reserve (Laupahoehoe Section)
Kahaualea Natural Area Reserve
Kalopa State Rec. Area
Keaoi Islet Sea Bird Sanctuary
Kekaha Kai State Park
Kipahoehoe Natural Area Reserve
Kohala Forest Reserve (Pololu Section)
Kohala Historical Sites State Monument
Kona Hema Preserve (Nature Conservancy)
Lapakahi State Historical Park
Laupahoehoe Natural Area Reserve
Lava Tree State Monument
Mackenzie State Recreation Area
Manowaialee Forest Reserve
Manuka Natural Area Reserve
Manuka State Wayside
Mauna Kea Ice Age Natural Area Reserve
Mauna Kea State Recreation Area/Mauna Kea Fr
Mokupuku Islet Sea Bird Sanctuary
Ookala Cooperative Game Management Area
Paokalani Islet Sea Bird Sanctuary
Puu Honau O Honaunau National Historical Park
Puu Waawaa Forest Bird Sanctuary
Puu Waawaa Forest Reserve
Puukohola Heiau National Historic Site
Wailoa River State Recreation Area
Wailuku River State Park

Kauai

Ahukini State Recreation Pier
Haena State Park
Hanalei National Wildlife Refuge
Kilauea Point National Wildlife Refuge
Kuia Natural Area Reserve
Mokuaee Rock Islet Sea Bird Sanctuary
Na Pali Coast State Wilderness Park
Polihale State Park
Russian Fort Elizabeth State Historical Park
Wailua River State Park
Waimea Canyon State Park
Waimea State Recreation Pier

Lanai

Moku Naio Sea Bird Sanctuary
Nanahoa Islets Sea Bird Sanctuary
Poopoo Islet Sea Bird Sanctuary
Puupehe Islet Sea Bird Sanctuary

Maui

Ahihi-Kinohiwa Natural Area Reserve
Alau Island Sea Bird Sanctuary
Haleakala National Park
Halekii-Pihana Heiaus State Monument
Hanawi Natural Area Reserve
Iao Valley State Monument
Kanaha Pond Wildlife Sanctuary
Kanaio Natural Area Reserve
Kaumahina State Wayside
Kealia Pond National Wildlife Refuge
Keopuka Islet Sea Bird Sanctuary
Makena State Park
Moikeehia Islet Sea Bird Sanctuary
Moku Hala Sea Bird Sanctuary
Moku Mana Islet Sea Bird Sanctuary
Molokini Sea Bird Sanctuary
Papanui O Kane Islet Sea Bird Sanctuary
Pauwulu Point Wildlife Sanctuary
Polipoli Spring State Recreation Area

Puaa Kaa State Wayside
Puuku Island Sea Bird Sanctuary
Waianapanapa State Park
Wailua Valley State Wayside
West Maui Natural Area Reserve (Honokowai Section)
West Maui Natural Area Reserve (Lihau Section)
West Maui Natural Area Reserve (Panaewa Section)

Molokai

Huelo Islet Sea Bird Sanctuary
Kakahaia National Wildlife Refuge
Kalaupapa National Historical Park
Kamiloloa Plant Sanctuary
Kanaha Rock Sea Bird Sanctuary
Mokapu Islet Sea Bird Sanctuary
Mokumanu Islet Sea Bird Sanctuary
Molokai Forest Reserve
Okala Islet Sea Bird Sanctuary

Niihau

Kaula Island Sea Bird Sanctuary
Lehua Island Sea Bird Sanctuary

Oahu

Aiea Bay State Recreation Area
Diamond Head State Monument
Hamakua Marsh Wildlife Sanctuary
James Campbell National Wildlife Refuge (Kii)
Kaohikaipu Island Sea Bird Sanctuary
Kawainui Marsh Wildlife Sanctuary (Proposed)
Keaiwa Heiau State Recreation Area
Kekepa Island Sea Bird Sanctuary
Kukaniloko Birthstones State Monument
Kukuihoolua Island Sea Bird Sanctuary
Makiki Valley State Recreation Area
Malaekahana State Recreation Area
Mokualai Island Sea Bird Sanctuary
Mokuauia Island Sea Bird Sanctuary
Mokulua Island Sea Bird Sanctuary
Mokumanu Islet Sea Bird Sanctuary
Oahu Forest National Wildlife Refuge

Chapter 11-54

Pahole Natural Area Reserve
Paiko Lagoon Wildlife Sanctuary
Pearl Harbor National Wildlife Refuge (Mid Loch)
Pearl Harbor National Wildlife Refuge (W Loch)
Pearl Harbor Nat'l Wildlife Refuge (Kalaeloa)
Popoia Island Sea Bird Sanctuary
Pouhala Marsh Wildlife Sanctuary
Pulemoku Rock Sea Bird Sanctuary
Puu Ualakaa State Park
Royal Mausoleum State Monument
Sacred Falls State Park
Sand Island State Recreation Area
Ulu Po Heiau State Monument
Waiahole Forest Reserve (Waiahole Section)
Waianae Kai Forest Reserve

Appendix B

July 1, 2014

Class AA, Marine Waters and Embayments

Hawaii

Puako Bay

Waiulua Bay

Anaehoomalu Bay

Kiholo Bay

Kailua Harbor

Kealakekua Bay

Honaunau Bay

Oahu

Waialua Bay

Kahana Bay

Kaneohe Bay

Hanauma Bay

Kauai

Hanalei Bay

Appendix C

July 1, 2014

Class A, Marine Waters and Embayments

Hawaii

Hilo Bay (inside breakwater)
Kawaihae Boat Harbor
Honokohau Boat Harbor
Keauhou Bay

Maui

Kahului Bay
Lahaina Boat Harbor
Maalaea Boat Harbor

Lanai

Manele Boat Harbor
Kaumalapau Harbor

Molokai

Hale o Lono Harbor
Kaunakakai Harbor
Kaunakakai Boat Harbor

Oahu

Kaiaka Bay
Paiko Peninsula to Koko Head
Ala Wai Boat Harbor
Kewalo Basin
Honolulu Harbor
Keehi Lagoon
Barbers Point Harbor
Pokai Bay
Heeia Kea Boat Harbor
Waianae Boat Harbor
Haleiwa Boat Harbor
Ko Olina

Kauai

Hanamaulu Bay
Nawiliwili Bay
Kukuiula Bay
Wahiawa Bay
Hanapepe Bay (inside breakwater)
Kikiaola Boat Harbor
Port Allen Boat Harbor

Appendix D

July 1, 2014

Class AA, Open Coastal Waters

Measured in a clockwise direction from the first-named to the second-named location, where applicable):

Hawaii

The open coastal waters from Leleiwi Point to Waiulaula Point.

Maui

The open coastal waters between Nakalele Point and Waihee Point and between Huelo Point and Puu Olai.

Kahoolawe

All open coastal water surrounding the island.

Lanai

All open coastal waters surrounding the island.

Molokai

The open coastal waters between the westerly boundary of Hale o Lono Harbor to Lamaloa Head. Also, the open coastal waters from Cape Halawa to the easterly boundary of Kaunakakai Harbor.

Oahu

Waimanalo Bay from the southerly boundary of Kaiona Beach Park, and including the waters surrounding Manana and Kaohikaipu Islands, to Makapuu Point. Also, Waialua Bay from Kaiaka Point to Puaena Point, and the open coastal waters along Kaena Point between a distance of 5.6 kilometers (3.5 miles) from Kaena Point towards Makua and 5.6 kilometers (3.5 miles) from Kaena Point toward Mokuleia.

Kauai

The open coastal waters between Hikimoe Valley and Makahoa Point. Also, the open coastal waters between Makahuena Point and the westerly boundary of Hoai Bay.

Niihau

All open coastal waters surrounding the island.

All other islands of the state

All open coastal waters surrounding the islands not classified in Appendix D or 11-54-6(b)(2)(A).

Modified

22) HAR §§ 11-55-01, 11-55-04, 11-55-19, 11-55-34.02, 11-55-34.04, 11-55-34.08

**Relating to Definitions; application for NPDES permit;
Application of effluent standards and water quality standards;
NPDES General permit; General permit conditions; Notice of
intent**

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-55
Hawaii Administrative Rules

1. Chapter 55 of Title 11, Hawaii Administrative Rules, titled "Water Pollution Control," is amended and complied to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 55

WATER POLLUTION CONTROL

| | |
|-----------|----------------------------------------------------------------------------------------|
| §11-55-01 | Definitions |
| §11-55-02 | General policy of water pollution control |
| §11-55-03 | General prohibition |
| §11-55-04 | Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion |
| §11-55-05 | Receipt of federal information |
| §11-55-06 | Transmission of information to Regional Administrator |
| §11-55-07 | Identity of signatories to NPDES forms |
| §11-55-08 | Formulation of tentative determinations and draft permit |
| §11-55-09 | Public notice of applications |
| §11-55-10 | Fact sheet |
| §11-55-11 | Notice to other government agencies |
| §11-55-12 | Public access to information |
| §11-55-13 | Public hearings |
| §11-55-14 | Public notice of public hearings |
| §11-55-15 | Issuance of NPDES permits |
| §11-55-16 | Modification or revocation and reissuance of NPDES permits |

§11-55-17 Termination of permits and denial of renewal
 §11-55-18 Reporting discontinuance or dismantlement
 §11-55-19 Application of effluent standards and limitations, water quality standards, and other requirements
 §11-55-20 Effluent limitations in issued NPDES permits
 §11-55-21 Schedule of compliance in issued NPDES permits
 §11-55-22 Compliance schedule reports
 §11-55-23 Other terms and conditions of issued NPDES permits
 §11-55-24 National pretreatment standards and users of publicly owned treatment works
 §11-55-25 Transmission to Regional Administrator of proposed NPDES permits
 §11-55-26 Transmission to Regional Administrator of issued NPDES permits
 §11-55-27 Renewal of NPDES permits
 §11-55-28 Monitoring
 §11-55-29 Recording of monitoring activities and results
 §11-55-30 Reporting of monitoring results
 §11-55-31 Sampling and testing methods
 §11-55-32 Malfunction, maintenance, and repair of equipment
 §11-55-33 Agency board membership
 §11-55-34 General permit definitions
 §11-55-34.01 General permit policy
 §11-55-34.02 General permit authority and adoption
 §11-55-34.03 General permit terms
 §11-55-34.04 General permit conditions
 §11-55-34.05 Requiring an individual permit
 §11-55-34.06 Relationship of general and individual permits
 §11-55-34.07 Degree of waste treatment
 §11-55-34.08 Notice of intent
 §11-55-34.09 Notice of intent review, notice of general permit coverage, additional conditions, terms, renewals, effective dates, and automatic coverage

| | |
|--------------|---------------------------------------------------------------------------------------------------------------------------------|
| §11-55-34.10 | Review of coverage issues and notice of intent and notice of general permit coverage decisions |
| §11-55-34.11 | Notice of general permit coverage modification, revocation and reissuance, and termination |
| §11-55-34.12 | General permit compliance |
| §11-55-35 | Penalties and remedies |
| §11-55-36 | Hearings and appeals |
| §11-55-37 | Severability clause |
| §11-55-38 | Repealed |
| §11-55-39 | Public interest |
| §11-55-40 | Field Citations |
| Appendix A | Department of Health Standard General Permit Conditions |
| Appendix B | NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities |
| Appendix C | NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity |
| Appendix D | NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities |
| Appendix E | NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day |
| Appendix F | NPDES General Permit Authorizing Discharges of Hydrotesting Waters |
| Appendix G | NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering |
| Appendix H | NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals |
| Appendix I | NPDES General Permit Authorizing Discharges of Treated Process |

§11-55-01

| | |
|-------------------|------------------------------------------------------------------------------------------------------------------------|
| | Wastewater Associated with Well Drilling Activities |
| Appendix J | NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems |
| Appendix K | NPDES General Permit Authorizing Discharges of Storm Water from Small Municipal Separate Storm Sewer Systems |
| Appendix L | NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks |
| <u>Appendix M</u> | <u>NPDES General Permit Authorizing</u> <u>Point Source Discharges from the</u> <u>Application of Pesticides</u> |

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

§11-55-01 Definitions

"13 CFR" means the Code of Federal Regulations, Title 13, Business Credit and Assistance, revised as of January 1, 2011 unless otherwise specified.

"40 CFR" means the Code of Federal Regulations, Title 40, Protection of Environment, revised as of [July 1, 2006] July 1, 2011 unless otherwise specified.

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

"Action threshold" means the point at which pest populations or environmental conditions necessitate that pest control action be taken based on economic, human health, aesthetic, or other effects. An action threshold may be based on current and/or past

environmental factors that are or have been demonstrated to be conducive to pest emergence and/or growth, as well as past and/or current pest presence. Action thresholds are those conditions that indicate both the need for control actions and the proper timing of such actions.

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

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

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

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

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

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stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants; other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.). The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin rashes) or domesticated animals that occur either from direct contact with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or animals containing pesticides) to state waters that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

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

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

"Annual treatment area threshold" means the additive area (in acres) or linear distance (in miles) in a calendar year to which a decision-maker is authorizing and/or performing pesticide applications in that area for activities covered under Appendix M. For calculating annual treatment areas for mosquitoes and other flying insect pest control and forest canopy pest for comparing with any threshold in table 1 of Appendix M, count each pesticide application activity to a treatment area (i.e., that area where a pesticide application is intended to provide pesticidal benefits within the pest management area) as a separate area treated. For example, applying pesticides three times a year to the same three thousand acre site should be counted as nine thousand acres of treatment area for purposes of determining if such an application exceeds an annual treatment area threshold. Similarly, for calculating annual treatment areas for weed and algae

control and animal pest control for comparing with any threshold in table 1 of Appendix M, calculations should include either the linear extent of or the surface area of waters for each application made to state waters or at water's edge adjacent to state waters. For calculating the annual treatment area, count each treatment area as a separate area treated. Also, for linear features (e.g., a canal or ditch), count the length of the linear feature each time an application is made to that feature during the calendar year, including counting separately applications made to each bank of the water feature if pesticides are applied to both banks. For example, applications four times a year to both banks of a three-mile long reach of stream will count as a total of twenty four linear miles (three miles * two banks * four applications per year = twenty four miles to which pesticides are applied in a calendar year).

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

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

- (1) Approved or permitted to remain in effect by the Administrator under Section 303(a) or Section 303(c) of the Act, 33 U.S.C. §1313(a) or §1313(c); or
- (2) Promulgated by the Administrator under Section 303(b) of the Act, 33 U.S.C. §1313(b).

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

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

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

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

- (1) is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi;
- (2) is a procaryotic microorganism, including, but not limited to, eubacteria and archaeobacteria; or
- (3) is a parasitically replicating microscopic element, including but not limited to, viruses. (See 40 CFR 158.2100(b)).

"Biochemical pesticide" means a pesticide that is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and has a non-toxic mode of action to the target pest(s). (See 40 CFR 158.2000(a)(1)).

"Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the

genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or produce thereof. (See 40 CFR 174.3).

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

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

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

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

"Cooling water" means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage of a facility's intake flow that is used for cooling purposes in 40 CFR §125.91(a)(4).

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

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

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

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

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

"Department" means the state department of health.

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

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

"Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to state waters from any point source, or any addition of any pollutant or combination of pollutants to the water of the contiguous zone or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation. This includes additions of pollutants into state waters from: surface runoff that is collected or channeled by man; or discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. (Excerpted from 40 CFR 122.2).

"Draft permit" means a document prepared under 40 CFR §124.6 indicating the director's tentative decision to issue or modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit as discussed in 40 CFR §124.5(d)

and defined in 40 CFR §124.2, and a notice of intent to deny a permit as defined in 40 CFR §124.2 are types of "draft permit." A denial of a request for modification, revocation and reissuance, or termination, as discussed in 40 CFR §124.5(b), is not a "draft permit."

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

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

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

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

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

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

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

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

"HRS" means the Hawaii Revised Statutes.

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

"Impaired water" (or "water quality impaired water" or "water quality limited segment") means waters that have been identified by the state pursuant to

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

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

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

"Industrial user" means a source of indirect discharge.

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

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

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

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

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

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

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

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

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

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

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318, and 405 of the Act.

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

- (1) From which there is or may be a discharge of pollutants;
- (2) That did not begin the discharge of pollutants at a particular site before August 13, 1979;
- (3) Which is not a new source; and

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- (4) Which has never received a finally effective NPDES permit for discharges at the site.

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

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

whichever occurs first.

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

"Non-target Organisms" includes the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

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

"Notice of general permit coverage" or "NGPC" means an authorization issued to the owner or operator

by the department to comply with the NPDES general permit.

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

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

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

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

"Once-through cooling water system" means a system designed to withdraw water from a natural or other water source, use it at the facility to support contact or noncontact or both cooling uses, and then discharge it to a waterbody without recirculation. Once-through cooling systems sometimes employ canals, channels, ponds, or nonrecirculating cooling towers to dissipate waste heat from the water before it is discharged.

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

- (1) Any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities; or

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- (2) Any entity with control over the decision to perform pesticide applications including the ability to modify those decisions.

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

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

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

"Pest" means

- [(1) Any insect, rodent, nematode, fungus, weed, or
(2) Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under 7 U.S.C. §136w(c)(1).] the same thing as defined in section 11-54-4(e)(1).

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

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

"Pesticide" means

- [(1) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest;
- (2) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and
- (3) Any nitrogen stabilizer, except that the term "pesticide" shall not include any article that is a "new animal drug" within the meaning of 21 U.S.C. §321(v), that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of 21 U.S.C. §321(w) bearing or containing a new animal drug.

The term "pesticide" does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in 21 U.S.C. §321. For purposes of the preceding sentence, the term "critical device" includes any device which is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term "semi-critical device" includes any device which contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body.]the same thing as defined in section 11-54-4(e)(1).

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

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

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"Point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff, except return flows from agriculture irrigated with reclaimed water. (See 40 CFR [§122.3]§122.2).

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

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

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

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

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

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

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

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

"Small entity" means any:

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

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

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

"Standard of performance" means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the director determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants; provided that

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the standard shall not be less stringent than required under Section 306 of the Act, 33 U.S.C. §1316.

"State waters" means the same thing as defined in section [342D-1, HRS]11-54-1.

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

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

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

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

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

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

"Treatment works treating domestic sewage" or "TWTDS" means a POTW or any other sewage sludge or

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

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

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

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

"Water quality impaired" see "Impaired Water".

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

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

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 183B-1, 342D-1, 342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subpart A and D; Part 125; §122.2)

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§11-55-02 General policy of water pollution control. (a) It is the public policy of this State:

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

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

(c) Permits issued under this chapter, and the related applications, processing, issuance, and post-issuance procedures and requirements, shall be at least as stringent as those required by 40 CFR §123.25(a). [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1251, 1288, 1311, 1312,

1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.25(a))

§11-55-03 General prohibition. No person shall violate any provision of section 342D-50, HRS, or any NPDES permit issued under this chapter. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5, 603-23; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50, 603-23; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-04 Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion. (a) Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land, or substantially altering the quality of any discharges, or substantially increasing the quantity of any discharges, a person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), submit a complete notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M) or, for certain storm water discharges, meet all requirements for a conditional "no exposure" exclusion. Submittal of a notice of intent for coverage under a general permit shall comply with and be regulated by sections 11-55-34.08 through 11-55-34.10. Conditional "no exposure" exclusions shall comply with and be regulated by subsection (e). An NPDES permit application shall be submitted:

- (1) At least one hundred eighty days before the discharge or construction begins or before the expiration date of the existing permit. The director may waive this one hundred eighty day requirement by issuing the permit

with an effective date before the one hundred eighty days expire;

- (2) In sufficient time prior to the beginning of the discharge of pollutants to ensure compliance with the requirements of new source performance standards under Section 306 of the Act, 33 U.S.C. §1316, or with any applicable zoning or site requirements established under Section 208(b)(2)(C) of the Act, 33 U.S.C. §1288(b)(2)(C), and any other applicable water quality standards and applicable effluent standards and limitations;
- (3) For any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill;
- (4) For any discharge from an existing regulated small municipal separate storm sewer system which is not qualified to obtain coverage under the general permit. The permit application shall be made under 40 CFR §122.33 if the small municipal separate storm sewer system is designated under 40 CFR §122.32(a)(1). A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas shall submit an NPDES permit

application if the department determines that the system's storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The department shall evaluate the small municipal separate storm sewer system with the following elements, at a minimum: discharge to sensitive waters, high growth or growth potential, high population density, contiguity to an urbanized area, significant contributor of pollutants to state waters, and ineffective protection of water quality by other programs. The NPDES permit application shall be submitted within one hundred eighty days of notice from the department;

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

(b) Application for an individual permit shall be made by the owner or operator on an NPDES permit application provided by the director. The NPDES permit application shall be submitted with complete data, site information, plan description, specifications, drawings, and other detailed information. The information submitted shall comply with 40 CFR §§122.21(f) through (l) and (r) to determine in what manner the new or existing treatment works or wastes outlet, including a facility described in 40 CFR §§122.23, 122.24, 122.25, 122.26, or 122.27, will be

constructed or modified, operated, and controlled. When a facility or activity is owned by one person, but is operated by another person, it is the operator's duty to obtain a permit on behalf of the owner. The operator shall provide written evidence that the owner authorizes the operator to apply on behalf of the owner and that the owner agrees to comply with all permit conditions. Only one permit is required for a single facility or activity.

(c) The director may require the submission of additional information after an NPDES permit application has been submitted, and shall ensure that, if an NPDES permit application is incomplete or otherwise deficient, processing of the application shall not be completed until the owner or its duly authorized representative has supplied the missing information or otherwise corrected the deficiency.

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

- (1) When an NPDES permit application is submitted for an individual permit for a substantial alteration or addition to a treatment works or waste outlet and where an individual permit had previously been granted for the treatment works or waste outlet, the owner or operator shall pay a \$1,000 filing fee which shall be submitted with the NPDES permit application;
- (2) A new owner of a discharge facility covered by an individual permit shall submit a new NPDES permit application for a new individual permit unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The owner or operator shall pay a \$500 filing fee which shall be submitted with the NPDES permit application or notice

of automatic transfer that meets 40 CFR §122.61(b);

- (3) An NPDES individual permittee shall submit a new NPDES permit application for the transfer of discharge from one permanent location to another permanent location. The owner or operator shall pay the \$1,000 filing fee which shall be submitted with the NPDES permit application;
- (4) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.

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

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

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

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(f) (Reserved)

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

(h) [The application of pesticides consistent with all relevant requirements under FIFRA (i.e., those relevant to protecting water quality) in the following two circumstances do not require an NPDES permit:

- (1) The application of pesticides directly to state waters in order to control pests. Examples of such applications include applications to control mosquito larvae, aquatic weeds, or other pests that are present in state waters; or
- (2) The application of pesticides to control pests that are present over state waters, including near such waters, where a portion of the pesticides will unavoidably be deposited to state waters in order to target the pests effectively; for example, when insecticides are aerially applied to a forest canopy where state waters may be present below the canopy or when pesticides are applied over or near water for control of adult mosquitoes or other pests.

The department reserves its authority to require NPDES permits for other pesticide applications.](Reserved)
[Eff 11/27/81; am and comp 10/29/92; am 09/23/96; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; am and comp 6/25/09; am and comp]
(Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1288(b)(2)(C), 1316, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125;

§§122.21, 122.23, 122.24, 122.25, 122.26, 122.27,
122.61, 123.25(a), 124.3)

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

- (1) Prompt transmittal to the director from the Regional Administrator of copies of any NPDES permit applications, or other relevant information collected by the Regional Administrator prior to the state or interstate agency's participation in the NPDES; and
- (2) A procedure to ensure that the director will not issue an individual permit on the basis of any NPDES permit application received from the Regional Administrator which the Regional Administrator has identified as incomplete or otherwise deficient until the director has received information sufficient to correct the deficiency to the satisfaction of the Regional Administrator. [Eff 11/27/81; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/25/09; comp]
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.42)

§11-55-06 Transmission of information to Regional Administrator. The director shall transmit to the Regional Administrator copies of NPDES forms received by the State in a manner as the director and Regional

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

§11-55-18 Reporting discontinuance or dismantlement.
An NPDES permittee shall report within thirty days after the permanent discontinuance or dismantlement of that treatment works or waste outlet for which the NPDES permit had been issued by submitting a notice of cessation. [Eff 11/27/81; comp 10/29/92; comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1252, 1342, 1370, 1251-1387; 40 CFR 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.64, 124.5)

§11-55-19 Application of effluent standards and limitations, water quality standards, and other requirements. (a) NPDES permits shall apply and

ensure compliance with the following whenever applicable:

- (1) Effluent limitations under Sections 301 and 302 of the Act, 33 U.S.C. §§1311 and 1312;
- (2) Standards of performance for new sources;
- (3) Effluent standards, effluent prohibitions, and pretreatment standards under Section 307 of the Act, 33 U.S.C. §1317;
- (4) More stringent limitation, including those:
 - (A) Necessary to meet water quality standards, treatment standards, or schedules of compliance, established under any state law or rules (under authority preserved by Section 510 of the Act, 33 U.S.C. §1370); or
 - (B) Necessary to meet any other federal law or regulations including, but not limited to:
 - (i) Toxic pollutant effluent standards in 40 CFR Part 129;
 - (ii) Secondary treatment regulation in 40 CFR Part 133;
 - (iii) Effluent guidelines and standards in 40 CFR Chapter I, subchapter N, Parts 400 to 471;
 - (iv) Criteria and standards in 40 CFR Part 125, Subparts A, B, C, D, H, I, J, K, and M;
 - (v) Standards for sludge handling in 40 CFR §122.44(b)(2), 40 CFR Part 503 and state rules; and
 - (vi) [Technical]Nutrient management requirements and technical standards for concentrated animal feeding operations in 40 CFR §123.36, 40 CFR §122.42, and 40 CFR Part 412; or
 - (C) Required to implement any applicable water quality standards; the limitations to include any legally applicable requirements necessary to implement

total maximum daily loads established under Section 303(d) of the Act, 33 U.S.C. §1313(d), or incorporated in the continuing planning process approved under Section 303(e) of the Act, 33 U.S.C. §1313(e), and any regulations and guidelines issued pursuant thereto;

- (5) More stringent legally applicable requirements necessary to comply with a plan approved under Section 208(b) of the Act, 33 U.S.C. §1288(b);
- (6) Prior to promulgation by the Administrator of applicable effluent standards and limitations under Sections 301, 302, 306, and 307 of the Act, 33 U.S.C. §§1311, 1312, 1316, and 1317, the conditions, as the director determines are necessary to carry out the provisions of the Act; and
- (7) If the NPDES permit is for the discharge of pollutants into the state waters from a vessel or other floating craft, any applicable regulations promulgated by the secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.
- (8) Other requirements developed under the continuing planning process under Section 303(e) of the Act and any regulations and guidelines issued under it.

(b) In any case where an issued NPDES permit applies the effluent standards and limitations described in subsection (a)(1), (2), and (3), the director shall state that the discharge authorized by the permit shall not violate applicable water quality standards and shall have prepared some explicit verification of that statement. In any case where an issued NPDES permit applies any more stringent effluent limitation based upon applicable water quality standards, a waste load allocation shall be prepared to

ensure that the discharge authorized by the permit is consistent with applicable water quality standards. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1311, 1312, 1313, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125, Subparts A, B, C, D, H, I, J, K, L, M; 129; 133; 136; 401; 403; 405-432; 434-436; 439-440; 443; 446-447; 454-455; 457-460; 503; 400-471, Subparts N; §122.42, 122.43, 122.44, 123.25(a))

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

§11-55-21 Schedule of compliance in issued NPDES permits. (a) With respect to any discharge which is

- (1) Designated planning areas under Sections 208 and 303 of the Act;
- (2) Sewer districts or sewer authorities;
- (3) City, county, or state political boundaries;
- (4) State highway systems;
- (5) Standard metropolitan statistical areas as defined by the Office of Management and Budget;
- (6) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 Federal Register 15202 (May 1, 1974); or
- (7) Any other appropriate division or combination of boundaries. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp
] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.2, 122.28, 123.25(a)(11))

§11-55-34.01 General permit policy. It is the policy of the State that general permits shall comply, at a minimum, with federal requirements for general permits, especially 40 CFR §122.28. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp
] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.02 General permit authority and adoption. (a) The director may adopt general permits. (b) The appendices located at the end of this chapter are adopted and incorporated by reference as

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general permits for the following applicable categories of sources:

- (1) Appendix B, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities," dated October 2007, for discharges composed entirely of storm water associated with certain industrial activities as identified in 40 CFR §§122.26(b)(14)(i) through 122.26(b)(14)(ix) and §122.26(b)(14)(xi);
- (2) Appendix C, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity," dated October 2007, for storm water discharges from construction activities which result in the disturbance of five acres or more of total land area or small construction activities which result in the disturbance of one to less than five acres of total land area;
- (3) Appendix D, titled "NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities," dated October 2007, for the discharge of treated effluent from the leaking underground storage tank remedial activities;
- (4) Appendix E, titled "NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day," dated October 2007, for the discharge of once-through, non-contact cooling water for one million gallons per day or less;
- (5) Appendix F, titled "NPDES General Permit Authorizing Discharges of Hydrotesting Waters," dated October 2007, for the discharge of non-polluted hydrotesting water;
- (6) Appendix G, titled "NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering," dated

- October 2007, for the discharge of dewatering effluent from a construction activity;
- (7) Appendix H, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals," dated October 2007, for the discharge of treated process wastewater effluent from petroleum bulk stations and terminals;
 - (8) Appendix I, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities," dated October 2007, for the discharge of treated process wastewater effluent associated with well drilling activities;
 - (9) Appendix J, titled "NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems," dated October 2007, for the discharge of treated process wastewater effluent from recycled water distribution systems;
 - (10) Appendix K, titled "NPDES General Permit Authorizing Discharges of Storm Water and Certain Non-Storm Water Discharges from Small Municipal Separate Storm Sewer Systems," dated October 2007, for the discharge of storm water and certain non-storm water discharges from a small municipal separate storm sewer system as defined in 40 CFR §122.26(b)(16); [and]
 - (11) Appendix L, titled "NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks," dated October 2007, for the discharge of circulation water from decorative ponds or tanks[.]; and
 - (12) Appendix M, titled "NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides," dated January 2012.

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[Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 124; 125; §§122.26, 122.28, 123.25(a)(11))

§11-55-34.03 General permit terms. General permits shall be for terms of not more than five years.

[Eff and comp 10/29/92; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.46, 123.25(a)(11))

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

(b) Appendix A, titled "Department of Health Standard General Permit Conditions," dated October 2007 and located at the end of this chapter is adopted, incorporated by reference, and applies to each general permit.

(c) Special conditions apply as specified in each general permit, e.g., appendices B through [L]M, respectively. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp] (Auth: HRS §§342D-4, 342D-5; 33

U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1318, 1319, 1321, 1323, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.41, 122.42, 123.25(a)(11))

§11-55-34.05 Requiring an individual permit.

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

- (1) The discharger or "treatment works treating domestic sewage" is not in compliance with the conditions of the general permit;
- (2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;
- (3) Effluent limitation guidelines are promulgated for point sources covered by the general permit;
- (4) A water quality management plan containing requirements applicable to the point sources is approved;
- (5) Circumstances have changed since the time of the request to be covered so that the permittee is no longer appropriately controlled under the general permit or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
- (6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general permit; or
- (7) The discharge(s) is a significant contributor of pollutants to state waters. In making

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

(b) A notice of intent shall:

- (1) Be submitted on forms provided by the director;
- (2) Comply with the notice of intent requirements of the respective general permit; and
- (3) Be accompanied by all pertinent information which the director may require in order to establish effluent limitations or best management practices, including, but not limited to, complete engineering reports, schedule of progress, plans, specifications, maps, measurements, quantitative and qualitative determinations, records, and all related materials.

(c) The director may require that all reports, plans, specifications, and other material submitted to the director be prepared by a licensed professional engineer.

(d) Material submitted shall be complete and accurate.

(e) Any notice of intent form submitted to the director shall be signed in accordance with section 11-55-07(a).

(f) All other reports or responses to requests for information required by the director shall be signed in accordance with section 11-55-07(b).

(g) Any change in the written authorization submitted to the director under subsection (f) which occurs after the issuance of a permit shall be reported to the director by submitting a copy of a new written authorization which meets the requirements of subsections (e) and (f).

(h) Any person signing a document under subsections (e) and (f) shall make a certification in accordance with 40 CFR §122.22(d).

(i) Each owner or operator who submits a notice of intent to be covered under the general permit provisions or for renewal of general permit coverage shall pay a filing fee of \$500. This filing fee shall be submitted with the notice of intent and shall not be refunded nor applied to any subsequent NPDES individual permit application following final action denying coverage under the general permit provisions.

(1) When a notice of intent is submitted to the director for a substantial alteration or addition to the treatment works or waste outlet and where a general permit authorization has previously been granted for the treatment works or waste outlet, the owner or operator shall be assessed the fee of \$500;

(2) A new owner or operator or both of a discharge facility covered by the general permit provisions shall submit a new notice of intent unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The new owner or operator shall be assessed the fee of \$500;

(3) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.

(j) A notice of intent shall be submitted to the director at least thirty days before the earlier of:

(1) The beginning of any discharge, which is not covered under Appendix C[;] or except for coverage under Appendix M for a declared pest emergency situation where the notice of intent shall be submitted no later than thirty days after beginning discharge;

(2) The beginning of any construction activity which is covered under Appendix C;

(3) The expiration date of the existing general permit; or

(4) The expiration date of the existing notice of general permit coverage.

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

notifies the owner or operator or its duly authorized representative that the notice of intent is incomplete, the thirty day period shall start over upon receipt of the revised notice of intent. The director may waive this thirty day requirement by notifying the owner or operator in writing of a notice of general permit coverage before the thirty days expire. [Eff and comp 10/29/92; am 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; am and comp 6/15/09; am and comp

] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.22, 122.26, 122.28(b)(2)(ii) and (iii), 123.25(a)(11))

§11-55-34.09 Notice of intent review, notice of general permit coverage , additional conditions, terms, renewals, effective dates, and automatic coverage. (a) After receipt of a notice of intent, the director may notify the owner or operator or its duly authorized representative in writing that the notice of intent is complete or incomplete, whether the proposed activity or discharge(s) is covered under a general permit, or whether an individual permit application is required. The director may deny without prejudice the notice of intent to be covered by a general permit if the owner or operator or its duly authorized representative does not respond or failed to respond in writing within thirty days of the date of the director's written notification that the notice of intent is incomplete.

(b) After receipt of the complete notice of intent, the director may notify the owner or operator in writing of a notice of general permit coverage. This includes issuing a notice of general permit coverage after automatic coverage applies under subsection (e)(2) even if the owner or operator has not waived automatic coverage. The director may impose conditions in a notice of general permit coverage or

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-55

Hawaii Administrative Rules

OCT 11 2012

SUMMARY

1. §11-55-01 is amended.
2. §11-55-04 is amended.
3. §11-55-19 is amended.
4. §11-55-34.02 is amended.
5. §11-55-34.04 is amended.
6. §11-55-34.08 is amended.
7. Appendix M is new.
8. Chapter 55 is compiled.

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"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 55

WATER POLLUTION CONTROL

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Appendix M NPDES General Permit Authorizing
Point Source Discharges from the
Application of Pesticides

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

§11-55-01 Definitions

"13 CFR" means the Code of Federal Regulations, Title 13, Business Credit and Assistance, revised as of January 1, 2011 unless otherwise specified.

"40 CFR" means the Code of Federal Regulations, Title 40, Protection of Environment, revised as of July 1, 2011 unless otherwise specified.

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

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

"Active ingredient" means any substance (or group of structurally similar substances if specified by the United States Environmental Protection Agency) that

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

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

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

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

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

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pesticides) to state waters that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

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

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

"Annual treatment area threshold" means the additive area (in acres) or linear distance (in miles) in a calendar year to which a decision-maker is authorizing and/or performing pesticide applications in that area for activities covered under Appendix M. For calculating annual treatment areas for mosquitoes and other flying insect pest control and forest canopy pest for comparing with any threshold in table 1 of Appendix M, count each pesticide application activity to a treatment area (i.e., that area where a pesticide application is intended to provide pesticidal benefits within the pest management area) as a separate area treated. For example, applying pesticides three times a year to the same three thousand acre site should be counted as nine thousand acres of treatment area for purposes of determining if such an application exceeds an annual treatment area threshold. Similarly, for calculating annual treatment areas for weed and algae control and animal pest control for comparing with any threshold in table 1 of Appendix M, calculations should include either the linear extent of or the surface area of waters for each application made to state waters or at water's edge adjacent to state waters. For calculating the annual treatment area, count each treatment area as a separate area treated. Also, for linear features (e.g., a canal or ditch), count the length of the linear feature each time an application

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

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

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

- (1) Approved or permitted to remain in effect by the Administrator under Section 303(a) or Section 303(c) of the Act, 33 U.S.C. §1313(a) or §1313(c); or
- (2) Promulgated by the Administrator under Section 303(b) of the Act, 33 U.S.C. §1313(b).

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

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

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

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

- (1) is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi;
- (2) is a procaryotic microorganism, including, but not limited to, eubacteria and archaeobacteria; or
- (3) is a parasitically replicating microscopic element, including but not limited to, viruses. (See 40 CFR 158.2100(b)).

"Biochemical pesticide" means a pesticide that is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and has a non-toxic mode of action to the target pest(s). (See 40 CFR 158.2000(a)(1)).

"Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or produce thereof. (See 40 CFR 174.3).

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

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

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

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

"Cooling water" means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage of a facility's intake flow that is used for cooling purposes in 40 CFR §125.91(a)(4).

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

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

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

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

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

"Department" means the state department of health.

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

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

"Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to state waters from any point source, or any addition of any pollutant or combination of pollutants to the water of the contiguous zone or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation. This includes additions of pollutants into state waters from: surface runoff that is collected or channeled by man; or discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. (Excerpted from 40 CFR 122.2).

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

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

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

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

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

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

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

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

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

"HRS" means the Hawaii Revised Statutes.

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

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

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

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

"Industrial user" means a source of indirect discharge.

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

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

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

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

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

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

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

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

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

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

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318, and 405 of the Act.

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

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

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

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

whichever occurs first.

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

"Non-target Organisms" includes the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

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

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

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

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

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

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

"Once-through cooling water system" means a system designed to withdraw water from a natural or other water source, use it at the facility to support contact or noncontact or both cooling uses, and then discharge it to a waterbody without recirculation. Once-through cooling systems sometimes employ canals, channels, ponds, or nonrecirculating cooling towers to dissipate waste heat from the water before it is discharged.

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

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

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

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

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

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

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

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

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

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

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

"Point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff, except return flows from agriculture irrigated with reclaimed water. (See 40 CFR §122.2).

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

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

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

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

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

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

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

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

"Small entity" means any:

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

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

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

"Standard of performance" means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the director determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants; provided that

the standard shall not be less stringent than required under Section 306 of the Act, 33 U.S.C. §1316.

"State waters" means the same thing as defined in section [342D-1, HRS]11-54-1.

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

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

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

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

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

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

"Treatment works treating domestic sewage" or "TWTDS" means a POTW or any other sewage sludge or

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

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

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

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

"Water quality impaired" see "Impaired Water".

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

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

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 183B-1, 342D-1, 342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subpart A and D; Part 125; §122.2)

§11-55-02 General policy of water pollution control. (a) It is the public policy of this State:

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

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

(c) Permits issued under this chapter, and the related applications, processing, issuance, and post-issuance procedures and requirements, shall be at least as stringent as those required by 40 CFR §123.25(a). [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1251, 1288, 1311, 1312,

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1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.25(a))

§11-55-03 General prohibition. No person shall violate any provision of section 342D-50, HRS, or any NPDES permit issued under this chapter. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5, 603-23; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50, 603-23; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-04 Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion. (a) Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land, or substantially altering the quality of any discharges, or substantially increasing the quantity of any discharges, a person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), submit a complete notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M) or, for certain storm water discharges, meet all requirements for a conditional "no exposure" exclusion. Submittal of a notice of intent for coverage under a general permit shall comply with and be regulated by sections 11-55-34.08 through 11-55-34.10. Conditional "no exposure" exclusions shall comply with and be regulated by subsection (e). An NPDES permit application shall be submitted:

- (1) At least one hundred eighty days before the discharge or construction begins or before the expiration date of the existing permit. The director may waive this one hundred eighty day requirement by issuing the permit

- with an effective date before the one hundred eighty days expire;
- (2) In sufficient time prior to the beginning of the discharge of pollutants to ensure compliance with the requirements of new source performance standards under Section 306 of the Act, 33 U.S.C. §1316, or with any applicable zoning or site requirements established under Section 208(b)(2)(C) of the Act, 33 U.S.C. §1288(b)(2)(C), and any other applicable water quality standards and applicable effluent standards and limitations;
 - (3) For any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill;
 - (4) For any discharge from an existing regulated small municipal separate storm sewer system which is not qualified to obtain coverage under the general permit. The permit application shall be made under 40 CFR §122.33 if the small municipal separate storm sewer system is designated under 40 CFR §122.32(a)(1). A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas shall submit an NPDES permit

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application if the department determines that the system's storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The department shall evaluate the small municipal separate storm sewer system with the following elements, at a minimum: discharge to sensitive waters, high growth or growth potential, high population density, contiguity to an urbanized area, significant contributor of pollutants to state waters, and ineffective protection of water quality by other programs. The NPDES permit application shall be submitted within one hundred eighty days of notice from the department;

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

(b) Application for an individual permit shall be made by the owner or operator on an NPDES permit application provided by the director. The NPDES permit application shall be submitted with complete data, site information, plan description, specifications, drawings, and other detailed information. The information submitted shall comply with 40 CFR §§122.21(f) through (l) and (r) to determine in what manner the new or existing treatment works or wastes outlet, including a facility described in 40 CFR §§122.23, 122.24, 122.25, 122.26, or 122.27, will be

constructed or modified, operated, and controlled. When a facility or activity is owned by one person, but is operated by another person, it is the operator's duty to obtain a permit on behalf of the owner. The operator shall provide written evidence that the owner authorizes the operator to apply on behalf of the owner and that the owner agrees to comply with all permit conditions. Only one permit is required for a single facility or activity.

(c) The director may require the submission of additional information after an NPDES permit application has been submitted, and shall ensure that, if an NPDES permit application is incomplete or otherwise deficient, processing of the application shall not be completed until the owner or its duly authorized representative has supplied the missing information or otherwise corrected the deficiency.

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

- (1) When an NPDES permit application is submitted for an individual permit for a substantial alteration or addition to a treatment works or waste outlet and where an individual permit had previously been granted for the treatment works or waste outlet, the owner or operator shall pay a \$1,000 filing fee which shall be submitted with the NPDES permit application;
- (2) A new owner of a discharge facility covered by an individual permit shall submit a new NPDES permit application for a new individual permit unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The owner or operator shall pay a \$500 filing fee which shall be submitted with the NPDES permit application or notice

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of automatic transfer that meets 40 CFR §122.61(b);

- (3) An NPDES individual permittee shall submit a new NPDES permit application for the transfer of discharge from one permanent location to another permanent location. The owner or operator shall pay the \$1,000 filing fee which shall be submitted with the NPDES permit application;
- (4) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.

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

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

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

(f) (Reserved)

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

(h) (Reserved) [Eff 11/27/81; am and comp 10/29/92; am 09/23/96; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; am and comp 6/25/09; am and comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1288(b)(2)(C), 1316, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21, 122.23, 122.24, 122.25, 122.26, 122.27, 122.61, 123.25(a), 124.3)

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

- (1) Prompt transmittal to the director from the Regional Administrator of copies of any NPDES permit applications, or other relevant information collected by the Regional Administrator prior to the state or interstate agency's participation in the NPDES; and
- (2) A procedure to ensure that the director will not issue an individual permit on the basis of any NPDES permit application received from the Regional Administrator which the Regional Administrator has identified as incomplete or otherwise deficient until the director has received information sufficient to correct

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the deficiency to the satisfaction of the Regional Administrator. [Eff 11/27/81; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/25/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.42)

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

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

an NPDES permit application, the director shall send the Regional Administrator any information necessary to correct the deficiency and shall, if the Regional Administrator so requests, not issue the individual permit until the department receives notice from the Regional Administrator that the deficiency has been corrected;

- (5) Procedures for the transmittal, if requested by the Regional Administrator, of copies of any notice received by the director from publicly owned treatment works under section 11-55-23(7) and 11-55-23(8); and
- (6) Variance applications shall be processed in accordance with the procedures set forth in section 342D-7, HRS, and 40 CFR §§122.21(m) through (o), 124.62, and 403.13. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**]
(Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21(m), 122.21(n), 122.21(o), 123.25(a), 123.43, 123.44, 124.62, 403.13)

§11-55-07 Identity of signatories to NPDES forms.

(a) Any NPDES form and its certification, as stated in 40 CFR §122.22(d), submitted to the director shall be signed as follows:

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

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

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

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

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

(c) If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth:

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

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

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

tentative determination under subsection (a) into a draft permit.

(c) The director shall prepare draft permits when required by 40 CFR §124.5(c) or (d). [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.44(m), 123.25(a), 124.5, 124.6)

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

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

- (1) Notice shall be circulated within the geographical areas of the proposed discharge; circulation includes any or all of the following:
 - (A) Posting in the post office and public places of the municipality nearest the premises of the owner or operator in which the effluent source is located;
 - (B) Posting near the entrance to the owner's or operator's premises and in nearby places; or
 - (C) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation.

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- (2) Notice shall be mailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v); and
- (3) The director shall add the name of any person, including those specified in 40 CFR §§124.10(c)(1)(ix) and (x), or group upon request to a mailing list to receive copies of notices for all NPDES permit applications within the State or within a certain geographical area.

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

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

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

- (6) A brief description of the procedures for the formulation of final determinations, including the procedures for public comment, requesting a public hearing, and any other means of public participation offered;
- (7) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:
 - (A) Obtain further information;
 - (B) Request a copy of the draft permit prepared under section 11-55-08(b);
 - (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
 - (D) Inspect and copy NPDES forms and related documents; and
- (8) Requirements applicable to cooling water intake structures under section 316(b) of the Act, in accordance with Part 125, Subparts I and J.

(d) All publication and mailing costs associated with the public notification of the director's tentative determinations with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1326(a), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.13, 124.17, 124.57)

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

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

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

- (4) A brief citation, including a brief identification of the uses for which the receiving state waters have been classified, of the water quality standards, and effluent standards and limitations applied to the proposed discharge;
- (5) A more detailed description of the procedures for the formulation of final determinations than that given in the public notice including:
 - (A) The thirty-day comment period required by section 11-55-09(b);
 - (B) Procedures for requesting a public hearing and the nature thereof; and
 - (C) Any other procedures by which the public may participate in the formulation of the final determinations;
- (6) The name and telephone number of a person to contact for additional information; and
- (7) The information required by 40 CFR §§124.8(b)(5), 124.56(a), 124.56(b), 124.56(c), 124.56(e), and Part 125, subpart M.

(c) The director shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1311, 1312, 1316, 1317, 1342, 1370, 1252-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 501; §§123.25(a), 124.8, 124.56, 501.15(d)(4))

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

(a) The director shall notify other appropriate government agencies of each complete NPDES permit application for an individual permit and shall provide

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the agencies an opportunity to submit their written views and recommendations.

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

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

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

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

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

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

(f) The director shall notify and coordinate with appropriate public health agencies for the purpose of assisting the owner or its duly authorized representative in coordinating the applicable requirements of the Act with any applicable requirements of the public health agencies. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1288(b), 1313(e), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

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

(b) The director shall protect any information (other than effluent data) as confidential upon a request and showing by any person at the time of submission that the information, if made public, would divulge methods or processes entitled to protection as trade secrets of a person. Any information obtained from a state and subject to a claim of confidentiality shall be treated in accordance with the regulations in 40 CFR Part 2 and section 92F-13, HRS. Claims of confidentiality shall be denied regarding the following: name and address of any owner or operator or permittee applying for an individual permit, notice of general permit coverage, or "no exposure"

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certification; NPDES permits; and effluent data. Information required by NPDES permit application forms may not be claimed confidential. This includes information supplied in attachments to the NPDES permit application forms. If, however, the information being considered for confidential treatment is contained in an NPDES form, the director shall forward the information to the Regional Administrator for the Regional Administrator's concurrence in any determination of confidentiality. If the Regional Administrator advises the director that the Regional Administrator does not concur in the withholding of the information, the director shall then make available to the public, upon request, that information determined by the Regional Administrator not to constitute trade secrets.

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

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

- (1) Ensure that a machine or device for the copying of papers and documents is available for a reasonable fee; or
- (2) Otherwise provide for or coordinate with copying facilities or services so that requests for copies of nonconfidential documents may be honored promptly. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp]
(Auth: HRS §§342D-4, 342D-5, 342D-14; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-14, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-

1387; 40 CFR Parts 2; 122; 123; 124, Subparts A and D; 125; §§122.7, 123.25(a), 123.41)

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

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

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

(d) Any person may submit oral or written statements and data concerning the draft permit. The public comment period under section 11-55-09 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-57; 33 U.S.C.

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§§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.11, 124.12)

§11-55-14 Public notice of public hearings. (a)

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

- (1) Published at least once in a newspaper of general circulation within the geographical area of the discharge;
- (2) Sent to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES permit application;
- (3) Mailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v), (ix), and (x); and
- (4) Effectuated under paragraphs (1) and (3) at least thirty days in advance of the hearing.

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

- (1) Name and address of the agency holding the public hearing;
- (2) Name and address of each owner or operator or both whose NPDES permit application will be considered at the hearing and the name and address of the facility or activity;
- (3) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;
- (4) A brief reference to the public notice for proposed action issued for each NPDES permit application, including identification number and date of issuance, if applicable;
- (5) Information regarding the date, time, and location of the hearing;

- (6) The purpose of the hearing, including a concise statement of the issues raised by the persons requesting the hearing, as applicable;
- (7) A brief description of the nature of the hearing, including the rules and procedures to be followed; and
- (8) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:
 - (A) Obtain further information;
 - (B) Request a copy of each draft permit prepared under section 11-55-08(b);
 - (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
 - (D) Inspect and copy NPDES forms and related documents.

(c) All publication and mailing costs associated with the public notification of the director's determinations to hold public hearing with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

§11-55-15 Issuance of NPDES permits. (a) The director may issue an NPDES permit for any period not

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exceeding five years and may renew a permit for any additional periods not exceeding five years.

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

- (1) The existing treatment works or waste outlet is designed, built, and equipped in accordance with:
 - (A) The best practicable control technology currently available or the best available technology economically achievable or the best conventional pollutant control technology for point sources other than publicly owned treatment works; and
 - (B) For publicly owned treatment works, secondary treatment or the best practicable waste treatment technology, so as to reduce wastes to a minimum;
 - (2) New treatment works or waste outlets are designed and built in compliance with the applicable standards of performance;
 - (3) The new or existing treatment works or waste outlet is designed and will be constructed or modified to operate without causing a violation of applicable rules of the department;
 - (4) The new or existing treatment works or waste outlet will not endanger the maintenance or attainment of applicable water quality standards;
 - (5) The facility shall comply with effluent standards and limitations, water quality standards and other requirements, as applicable in sections 11-55-19, 11-55-20, and 11-55-22; and
 - (6) The facility shall comply with sections 11-55-27 through 11-55-32.
- (c) NPDES permits at a minimum shall include conditions and requirements at least as stringent as:

- (1) Those conditions contained in sections 11-55-16, 11-55-17, 11-55-23, and 40 CFR §122.41;
- (2) The requirement that the owner or operator provide the facilities as necessary for monitoring of the authorized waste discharge into state waters and the effects of the wastes on the receiving state waters. The monitoring program shall comply with sections 11-55-28 through 11-55-32;
- (3) The requirement of compliance with any applicable effluent standards and limitations, water quality standards, and other requirements imposed by the director under sections 11-55-19, 11-55-20, and 11-55-22; and
- (4) Conditions requested by the Corps of Engineers and other government agencies as described in 40 CFR §124.59.

(d) The director may issue a permit to an existing facility which does not or cannot presently comply with subsections (b) and (c) only if the permit includes a schedule of compliance with specific deadlines for bringing the facility into compliance with subsections (b) and (c). Schedule of compliance shall comply with section 11-55-21.

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

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

- (1) Discharge of any radiological or biological warfare agent, or high-level radioactive waste into state waters;

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- (2) Discharge which the Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage and navigation;
 - (3) Discharge to which the Regional Administrator has objected in writing under any right to object provided the Administrator in Section 402(d) of the Act, 33 U.S.C. §1342(d);
 - (4) Discharge from a point source which is in conflict with a plan or amendment thereto approved under Section 208(b) of the Act, 33 U.S.C. §1288(b); or
 - (5) When prohibited by 40 CFR §122.4.
- (g) The issuance of a permit does not convey any property rights of any sort or any exclusive privilege. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.4, 122.5, 122.41, 122.43, 122.44, 122.45, 122.46, 123.25(a), 124.5, 124.59)

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

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

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

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

(e) All applications made under section 342D-7, HRS, for a variance from the terms and conditions of an NPDES permit shall also be deemed as applications for a modification under this section. Any variances, if granted, shall be for a period not to exceed five years. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp

OCT 21 2012] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-7; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-7, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.62, 122.63, 123.25(a), 124.5)

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

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

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

- (1) Noncompliance by the permittee with any condition of the permit;
- (2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;
- (3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

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- (4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a publicly owned treatment works).

(d) The director shall follow the applicable state procedures in terminating any NPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a publicly owned treatment works (but not by land application or disposal into a well), the director may terminate the permit by notice to the permittee. Termination by notice shall be effective thirty days after notice is sent ("expedited termination"), unless the permittee objects in writing during that time. If the permittee objects during that period, the director shall follow applicable state procedures for termination. Expedited termination is not available to permittees who are subject to pending state or federal or both enforcement actions including citizen suits brought under state or federal law. If requesting expedited termination, a permittee shall certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under 40 CFR §124.6. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp
OCT 21 2012] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.64, 122.64(b), 123.25(a), 124.5, 124.5(d), 124.15(a))

§11-55-18 Reporting discontinuance or dismantlement.
An NPDES permittee shall report within thirty days after the permanent discontinuance or dismantlement of that treatment works or waste outlet for which the NPDES permit had been issued by submitting a notice of cessation. [Eff 11/27/81; comp 10/29/92; comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1252, 1342, 1370, 1251-1387; 40 CFR 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.64, 124.5)

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

- (1) Effluent limitations under Sections 301 and 302 of the Act, 33 U.S.C. §§1311 and 1312;
- (2) Standards of performance for new sources;
- (3) Effluent standards, effluent prohibitions, and pretreatment standards under Section 307 of the Act, 33 U.S.C. §1317;
- (4) More stringent limitation, including those:
 - (A) Necessary to meet water quality standards, treatment standards, or schedules of compliance, established under any state law or rules (under authority preserved by Section 510 of the Act, 33 U.S.C. §1370); ~~or~~ **§ 1370**
 - (B) Necessary to meet any other federal law or regulations including, but not limited to:
 - (i) Toxic pollutant effluent standards in 40 CFR Part 129;
 - (ii) Secondary treatment regulation in 40 CFR Part 133;

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- (iii) Effluent guidelines and standards in 40 CFR Chapter I, subchapter N, Parts 400 to 471;
 - (iv) Criteria and standards in 40 CFR Part 125, Subparts A, B, C, D, H, I, J, K, and M;
 - (v) Standards for sludge handling in 40 CFR §122.44(b)(2), 40 CFR Part 503 and state rules; and
 - (vi) Nutrient management requirements and technical standards for concentrated animal feeding operations in 40 CFR §123.36, 40 CFR §122.42, and 40 CFR Part 412; or
- (C) Required to implement any applicable water quality standards; the limitations to include any legally applicable requirements necessary to implement total maximum daily loads established under Section 303(d) of the Act, 33 U.S.C. §1313(d), or incorporated in the continuing planning process approved under Section 303(e) of the Act, 33 U.S.C. §1313(e), and any regulations and guidelines issued pursuant thereto;
- (5) More stringent legally applicable requirements necessary to comply with a plan approved under Section 208(b) of the Act, 33 U.S.C. §1288(b);
 - (6) Prior to promulgation by the Administrator of applicable effluent standards and limitations under Sections 301, 302, 306, and 307 of the Act, 33 U.S.C. §§1311, 1312, 1316, and 1317, the conditions, as the director determines are necessary to carry out the provisions of the Act; and
 - (7) If the NPDES permit is for the discharge of pollutants into the state waters from a vessel or other floating craft, any applicable regulations promulgated by the

secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

- (8) Other requirements developed under the continuing planning process under Section 303(e) of the Act and any regulations and guidelines issued under it.

(b) In any case where an issued NPDES permit applies the effluent standards and limitations described in subsection (a)(1), (2), and (3), the director shall state that the discharge authorized by the permit shall not violate applicable water quality standards and shall have prepared some explicit verification of that statement. In any case where an issued NPDES permit applies any more stringent effluent limitation based upon applicable water quality standards, a waste load allocation shall be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1311, 1312, 1313, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125, Subparts A, B, C, D, H, I, J, K, L, M; 129; 133; 136; 401; 403; 405-432; 434-436; 439-440; 443; 446-447; 454-455; 457-460; 503; 400-471, Subparts N; §§122.42, 122.43, 122.44, 123.25(a))

§11-55-20 Effluent limitations in issued NPDES permits. In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements under section 11-55-19, each issued NPDES permit shall specify average and maximum daily quantitative limitations for the level of

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pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The director, at the director's discretion, in addition to the specification of daily quantitative limitations by weight, may specify other limitations, such as average or maximum concentration limits. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.45(f), 123.25(a))

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

- (1) In accordance with any legally applicable schedule of compliance contained in:
 - (A) Applicable effluent standards and limitations;
 - (B) If more stringent, effluent standards and limitations needed to meet water quality standards; or
 - (C) If more stringent, effluent standards and limitations needed to meet legally applicable requirements listed in section 11-55-19; or
- (2) In the absence of any legally applicable schedule of compliance, in the shortest, reasonable period of time, which shall be consistent with the guidelines and requirements of the Act.

(b) When a schedule specifies compliance longer than one year after permit issuance, the schedule of compliance shall specify interim requirements and the dates for their achievement and in no event shall more than one year elapse between interim dates. If the time necessary for completion of the interim requirement (such as the construction of a treatment facility) exceeds one year and is not readily divided into stages for completion, the schedule shall specify interim dates for the submission of reports of progress towards completion of the interim requirements. For each NPDES permit schedule of compliance, interim dates, reporting dates, and the final date for compliance shall, to the extent practicable, fall on the last day of the month of March, June, September, and December. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a))

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

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

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and copying and shall contain at least the following information with respect to each instance of noncompliance:

- S105 1 S 100
- (1) Name, address, and permit number of each noncomplying permittee;
 - (2) A short description of each instance of noncompliance for which 40 CFR §123.45(a)(2) requires reporting (e.g., failure to submit preliminary plans; two weeks delay in beginning construction of treatment facility; failure to notify director of compliance with interim requirement to complete construction by June 30th, etc.);
 - (3) The date(s) and a short description of any actions or proposed actions by the permittee or the director to comply or enforce compliance with the interim or final requirement; and
 - (4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objection from state fish and wildlife agency, etc.).

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

(d) If a permittee fails or refuses to comply with an interim or final requirement in an NPDES permit, noncompliance shall constitute a violation of the permit for which the director may modify, revoke and reissue, or terminate the permit under sections 11-55-16 and 11-55-17 or may take direct enforcement action. [Eff 11/27/81; am and comp 10/29/92; am and

comp 09/22/97; comp 01/06/01; am and comp 11/07/02;
comp 08/01/05; comp 10/22/07; comp 6/15/09; comp
OCT 21 2012] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C.
§§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4,
342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-
1387; 40 CFR Parts 122; 123; 124, Subparts A and D;
125; §§122.43, 122.47, 123.25(a), 123.45)

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

- (1) All discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the NPDES permit;
- (2) The permittee shall report at least as required by 40 CFR §122.41(l), and where applicable, 40 CFR §122.42(a), (b), (c), (d), and (e);
- (3) Facility expansions, production increase, or process modifications which result in new or increased discharges of pollutants shall be reported by submission of a new NPDES permit application, or, if the discharge does not violate effluent limitations specified in the NPDES permit, by submission to the director of notice of the new or increased discharges of pollutants under 40 CFR §122.42(a);
- (4) The discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the NPDES permit shall constitute a violation of the terms and conditions of the NPDES permit;
- (5) The permittee shall allow the director or an authorized agent, including a contractor of the Administrator, upon the presentation of credentials to:
 - (A) Enter the permittee's premises in which an effluent source is located or in

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- which any records are kept under terms and conditions of the NPDES permit;
- (B) Have access to and copy any records kept under terms and conditions of the NPDES permit;
 - (C) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the NPDES permit; or
 - (D) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location;
- (6) Any treatment facility treating domestic sewage and also receiving industrial waste from one or more indirect dischargers may be required to develop for the director's approval a pretreatment program in accordance with applicable requirements in 40 CFR Part 403. The pretreatment program approved by the director may then be incorporated into the NPDES permit as a permit condition;
- (7) If the NPDES permit is for a discharge from a publicly or privately owned treatment works, the permittee shall notify the director in writing of the following:
- (A) Any new introduction of pollutants into a publicly or privately owned treatment works from an indirect discharger which would be subject to Sections 301 and 306 of the Act, 33 U.S.C. §1311 and §1316, if the indirect discharger were directly discharging those pollutants;
 - (B) Any substantial change in volume or character of pollutants being introduced into the treatment works by a source introducing pollutants into the treatment works at the time of issuance of the permit;

- (C) The quality and quantity of effluent to be introduced into a treatment works;
and
 - (D) Any anticipated impact caused by a change in the quality or quantity of effluent to be discharged from a publicly or privately owned treatment works;
- (8) If the NPDES permit is for a discharge from a publicly owned treatment works with an approved pretreatment program under section 11-55-24, the director shall incorporate the approved pretreatment program into the NPDES permit as a permit condition. The permittee shall require any industrial user of the treatment works to comply with the requirements contained in the approved pretreatment program and the requirements of Sections 204(b), 307, and 308 of the Act, 33 U.S.C. §§1284, 1317, and 1318. The permittee shall also require each industrial user subject to the requirements of Section 307 of the Act, 33 U.S.C. §1317, to forward copies of periodic reports (over intervals not to exceed nine months) of progress towards full compliance with Section 307 of the Act, 33 U.S.C. §1317 requirements, to the permittee and the director;
- (9) The permittee at all times shall maintain in good working order and operate as efficiently as possible any facility or system of control installed by the permittee to achieve compliance with the terms and conditions of the NPDES permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is

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- necessary to achieve compliance with the conditions of the permit; and
- (10) If a toxic effluent standard or prohibition (including any schedule of compliance specified in the effluent standards or prohibition) is promulgated under Section 307(a) of the Act, 33 U.S.C. §1317(a), for a toxic pollutant which is present in the permittee's discharge and the standard or prohibition is more stringent than any limitation upon the pollutant in the NPDES permit, the director shall revise or modify the permit in accordance with the toxic effluent standard or prohibition and notify the permittee; and
- (11) A copy of the NPDES permit application, notice of intent, "no exposure" certification, individual permit, notice of general permit coverage, and conditional "no exposure" exclusion, as applicable, shall be retained on-site or at a nearby office or field office. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-8, 342D-50, 342D-55; 33 U.S.C. §§1251, 1284, 1311, 1316, 1317, 1318, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 403; §§122.41, 122.42, 122.44, 123.25(a))

§11-55-24 National pretreatment standards and users of publicly owned treatment works. (a) Any county desiring to administer its own publicly owned treatment works pretreatment program shall submit to the director for approval a program description which

shall at a minimum include the information set forth in 40 CFR §403.9(a) or 403.9(c).

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

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

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

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

(e) The director may require any person discharging any pollutant or effluent into a publicly owned treatment works to:

- (1) Establish and maintain records;
- (2) Make reports;
- (3) Install, use, and maintain monitoring equipment or methods;
- (4) Sample effluent and state waters;
- (5) Provide access to and copying of any records which are maintained; and
- (6) Provide other information as the department may require. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2,

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342D-4, 342D-5, 342D-6, 342D-8, 342D-50,
342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-
1387; 40 CFR Parts 122; 123; 124, Subparts A
and D; 125; 403, §§122.41(i))

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

- (1) Except as waived under paragraph (4), the
transmission by the director of any and all
terms, conditions, requirements, or documents
which are a part of the proposed NPDES permit
or which affect the authorization by the
proposed NPDES permit of the discharge of
pollutants;
- (2) A period of time (up to ninety days) in which
the Regional Administrator, under any right
to object provided in Section 402(d) of the
Act, 33 U.S.C. §1342(d), may comment upon,
object to, or make recommendations with
respect to the proposed NPDES permit;
- (3) Procedures for state acceptance or rejection
of a written objection by the Regional
Administrator; and
- (4) Any written waiver by the Regional
Administrator of the Regional Administrator's
rights to receive, review, object to, or
comment upon proposed NPDES permits for
classes, types, or sizes within any category
of point sources. [Eff 11/27/81; am and comp
10/29/92; am and comp 09/22/97; comp
01/06/01; am and comp 11/07/02; comp
08/01/05; comp 10/22/07; comp 6/15/09; comp
OCT 21 2012] (Auth: HRS §§342D-4, 342D-5,
342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp:

HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33
U.S.C. §§1251, 1342, 1370, 1251-1387;
40 CFR Parts 122; 123; 124, Subparts A and D;
125; §§123.24(d), 123.43, 123.44)

§11-55-26 Transmission to Regional Administrator
of issued NPDES permits. The director shall transmit
to the Regional Administrator a copy of every issued
NPDES permit, immediately following issuance, along
with any and all terms, conditions, requirements, or
documents which are a part of the NPDES permit or which
affect the authorization by the NPDES permit of the
discharge of pollutants. [Eff 11/27/81; comp 10/29/92;
am and comp 09/22/97; comp 01/06/01; am and comp
11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09;
comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5,
342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS
§§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251,
1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124,
Subparts A and D; 125; 123.43(a)(3))

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

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

- (1) The permittee is in compliance with or has
substantially complied with all the terms,
conditions, requirements, and schedules of
compliance of the current or expired NPDES
permit;
- (2) That the director has current information on
the permittee's production levels;
permittee's waste treatment practices;

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nature, contents, and frequency of permittee's discharge through the submission of new forms and applications or from monitoring records and reports submitted to the director by the permittee; and

- (3) That the discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements, including any additions to, revisions, or modifications of the effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

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

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

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

(e) Application for renewal of an NPDES permit shall comply with section 11-55-04. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS

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

§11-55-28 Monitoring. (a) Any discharge authorized by an NPDES permit may be subject to monitoring requirements as may be reasonably required by the director, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods).

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

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

(c) Monitored items:

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

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under the Act, as subject to monitoring;
and

- (D) Any pollutants in addition to the above which the Regional Administrator requests, in writing, to be monitored.

(d) Each effluent flow or pollutant required to be monitored under subsection (c) shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels shall be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.41, 122.43, 122.48, 123.25(a))

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

- (1) The permittee shall maintain records of all information resulting from any monitoring activities required by the NPDES permit;
- (2) Any records of monitoring activities and results shall include for all samples:
 - (A) The date, exact place, and time of sampling or measurements;
 - (B) The individual(s) who performed the sampling or measurements;
 - (C) The date(s) the analyses were performed;
 - (D) The individual(s) who performed the analyses;
 - (E) The analytical techniques or methods used; and
 - (F) The results of the analyses; and

- (3) The permittee shall retain for a minimum of five years any records of monitoring activities and results including all original strip chart recording for continuous monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 122.41(j))

§11-55-30 Reporting of monitoring results. The director shall require periodic reporting (at a frequency of not less than once per year) on the proper NPDES discharge monitoring report form, or other form as specified by the director, of monitoring results obtained by a permittee under monitoring requirements in an NPDES permit. In addition to the NPDES discharge monitoring report form, or other form as specified by the director, the director may require submission of any other information regarding monitoring results as determined to be necessary. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 122.41(1)(4), 122.44(i))

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§11-55-31 Sampling and testing methods. (a) All sampling and testing shall be done in accordance with test procedures approved under 40 CFR Part 136 unless other test procedures have been specified in the permit or approved by the director and, when applicable, with guidelines establishing test procedures for the analysis of pollutants published by the Administrator in accordance with Section 304(h) of the Act, 33 U.S.C. §1314(h). All tests shall be made under the direction of persons knowledgeable in the field of water pollution control.

(b) The director may conduct tests of waste discharges from any source. Upon request of the director, the person responsible for the source to be tested shall provide necessary sampling stations and other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the waste discharge. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp
OCT 21 2012] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1314, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.41(j)(4), 136)

§11-55-32 Malfunction, maintenance, and repair of equipment. (a) There shall be no shut-down of water pollution treatment facilities for purposes of maintenance unless a schedule or plan for the maintenance has been submitted to and approved by the director prior to the shut-down.

(b) In the case of a shut-down of water pollution control equipment for necessary maintenance, the intent to shut down the equipment shall be reported to and approved by the director at least twenty-four hours prior to the planned shut-down. The prior notice shall include, but is not limited to, the following:

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

(c) In the event that any water pollution control equipment or related facility breaks down in a manner causing the discharge of water pollutants in violation of applicable rules, the person responsible for the equipment shall immediately notify the director of the failure or breakdown and provide a statement giving all pertinent facts, including the estimated duration of the breakdown. The director shall be notified when the condition causing the failure or breakdown has been corrected and the equipment is again in operation.

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**]
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-33 Agency board membership. (a) Any board or body which approves NPDES permit applications, notices of intent, or "no exposure" certifications, or portions thereof shall not include as a member any

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person who receives, or has during the previous two years received, a significant portion of the person's income directly or indirectly from permittees or persons applying for an NPDES permit.

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

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

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

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

(f) For the purposes of this section, income is not received "directly or indirectly from permittees or persons applying for an NPDES permit" where it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary sources of income.

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp
OCT 21 2012] (Auth: HRS §§342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 123.25(c))

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

"Category of sources" means either:

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

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

- (1) Designated planning areas under Sections 208 and 303 of the Act;
- (2) Sewer districts or sewer authorities;
- (3) City, county, or state political boundaries;
- (4) State highway systems;
- (5) Standard metropolitan statistical areas as defined by the Office of Management and Budget;
- (6) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 Federal Register 15202 (May 1, 1974); or
- (7) Any other appropriate division or combination of boundaries. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp

OCT 21 2012] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342,

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1370, 1251-1387; 40 CFR Parts 122; 123; 124;
125; §§122.2, 122.28, 123.25(a)(11))

§11-55-34.01 General permit policy. It is the policy of the State that general permits shall comply, at a minimum, with federal requirements for general permits, especially 40 CFR §122.28. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

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

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

- (1) Appendix B, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities," dated October 2007, for discharges composed entirely of storm water associated with certain industrial activities as identified in 40 CFR §§122.26(b)(14)(i) through 122.26(b)(14)(ix) and §122.26(b)(14)(xi);
- (2) Appendix C, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity," dated October 2007, for storm water discharges from construction activities which result in the disturbance of five acres or more of total land area or small construction activities which result in the disturbance of one to less than five acres of total land area;

- (3) Appendix D, titled "NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities," dated October 2007, for the discharge of treated effluent from the leaking underground storage tank remedial activities;
- (4) Appendix E, titled "NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day," dated October 2007, for the discharge of once-through, non-contact cooling water for one million gallons per day or less;
- (5) Appendix F, titled "NPDES General Permit Authorizing Discharges of Hydrotesting Waters," dated October 2007, for the discharge of non-polluted hydrotesting water;
- (6) Appendix G, titled "NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering," dated October 2007, for the discharge of dewatering effluent from a construction activity;
- (7) Appendix H, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals," dated October 2007, for the discharge of treated process wastewater effluent from petroleum bulk stations and terminals;
- (8) Appendix I, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities," dated October 2007, for the discharge of treated process wastewater effluent associated with well drilling activities;
- (9) Appendix J, titled "NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems," dated October 2007, for the discharge of

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- treated process wastewater effluent from recycled water distribution systems;
- (10) Appendix K, titled "NPDES General Permit Authorizing Discharges of Storm Water and Certain Non-Storm Water Discharges from Small Municipal Separate Storm Sewer Systems," dated October 2007, for the discharge of storm water and certain non-storm water discharges from a small municipal separate storm sewer system as defined in 40 CFR §122.26(b)(16); [and]
 - (11) Appendix L, titled "NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks," dated October 2007, for the discharge of circulation water from decorative ponds or tanks; and
 - (12) Appendix M, titled "NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides," dated January 2012. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122;; 124; 125; §§122.26, 122.28, 123.25(a)(11))

§11-55-34.03 General permit terms. General permits shall be for terms of not more than five years. [Eff and comp 10/29/92; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387;

40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.46, 123.25(a)(11))

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

(b) Appendix A, titled "Department of Health Standard General Permit Conditions," dated October 2007 and located at the end of this chapter is adopted, incorporated by reference, and applies to each general permit.

(c) Special conditions apply as specified in each general permit, e.g., appendices B through M, respectively. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1318, 1319, 1321, 1323, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.41, 122.42, 123.25(a)(11))

§11-55-34.05 Requiring an individual permit. Notwithstanding the provisions of a general permit, the director may require any person covered by a general permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

- (1) The discharger or "treatment works treating domestic sewage" is not in compliance with the conditions of the general permit;
- (2) A change has occurred in the availability of demonstrated technology or practices for the

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- control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;
- (3) Effluent limitation guidelines are promulgated for point sources covered by the general permit;
 - (4) A water quality management plan containing requirements applicable to the point sources is approved;
 - (5) Circumstances have changed since the time of the request to be covered so that the permittee is no longer appropriately controlled under the general permit or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
 - (6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general permit; or
 - (7) The discharge(s) is a significant contributor of pollutants to state waters. In making this determination, the director may consider the following factors:
 - (A) The location of the discharge with respect to state waters;
 - (B) The size of the discharge;
 - (C) The quantity and nature of the pollutants discharged to the state waters; and
 - (D) Other relevant factors. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28(b)(3)(i), 123.25(a)(11))

§11-55-34.06 Relationship of general and individual permits. (a) Any owner or operator covered by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application with reasons supporting the request to the director.

(b) When an individual permit is issued to an owner or operator otherwise covered by a general permit, the coverage of the general permit to the individual permittee is automatically terminated on the effective date of the individual permit.

(c) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp

OCT 21 2012] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28(b)(3)(iii-v), 123.25(a)(11))

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

- (1) Effluent limitations established by the EPA under Sections 301, 302, 306, 307, 318, and 405 of the Act;
- (2) Criteria and standards for best management practices established by the EPA under Section 304(e) of the Act;
- (3) Notwithstanding paragraphs (1) and (2), more stringent effluent limitations may be required as deemed necessary by the director:

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- (A) To meet any existing federal laws or regulations; or
 - (B) To ensure compliance with any applicable state water quality standards, effluent limitations, treatment standards, or schedule of compliance; and
- (4) Calculations and specifications of effluent limits and standards shall be made in accordance with the provisions of federal regulations, 40 CFR §122.45. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1312, 1314, 1316, 1317, 1318, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

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

- (b) A notice of intent shall:
 - (1) Be submitted on forms provided by the director;
 - (2) Comply with the notice of intent requirements of the respective general permit; and
 - (3) Be accompanied by all pertinent information which the director may require in order to establish effluent limitations or best management practices, including, but not limited to, complete engineering reports, schedule of progress, plans, specifications, maps, measurements, quantitative and qualitative determinations, records, and all related materials.

(c) The director may require that all reports, plans, specifications, and other material submitted to the director be prepared by a licensed professional engineer.

(d) Material submitted shall be complete and accurate.

(e) Any notice of intent form submitted to the director shall be signed in accordance with section 11-55-07(a).

(f) All other reports or responses to requests for information required by the director shall be signed in accordance with section 11-55-07(b).

(g) Any change in the written authorization submitted to the director under subsection (f) which occurs after the issuance of a permit shall be reported to the director by submitting a copy of a new written authorization which meets the requirements of subsections (e) and (f).

(h) Any person signing a document under subsections (e) and (f) shall make a certification in accordance with 40 CFR §122.22(d).

(i) Each owner or operator who submits a notice of intent to be covered under the general permit provisions or for renewal of general permit coverage shall pay a filing fee of \$500. This filing fee shall be submitted with the notice of intent and shall not be refunded nor applied to any subsequent NPDES individual permit application following final action denying coverage under the general permit provisions.

(1) When a notice of intent is submitted to the director for a substantial alteration or addition to the treatment works or waste outlet and where a general permit authorization has previously been granted for the treatment works or waste outlet, the owner or operator shall be assessed the fee of \$500;

(2) A new owner or operator or both of a discharge facility covered by the general permit provisions shall submit a new notice of intent unless the new owner submits a

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- notice of automatic transfer that meets 40 CFR §122.61(b). The new owner or operator shall be assessed the fee of \$500;
- (3) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.
 - (j) A notice of intent shall be submitted to the director at least thirty days before the earlier of:
 - (1) The beginning of any discharge, which is not covered under Appendix C or except for coverage under Appendix M for a declared pest emergency situation where the notice of intent shall be submitted no later than thirty days after beginning discharge;
 - (2) The beginning of any construction activity which is covered under Appendix C;
 - (3) The expiration date of the existing general permit; or
 - (4) The expiration date of the existing notice of general permit coverage.
 - (k) (Reserved).
 - (l) (Reserved).
 - (m) A notice of intent shall be submitted to the director for:
 - (1) Any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill; or
 - (2) Any discharge from an existing regulated small municipal separate storm sewer system which is qualified to obtain coverage under the general permit. A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as

determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas are designated to submit a notice of intent if the department determines that the storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The notice of intent shall be submitted within thirty days of notice from the department.

(n) (Reserved).

(o) The submittal date is the date the department receives the notice of intent. The thirty day period includes weekends and holidays. If the director notifies the owner or operator or its duly authorized representative that the notice of intent is incomplete, the thirty day period shall start over upon receipt of the revised notice of intent. The director may waive this thirty day requirement by notifying the owner or operator in writing of a notice of general permit coverage before the thirty days expire. [Eff and comp 10/29/92; am 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; am and comp 6/15/09; am and comp

OCT 2 | 2012] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.22, 122.26, 122.28(b)(2)(ii) and (iii), 123.25(a)(11))

§11-55-34.09 Notice of intent review, notice of general permit coverage , additional conditions, terms,

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

(b) After receipt of the complete notice of intent, the director may notify the owner or operator in writing of a notice of general permit coverage. This includes issuing a notice of general permit coverage after automatic coverage applies under subsection (e)(2) even if the owner or operator has not waived automatic coverage. The director may impose conditions in a notice of general permit coverage or add conditions to an issued notice of general permit coverage to ensure that the activity or discharge(s) complies with the terms and conditions of the general permit and to ensure that state water quality standards will not be violated.

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

(d) The director may administratively extend a notice of general permit coverage upon receipt of a notice of intent for renewal of a notice of general permit coverage before the expiration of the general permit or the term of the notice of general permit coverage, whichever occurs first. The permittee who submits a notice of intent for renewal of the notice of general permit coverage shall be treated as an owner or operator applying for permit renewal under section 342D-6(h), HRS.

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

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

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

- (1) The notice of intent may later be found to be incomplete by the director or by a court;
- (2) The person may not be covered under the terms of the general permit, even if the notice of intent is complete;
- (3) The person may be acting in noncompliance with the general permit or this chapter, even if the person is complying with its notice of intent; and
- (4) The director may modify, revoke and reissue, or terminate a notice of general permit coverage under section 11-55-34.11. The director may revoke automatic coverage and issue a notice of general permit coverage or terminate an automatic coverage under section 11-55-34.11.

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

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submitted less than thirty days before the start of construction activities.

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

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

(i) All submittals in compliance with a condition of the notice of general permit coverage shall be signed in accordance with section 11-55-34.08(e), (f), or (g) and include a certification in accordance with 40 CFR §122.22(d). [Eff and comp 10/29/92; am 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.10 Review of coverage issues and notice of intent and notice of general permit coverage decisions. Any interested person may petition the director under section 91-8, HRS, for a declaratory ruling on whether an individual permit is required for, or a general permit covers, a discharge. The director's decision requiring a person to apply for an individual permit or excluding a person from general permit coverage shall remain effective pending the outcome of the petition. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; §11-55-34.1; am, ren, and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387;

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

§11-55-34.11 Notice of general permit coverage modification, revocation and reissuance, and termination. (a) A notice of general permit coverage and automatic coverage under section 11-55-34.09(e)(2) may be modified or revoked and reissued under the criteria and procedures of section 11-55-16.

(b) A notice of general permit coverage and automatic coverage under section 11-55-34.09(e)(2) may be terminated under the criteria of sections 11-55-17 and 11-55-34.05 and the procedures of section 11-55-17(d). [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp

OCT 2 | 2012] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.12 General permit compliance. Any person who discharges under a general permit shall comply with section 11-55-34.04, all general permit standard conditions, all applicable special conditions, and all applicable additional notice of general permit coverage conditions. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp

OCT 2 | 2012] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

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§11-55-35 Penalties and remedies. Any person who violates any provision of this chapter or the terms or conditions of any permit issued under this chapter shall be subject to the penalties and remedies provided in chapter 342D, HRS. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5, 342D-30, 342D-31, 342D-32, 342D-33, 342D-34, 342D-35; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-9, 342D-11, 342D-17, 342D-30, 342D-31, 342D-32, 342D-33, 342D-34, 342D-35; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-36 Hearing and appeals. Hearings before the director on any violations of these rules and appeals from any of the director's decisions shall comply with chapters 91 and 342D, HRS. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5, 342D-12, 342D-56, 342D-57; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS Ch. 91 and §§342D-2, 342D-4, 342D-5, 342D-6, 342D-9, 342D-11, 342D-12, 342D-31; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-37 Severability clause. If any provision of this chapter, or its application to any person or circumstance, is held invalid, the application of the provision to other persons or circumstances, and the remainder of this chapter, shall not be affected. [Eff 11/27/81; comp 10/29/92; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370,

1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-38 Repealed. [Eff and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; R 6/15/09] (Auth: HRS ch. 6E, §§6E-1, 6E-42(a)) (Imp: HRS ch. 6E, §§6E-1, 6E-42(a))

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

- (1) The environmental impact of the proposed action beside the water quality effects already covered in the application and supporting materials;
- (2) Any adverse environmental effects which cannot be avoided should the action be implemented;
- (3) The alternatives to the proposed action;
- (4) The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity;
- (5) Any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented; and
- (6) The optimum balance between economic development and environmental quality.

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

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compliance with this section. The department shall seek to avoid redundant work.

(c) The department may consider other information relevant to the public interest, including information in an environmental assessment; environmental impact statement; other document prepared for another permit, license, or approval; or elsewhere. If the department considers information unknown to the applicant, the department shall notify the applicant and allow the applicant to respond in a timely manner. [Eff and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-4, 342D-5, 342D-6)

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

(1) Offer to settle; penalties.

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

- (i) Any person who causes or allows a discharge of pollutants into state waters or municipal separate storm sewer systems without coverage under an individual permit or notice of general permit coverage or conditional "no exposure" exclusion;
- (ii) Any person who begins any construction activity which involves the disturbance of one

acre or more of total land area or any construction activity that involves the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area and who has not obtained coverage under an individual permit or notice of general permit coverage;

(iii) Any person who fails to correctly install, implement, maintain, or repair site best management practices as called for in their storm water pollution control plan or best management practices plan or other plan;

(iv) Any person who fails to retain a copy of the NPDES permit application or notice of intent or "no exposure" certification; storm water pollution control plan or best management practices plan or other plan, and all subsequent revisions; individual permit or notice of general permit coverage or conditional "no exposure" exclusion on-site or at a nearby office or field office.

(B) A field citation shall assess the following penalties for violations:

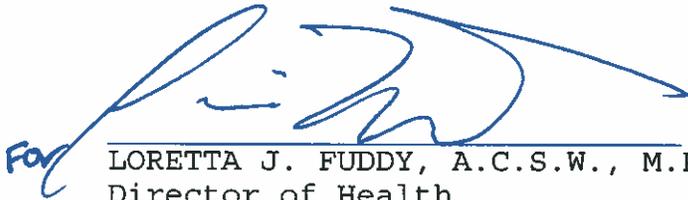
(i) Any person who violates paragraph (1)(A)(i) shall be fined \$500 for first violation, and \$1,000 for a subsequent violation;

(ii) Any person who violates paragraph (1)(A)(ii) shall be fined \$500 for the first violation, and

- 342D, HRS, or otherwise challenge the field citation;
- (ii) Pay the penalty assessed; and
 - (iii) Correct the violation;
- (C) If the field citation is not accepted in compliance with paragraph (2)(A), the director may seek for that cited violation any remedies available under this chapter; chapter 342D, HRS; or any other law. For all other violations the director retains authority to seek any available remedies.
- (3) Form of citation. The department shall prescribe a field citation form." [Eff and comp 10/22/07; comp 6/15/09; comp **OCT 21 2012**](Auth: HRS §§321-11, 342D-1, 342D-4, 342D-5) (Imp: HRS §§321-11, 342D-2, 342D-4, 342D-5, 342D-9, 342D-18, 342D-30, 342D-31, 342D-50, 603-23)

Amendments to and compilation of chapter 11-55, title 11, Hawaii Administrative Rules, titled Water Pollution Control, on the summary page dated OCT 11 2012, were adopted on OCT 21 2012, following a public hearing held on June 4, 2012, after public notice was given in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Isle newspapers, Docket No. R-1-12 on April 30, 2012.

The amendments and compilation shall take effect ten days after filing with the Office of the Lieutenant Governor.


LORETTA J. FUDDY, A.C.S.W., M.P.H.
Director of Health


Neil Abercrombie
Governor
State of Hawaii

Dated: 10-11-12

APPROVED AS TO FORM: Filed: OCT 21 2012


Edward G. Bohlen
Deputy Attorney General

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OFFICE

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DEPARTMENT OF HEALTH
STANDARD GENERAL PERMIT CONDITIONS

October 2007

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Note: All references to Title 40 of the Code of Federal Regulations (40 CFR) are to regulations that are in effect on July 1, 2006 unless otherwise specified. The Clean Water Act (Act) is also known as the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, and appears at 33 U.S.C. §§1251 to 1387.

The permittee shall comply with the following standard conditions.

1. Basic water quality criteria (section 11-54-4)
 - a. The permittee shall not cause or contribute to a violation of the basic water quality criteria specified in section 11-54-4(a) which states:

"(a) All waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants, including:

 - (1) Materials that will settle to form objectionable sludge or bottom deposits;
 - (2) Floating debris, oil, grease, scum, or other floating materials;
 - (3) Substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts sufficient to produce objectionable color,

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- turbidity or other conditions in the receiving waters;
- (4) High or low temperatures; biocides; pathogenic organisms; toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water;
 - (5) Substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life; and
 - (6) Soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways; subdivisions; recreational, commercial, or industrial developments; or the cultivation and management of agricultural lands."

b. The discharge shall not cause or contribute to a violation of the basic requirements of section 11-54-4(b).

2. Onshore or offshore construction

The applicable general permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any state waters.

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3. Sampling requirements and definitions

(a) Sampling Points

All samples shall be taken at the monitoring points specified in the applicable general permit and, unless otherwise specified, before the effluent joins or is diluted by any other wastestream, body of water, or substance. Monitoring points shall not be changed without notification to and the approval of the director. No discharge is authorized which does not totally pass through the final monitoring point.

(b) Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to ensure the accuracy and reliability of measurements of the volume of discharges. The devices shall be installed, calibrated and maintained to ensure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than plus or minus ten per cent from the true discharge rates throughout the range of expected discharge volumes. Once-through condenser cooling water flow which is monitored by pump logs or pump hour meters as specified in the applicable general permit based on the manufacturer's pump curves shall not be subject to this requirement. Guidance in selection, installation, calibration, and operation of acceptable flow measurement devices can be obtained from the following references:

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- (1) "A Guide of Methods and Standards for the Measurement of Water Flow," U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 421, May 1975, 97 pp. (Available from the U.S. Government Printing Office, Washington, D.C. 20402. Order by SD catalog No. C13.10:421.) (Also available from National Technical Information Service (NTIS). Order by NTIS No. COM-7510683.)
- (2) "Water Measurement Manual," U.S. Department of Interior, Bureau of Reclamation, Third Edition, Revised Reprint, 2001, 485 pp. (Available from the U.S. Government Bookstore. Order by Stock No. 024-003-00186-4 and ISBN 0-16-061763-4.) (Also available from National Technical Information Service (NTIS). Order by NTIS No. PB2002-100323.)
- (3) "Flow Measurement in Open Channels and Closed Conduits," U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 484, October 1977, 982 pp. (Available in paper copy or microfiche from National Technical Information Service (NTIS), Springfield, VA 22151. Order by NTIS No. PB-273 535/5ST.)
- (4) "NPDES Compliance Flow Measurement Manual," U.S. Environmental Protection Agency, Office of Water Enforcement, Publication MCD-77, EPA No. 832B81102, September 1981, 149 pp. (Available from the National Technical Information

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Service (NTIS). Order by NTIS No.
PB82-131178.)

(c) Calibration

The permittee shall periodically calibrate and perform maintenance on all monitoring and analytical equipment used to monitor the pollutants discharged under the applicable general permit, at intervals which will ensure the accuracy of measurements, but no less than the manufacturer's recommended intervals or six-month intervals (whichever comes first). Records of calibration shall be kept under section 14.

(d) pH Effluent Limitations Under Continuous Monitoring

If the permittee continuously measures the pH of the effluent under a requirement or option in the applicable general permit, excursions from the range provided in the general permit or as specified in chapter 11-54 are permitted, provided:

- (1) The pH limitation in the general permit is based upon a requirement imposed under 40 CFR Subchapter N, Effluent Guidelines and Standards;
- (2) The total time during which the pH values are outside the required range of pH values shall not exceed four hundred forty-six minutes in any calendar month;
- (3) No individual excursions from the range of pH values shall exceed sixty minutes; and

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(4) For purposes of this section, an "excursion" is an unintentional and temporary incident in which the pH value of the effluent exceeds the range set forth in the applicable general permit. The number of individual excursions exceeding sixty minutes and the total accumulated excursion time in minutes occurring in any calendar month shall be reported in accordance with the applicable general permit.

(e) Average

As used in the applicable general permit, unless otherwise stated, the term "average" means the arithmetic mean of values taken at the frequency required for each parameter over the specified period. For fecal coliform, enterococcus, or *clostridium perfringens*, the "average" shall be the geometric mean. For total coliform, the "average" shall be the median.

(f) Mass/Day Measurements

(1) The "daily discharge" is the total mass (weight) of a pollutant discharged during a calendar day. The daily discharge shall be determined by using the following equations:

$$\text{Daily Discharge (lbs/day)} = 8.34 \times Q \times C;$$

$$\text{Daily Discharge (kg/day)} = 3.785 \times Q \times C;$$

and

where "C" (in mg/l) is the measured daily concentration of the pollutant and "Q" (in million gallons per day) is the

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measured effluent flow rate for the same calendar day.

If only one sample is taken during any calendar day, the mass (weight) of pollutant discharged that is calculated from it is the "daily discharge."

- (2) The "average monthly discharge" is defined as the total mass of all daily discharges sampled or measured or both during a calendar month on which daily discharges are sampled and measured, divided by the number of daily discharges sampled or measured or both during such month. It is, therefore, an arithmetic mean found by adding the weights of the pollutant found each day of the month and then dividing this sum by the number of days. This limitation is identified as "Monthly Average" in the applicable general permit and the average monthly discharge value is reported in the "Average" column under "Quantity" on the discharge monitoring report form.
- (3) The "average weekly discharge" is defined as the total mass of all daily discharges sampled or measured or both during the calendar week in which daily discharges are sampled or measured or both. It is, therefore, an arithmetic mean found by adding the weights of pollutants found each day of the week and then dividing this sum by the number of days. This limitation is identified as "Weekly Average" in the applicable general permit and the average weekly discharge value is reported in the

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"Maximum" column under "Quantity" on the discharge monitoring report form.

- (4) The "maximum daily discharge" is the highest daily discharge value recorded, sampled, or measured during the reporting period. This limitation is identified as "Daily Maximum" in the applicable general permit and the maximum daily discharge value is reported in the "Maximum" column under "Quantity" on the discharge monitoring report form.

(g) Concentration Measurements

- (1) The "daily concentration" is the concentration of a pollutant discharged during a calendar day. It is equal to the concentration of a composite sample or in the case of grab samples, it is the arithmetic mean (weighted by flow value) of all samples collected during that calendar day. If only one sample is taken during any calendar day, it represents the "daily concentration."
- (2) The "average monthly concentration," other than for fecal coliform, enterococcus, *clostridium perfringens*, or total coliform, is the sum of the daily concentrations sampled or measured or both divided by the number of daily discharges sampled or measured or both during such month (arithmetic mean of the daily concentration values). The average monthly count for fecal coliform, enterococcus, or *clostridium perfringens* is the geometric mean of the counts for samples collected during a

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calendar month. The average monthly count for total coliform is the median of the counts for samples collected (not less than five discrete samples) during a calendar month. This limitation is identified as "Monthly Average" or "Daily Average" under "Other Limits" in the applicable general permit and the average monthly concentration value is reported under the "Average" column under "Quality" on the discharge monitoring report form.

- (3) The "average weekly concentration," other than for fecal coliform, enterococcus, or *clostridium perfringens*, or total coliform, is the sum of the concentrations of all daily discharges sampled or measured or both during a calendar week on which daily discharges are sampled and measured divided by the number of daily discharges sampled or measured or both during such week (arithmetic mean of the daily concentration values). The average weekly count for fecal coliform, enterococcus, or *clostridium perfringens* is the geometric mean of the counts for samples collected during a calendar week. The average weekly count for total coliform is the median of the counts for samples collected during a calendar week. This limitation is identified as "Weekly Average" under "Other Limits" in the applicable general permit and the average weekly concentration value is reported under the "Maximum" column under "Quality" on the discharge monitoring report form.

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- (4) The "maximum daily concentration" is the highest daily concentration value recorded, sampled, or measured during the reporting period. This limitation identified as "Daily Maximum" under "Other Limits" in the applicable general permit and the maximum daily concentration is reported under the "Maximum" column under "Quality" on the discharge monitoring report form.
- (h) The effluent flow expressed as cubic meters per day or million gallons per day (MGD), is the twenty-four-hour average flow averaged monthly. It is the arithmetic mean of the total daily flows recorded during the calendar month. Where monitoring requirements for flow are specified in the applicable general permit, the flow rate values are reported in the "Average" column under "Quantity" on the discharge monitoring report form.
- (1) An "instantaneous flow measurement" is a measure of flow taken at the time of sampling, when both the sample and flow will be representative of the total discharge.
- (2) Where monitoring requirements for pH, dissolved oxygen or fecal coliform, enterococcus, or *clostridium perfringens* are specified in the applicable general permit, the values are generally reported in the "Quality or Concentration" column on the discharge monitoring report form.

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- (i) The "arithmetic mean" of any set of values is the summation of the individual values divided by the number of individual values.
- (j) The "geometric mean" of any set of values is the Nth root of the product of the individual values where N is equal to the number of individual values. The geometric mean is equivalent to the antilog of the arithmetic mean of the logarithms of the individual values. For purposes of calculating the geometric mean, values of zero shall be considered to be one.
- (k) "Weighted by flow value" means the summation of each concentration times its respective flow divided by the summation of the respective flows.
- (l) The "median" of any set of ordered values is the value below and above which there is an equal number of values or which is the arithmetic mean of the two middle values if there is no one middle number.
- (m) A calendar day is defined as the period from midnight of one day until midnight of the next day. However, for the purposes of the applicable general permit, any consecutive twenty-four-hour period that reasonably represents the calendar day may be used for sampling.
- (n) "Removal efficiency" is the ratio of pollutants removed by the treatment unit to pollutants entering the treatment unit. Removal efficiencies of a treatment plant shall be determined using the average monthly concentrations (C, in mg/l) of influent and effluent samples collected about the same

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time and the following equation (or its equivalent):

$$\text{Removal Efficiency (per cent)} = 100 \times \left(1 - \frac{C_{\text{effluent}}}{C_{\text{influent}}}\right)$$

4. Duty to reapply

If the permittee wishes to continue an activity regulated by the applicable general permit after the expiration of the notice of general permit coverage or in the case of automatic coverage, the expiration of the general permit itself, the permittee shall follow the procedures as specified in sections 11-55-34.08 and 11-55-34.09.

5. Applications (comply with 40 CFR §122.22)

6. Duty to comply (comply with 40 CFR §122.41(a))

7. Need to halt or reduce activity not a defense (comply with 40 CFR §122.41(c))

8. Duty to mitigate (based in part on 40 CFR §122.41(d))

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the applicable general permit or applicable law.

9. Proper operation and maintenance (comply with 40 CFR §122.41(e))

10. Permit actions (comply with 40 CFR §122.41(f))

11. Property rights (comply with 40 CFR §122.41(g))

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12. Duty to provide information (comply with 40 CFR §122.41(h))
13. Inspection and entry (comply with 40 CFR §122.41(i))
14. Monitoring and records (based in part on 40 CFR §122.41(j))
 - (a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

As used in this section, a representative sample means that the content of the sample shall:

- (1) Be identical to the content of the substance sampled at the time of the sampling;
- (2) Accurately represent the monitored item (for example, sampling to monitor final effluent quality shall accurately represent that quality, even though the sampling is done upstream of the discharge point); and
- (3) Accurately represent the monitored item for the monitored time period (for example, sampling to represent monthly average effluent flows shall be taken at times and on days that cover significant variations). Representative sampling may include weekends and storm events and may mean taking more samples than the minimum number specified elsewhere in the applicable general permit.

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The burden of proving that sampling or monitoring is representative is on the permittee.

- (b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the applicable general permit, and records of all data used to complete the application for the applicable general permit, for a period of at least five years from the date of the sample, measurement, report or application. This period may be extended by request of the director at any time.
- (c) Records of monitoring information shall include:
 - (1) The date, exact place, and time of sampling or measurements;
 - (2) The individual(s) who performed the sampling or measurements;
 - (3) The date(s) the analyses were performed;
 - (4) The individual(s) who performed the analyses;
 - (5) The analytical techniques or methods used; and
 - (6) The results of the analyses.
- (d) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 or, in the case of sludge use or

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disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, unless other test procedures have been specified in the applicable general permit.

- (e) The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained by the applicable general permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than two years per violation, or by both for a first conviction. For a second conviction, the person is subject to a fine of not more than \$20,000 per day of violation, or by imprisonment for not more than four years, or both. (Updated under the Water Quality Act of 1987)

15. Signatory requirement (comply with 40 CFR §§122.22 and 122.41(k))
16. Reporting requirements (comply with 40 CFR §122.41(1))
17. Bypass (based in part on 40 CFR §122.41(m))

(a) Definitions

- (1) "Bypass" means the intentional diversion of any waste streams from any portion of a treatment facility.
- (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably

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be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

- (b) Prohibition of bypass. Every bypass is prohibited, and the director may take enforcement action against a permittee for bypass, except as provided in section 17(c).
- (c) Exceptions to bypass prohibition
 - (1) Bypass not exceeding limitations. A bypass is allowable under this paragraph only if it does not cause any effluent limitation to be exceeded, and only if the bypass is necessary for essential maintenance to assure efficient operation.
 - (2) Bypass unavoidable to prevent specified harm. A bypass is allowable under this paragraph if:
 - (A) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment

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downtime or preventative maintenance; and

- (C) The permittee submitted notices as required under section 17(d).
- (3) Approved anticipated bypass. An anticipated bypass is allowable if the director approves it. The director shall approve the anticipated bypass only if the director receives information sufficient to show compliance with section 17(c)(2), including information on the potential adverse effects with and without the bypass, and information on the search for and the availability of alternatives, whether the permittee ultimately considers the alternatives feasible or not.
- (d) Notice
 - (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, the permittee shall submit prior notice, if possible at least ten days before the date of the bypass.
 - (2) Unanticipated bypass. The permittee shall report unanticipated bypasses.
 - (A) Reports required by the reporting requirements of the applicable general permit shall be made in accordance with that section. If the permittee questions whether the reporting requirements of the applicable general permit applies, it shall follow the reporting

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requirements of the applicable general permit;

(B) For all other bypasses, reports shall be made orally within twenty-four hours from the time the permittee becomes aware of the bypass. Written reports may be required on a case-by-case basis.

(e) Burden of proof. In any enforcement proceeding the party seeking to establish that any exception to the bypass prohibition applies has the burden of proof. Proof that effluent limitations were met requires effluent monitoring during the bypass.

18. Upset (based in part on 40 CFR §122.41(n))

(a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with the technology based permit effluent limitations if the requirements of section 18(c) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for

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noncompliance, is final administrative action subject to judicial review.

- (c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
- (1) An upset occurred and that the permittee can identify the cause(s) of the upset;
 - (2) The permitted facility was at the time being properly operated;
 - (3) The permittee submitted within twenty-four hours a notice of any upset which exceeded any effluent limitation in the applicable general permit; and
 - (4) The permittee complied with any remedial measures required under 40 CFR §122.41(d).
- d. Burden of proof. In any enforcement proceeding, any person seeking to establish the occurrence of an upset has the burden of proof.
19. Existing manufacturing, commercial, mining, and silvicultural dischargers (comply with 40 CFR §122.42(a))
 20. Publicly owned treatment works (comply with 40 CFR §122.42(b))
 21. Reopener clause (comply with 40 CFR §122.44(c) and 40 CFR §125.123(d)(4))

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22. Privately owned treatment works (The following conditions were established by EPA Region 9 to enforce applicable requirements of the Resource Conservation and Recovery Act and 40 CFR §122.44(m))

This section applies only to privately owned treatment works as defined at 40 CFR §122.2.

- (a) Materials authorized to be disposed of into the privately owned treatment works and collection system are typical domestic sewage. Unauthorized materials are hazardous waste (as defined at 40 CFR Part 261), motor oil, gasoline, paints, varnishes, solvents, pesticides, fertilizers, industrial wastes, or other materials not generally associated with toilet flushing or personal hygiene, laundry, or food preparation, unless specifically listed under "Authorized Non-domestic Sewer Dischargers" elsewhere in the applicable general permit. The Domestic Sewage Exclusion (40 CFR §261.4) does not apply to hazardous wastes mixed with domestic sewage in a sewer leading to a privately owned treatment works.
- (b) It is the permittee's responsibility to inform users of the privately owned treatment works and collection system of the prohibition against unauthorized materials and to ensure compliance with the prohibition. The permittee must have the authority and capability to sample all discharges to the collection system, including any from septic haulers or other unsewered dischargers, and shall take and analyze such samples for conventional, toxic, or hazardous pollutants when instructed by the permitting authority or by an EPA or

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state inspector. The permittee must provide adequate security to prevent unauthorized discharges to the collection system.

- (c) Should a user of the privately owned treatment works desire authorization to discharge non-domestic wastes, the permittee shall submit a request for permit modification and an application, under 40 CFR §122.44(m), describing the proposed discharge. The application shall, to the extent possible, be submitted using forms provided by the Administrator, unless another format is requested by the permitting authority. If the privately owned treatment works or collection system user is different from the permittee, and the permittee agrees to allow the non-domestic discharge, the user shall submit the application and the permittee shall submit the applicable general permit modification request. The application and request for modification shall be submitted at least six months before authorization to discharge non-domestic wastes to the privately owned treatment works or collection system is desired.

23. Transfers by modification (comply with 40 CFR §122.61(a))
24. Automatic transfers (comply with 40 CFR §122.61(b) and section 11-55-34.08(i)(2))
25. Minor modification of permits (comply with 40 CFR §122.63)
26. Termination of permits (comply with 40 CFR §122.64)

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27. Removed substances (under Sections 301 and 405 of the Act and 40 CFR §125.3(g))

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner which prevents any pollutant from the materials from entering state waters.

28. Availability of reports (under Section 308 of the Act)

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of the applicable general permit shall be available for public inspection at the offices of the director. As required by the Act, permit applications, permits, and effluent data shall not be considered confidential.

29. Civil and criminal liability (under Section 309 of the Act)

Except as provided in the applicable general permit conditions on "Bypass" (section 17) and "Upset" (section 18), nothing in the applicable general permit shall be construed to relieve the permittee from civil or criminal penalties or remedies for noncompliance.

30. Oil and hazardous substance liability (under Section 311 of the Act)

Nothing in the applicable general permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

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31. Federal facility construction (under Section 313(b) of the Act)

Construction shall not be initiated for facilities for treatment of wastewater at any federal property or facility if alternative methods for wastewater treatment at the property or facility utilizing innovative treatment processes and techniques, including, but not limited to, methods utilizing recycle and reuse techniques and land treatment are not utilized, unless the life cycle cost of the alternative treatment works exceeds the life cycle cost of the most effective alternative by more than fifteen per cent.

32. State law (under Section 510 of the Act)

Nothing in the applicable general permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established under any applicable state law or regulation.

33. Severability (under Section 512 of the Act)

The provisions of the applicable general permit are severable and if any provision of the applicable general permit, or the application of any provision of the applicable general permit to any circumstance, is held invalid, the application of the provision to other circumstances, and the remainder of the applicable general permit, shall not be affected thereby.

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34. Notice of Intent Requirements (comply with section 11-55-34.08)

The owner or its duly authorized representative shall include the following information in the notice of intent (NOI):

- (a) Legal name(s), street address, contact person's name and position title, and telephone and fax numbers of the owner and operator and duly authorized representative, if applicable.

For a construction activity, the operator is usually the general contractor. In this case, the general contractor's legal name, street address, contact person's name and position title, and telephone and fax numbers shall be submitted to the director with the notice of intent or thirty days before the start of construction activities;

- (b) Ownership status as federal, state, private, public or other entity;
- (c) Name, street address, island, tax map key number(s), contact person's name and position title, and telephone and fax numbers of the facility or project for which the notice of intent is submitted;
- (d) Name(s) of the receiving state water(s) that the effluent enters or will enter, the latitude and longitude of each outfall or discharge point to the nearest receiving state water(s) or separate storm water drainage system, and the classification of the receiving state water(s).

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If the effluent initially enters a separate storm water drainage system, the owner or its duly authorized representative shall provide the following information:

- (1) Name of the owner of the drainage system; and
 - (2) Copy of the permit, license, or equivalent written approval granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s).
- (e) Type of general permit required for the proposed discharge;
- (f) Quantity of discharge; the source of the discharge; and the period of discharge, i.e., continuous, seasonal, occasional, or emergency;
- (g) Topographic map or maps of the area on 8-1/2 by 11 inches sized paper extending at least one mile beyond the property boundaries of the site which clearly show the following:
- (1) Legal boundaries of the site;
 - (2) Location and an identification number for each of the site's existing and proposed intake and discharge structures.

If the intake or discharge structure associated with the site is located less than one mile from the construction site or treatment system(s) or control device(s) associated with the site(s), the owner or its duly authorized

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representative shall show it on the map. If not, the owner or its duly authorized representative shall attach additional sheets describing the location of the structure or disposal site and identify it on a 7-1/2 minute series U.S. Geological Survey or other map corresponding to the location. If a 7-1/2 minute series map has not been published for the site, then the owner or its duly authorized representative shall use a 15 minute series map from the U.S. Geological Survey. If neither a 7-1/2 nor 15 minute series map has been published for the site, the owner or its duly authorized representative shall use a plat map or other appropriate map, including all of the required information; and

- (3) Receiving state water(s) or receiving storm water drainage system(s) identified and labeled. If the receiving state water is a wetland, submit a map showing the delineated wetland.
- (h) Flow chart or line drawing showing the general route taken by the discharge from the intake or source to the discharge point. The owner or its duly authorized representative shall show any treatment system(s) or erosion control(s) used or to be used for new discharges. The flow contributed by each source may be estimated if no data is available;
- (i) List of existing or pending permits, licenses, or approvals and corresponding file numbers; and

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- (j) Certifying person's name and position title,
company name, and telephone and fax numbers.

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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF STORM WATER
ASSOCIATED WITH INDUSTRIAL ACTIVITIES

October 2007

1. Coverage under this General Permit
 - (a) This general permit covers discharges composed entirely of storm water runoff associated with industrial activity, as defined in 40 CFR §§122.26(b)(14)(i) through 122.26(b)(14)(ix) and 122.26(b)(14)(xi).
 - (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."
2. Limitations on Coverage under this General Permit
 - (a) This general permit does not cover the following:
 - (1) Storm water discharges associated with industrial facilities which flow into a sanitary sewer system;
 - (2) Storm water discharges in categories for which storm water discharge limitation guidelines have been promulgated by the EPA;
 - (3) Storm water discharges associated with construction activities;

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- (4) Storm water discharges from industrial facilities which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s);
 - (5) Storm water discharges for which the director has issued a notice of general permit coverage under another general permit specific to that type of industrial activity;
 - (6) Storm water discharges for which the director has received a "no exposure" certification for a conditional "no exposure" exclusion;
 - (7) Storm water discharges from municipal separate storm water drainage systems;
 - (8) Storm water discharges the director finds more appropriately regulated under an individual permit; and
 - (9) Storm water discharges where the circumstances have changed since the time of the request to be covered so that the permittee is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.
- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in

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accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

(a) This general permit becomes effective when section 11-55-34.02(b)(1) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires five years after the effective date or when amendments to section 11-55-34.02(b)(1) are adopted, whichever is earlier.

(b) A notice of general permit coverage under this general permit expires:

(1) Five years after the effective date of this general permit;

(2) When the notice of general permit coverage specifies; or

(3) When amendments to section 11-55-34.02(b)(1) are adopted,

whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

4. Notice of Intent Requirements

(a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the facility industrial activity or thirty days before the expiration date of the applicable notice of general permit coverage.

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- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
- (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) List of up to four Standard Industrial Classification codes or North American Industrial Classification System codes that best represent the products or activities of the facility;
 - (3) Existing quantitative and qualitative data which describe the concentrations of pollutants in storm water discharges. In cases when this data is not available at the time of notice of intent submission due to lack of representative rainfall event for sampling, the permittee shall monitor the next representative rainfall event and submit the data to the director of health within thirty days of the sampling;
 - (4) Facility site map; and
 - (5) Storm water pollution control plan, which meets the applicable requirements as specified in sections 6 or 7 or both of this general permit.
 - (A) The applicant for a proposed facility shall submit the storm water pollution control plan to the director within one hundred twenty days after the issuance date of the notice of general permit coverage or by the date the applicant claimed automatic coverage as

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specified in section 11-55-34.09(e)(2), or by the date the facility begins operations. The permittee for a proposed facility shall implement its storm water pollution control plan within one hundred eighty days after submittal to the director.

- (B) The permittee for a facility which is currently covered by a notice of general permit coverage shall submit its existing or updated storm water pollution control plan, which meets the applicable requirements as specified in sections 6 or 7 or both of this general permit, with the notice of intent and shall continue to implement the storm water pollution control plan during the processing of the notice of intent.
- (C) The applicant for an existing facility not currently covered by a notice of general permit coverage shall submit a storm water pollution control plan with the notice of intent, which meets the applicable requirements in sections 6 or 7 or both of this general permit. If a storm water pollution control plan is not available at the time of the notice of intent submittal, the applicant may request that the storm water pollution control plan be submitted within one hundred twenty days after the issuance date of the notice of general permit coverage

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or by the date the applicant claimed automatic coverage as specified in section 11-55-34.09(e)(2). The permittee shall implement its storm water pollution control plan upon submittal to the director.

- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

6. Storm Water Pollution Control Plan Requirements

- (a) The permittee shall develop and implement a storm water pollution control plan to minimize the discharge of pollutants in storm water runoff and to maintain compliance with conditions of this general permit. The storm

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water pollution control plan shall include the following:

- (1) Brief facility description;
- (2) Site map identifying the locations of drainage structures; outline of each drainage area; paved areas and buildings and other ground cover within each drainage area; each past or present area for outdoor storage, industrial activities, or disposal of materials; each past or present area of a significant spill (as identified in sections 6(a)(5) and 6(a)(6) of this general permit); structural measures for the control of storm water; material loading and access areas; areas where pesticides, herbicides, soil conditioners and fertilizers are applied; hazardous waste storage or disposal areas or both; underground injection wells; sampling locations, outfall locations; and the nearest receiving state water(s);
- (3) Pollutant control strategy identifying potential pollutants, pollutant sources, and control strategies used to minimize the discharge of pollutants. The permittee shall consider the use of containment structures, covering materials by roof or tarpaulin, preventive maintenance, good housekeeping measures, waste minimization, removal of exposed pollutants, and spill prevention practices;

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- (4) Spill prevention and response plan that identifies spill prevention and response measures and facility personnel responsible for its implementation and conforms with the reporting requirements. Responsible personnel shall be available at all times when the facility is in operation;
- (5) Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the five years before the submittal of this storm water pollution control plan;
- (6) Existing information regarding any discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required under 40 CFR §110.6 at anytime since November 16, 1987;
- (7) Storm water monitoring plan that includes the following:
 - (A) Rationale for selecting sampling locations. Where two or more outfalls are expected, based on the features and activities within the drainage areas, to convey substantially similar storm water discharges, the permittee may request to monitor only one of those outfalls. The director may approve the request if the permittee demonstrates that the outfalls monitored are representative for the overall storm water discharges from the

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facility. The justification for the outfall sampling locations chosen shall be incorporated into the monitoring plan. The permittee shall sample for all potentially present pollutants as identified in the notice of intent; as listed in Federal Register, Vol. 65, No. 210, pages 64746-64880, dated October 30, 2000, as amended in Federal Register, Vol. 66, No. 6, pages 1675-1678, dated January 9, 2001, and Federal Register, Vol. 66, No. 57, pages 16233-16237, dated March 23, 2001; or the storm water pollution control plan;

- (B) Sample collection methods, including quality assurance/quality control methods;
- (C) List of parameters to be monitored;
- (D) Type of sample to be taken for each parameter to be monitored;
- (E) Test procedures to be used for each parameter to be monitored;
- (F) Detection limit for each test procedure;
- (G) Method to calculate storm water flow;
- (H) Procedures to collect storm event information, including the date, duration, and starting and ending times of the storm event, and the duration between the storm event

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and the end of the previous rainfall event with rainfall greater than 0.1 inches; and

- (I) Procedures to inspect receiving state waters, storm water runoff, control measures, and best management practices to detect violations of the basic water quality criteria as specified in section 11-54-4;
- (8) Procedures for implementing, reviewing, and updating the storm water pollution control plan including:
- (A) Annual employee education or training program that ensures the storm water pollution control plan will be properly implemented;
 - (B) Protocol for inspections that ensures the pollutant control strategy and the spill prevention and response plan are being effectively carried out; and
 - (C) Documentation procedures for all inspections and reviews required in the storm water pollution control plan.
- (9) If the industrial facility discharges storm water to a state water for which a total maximum daily load has been approved by the EPA, the permittee shall develop and submit an implementation and monitoring plan with the notice of intent or within ninety days after the issuance date of the notice of general

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permit coverage or by the date the permittee claimed automatic coverage as specified in section 11-55-34.09(e)(2). The permittee shall incorporate the total maximum daily load into the facility's storm water pollution control plan within sixty days of the date of submittal of the plan and implement necessary steps to meet the plan.

- (b) The permittee shall retain the storm water pollution control plan, and all subsequent revisions, on-site or at a nearby office.
- (c) The permittee shall conduct facility inspections as specified in Federal Register, Vol. 65, No. 210, pages 64746-64880, dated October 30, 2000, as amended in Federal Register, Vol. 66, No. 6, pages 1675-1678, dated January 9, 2001, and Federal Register, Vol. 66, No. 57, page 16233-16237, dated March 23, 2001; to ensure that the storm water pollution control plan remains effective. Otherwise, the permittee shall conduct facility inspections at least semi-annually. The permittee shall maintain a record of the following:
 - (1) Dates on which inspections were conducted;
 - (2) Inspection findings; and
 - (3) Corrective actions taken.
- (d) The permittee shall review and update the storm water pollution control plan as often as needed to comply with the conditions of this general permit or conditions of the notice of general permit coverage, whichever

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is more stringent, or as required by the director. The permittee shall document and report any changes to the storm water pollution control plan to the director within thirty days of when the changes arise. The permittee shall retain the storm water pollution control plan and all accompanying records, reports, and changes, for a period of at least five years after the expiration of this general permit unless otherwise noted in section 13 of this general permit.

7. Additional Conditions for Facilities Subject to Superfund Amendments and Reauthorization Act Section 313 Requirements.

The permittee for facilities subject to reporting requirements under Superfund Amendments and Reauthorization Act of 1986, Title III, Section 313, 42 U.S.C. §11023 for chemicals which are classified as "Section 313 water priority chemicals" in accordance with the definition in section 7(c) shall describe and ensure in the storm water pollution control plan the implementation of practices which are necessary to provide conformance with the following guidelines:

- (a) In areas where Section 313 water priority chemicals are stored, processed or otherwise handled, the permittee shall provide appropriate containment, drainage control or diversionary structures or both. At a minimum, the permittee shall use one of the following preventive systems or its equivalent:
- (1) Curbing, culverting, gutters, sewers or other forms of drainage control to prevent or minimize the potential for storm water runoff to come into contact

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with significant sources of pollutants;
or

- (2) Roofs, covers or other forms of protection to prevent storage piles from exposure to storm water and wind.
- (b) In addition to the minimum standards listed under section 7(a) above, the permittee shall include in the storm water pollution control plan a complete discussion of measures taken to conform with the following applicable guidelines, other effective storm water pollution control procedures, and applicable state rules, regulations, and guidelines:
- (1) Liquid storage areas where storm water comes into contact with any equipment, tank, container, or other vessel used for Section 313 water priority chemicals.
 - (A) The permittee shall not use any tank or container for the storage of a Section 313 water priority chemical unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature, etc.
 - (B) The permittee shall operate liquid storage areas for Section 313 water priority chemicals to minimize discharges of Section 313 chemicals. Appropriate measures to minimize discharges of Section 313 chemicals may include secondary containment provided for at least the entire contents of the largest

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single tank plus sufficient freeboard to allow for precipitation, a strong spill contingency and integrity testing plan or other equivalent measures or both.

- (2) The permittee shall incorporate drainage or other control features which will minimize the discharge of Section 313 water priority chemicals from material storage areas for Section 313 water priority chemicals other than liquids which are subject to runoff, leaching, or wind.
- (3) The permittee shall operate truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals to minimize discharges of Section 313 water priority chemicals. The permittee shall provide protection such as overhangs or door skirts to enclose trailer ends at truck loading/unloading docks as appropriate. Appropriate measures to minimize discharges of Section 313 chemicals may include: the placement and maintenance of drip pans (including the proper disposal of materials collected in the drip pans) where spillage may occur (such as hose connections, hose reels and filler nozzles) for use when making and breaking hose connections; a strong spill contingency and integrity testing plan; or other equivalent measures or any combination thereof.
- (4) The permittee shall operate processing equipment and materials handling

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equipment in facility areas where Section 313 water priority chemicals are transferred, processed, or otherwise handled to minimize discharges of Section 313 water priority chemicals. Materials used in piping and equipment shall be compatible with substances handled. The permittee shall provide drainage from process and materials handling areas to minimize storm water contact with Section 313 water priority chemicals. The permittee shall provide additional protection such as covers or guards to prevent exposure to wind, spraying or releases from pressure relief vents from causing a discharge of Section 313 water priority chemicals to the drainage system as appropriate. The Permittee shall perform visual inspections or leak tests for overhead piping conveying Section 313 water priority chemicals without secondary containment.

- (5) Discharges from areas covered by section 7(b)(1), 7(b)(2), 7(b)(3), or 7(b)(4).
- (A) The permittee shall prevent the discharge of a spill or other excessive leakage of Section 313 water priority chemicals by restraining drainage from areas covered by section 7(b)(1), 7(b)(2), 7(b)(3), or 7(b)(4) by valves or other positive means. Where containment units are employed, the permittee shall manually activate pumps or ejectors to empty units.

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- (B) The Permittee shall not use flapper-type drain valves to drain containment areas. As much as practicable, the Permittee shall use manual valves designed to open-and-close.
 - (C) If facility drainage is not engineered as described above, the permittee shall equip all in-facility storm sewers with a diversion system that could, in the event of an uncontrolled spill of Section 313 water priority chemicals, return the spilled material to the facility.
 - (D) The permittee shall keep records of the frequency and estimated volume (in gallons) of discharges from containment areas.
- (6) The permittee shall incorporate the necessary drainage or other control features to prevent discharge of spilled or improperly disposed Section 313 water priority chemicals from other areas of the facility not addressed in sections 7(b)(1), 7(b)(2), 7(b)(3), or 7(b)(4) and ensure the mitigation of pollutants in runoff or leachate, from which runoff which may contain or spills of Section 313 water priority chemicals could cause a discharge.
- (7) The permittee shall inspect all areas of the facility at specific intervals for leaks or conditions that could lead to discharges of Section 313 water priority chemicals or direct contact of storm

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water with raw materials, intermediate materials, waste materials or products. In particular, the permittee shall examine facility piping, pumps, storage tanks and bins, pressure vessels, process and material handling equipment, and material bulk storage areas for any conditions or failures which could cause a discharge.

- (A) The permittee shall include an inspection for leaks, areas affected by wind, corrosion, support or foundation failure, or other forms of deterioration or noncontainment.
- (B) The permittee shall specify inspection intervals in the storm water pollution control plan. The permittee shall base inspection intervals on design and operational experience where different areas may require different inspection intervals.
- (C) Where a leak or other condition is discovered which may result in significant releases of Section 313 water priority chemicals to state waters, the permittee shall take immediate action to stop the leak or otherwise prevent the significant release of Section 313 water priority chemicals to state waters or immediately shut down the unit or process until such action can be taken.

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- (D) When a leak or noncontainment of a Section 313 water priority chemical has occurred, the permittee shall promptly remove and dispose contaminated soil, debris, or other material in accordance with federal, state, and local requirements and as described in the storm water pollution control plan.
- (8) The permittee shall have the necessary security systems to prevent accidental or intentional entry which could cause a discharge from the facility. The permittee shall address fencing, lighting, vehicular traffic control, and securing of equipment and buildings in the storm water pollution control plan.
- (9) The permittee shall train and inform employees and contractor personnel (who work in areas where Section 313 water priority chemicals are used or stored) on preventive measures at the facility.
 - (A) The permittee shall conduct employee training at intervals specified in the storm water pollution control plan, but not less than once a year, in matters of pollution laws and regulations, and in the storm water pollution control plan and the particular features of the facility and its operation which are designed to minimize discharges of Section 313 water priority chemicals.

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- (B) The permittee shall designate and include in the storm water pollution control plan a person who is accountable for spill prevention at the facility and who will set up the necessary spill emergency procedures and reporting requirements so that spills and emergency releases of Section 313 water priority chemicals can be isolated and contained before a discharge of a Section 313 water priority chemical can occur.
- (C) The permittee shall inform contractors or temporary personnel of plant operation and design features in order to prevent discharges or spills from occurring.
- (10) The permittee shall have the storm water pollution control plan for a facility subject to Superfund Amendments and Reauthorization Act, Title III, Section 313 requirements for chemicals which are classified as "Section 313 water priority chemicals" reviewed and certified by a licensed professional engineer. The permittee shall have the licensed professional engineer recertify the storm water pollution control plan every three years thereafter or as soon as practical after significant modifications are made to the facility. The licensed professional engineer, having examined the facility and being familiar with the provisions of this part, shall attest that the storm water pollution control plan has been prepared

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in accordance with good engineering practices. The certification shall in no way relieve the permittee of a facility covered by the storm water pollution control plan of their duty to prepare and fully implement the storm water pollution control plan.

- (c) "Section 313 water priority chemical" means a chemical or chemical categories which:
- (1) Are listed at 40 CFR §372.65 under Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 also titled the Emergency Planning and Community Right-to-Know Act;
 - (2) Are present at or above threshold levels at a facility subject to Superfund Amendments and Reauthorization Act, Title III, Section 313 reporting requirements; and
 - (3) Meet at least one of the following criteria:
 - (A) Are listed in Appendix D of 40 CFR §122 on either Table II (organic priority pollutants), Table III (certain metals, cyanide, and phenols) or Table V (certain toxic pollutants and hazardous substances);
 - (B) Are listed as a hazardous substance under Section 311(b)(2)(A) of the Act at 40 CFR §116.4; or

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- (C) Are pollutants for which the EPA has published acute or chronic water quality criteria.

8. Storm Water Discharge Limitations and Monitoring Requirements

- (a) The storm water discharge shall be limited and monitored by the permittee as specified in this section and in Table 34.1. (Daily maximum storm water discharge limitations for saline water apply only when discharges to saline water occur and daily maximum storm water discharge limitations for fresh water apply only when discharges to fresh water occur.)

(1) Sampling Points

The permittee shall monitor the storm water outfalls, prior to mixing with receiving state water or entering separate storm water drainage systems, as identified in the storm water pollution control plan.

(2) Collection of Samples

- (A) The permittee shall collect samples from a discharge resulting from a representative storm event as defined in section 11-55-01.

- (B) The permittee shall take samples and measurements for the purposes of monitoring which are representative of the volume and nature of the total discharge.

(3) Types of Samples

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Definitions for grab sample and composite sample are in note {2} of Table 34.1.

(4) Test Procedures

- (A) The permittee shall use test procedures for the analysis of pollutants which conform with regulations published under Section 304(h) of the Act.
- (B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.
- (C) The permittee shall use test methods with detection limitations that reflect the applicable numerical limitations as specified in chapter 11-54. If the test result is not detectable, indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.

(5) Recording of Results

The permittee shall comply with section 14(c) of appendix A of chapter 11-55 for each measurement or

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sample taken under the requirements of this general permit.

(6) Quantity of Flow

The permittee shall estimate or calculate the quantity of storm water discharged and submit the calculations.

(b) Basic Water Quality Criteria and Inspections

(1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.

(2) The permittee shall timely inspect the receiving state waters, storm water runoff, control measures, and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at the storm water discharge and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)

(c) Storm Event Information

The permittee shall collect the following information for the storm event monitored:

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- (1) Date, duration (in hours), and starting and ending times of the storm event; and
- (2) Duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch) rainfall event.

9. Corrective Action

The permittee shall immediately stop, reduce, or modify the discharge as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

10. Reporting Requirements

(a) Reporting of Monitoring Results

- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.1 and other requirements of this general permit.
- (2) The permittee shall submit monitoring results at least annually and the results shall be postmarked or received by the department no later than sixty days after the end of each monitoring year. The first monitoring year shall start on January 1st of the year of the issuance date of the notice of general permit coverage or other date specified by the director in written correspondence to the permittee and end

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on December 31st. The subsequent monitoring years shall be calendar years.

- (3) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; storm water flow calculations; date, duration, starting and ending times of the storm event; date of the previous 0.1 inch rainfall event; and any additional pollutant control strategies to be implemented based on monitoring results.
- (4) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.

(b) Additional Monitoring by the Permittee

If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 8(a)(4)(B), the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.

(c) Reporting of Noncompliance, Unanticipated Bypass, or Upset

- (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:

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- (A) Violation of a storm water discharge limitation specified in Table 34.1 or a basic water quality criteria specified in section 8(b) of this general permit;
 - (B) Discharge or noncompliance with storm water discharge limitations which may endanger health or the environment; or
 - (C) Unanticipated bypass or upset.
- (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.
- (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:
- (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;
 - (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
 - (C) Estimated time the noncompliance, unanticipated bypass, or upset is

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expected to continue if it has not been corrected; and

(D) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset.

(4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.

(d) Planned Changes

The permittee shall report any planned physical alterations or additions to the permitted facility, not covered by 40 CFR §122.41(1)(1)(i), (ii), and (iii) to the director on a quarterly basis.

11. Submittal Requirements

(a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

(b) The owner or its duly authorized representative shall include the following certification statement and an original

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signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

12. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

13. Record Retention

The permittee shall retain all records and information resulting from the monitoring activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation for

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a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

14. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

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TABLE 34.1

LIMITATIONS AND MINIMUM MONITORING REQUIREMENTS FOR
STORM WATER DISCHARGES

| Storm Water Discharge Parameter | Storm Water Discharge Limitation {1} | Minimum Monitoring Frequency | Type of Sample {2} |
|------------------------------------------|--------------------------------------|------------------------------|-------------------------|
| Quantity of Discharge (gallons) | {3} | Annually | Calculated or Estimated |
| Biochemical Oxygen Demand (5-day) (mg/l) | {3} | Annually | Composite {4} |
| Chemical Oxygen Demand (mg/l) | {3} | Annually | Composite {4} |
| Total Suspended Solids (mg/l) | {3} | Annually | Composite {4} |
| Total Phosphorus (mg/l) | {3} | Annually | Composite {4} |
| Total Nitrogen {5} (mg/l) | {3} | Annually | Composite {4} |
| Nitrate+Nitrite Nitrogen (mg/l) | {3} | Annually | Composite {4} |
| Oil and Grease (mg/l) | 15 | Annually | Grab {6} |
| pH (standard units) | {7} | Annually | Grab {8} |
| Toxic Pollutants (mg/l) {9} | {10} | Annually | {11} |

mg/l = milligrams per liter

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NOTES:

- {1} Pollutant concentration levels shall not exceed the storm water discharge limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those storm water discharge limits or are outside those ranges shall be reported to the director as required in section 10(c) of this general permit.
- {2} The permittee shall collect samples for analysis from a discharge resulting from a representative storm. A representative storm means a rainfall that accumulates more than 0.1 inch of rain and occurs at least seventy-two hours after the previous measurable (greater than 0.1 inch) rainfall event.

"Grab sample" means a sample collected during the first fifteen minutes of the discharge.

"Composite sample" means a combination of at least two sample aliquots, collected at periodic intervals. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot must be proportional to the total flow of storm water discharge flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

Samples for analysis shall be collected during the first fifteen minutes of the discharge and at fifteen-minute intervals thereafter for the duration of the discharge, as applicable. If the discharge lasts for over an hour, sample collection may cease.

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- {3} No limitation at this time. Only monitoring and reporting is required.
- {4} If the duration of the discharge event is less than thirty minutes, the sample collected during the first fifteen minutes of the discharge shall be analyzed as a grab sample and reported toward the fulfillment of this composite sample specification. If the duration of the discharge event is greater than thirty minutes, the Permittee shall analyze two or more sample aliquots as a composite sample.
- {5} The total nitrogen parameter is a measure of all nitrogen compounds in the sample (nitrate, nitrite, ammonia, dissolved organic nitrogen, and organic matter present as particulates).
- {6} Oil and Grease shall be measured by EPA Method 1664, Revision A.
- {7} The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.
- {8} The pH shall be measured within fifteen minutes of obtaining the grab sample.
- {9} The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 CFR Part 122; in the Federal Register, Vol. 65, No. 210, pages 64746-64880, dated October 30, 2000, as amended in Federal Register, Vol. 66, No. 6, pages 1675-1678, dated January 9, 2001, and Federal Register, Vol. 66, No. 57, pages 16233-16237, dated March 23, 2001; or in section 11-54-4. The permittee shall measure for the total recoverable portion of all metals. If monitoring results indicate that the discharge limitation was equaled or exceeded, the storm water pollution control

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plan shall be amended to include additional best management practices targeted to reduce the parameter which was in excess of the discharge limitation.

- {10} Storm water discharge limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters. For pollutants which do not have established acute water quality standards, the permittee shall report any detected concentration greater than 0.01 µg/l.
- {11} The permittee shall measure for cyanide and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants, as identified in Appendix D of 40 CFR Part 122; in Federal Register Vol. 65, No. 210, pages 64746-64880, dated October 30, 2000, as amended in Federal Register, Vol. 66, No. 6, pages 1675-1678, dated January 9, 2001, and Federal Register, Vol. 66, No. 57, pages 16233-16237, dated March 23, 2001; or in section 11-54-4 using a composite sample.

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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF STORM WATER
ASSOCIATED WITH CONSTRUCTION ACTIVITY

October 2007

1. Coverage under this General Permit
 - (a) This general permit covers discharges composed entirely of storm water runoff associated with construction activities, including, but not limited to, clearing, grading, and excavation that result in the disturbance of one acre or more of total land area. This general permit also covers activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area.
 - (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 entitled "Water Quality Standards."
 - (c) "Disturbance of land" refers to the penetration, turning, or moving of soil or resurfacing of pavement with exposure of the base course or the exposure of bare soil or ground surface, including the land surface exposed by construction roads, baseyards, staging areas, demolition, headquarters, and parking areas. It does not include grass or weed cutting, bush or tree trimming or felling that leaves soil or ground intact.

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It includes "grubbing" in its normal meaning of the use of equipment to knock down and push vegetation out of the way, typically uprooting vegetation and disturbing the ground surface.

- (d) A "larger common plan of development or sale" means a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan. "Common plan" is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot.

2. Limitations on Coverage under this General Permit

- (a) This general permit does not cover the following:
 - (1) Storm water discharges associated with construction activity which flow into a sanitary sewer system;
 - (2) Storm water discharges associated with construction activity that are regulated by existing individual permits;
 - (3) Storm water discharges in categories for which storm water discharge limitation guidelines have been promulgated by the EPA;

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- (4) Storm water discharges from a construction activity which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s);
- (5) Storm water discharges for which the director has issued a notice of general permit coverage under another general permit specific to that type of construction or industrial activity; and
- (6) Storm water discharges that the director finds more appropriately regulated under an individual permit.

- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

- (a) This general permit becomes effective when section 11-55-34.02(b)(2) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires five years after the effective date or when amendments to section 11-55-34.02(b)(2) are adopted, whichever is earlier.
- (b) A notice of general permit coverage under this general permit expires:

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- (1) Five years after the effective date of this general permit;
- (2) When the notice of general permit coverage specifies; or
- (3) When amendments to section 11-55-34.02(b)(2) are adopted,

whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the construction activity or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
 - (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) Construction site best management practices plan containing, at a minimum, the following information:
 - (A) Site characterization report which describes at a minimum, the history of the land use at the proposed construction site, the potential pollution source(s) in the history

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and from the operation of the proposed construction activity, the potential pollutant(s) present at the existing site, and any proposed corrective measures;

- (B) Description of the nature of the construction activity, including a proposed timetable for major activities with the date when the contractor will begin the site disturbance;
- (C) Total area of the site and the area of the site that is expected to be disturbed, including clearing, grading, excavation, staging or any combination of the above;
- (D) Quantity of storm water runoff, with supporting calculations;
- (E) Description of the nature of the fill material to be used and existing data describing the soil or the quality of any discharge from the site;
- (F) Site map showing, at a minimum: approximate slopes anticipated after major grading activities; areas of soil disturbance; drainage patterns; areas used for the storage of soils or wastes; the location where stabilization practices are expected to occur; the location of all structural controls; the areas where vegetative practices are to be

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implemented; the location of impervious structures (including buildings, roads, parking lots, etc.) after construction is completed; wetlands and other state water(s); and the boundaries of 100-year flood plains, if determined. A site-specific site map shall be submitted at least thirty days before the start of construction activities;

- (G) Descriptions of construction management techniques, vegetation controls, and structural controls. At a minimum, the requirement listed in section 11 of this general permit must be addressed;
- (H) A county-approved erosion and sediment control plan as appropriate for the activity and a schedule for implementing each control shall be submitted to the director with the notice of intent or thirty days before the start of construction activities. Construction may start before the end of the thirty day period as soon as the department accepts the county-approved erosion and sediment control plan;
- (I) Site-specific plan to minimize erosion of soil and discharge of other pollutants into state waters, including removal procedures for the construction site best management practices, shall be

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submitted to the director with the notice of intent or thirty days before the start of construction activities. The transmittal of the plan must be signed in accordance with section 11-55-34.08(f). The plan, and all subsequent revisions, shall be kept at the construction site or nearby field office;

- (J) Descriptions of measures that will minimize the discharge of pollutants via storm water discharges after construction operations have been finished. Examples include: open, vegetated swales and natural depressions; structures for storm water retention, detention, or recycle; velocity dissipation devices to be placed at the outfalls of detention structures or along with the length of outfall channels; and other appropriate measures;
- (K) The identification of all non-storm water sources that connect to the storm water drainage system and non-storm water pollution prevention measures that will be implemented during construction.
- (L) If the construction project discharges storm water to a state water for which a total maximum daily load has been approved by the EPA, the permittee shall incorporate measures or controls to comply with the total maximum daily

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load into the project's site-specific construction best management practices plan. The measures or controls shall be submitted to the director with the notice of intent or by the date the permittee claimed automatic coverage as specified in section 11-55-34.09(e)(2) or at least thirty days before the start of construction activities. The measures or controls to meet the total maximum daily load shall be implemented at the start of construction activities.

- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

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6. Implementation of the Construction Site Best Management Practices Plan
 - (a) The permittee shall design, operate, implement, and maintain the construction site best management practices plan to ensure that storm water discharges associated with construction activities will not cause or contribute to a violation of applicable state water quality standards.
 - (b) The permittee shall implement the construction site best management practices plan as often as needed to improve the quality of storm water discharges or when instructed by the director.
7. Basic Water Quality Criteria and Inspections
 - (a) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
 - (b) The permittee shall timely inspect the receiving state waters, storm water runoff and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at storm water discharges and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)

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8. Corrective Action

The permittee shall immediately stop, reduce, or modify construction, or implement new or revised best management practices as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

9. Reporting Requirements

- (a) The permittee shall immediately notify the director of the incident and identify the pollutant(s) source(s) and the proposed and implemented control or mitigative measures as required in section 16 of appendix A of chapter 11-55.
- (b) The permittee shall notify the director of the start of the construction activities in writing within one week before the start of the construction activities.

10. Submittal Requirements

- (a) The owner or its duly authorized representative shall submit signed copies of all reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

- (b) The owner or its duly authorized representative shall include the following

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certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

11. Special Conditions for Land Disturbances

The following special conditions apply to all land disturbance work conducted under this general permit:

- (a) Construction Management Techniques

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- (1) Clearing and grubbing shall be held to the minimum necessary for grading and equipment operation.
- (2) Construction shall be sequenced to minimize the exposure time of the cleared surface area.
- (3) Construction shall be staged or phased for large projects. Areas of one phase shall be stabilized before another phase is initiated. Stabilization shall be accomplished by temporarily or permanently protecting the disturbed soil surface from rainfall impacts and runoff.
- (4) Erosion and sediment control measures shall be in place and functional before earth moving operations begin. These measures shall be properly constructed and maintained throughout the construction period.
- (5) All control measures shall be checked and repaired as necessary, for example, weekly in dry periods and within twenty-four hours after any rainfall of 0.5 inches or greater within a twenty-four-hour period. During prolonged rainfall, daily checking is necessary. The permittee shall maintain records of checks and repairs.
- (6) The permittee shall maintain records of the duration and estimated volume of storm water discharge(s).

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- (7) A specific individual shall be designated to be responsible for erosion and sediment controls on each project site.

(b) Vegetation Controls

- (1) Pre-construction vegetative ground cover shall not be destroyed, removed, or disturbed more than twenty calendar days prior to land disturbance.
- (2) Temporary soil stabilization with appropriate vegetation shall be applied on areas that will remain unfinished for more than thirty calendar days.
- (3) Permanent soil stabilization with perennial vegetation or pavement shall be applied as soon as practical after final grading. Irrigation and maintenance of the perennial vegetation shall be provided for thirty calendar days or until the vegetation takes root, whichever is shorter.

(c) Structural Controls

- (1) Storm water flowing toward the construction area shall be diverted by using appropriate control measures, as practical.
- (2) Erosion control measures shall be designed according to the size of disturbed or drainage areas to detain runoff and trap sediment.

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- (3) Water must be discharged in a manner that the discharge shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.

12. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

13. Record Retention

The permittee shall retain all records and information resulting from the activities required by this general permit for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

14. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF TREATED EFFLUENT FROM
LEAKING UNDERGROUND STORAGE TANK REMEDIAL ACTIVITIES

October 2007

1. Coverage under this General Permit
 - (a) This general permit covers only facilities where petroleum hydrocarbons have been released from underground storage tanks and the cleanup (or remedial action) involves a release or discharge of treated ground water to state waters.
 - (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."
2. Limitations on Coverage under this General Permit
 - (a) This general permit does not cover the following:
 - (1) Discharges of treated ground water into a sanitary sewer system and
 - (2) Discharges of treated ground water which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject

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discharge to enter their drainage system(s).

- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

- (a) This general permit becomes effective when section 11-55-34.02(b)(3) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires five years after the effective date or when amendments to section 11-55-34.02(b)(3) are adopted, whichever is earlier.
- (b) A notice of general permit coverage under this general permit expires:
 - (1) Five years after the effective date of this general permit;
 - (2) When the notice of general permit coverage specifies; or
 - (3) When amendments to section 11-55-34.02(b)(3) are adopted,

whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

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4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
 - (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) List of up to four Standard Industrial Classification codes or North American Industrial Classification System codes that best represent the products or activities of the facility;
 - (3) Quantitative data on pollutants that the owner or operator of the facility knows or reasonably should know are or will be present in the discharge and for which pollutants numerical criteria for the existing or proposed receiving state waters are specified in section 11-54-4;
 - (4) Treatment system operations plan which specifies the treatment system to be used and describes its operation in detail. If any treatment technology is being considered other than the Granular-Activated Carbon Process or the Air-Stripping Process, then additional technical information on the technology

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which is consistent with this permit shall be submitted to the director for review as soon as the decision for its use has been made. The treatment system operations plan shall include a contingency plan to be activated in the event of an emergency; provisions for system shut-down and any other measures for the protection of health and safety of employees and the public; a sampling plan; and a detailed schedule for sampling and analysis of the treated groundwater. The treatment system operations plan shall be modified as required by the director. The permittee shall retain the plan, and all subsequent revisions, on-site or at a nearby office.

- (5) Certification report certifying the adequacy of each component of the proposed treatment facility along with the associated treatment system operations plan. The certification report shall describe accepted engineering practice of how the process and physical design of the treatment facilities will ensure compliance with this general permit. The signature and professional engineering license number of the design engineer shall be placed on the report. Each report shall also certify that:
- (A) All of the startup and operation instruction manuals for the treatment facility are adequate and available to operating personnel;

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- (B) All treatment facility maintenance and testing schedules are included in the treatment facility treatment system operations plan; and
 - (C) Effluent sampling locations and ports are located in areas where samples representative of the waste stream to be monitored can be obtained.
- (6) The average and maximum daily flow rates of effluent discharge;
 - (7) The best estimate of the date(s) on which the facility will begin and terminate the discharge.
 - (8) If the remedial activities of the project discharges storm water to a state water for which a total maximum daily load has been approved by the EPA, the permittee shall incorporate measures or controls to comply with the total maximum daily load into the project's treatment system operations plan. The measures or controls shall be submitted to the director with the notice of intent or by the date the permittee claimed automatic coverage as specified in section 11-55-34.09(e)(2) or at least thirty days before the start of remedial activities. The measures or controls to meet the total maximum daily load shall be implemented at the start of the remedial activities.

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- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

6. Effluent Limitations and Monitoring Requirements

- (a) The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.2. (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)

(1) Sampling Point

The permittee shall collect representative discharge samples at the

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nearest accessible point after final treatment and prior to actual discharge or mixing with the receiving state waters.

(2) Collection of Samples

The permittee shall take samples and measurements for the purposes of monitoring which are representative of the volume and nature of the total discharge.

(3) Types of Samples

(A) "Grab sample" means an individual sample collected within the first fifteen minutes of a discharge.

(B) "Composite sample" means a combination of a least eight samples aliquots, collected at periodic intervals during the operating hours of the facility over a twenty-four-hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically unless otherwise stated.

(4) Test Procedures

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- (A) The permittee shall use test procedures for the analysis of pollutants which conform with regulations published under Section 304(h) of the Act.
 - (B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.
 - (C) The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54. If the test result is not detectable, indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.
- (5) Recording of Results

The permittee shall comply with section 14(c) of appendix A of chapter 11-55 for each measurement or sample taken under the requirements of this general permit.

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- (b) Basic Water Quality Criteria and Inspections
- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
 - (2) The permittee shall timely inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)
- (c) There shall be no visible oil sheen in the effluent.
- (d) The permittee shall take all reasonable steps to minimize or prevent any discharge, use, or disposal of sludge or sediments in violation of this general permit or applicable law. Sludge, sediments, or any other material generated by any treatment process must be disposed of in a manner which prevents its entrance into or pollution of any state waters. Additionally, the disposal of such sludge or other material shall be in compliance with 40 CFR Parts 501 and 503.

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7. Whole Effluent Toxicity Limitations And Monitoring Requirements

(a) Monitoring Requirements

- (1) The permittee shall conduct, or have a contract laboratory conduct, monthly static or flow-through bioassays on composite effluent samples in accordance with the methods described in "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms" (EPA 821/R-02-013, October 2002), and "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms" (EPA 821/R-02-014, October 2002).
- (2) Tests shall be conducted in one hundred per cent effluent for a period of ninety-six hours unless the methods specify a shorter period for a definitive test for a particular species (e.g. forty-eight hours for *ceriodaphnia dubia*).
- (3) If the permittee uses static tests, the daily renewal solutions shall be fresh twenty-four-hour composite samples. The permittee may conduct tests using locally available species at ambient temperature.
- (4) Test results for each species used shall be reported on the permittee's monthly discharge monitoring report form.

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Results shall be reported as per cent survival with respect to controls.

- (5) If necessary, the permittee may adjust the salinity of a discharge using salts to allow testing with marine species.

(b) Species Selection

- (1) The permittee shall select three species for monitoring from the EPA manual identified in section 7(a)(1). The Permittee may use *ceriodaphnia dubia* (life stage - twenty-four hours) in freshwater only. The permittee shall submit the selection to the director for approval within thirty days after receiving written approval from the director to perform chronic toxicity tests.
- (2) The permittee shall obtain written approval from the director before changing any of the three selected species after the initial notification.
- (3) The permittee shall conduct monitoring, at a minimum, on one of the three selected species each month. The permittee shall rotate the three selected species on a monthly basis.

(c) Preparation of Initial Investigation Toxicity Reduction Evaluation Workplan

The Permittee shall submit to the director an initial investigation toxicity reduction evaluation workplan (approximately one to two pages) within one hundred twenty days after

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the issuance date of the notice of general permit coverage, the date the permittee claimed automatic coverage as specified in section 11-55-34.09(e)(2), or the date the facility begins operations. This workplan shall describe steps which the permittee intends to follow in the event that toxicity is detected, and should include at a minimum the following information:

- (1) Description of the investigation and evaluation techniques that would be used to identify potential causes or sources or both of toxicity, effluent variability, treatment system efficiency;
 - (2) Description of the facility's method of maximizing in-house treatment efficiency, good housekeeping practices, and a list of all chemicals used in operation of the facility; and
 - (3) If a toxicity identification evaluation is necessary, who (e.g., contract laboratory, etc.) will conduct the toxicity identification evaluation.
- (d) Additional Toxicity Testing
- (1) If toxicity is detected, then the permittee shall conduct six additional weekly tests. Effluent sampling for the first test of the six additional tests shall begin within approximately twenty-four hours of receipt of the test results exceeding a toxicity discharge limitation;

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- (2) However, if implementation of the initial investigation toxicity reduction evaluation workplan indicates the source of toxicity (e.g., a temporary plant upset, etc.), then the permittee shall conduct only the first test of the six additional tests required above. If toxicity is not detected in this first test, the permittee may return to the normal sampling frequency as specified in Table 34.2. If toxicity is detected in this first test, then section 7(e) of this general permit shall apply.
 - (3) If toxicity is not detected in any of the six additional tests required above, then the permittee may return to the normal sampling frequency as specified in Table 34.2.
- (e) Toxicity Reduction Evaluation/Toxicity Identification Evaluation
- (1) If toxicity is detected in any of the six additional tests, then, based on an evaluation of the test results and additional available information, the director may determine that the permittee shall initiate a toxicity reduction evaluation, in accordance with the permittee's initial investigation toxicity reduction evaluation workplan and "Toxicity Reduction Evaluation Guidance for Municipal Wastewater Treatment Plants" (EPA 833-B-99-002, 1999). Moreover, the permittee shall develop a detailed toxicity reduction evaluation workplan which includes:

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- (A) Further actions to investigate and identify the cause(s) of toxicity;
- (B) Actions the permittee has taken or will take to mitigate the impact of the discharge, to correct the noncompliance, and to prevent the recurrence of toxicity;
- (C) A schedule under which these actions will be implemented;

and shall submit this workplan to the director for approval.

- (2) As part of this toxicity reduction evaluation process, the permittee may initiate a toxicity identification evaluation using the test methods manuals, EPA/600/6-91/005F (Phase I), EPA/600/R-92/080 (Phase II), and EPA/600/R-92/081 (Phase III), to identify the cause(s) of toxicity.
- (3) If a toxicity reduction evaluation/toxicity identification evaluation is initiated prior to completion of the accelerated testing schedule required by section 7(d) of this general permit, then the accelerated testing schedule may be terminated, or used as necessary in performing the toxicity reduction evaluation/toxicity identification evaluation.

(f) Reporting

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- (1) The permittee shall submit a full report of toxicity test results, including any toxicity testing required by sections 7(d) and 7(e) of this general permit, with the discharge monitoring report for the month in which the toxicity tests are conducted. A full report shall consist of: toxicity test results; dates of sample collection and initiation of each toxicity test; and toxicity discharge limitation. Toxicity test results shall be reported according to the test methods manual chapter on report preparation.

If the initial investigation toxicity reduction evaluation workplan is used to determine that additional toxicity testing is unnecessary, these results shall be submitted with the discharge monitoring report for the month in which investigations conducted under the toxicity reduction evaluation workplan occurred.

- (2) Within fourteen days of receipt of test results exceeding a toxicity discharge limitation, the permittee shall provide to the director written notification of:
 - (1) Findings of the toxicity reduction evaluation or other investigation to identify the cause(s) of toxicity;
 - (2) Actions the permittee has taken or will take, to mitigate the impact of the discharge and to prevent the recurrence of toxicity;

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- (3) When corrective actions, including a toxicity reduction evaluation, have not been completed, a schedule under which corrective actions will be implemented; or
- (4) The reason for not taking corrective action, if no action has been taken.

8. Corrective Action

The permittee shall immediately stop, reduce, or modify the discharge as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

9. Reporting Requirements

(a) Reporting of Monitoring Results

- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.2 and other requirements of this general permit.
- (2) The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.

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- (3) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.
- (4) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.

(b) Additional Monitoring by the Permittee

If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B), the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.

(c) Reporting of Noncompliance, Unanticipated Bypass, or Upset

- (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:
 - (A) Violation of an effluent limitation specified in Table 34.2 or a basic water quality criteria specified in section 6(b) of this general permit;

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- (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment; or
 - (C) Unanticipated bypass or upset.
- (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.
- (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:
- (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;
 - (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
 - (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
 - (D) Steps taken or planned to reduce, eliminate, and prevent reoccurrence

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of the noncompliance, unanticipated bypass, or upset.

(4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.

(d) Planned Changes

The permittee shall report any planned physical alterations or additions to the permitted facility, not covered by 40 CFR §122.41(1)(1)(i), (ii), and (iii) to the director on a quarterly basis.

(e) Reporting of Chemical Uses

The permittee shall submit to the director by the twenty-eighth of January of each year an annual summary of the quantities of all chemicals (including the material safety data sheet), listed by both chemical and trade names, which are used in ground water treatment and which are discharged.

(f) Schedule of Maintenance

The permittee shall submit a schedule for approval by the director at least fourteen days prior to any maintenance of facilities which might result in exceedance of effluent limitations. The schedule shall include a description of the maintenance and its reason; the period of maintenance, including exact dates and times; and steps taken or planned to reduce, eliminate, and prevent occurrence of noncompliance.

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10. Submittal Requirements

- (a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

- (b) The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

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- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

11. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

12. Record Retention

The permittee shall retain all records and information resulting from the monitoring activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

13. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

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TABLE 34.2

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS FOR DISCHARGE OF TREATED EFFLUENT FROM LEAKING UNDERGROUND STORAGE TANK REMEDIAL ACTIVITIES

| Effluent Parameter | Effluent Limitations {1} | | Monitoring Requirements | |
|-----------------------------------------------------|-----------------------------------|-----------------|-------------------------|-------------------------|
| | For Saline Water | For Fresh Water | Minimum Frequency | Type of Sample |
| Flow (GPD) | {2} | {2} | Continuous | Calculated or Estimated |
| Total Petroleum Hydrocarbons as Gasoline (mg/l) {3} | {2} | {2} | Weekly | Grab |
| Total Petroleum Hydrocarbons as Diesel (mg/l) {3} | {2} | {2} | Weekly | Grab |
| Benzene (mg/l) {4} | 1.7 | 1.8 | Weekly | Grab |
| Toluene (mg/l) {4} | 2.1 | 5.8 | Weekly | Grab |
| Xylenes (mg/l) {4} | {2} | {2} | Weekly | Grab |
| Ethylbenzene (mg/l) {4} | 0.14 | 11 | Weekly | Grab |
| Lead (mg/l) {5} | 0.14 | 0.029 | Weekly | Grab |
| Organic Lead (mg/l) {6} | {2} | {2} | Weekly | Grab |
| pH (standard units) | {7} | | Weekly | Grab {8} |
| Whole Effluent Toxicity | 80% survival in 100% effluent {9} | | Monthly | Composite |

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| Effluent Parameter | Effluent Limitations {1} | | Monitoring Requirements | |
|-------------------------------|-----------------------------|-----------------|-------------------------|----------------|
| | For Saline Water | For Fresh Water | Minimum Frequency | Type of Sample |
| Toxic Pollutants mg/l {10} | {11} | | Annually | {12} |

GPD = gallons per day
 mg/l = milligrams per liter

NOTES:

- {1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section(9(c) of this general permit.
- {2} No limitation at this time. Only monitoring and reporting is required.
- {3} The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004) method 5030/8015 for the measurement of Total Petroleum Hydrocarbons as Gasoline and EPA method 3550/8015 shall be used for the measurement of Total Petroleum Hydrocarbons as Diesel.
- {4} The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005;), or EPA methods 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, for the measurement of benzene, ethylbenzene, and toluene. EPA method 8260B, or

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an equivalent method, shall be used for the measurement of xylenes.

- {5} The permittee shall measure for the total recoverable portion of all metals.
- {6} The method for measuring for organic lead shall be the one referenced in the State of Hawaii's Technical Guidance Manual for Underground Storage Tank Closure and Release Response (March 2000).
- {7} The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.
- {8} The pH shall be measured within fifteen minutes of obtaining the grab sample.
- {9} Whole Effluent Toxicity measuring shall be performed in accordance with the provisions of section 7 of this general permit.
- {10} The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4, only if they are identified as potential pollutants requiring monitoring in the notice of intent. If monitoring results indicate that the discharge limitation was equaled or exceeded, the treatment system operations plan shall be amended to include additional best management practices targeted to reduce the parameter which was in excess of the discharge limitation.
- {11} Storm water discharge limitations are the chronic water quality standards established in section 11-54-4, for either fresh or saline waters. For pollutants which do not have established chronic water quality standards, the

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permittee shall report any detected concentration greater than 0.01 µg/l.

- {12} The permittee shall measure for cyanide and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a composite sample.

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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF ONCE THROUGH COOLING WATER
LESS THAN ONE (1) MILLION GALLONS PER DAY

October 2007

1. Coverage under this General Permit
 - (a) This general permit covers only once through cooling water discharges of a total flow of less than one million gallons per day (mgd) to state waters. "Once through cooling water" means water passed through the main cooling condensers one or two times for the purpose of removing waste heat.
 - (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."
2. Limitations on Coverage under this General Permit
 - (a) This general permit does not cover the following:
 - (1) Discharges of once through cooling water into a sanitary sewer system and
 - (2) Discharges of once through cooling water which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject

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discharge to enter their drainage system(s).

- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

- (a) This general permit becomes effective when section 11-55-34.02(b)(4) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires five years after the effective date or when amendments to section 11-55-34.02(b)(4) are adopted, whichever is earlier.
- (b) A notice of general permit coverage under this general permit expires:
 - (1) Five years after the effective date of this general permit;
 - (2) When the notice of general permit coverage specifies; or
 - (3) When amendments to section 11-55-34.02(b)(4) are adopted,

whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

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4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
 - (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) List of up to four Standard Industrial Classification codes or North American Industrial Classification System codes that best represent the products or activities of the facility;
 - (3) The average frequency of flow and duration of any intermittent or seasonal discharge. The frequency of flow means the number of days or months per year when there is an intermittent discharge. Duration means the number of days or hours per discharge. The owner or its duly authorized representative shall provide the best estimate for new discharges;
 - (4) Source(s) of the once-through cooling water;

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- (5) Quantitative data of the pollutant or parameter as specified in 40 CFR §122.21(h)(4)(i);
 - (6) The name of the cooling water additives, if any used;
 - (7) The best estimate of the date on which the facility will begin to discharge; and
 - (8) A brief description of any treatment system used or to be used. The permittee shall retain the treatment system plan, and all subsequent revisions, on-site or at a nearby office.
 - (9) If the facility discharges cooling water to a state water for which a total maximum daily load has been approved by the EPA, the permittee shall develop and submit an implementation and monitoring plan with the notice of intent or within ninety days after the issuance date of the notice of general permit coverage or by the date the permittee claimed automatic coverage as specified in section 11-55-34.09(e)(2). The permittee shall incorporate provisions to comply with the total maximum daily load into the facility's treatment system within sixty days of the date of submittal of the plan and implement necessary steps to meet the plan.
- (c) The director may require additional information to be submitted.

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- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

6. Effluent Limitations and Monitoring Requirements

- (a) The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.3. (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)

(1) Sampling Points

Samples taken in compliance with the monitoring requirements shall be taken at the following point(s):

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- (A) The permittee shall collect influent samples downstream from any additions to the source water and prior to the cooling system.
- (B) The permittee shall collect effluent samples downstream from the cooling system and prior to actual discharge or mixing with the receiving state waters.

(2) Collection of Samples

The permittee shall take samples and measurements for the purposes of monitoring which are representative of the volume and nature of the total discharge.

(3) Type of Sample

"Grab sample" means an individual sample collected within the first fifteen minutes of a discharge.

(4) Test Procedures

- (A) The permittee shall use test procedures for the analysis of pollutants which conform with regulations published under Section 304(h) of the Act.
- (B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of

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the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.

- (C) The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54. If the test result is not detectable, indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.

(5) Recording of Results

The permittee shall comply with section 14(c) of appendix A of chapter 11-55 for each measurement or sample taken under the requirements of this general permit.

(b) Basic Water Quality Criteria and Inspections

- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
- (2) The permittee shall timely inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity,

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color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)

- (c) The date, duration (in hours), starting and ending times, and volume of each discharge shall be collected for intermittent discharges.
- (d) There shall be no visible oil sheen in the effluent.
- (e) There shall be no discharge of waste from the physical cleaning of the cooling system.
- (f) There should be no discharge of compounds used in closed-loop systems.

7. Corrective Action

The permittee shall immediately stop, reduce, or modify the discharge as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

8. Reporting Requirements

(a) Reporting of Monitoring Results

- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general

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permit in a format that demonstrates compliance with the limitations in Table 34.3 and other requirements of this general permit.

- (2) The permittee shall submit monitoring results obtained during the previous calendar month postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.
- (3) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; influent and effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.
- (4) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.

(b) Additional Monitoring by the Permittee

If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B), the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.

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- (c) Reporting of Noncompliance, Unanticipated Bypass, or Upset
- (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:
 - (A) Violation of an effluent limitation specified in Table 34.3 or a basic water quality criteria specified in section 6(b) of this general permit;
 - (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment; or
 - (C) Unanticipated bypass or upset.
 - (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.
 - (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:

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- (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;
 - (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
 - (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
 - (D) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset.
- (4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.

(d) Planned Changes

The permittee shall report any planned physical alterations or additions to the permitted facility, not covered by 40 CFR §122.41(l)(1)(i), (ii), and (iii) to the director on a quarterly basis.

(e) Reporting of Chemical Uses

The permittee shall submit to the director by the twenty-eighth of January of each year an annual summary of the quantities of all chemicals (including the material safety data sheet), listed by both chemical and trade

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names, which are used in once through cooling water treatment and which are discharged.

(f) Schedule of Maintenance

The permittee shall submit a schedule for approval by the director at least fourteen days prior to any maintenance of facilities, which might result in exceedance of effluent limitations. The schedule shall include a description of the maintenance and its reason; the period of maintenance, including exact dates and times; and steps taken or planned to reduce, eliminate, and prevent occurrence of noncompliance.

9. Submittal Requirements

- (a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

- (b) The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared

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under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

10. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

11. Record Retention

The permittee shall retain all records and information resulting from the monitoring activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation shall be retained for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the

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discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

12. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

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TABLE 34.3

EFFLUENT LIMITATION AND MONITORING REQUIREMENTS
FOR DISCHARGE OF ONCE THROUGH COOLING WATER
LESS THAN ONE (1) MILLION GALLONS PER DAY

| Effluent Parameter | Effluent Limitation {1} | Minimum Monitoring Frequency | Type of Sample |
|------------------------------------|-------------------------|------------------------------|--------------------|
| Flow (MGD) | {2} | Continuous | Recorder/Totalizer |
| Temperature (°C) | 30 | Once/Quarter | Grab |
| Total Residual Oxidants (mg/l) {3} | 0.013{4} 0.019{5} | Once/Quarter | Grab |
| Total Suspended Solids (mg/l) | 5 {6} | Once/Quarter | Grab {7} |
| Oil and Grease (mg/l) | 15 | Once/Quarter | Grab {8} |
| pH (standard units) | {9} | Once/Quarter | Grab {10} |

MGD = million gallons per day

°C = degrees celsius

mg/l = milligrams per liter

NOTES:

{1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.

{2} No limitation at this time. Only monitoring and reporting is required.

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- {3} Total residual oxidants (TRO) is obtained using the amperometric titration method for total residual chlorine described in 40 CFR Part 136.
- {4} Applicable to discharges that enter saline waters as per chapter 11-54.
- {5} Applicable to discharges that enter fresh waters as per chapter 11-54.
- {6} The total suspended solids limits are net increase restrictions of the effluent above that of the influent.
- {7} Both the influent and effluent shall be monitored concurrently.
- {8} Oil and Grease shall be measured by EPA Method 1664, Revision A.
- {9} The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.
- {10} The pH shall be measured within fifteen minutes of obtaining the grab sample.

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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF HYDROTESTING WATERS

October 2007

1. Coverage under this General Permit
 - (a) This general permit covers facilities or activities which involve a release or discharge of hydrotesting waters to state waters. "Hydrotesting Waters" means water used to test the integrity of a tank or pipeline.
 - (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."
2. Limitations on Coverage under this General Permit
 - (a) This general permit does not cover the following:
 - (1) Discharges of hydrotesting waters into a sanitary sewer system and
 - (2) Discharges of hydrotesting waters which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s).

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- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

- (a) This general permit becomes effective when section 11-55-34.02(b)(5) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires five years after the effective date or when amendments to section 11-55-34.02(b)(5) are adopted, whichever is earlier.

- (b) A notice of general permit coverage under this general permit expires:

- (1) Five years after the effective date of this general permit;
- (2) When the notice of general permit coverage specifies; or
- (3) When amendments to section 11-55-34.02(b)(5) are adopted,

whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before

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the proposed starting date of the discharge or thirty days before the expiration of the applicable notice of general permit coverage.

- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
- (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) Brief description of the project including an overview of the hydrotesting activities; an estimated timetable for major construction activities; dates on which the hydrotesting activities are projected to occur; estimated average and maximum daily flow rates; and a list of pollutants that may be present in the hydrotesting water and an explanation of its origins;
 - (3) Water quality analysis of the hydrotesting water including any toxic pollutants believed to be present in the hydrotesting water. For the hydrotesting of transmission lines, the water quality analysis for the source water may be substituted for the water quality analysis of the hydrotesting water; and
 - (4) Hydrotesting best management practices plan, including good housekeeping and mitigative measures to prevent pollutants that may be present in the hydrotesting water from entering state waters, to ensure that the hydrotesting

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water discharge will meet the conditions of this general permit, basic water quality criteria, and applicable specific water quality parameters. The hydrotesting best management practices plan may be submitted with the notice of intent or thirty days before the start of hydrotesting activities.

- (5) If the project or facility discharges hydrotesting water to a state water for which a total maximum daily load has been approved by the EPA, the permittee shall incorporate measures or controls to comply with the total maximum daily load into the project or facility's hydrotesting best management practices plan. The measures or controls shall be submitted to the director with the notice of intent or by the date the permittee claimed automatic coverage as specified in section 11-55-34.09(e) (2) or at least thirty days before the start of project or facility activities. The measures or controls to meet the total maximum daily load shall be implemented at the start of the project or facility activities.
- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

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Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

6. Effluent Limitations and Monitoring Requirements for Transmission Line Testing

- (a) If a water quality analysis of the hydrotesting water was not provided with the notice of intent, then the water quality of the hydrotesting water shall be limited and monitored by the permittee as specified in this section and in Table 34.4. (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)

(1) Sampling Point

The permittee shall collect representative discharge samples at the end of the effluent discharge point(s) prior to entering the receiving state water or separate storm water drainage systems.

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(2) Collection of Samples

The permittee shall take samples and measurements for the purposes of monitoring which are representative of the volume and nature of the total discharge.

(3) Types of Samples

(A) "Grab sample" means an individual sample collected within the first fifteen minutes of a discharge.

(B) "Composite sample" means a combination of a least eight samples aliquots, collected at periodic intervals during the operating hours of the facility over a 24-hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

(4) Test Procedures

(A) The permittee shall use test procedures for the analysis of pollutants which conform with regulations published under Section 304(h) of the Act.

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- (B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.
- (C) The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54. If the test result is not detectable, the permittee shall indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.

(5) Recording of Results

The permittee shall comply with section 14(c) of appendix A of chapter 11-55 for each measurement or sample taken under the requirements of this general permit.

(6) Quantity of Flow

The permittee shall estimate or calculate the quantity of hydrotesting water discharged and submit the calculations.

(b) Basic Water Quality Criteria and Inspections

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- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
- (2) The permittee shall timely inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)

7. Corrective Action

The permittee shall immediately stop, reduce, or modify construction, hydrotesting, or implement new or revised best management practices as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

8. Reporting Requirements

(a) Reporting of Monitoring Results

- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all

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monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.4 and other requirements of this general permit.

- (2) The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.
 - (3) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.
 - (4) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.
- (b) Additional Monitoring by the Permittee

If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B), the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.

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- (c) Reporting of Noncompliance, Unanticipated Bypass, or Upset
- (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:
 - (A) Violation of an effluent limitation specified in Table 34.4 or a basic water quality criteria specified in section 6(b) of this general permit;
 - (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment; and
 - (C) Unanticipated bypass or upset.
 - (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.
 - (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:

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- (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;
 - (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
 - (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
 - (D) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset.
- (4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.
- (d) The permittee shall notify the director of the start of the construction activities in writing within one week before the start of the construction activities.
9. Submittal Requirements
- (a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

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Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

- (b) The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

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10. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

11. Record Retention

The permittee shall retain all records and information resulting from the monitoring activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

12. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

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TABLE 34.4

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS
FOR HYDROTESTING WATER DISCHARGES

| Effluent Parameter | Effluent Limitations {1} | Minimum Monitoring Frequency | Type of Sample |
|------------------------------------|--------------------------|------------------------------|-------------------------|
| Quantity of Discharge (gallons) | {2} | Once/Discharge | Calculated or Estimated |
| Total Suspended Solids (mg/l) | {2} | Once/Discharge | Grab {3} |
| Turbidity (NTU) | {2} | Once/Discharge | Grab {3} |
| pH (standard units) | {4} | Once/Discharge | Grab {3}, {5} |
| Total Residual Chlorine (µg/l) {6} | 19 {7} 13 {8} | Once/Discharge | Grab {3} |
| Toxic Pollutants {9} | {10} | Once/Discharge | {3}, {11} |

mg/l = milligrams per liter
µg/l = micrograms per liter
NTU = nephelometric turbidity units

NOTES:

- {1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.
- {2} The value shall not exceed the applicable limit as specified in chapter 11-54 for the applicable classification of the receiving state waters. If

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no limitation is specified in chapter 11-54, then only monitoring and reporting is required.

- {3} The Permittee shall sample the discharge after dechlorination and/or filtration within the first five minutes of discharge.
- {4} The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.
- {5} The pH shall be measured within fifteen minutes of obtaining the grab sample.
- {6} The permittee shall measure for total residual chlorine immediately after obtaining a sample and only when effluent from disinfection operations is discharged.
- {7} This limitation applies when hydrotesting water is discharged into fresh waters.
- {8} This limitation applies when hydrotesting water is discharged into saline waters.
- {9} The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4, only if they are identified as potential pollutants requiring monitoring in the notice of intent. The permittee shall measure for the total recoverable portion of all metals.
- {10} Effluent limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters. For pollutants which do not have established acute water quality standards, the permittee shall report any detected concentration greater than 0.01 µg/l.

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- (11) The permittee shall measure for cyanide and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a composite sample.

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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES ASSOCIATED WITH
CONSTRUCTION ACTIVITY DEWATERING

October 2007

1. Coverage under this General Permit
 - (a) This general permit covers discharges from the dewatering process of construction activities of any size upon compliance with the applicable general permit requirements.
 - (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."
2. Limitations on Coverage under this General Permit
 - (a) This general permit does not cover the following:
 - (1) Discharges of construction dewatering effluent into a sanitary sewer system;
 - (2) Storm water discharges associated with construction activities for which the director has issued a notice of general permit coverage under another general permit;
 - (3) Return flow or overflow from dredged material dewatering process that are

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regulated by the U.S. Army Corps of Engineers under Section 404 of the Act;

- (4) Discharges of construction dewatering effluent which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s);
- (5) Discharges of construction dewatering effluent that is subject to the general permit specified in appendix D of chapter 11-55; and
- (6) Discharges of construction dewatering effluent that the director finds more appropriately regulated under an individual permit.

- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

- (a) This general permit becomes effective when section 11-55-34.02(b)(6) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires five years after the effective date or when amendments to section 11-55-34.02(b)(6) are adopted, whichever is earlier.

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- (b) A notice of general permit coverage under this general permit expires:
 - (1) Five years after the effective date of this general permit;
 - (2) When the notice of general permit coverage specifies; or
 - (3) When amendments to section 11-55-34.02(b)(6) are adopted,

whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
 - (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) Legal name, street address, telephone and fax numbers, and contact person(s) for the designer(s) of the dewatering or treatment facility(ies) or both;

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- (3) Site characterization report including the history of the land use at the proposed construction site and surrounding area, the potential pollution source(s) at the proposed construction site and surrounding area, the potential pollutant(s) present at the proposed construction site and surrounding area, any proposed corrective measures, and pollutants that may be in the discharge;
- (4) Brief description of the project including the portion of the project involving construction dewatering, an estimated timetable for major activities (including the date when the contractor will begin site disturbance), the date when the contractor will begin the construction dewatering process, estimates of the quantity, rate, and frequency of the proposed discharges, and the time frame of the proposed discharges;
- (5) An analysis of the source water quality as specified by the director. The source water quality data may be collected from sites allowed by the director. The analysis shall:
 - (A) Include an explanation addressing the selection of the toxic pollutants provided and an evaluation of the source water quality data collected with respect to the applicable numeric criteria and numeric standards for the toxic

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pollutants specified under section 11-54-4,

- (B) Be based on the history of the land use as reported in paragraph 4(b)(3) or as believed to be present in the discharge,
 - (C) Use test methods as specified in section 6(a)(4)(B), and
 - (D) Be submitted to the director with the notice of intent;
- (6) Dewatering plan designed to comply with the basic water quality criteria specified under chapter 11-54. The plan shall include the pumping devices to be used, their pumping capacity, and the number of devices to be used; treatment design; design concerns; calculations used in the treatment design; and proposed mitigative measures. The site-specific dewatering plan shall be submitted to the director with the notice of intent or thirty days before the start of construction dewatering activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office;
- (7) Dewatering system maintenance plan to ensure that the dewatering effluent discharge will meet conditions of this general permit, basic water quality criteria, and applicable specific water quality parameters. The dewatering system maintenance plan shall include:

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- (A) Schedule of activities,
- (B) Operation and maintenance procedures to prevent or reduce the pollution of state waters, including:
 - (i) Responsible field person of the system, by title or name;
 - (ii) Operations plan;
 - (iii) Maintenance scheduling or action criteria;
 - (iv) Maintenance program;
 - (v) Sediment handling and disposal plan;
 - (vi) Monitoring and visual inspection program;
 - (vii) Cessation of discharge plan; and
 - (viii) Effluent control plan, and
- (C) Treatment requirements.

The site-specific dewatering system maintenance plan shall be submitted to the director with the notice of intent or thirty days before the start of construction dewatering activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office;

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- (8) Construction pollution prevention plan to prevent or reduce the pollution of state waters due to other discharges. The construction pollution prevention plan shall include:
- (A) Prohibited practices,
 - (B) Other management practices to prevent or reduce the pollution of state waters, and
 - (C) Practices to control project site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage or stockpiling area(s).

The site-specific construction pollution prevention plan shall be submitted to the director with the notice of intent or thirty days before the start of construction dewatering activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office; and

- (9) For construction projects which are one acre or more, submit a county approved site-specific erosion control plan with the notice of intent or thirty days before the start of construction dewatering activities, as applicable.
- (10) If the construction project discharges dewatering effluent to a state water for which a total maximum daily load has been approved by the EPA, the permittee shall incorporate measures or controls

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to comply with the total maximum daily load into the project's site-specific dewatering plan. The measures or controls shall be submitted to the director with the notice of intent or by the date the permittee claimed automatic coverage as specified in section 11-55-34.09(e)(2) or at least thirty days before the start of construction activities dewatering. The measures or controls to meet the total maximum daily load shall be implemented at the start of construction activities dewatering.

- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

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6. Effluent Limitations and Monitoring Requirements

(a) The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.5 (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)

(1) Sampling Point

The permittee shall collect representative discharge samples at the end of the effluent discharge point(s) prior to entering the receiving state water or separate storm water drainage systems.

(2) Collection of Samples

The permittee shall take samples and measurements for the purposes of monitoring which are representative of the volume and nature of the total discharge.

(3) Types of Samples

(A) "Grab sample" means an individual sample collected within the first fifteen minutes of a discharge.

(B) "Composite sample" means a combination of a least eight samples aliquots, collected at periodic intervals during the operating hours of the facility

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over a 24-hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

(4) Test Procedures

- (A) The permittee shall use test procedures for the analysis of pollutants which conform with regulations published under Section 304(h) of the Act.
- (B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.
- (C) The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54. If the test result is not detectable, indicate that the test result is "less than #,"

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where the # is the lowest detection limit of the test method used.

(5) Recording of Results

The permittee shall comply with section 14(c) of appendix A of chapter 11-55 for each measurement or sample taken under the requirements of this general permit.

(b) Basic Water Quality Criteria and Inspections

- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
- (2) The permittee shall timely inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)

7. Corrective Action

The permittee shall immediately stop, reduce, or modify construction, or implement a new or revised

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dewatering system maintenance plan as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

8. Reporting Requirements

(a) Reporting of Monitoring Results

- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.4 and other requirements of this general permit.
- (2) The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.
- (3) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.
- (4) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.

(b) Additional Monitoring by the Permittee

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If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B), the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.

- (c) Reporting of Noncompliance, Unanticipated Bypass, or Upset
- (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:
- (A) Violation of an effluent limitation specified in Table 34.5 or a basic water quality criteria specified in section 6(b) of this general permit;
- (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment;
or
- (C) Unanticipated bypass or upset.
- (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State

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Hospital Operator at (808) 247-2191
outside of regular office hours.

- (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:
- (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;
 - (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
 - (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
 - (D) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset.
- (4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.
- (b) The permittee shall notify the director of the start of the construction activities in writing within one week before the start of the construction activities.

9. Submittal Requirements

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- (a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

- (b) The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned

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notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

10. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

11. Record Retention

The permittee shall retain all records and information resulting from the monitoring activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

12. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

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TABLE 34.5

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS
FOR CONSTRUCTION DEWATERING DISCHARGES

| Effluent Parameter | Effluent Limitations (1) | Minimum Monitoring Frequency | Type of Sample |
|------------------------------------|--------------------------|------------------------------|-------------------------|
| Quantity of Discharge (GPD or gpm) | {2} | {3} | Calculated or Estimated |
| Total Suspended Solids (mg/l) | {2} | {4} | Grab |
| Turbidity (NTU) | {2} | {4} | Grab |
| Oil and Grease (mg/l) | 15 | {4} | Grab {5} |
| pH (standard units) | {6} | {4} | Grab {7} |
| Toxic Pollutants {8} | {9} | {4} | {10} |

GPD = gallons per day
gpm = gallons per minute
mg/l = milligrams per liter
NTU = nephelometric turbidity units

NOTES:

- {1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.
- {2} No limitation at this time. Only monitoring and reporting is required.

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- {3} For intermittent discharges, flow measurement shall be taken once for each discharge for the duration of the discharge. For continuous discharge, continuous flow measurement is required.
- {4} For intermittent discharges, the sample shall be taken once for each discharge. For continuous discharge, the sample shall be taken at least once per week.
- {5} Oil and Grease shall be measured by EPA Method 1664, Revision A.
- {6} The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.
- {7} The pH shall be measured within fifteen minutes of obtaining the grab sample.
- {8} The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 only if they are identified as potential pollutants requiring monitoring in the notice of intent. For dewatering processes involving only the treated storm water discharges, only those potential pollutants identified in the site characterization report need to be monitored. The permittee shall measure for the total recoverable portion of all metals.
- {9} Effluent limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters. For pollutants which do not have established acute water quality standards, the permittee shall report any detected concentration greater than 0.01 µg/l.

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- {10} The permittee shall measure for cyanide, temperature, bacterial counts, and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a composite sample.

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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF TREATED
PROCESS WASTEWATER ASSOCIATED WITH
PETROLEUM BULK STATIONS AND TERMINALS

October 2007

1. Coverage under this General Permit
 - (a) This general permit covers only discharges of treated process wastewater effluent from petroleum bulk stations and terminals upon compliance with the applicable general permit requirements. Treated process wastewater effluent covered by this general permit includes tank water draws; product displacement process wastewater; wash down and fire hydrant system test waters; service station tank draws; recovered groundwater; and contaminated storm water runoff from the product storage and handling areas.
 - (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."
2. Limitations on Coverage under this General Permit
 - (a) This general permit does not cover the following:
 - (1) Discharges of treated effluent into a sanitary sewer system and

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- (2) Discharges of treated effluent which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s).
 - (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.
3. Term of General Permit
- (a) This general permit becomes effective when section 11-55-34.02(b)(7) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires five years after the effective date or when amendments to section 11-55-34.02(b)(7) are adopted, whichever is earlier.
 - (b) A notice of general permit coverage under this general permit expires:
 - (1) Five years after the effective date of this general permit;
 - (2) When the notice of general permit coverage specifies; or
 - (3) When amendments to section 11-55-34.02(b)(7) are adopted,

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whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
 - (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) List of up to four Standard Industrial Classification codes or North American Industrial Classification System codes that best represent the products or activities of the facility;
 - (3) Brief description of the nature of business conducted at the facility;
 - (4) Description of the following for each outfall:
 - (A) All operations contributing wastewater and contaminated storm water runoff to the effluent;

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- (B) The average flow contributed by each operation and contaminated storm water runoff;
 - (C) The treatment received by the wastewater and contaminated storm water runoff; and
 - (D) The average and maximum daily flow rates of the effluent discharge;
- (5) Quantitative data on pollutants that the owner or operator of the facility knows or reasonably should know are or will be present in the discharge and for which the pollutants numerical criteria for the existing or proposed receiving state waters are specified in chapter 11-54, especially section 11-54-4;
- (6) Name, street address, and phone and fax numbers of each contract laboratory or consulting firm that performed any of the analyses in accordance with section 4(b)(5), as applicable. This information shall be submitted with the notice of intent or thirty days before the start of discharge(s); and
- (7) Treatment system operations plan which specifies the treatment system to be used and describes its operation in detail. The plan shall include a sampling plan and a detailed schedule for sampling and analysis of the effluent. The treatment system operations plan shall be modified by the permittee as requested by the director. The plan, and all subsequent revisions,

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shall be retained on-site or at a nearby field office.

- (8) If the facility discharges treated process wastewater effluent to a state water for which a total maximum daily load has been approved by the EPA, the permittee shall develop and submit an implementation and monitoring plan with the notice of intent or within ninety days after the issuance date of the notice of general permit coverage or by the date the permittee claimed automatic coverage as specified in section 11-55-34.09(e)(2). The permittee shall incorporate provisions to comply with the total maximum daily load into the facility's treatment system operations plan within sixty days of the date of submittal of the plan and implement necessary steps to meet the plan.
- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

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5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

6. Effluent Limitations and Monitoring Requirements

(a) The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.6. (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)

(1) Sampling Points

The permittee shall collect representative discharge samples at the end of effluent discharge point(s) prior to entering the receiving state water or separate storm water drainage systems.

(2) Collection of samples

The permittee shall take samples and measurements for the purposes of monitoring which are representative of the volume and nature of the total discharge.

(3) Type of Sample

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"Grab Sample" means an individual sample collected within the first fifteen minutes of a discharge.

(4) Test Procedures

- (A) The permittee shall use test procedures for the analysis of pollutants that conform with regulations published under Section 304(h) of the Act.
- (B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.
- (C) The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54. If the test result is not detectable, indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.

(5) Recording of Results

The permittee shall comply with section 14(c) of appendix A of chapter 11-55 for each measurement or

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sample taken under the requirements of this general permit.

(b) Basic Water Quality Criteria and Inspections

- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
- (2) The permittee shall timely inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)

(c) The permittee shall collect the following information for each batch discharge: date, duration (in hours), starting and ending times, and volume.

(d) There shall be no discharge of floating solids or visible foam.

(e) There shall be no visible oil sheen in the effluent.

7. Corrective Action

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The permittee shall immediately stop, reduce, or modify the discharge as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

8. Reporting Requirements

(a) Reporting of Monitoring Results

- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.6 and other requirements of this general permit.
- (2) The permittee shall submit monitoring results obtained during the previous calendar month and the results shall be postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.
- (3) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.
- (4) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.

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(b) Additional Monitoring by the Permittee

If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B), the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.

(c) Reporting of Noncompliance, Unanticipated Bypass, or Upset

- (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:
 - (A) Violation of an effluent limitation specified in Table 34.6 or a basic water quality criteria specified in section 6(b) of this general permit;
 - (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment;
or
 - (C) Unanticipated bypass or upset.
- (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday

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(excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.

- (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:
- (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;
 - (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
 - (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
 - (D) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset.
- (4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.
- (d) Planned Changes

The permittee shall report any planned physical alterations or additions to the

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permitted facility, not covered by 40 CFR §122.41(l)(1)(i), (ii), and (iii) to the director on a quarterly basis.

(e) Schedule of Maintenance

The permittee shall submit a schedule for approval by the director at least fourteen days prior to any maintenance of facilities which might result in exceedance of effluent limitations. The schedule shall include a description of the maintenance and its reason; the period of maintenance, including exact dates and times; and steps taken or planned to reduce, eliminate, and prevent occurrence of noncompliance.

9. Submittal Requirements

- (a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

- (b) The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

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"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

10. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

11. Record Retention

The permittee shall retain all records and information resulting from the monitoring activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation for a minimum of five years. This period of retention shall be extended during the course of any

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unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

12. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

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TABLE 34.6

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS
FOR DISCHARGES OF TREATED EFFLUENT FROM
PETROLEUM BULK STATIONS AND TERMINALS

| Effluent Parameter | Effluent Limitations {1} | | Monitoring Requirements {2} | |
|--------------------------------------------|--------------------------|-----------------|-----------------------------|-------------------------|
| | For Saline Water | For Fresh Water | Minimum Frequency | Type of Sample |
| Quantity of Discharge (gallons) | {3} | {3} | Once/Batch Discharge | Calculated or Estimated |
| Oil and Grease (mg/l) | 15 | 15 | Once/Batch Discharge | Grab {4} |
| Total Recoverable Lead (mg/l) {5} | 0.14 | 0.029 | Once/Batch Discharge | Grab |
| Benzene (mg/l) {6} | 1.7 | 1.8 | Once/Batch Discharge | Grab |
| Toluene (mg/l) {6} | 2.1 | 5.8 | Once/Batch Discharge | Grab |
| Xylenes (mg/l) {6} | {3} | {3} | Once/Batch Discharge | Grab |
| Ethyl benzene (mg/l) {6} | 0.14 | 11 | Once/Batch Discharge | Grab |
| Turbidity (NTU) | {7} | {7} | Once/Batch Discharge | Grab |
| Ammonia Nitrogen (NH ₄ -N mg/l) | {7} | {7} | Once/Batch Discharge | Grab |
| pH (standard units) {8} | {7} | {7} | Once/Batch Discharge | Grab {9} |

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| Effluent Parameter | Effluent Limitations {1} | | Monitoring Requirements {2} | |
|--------------------------------|--------------------------|-----------------|-----------------------------|----------------|
| | For Saline Water | For Fresh Water | Minimum Frequency | Type of Sample |
| Dissolved Oxygen (%saturation) | {7} | {7} | Once/Batch Discharge | Grab |

mg/l = milligrams per liter

NTU = nephelometric turbidity units

NOTES:

- {1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.
- {2} No monitoring of storm water discharge is required if the associated storm event occurs less than seventy-two hours from a previous storm event or provided that the preceding storm event generates storm water which is discharged and monitored for all effluent characteristics specified in accordance with Table 34.6 or both.
- {3} No limitation at this time. Only monitoring and reporting is required.
- {4} Oil and Grease shall be measured by EPA Method 1664, Revision A.
- {5} The permittee shall measure for the total recoverable portion of all metals.

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- {6} The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005;), or EPA method 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, for the measurement of benzene, ethylbenzene, and toluene. EPA method 8260B, or an equivalent method, shall be used for the measurement of xylenes.
- {7} Effluent limitations are the specific criteria established in sections 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable. For pollutants which do not have established specific criteria, the permittee shall report any detected concentration greater than 0.01 µg/l.
- {8} The permittee may determine compliance for pH by either monitoring the effluent or the receiving state water. Receiving state water monitoring shall be performed at a minimum of two stations. One sample station shall be monitored at the point where the discharge initially mixes with the receiving state water. One control station shall be monitored at a point where impacts from the discharge would not be expected. The monitoring specification shall be set forth in a monitoring program as approved by the director.
- {9} The pH shall be measured within fifteen minutes of obtaining the grab sample.

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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF TREATED
PROCESS WASTEWATER ASSOCIATED WITH
WELL DRILLING ACTIVITIES

October 2007

1. Coverage under this General Permit
 - (a) This general permit covers only discharges of treated process wastewater associated with well drilling activities upon compliance with the applicable general permit requirements. Treated process wastewater covered by this general permit includes well drilling slurries, lubricating fluids wastewaters, and well purge wastewaters.
 - (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."
2. Limitations on Coverage under this General Permit
 - (a) This general permit does not cover the following:
 - (1) Discharges of treated process wastewater into a sanitary sewer system;
 - (2) Discharges of treated process wastewater which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval

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is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); and

(3) Discharges of well pump testing wastewaters which are not associated with well drilling activities.

(b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

(a) This general permit becomes effective when section 11-55-34.02(b)(8) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires five years after the effective date or when amendments to section 11-55-34.02(b)(8) are adopted, whichever is earlier.

(b) A notice of general permit coverage under this general permit expires:

(1) Five years after the effective date of this general permit;

(2) When the notice of general permit coverage specifies; or

(3) When amendments to section 11-55-34.02(b)(8) are adopted,

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whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
 - (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) Legal name, street address, telephone and fax numbers, and contact person(s) for the designer(s) of the well drilling process wastewater treatment facility(ies);
 - (3) Site characterization report which includes:
 - (A) The history of the land use at the proposed drilling site,
 - (B) The potential pollution source(s) at the proposed drilling site,
 - (C) The potential pollutant(s) present at the proposed drilling site,

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- (D) Any proposed corrective measures,
and
 - (E) Pollutants that may be in the
effluent;
- (4) Brief description of the project,
including:
- (A) An estimated timetable of the
drilling activities, including the
date when the contractor will begin
the well drilling process;
 - (B) Details of the proposed
wastewater(s) discharge(s):
 - (i) Estimates of the quantity
and frequency of the
proposed discharge(s) and
 - (ii) The name(s) of the
chemical(s) or material(s)
listed by both chemical and
trade names that is(are)
present in the proposed
wastewater(s) discharge(s).
Also, provide the material
safety data sheet (MSDS) for
the chemical(s) or
materials; and
 - (C) The time frame of the proposed
discharges;
- (5) Quantitative data on pollutants that the
owner or operator of the activity knows
or reasonably should know are or will be
present in the discharge and for which

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pollutants numerical criteria for the receiving state waters are specified in section 11-54-4;

- (6) Name, street address, and phone and fax numbers of each contract laboratory or consulting firm that performed any of the analyses in accordance with section 4(b)(5), as applicable. This information shall be submitted with the notice of intent or thirty days before the start of well drilling activities;
- (7) Well drilling plan designed to comply with the basic water quality criteria specified under chapter 11-54. The plan shall include:
 - (A) The well drilling equipment to be used,
 - (B) Process wastewater treatment design,
 - (C) Design concerns,
 - (D) Calculations used in the treatment design, and
 - (E) Proposed mitigative measures.

The site-specific detailed well drilling plan shall be submitted to the director with the notice of intent or thirty days before the start of well drilling activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office; and

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- (8) Well drilling best management practices plan to ensure that the well drilling effluent discharge will meet conditions of this general permit, basic water quality criteria, and applicable specific water quality parameters. The well drilling best management practices plan shall include:
- (A) A schedule of activities;
 - (B) Prohibited practices;
 - (C) Operation and maintenance procedures to prevent or reduce the pollution of state waters, including:
 - (i) Responsible field person of the system, by title or name;
 - (ii) Operations plan;
 - (iii) Maintenance scheduling or action criteria, and program;
 - (iv) Effluent monitoring program (e.g. visual inspection);
 - (v) Cessation of discharge plan; and
 - (vi) Effluent control plan;
 - (D) Other management practices to prevent or reduce the pollution of state waters;

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- (E) Treatment requirements; and
- (F) Practices to control project site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage or stockpiling area(s).

The site-specific detailed well drilling best management practices plan shall be submitted to the director with the notice of intent or thirty days before the start of well drilling activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office.

- (9) If the project discharges treated process wastewater associated with the well drilling activity to a state water for which a total maximum daily load has been approved by the EPA, the permittee shall incorporate measures or controls to comply with the total maximum daily load into the project's site-specific well drilling best management practices plan. The measures or controls shall be submitted to the director with the notice of intent or by the date the permittee claimed automatic coverage as specified in section 11-55-34.09(e)(2) or at least thirty days before the start of well drilling activities. The measures or controls to meet the total maximum daily load shall be implemented at the start of well drilling activities.

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- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

6. Effluent Limitations and Monitoring Requirements

- (a) The discharges shall be limited and monitored by the permittee as specified in this section and in Table 34.7 (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)

(1) Sampling Points

The permittee shall collect representative discharge samples at the

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end of effluent discharge point(s) prior to entering the receiving state water or separate storm water drainage systems.

(2) Collection of Samples

The permittee shall take samples and measurements for the purposes of monitoring which are representative of the volume and nature of the total discharge.

(3) Types of Samples

(A) "Grab Sample" means an individual sample collected within the first fifteen minutes of a discharge.

(B) "Composite sample" means a combination of a least eight samples aliquots, collected at periodic intervals during the operating hours of the facility over a 24hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

(4) Test Procedures

(A) The permittee shall use test procedures for the analysis of

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pollutants which conform with regulations published under Section 304(h) of the Act.

- (B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.
- (C) The] permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54. If the test result is not detectable, indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.

(5) Recording of Results

The permittee shall comply with section 14(c) of appendix A of chapter 11-55 for each measurement or sample taken under the requirements of this general permit.

(b) Basic Water Quality Criteria and Inspections

- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.

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- (2) The permittee shall timely inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce odor or off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)
- (c) There shall be no discharge of floating solids or visible foam.
- (d) There shall be no visible oil sheen in the effluent.
- (e) The permittee shall take all reasonable steps to minimize or prevent any discharge, use, or disposal of sludge or sediments in violation of this general permit or applicable law. Sludge, sediments, or any other material generated by any treatment process shall be disposed of in a manner which prevents its entrance into or pollution of any surface or subsurface waters. Additionally, the disposal of such sludge or other material shall be in compliance with 40 CFR Parts 501 and 503.

7. Corrective Action

The permittee shall immediately stop, reduce, or modify the discharge as needed to stop or prevent

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a violation of the basic water quality criteria as specified in section 11-54-4.

8. Reporting Requirements

(a) Reporting of Monitoring Results

- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.7 and other requirements of this general permit.
- (2) The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.
- (3) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.
- (4) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.

(b) Additional Monitoring by the Permittee

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If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B), the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.

- (c) Reporting of Noncompliance, Unanticipated Bypass, or Upset
- (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:
 - (A) Violation of an effluent limitation specified in Table 34.7 or a basic water quality criteria specified in section 6(b) of this general permit;
 - (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment;
or
 - (C) Unanticipated bypass or upset.
 - (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State

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Hospital Operator at (808) 247-2191
outside of regular office hours.

- (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:
- (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;
 - (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
 - (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
 - (D) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset.
- (4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.

(d) Planned Changes

The permittee shall report any planned physical alterations or additions to the permitted facility, not covered by 40 CFR

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§122.41(1)(1)(i), (ii), and (iii) to the director on a quarterly basis.

(e) Schedule of Maintenance

The permittee shall submit a schedule for approval by the director at least fourteen days prior to any maintenance of facilities which might result in exceedance of effluent limitations. The schedule shall include a description of the maintenance and its reason; the period of maintenance, including exact dates and times; and steps taken or planned to reduce, eliminate, and prevent occurrence of noncompliance.

9. Submittal Requirements

- (a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

- (b) The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared

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under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

10. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

11. Record Retention

The permittee shall retain all records and information resulting from the monitoring activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of

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pollutants by the permittee or when requested by the director or Regional Administrator.

12. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

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TABLE 34.7

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS
FOR DISCHARGE OF TREATED EFFLUENT
FROM WELL DRILLING ACTIVITIES

| Effluent Parameters | Effluent Limitations {1} | | Monitoring Requirements | |
|---------------------------------------------|--------------------------|-----------------|-------------------------|-------------------------|
| | For Saline Water | For Fresh Water | Minimum Frequency | Type of Sample |
| Quantity of Discharge (gallons) | {2} | {2} | Daily | Calculated or Estimated |
| Oil and Grease (mg/l) | 15 | 15 | {3} | Grab {4} |
| Benzene (mg/l) {5} | 1.7 | 1.8 | {3} | Grab |
| Total Suspended Solids (mg/l) | {6} | {6} | {3} | Grab |
| Turbidity (NTU) | {6} | {6} | {3} | Grab |
| Ammonia Nitrogen (NH ₄ -N/l) {7} | {6} | {6} | {3} | Grab |
| pH (standard units) | {6} | {6} | {3} | Grab {8} |
| Toxic Pollutants {7} | {6} | {6} | {3} | {9} |

mg/l = milligrams per liter

NTU = nephelometric turbidity units

NOTES:

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- {1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.
- {2} No limitation at this time. Only monitoring and reporting is required.
- {3} For intermittent discharges, the sample shall be taken once for each discharge. For continuous discharge a sample shall be taken at least once per week.
- {4} Oil and Grease shall be measured by EPA Method 1664, Revision A.
- {5} The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005;), or EPA methods 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, or 1624 for the measurement of benzene.
- {6} Effluent limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters and specific criteria established in section 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable. For pollutants which do not have established acute water quality standards or specific criteria, the permittee shall report any detected concentration greater than 0.01 µg/l.
- {7} The permittee shall measure for toxic pollutants, as identified in appendix D of 40 CFR Part 122 or

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in section 11-54-4 only if they are identified as potential pollutants requiring monitoring in the notice of intent. The permittee shall measure for the total recoverable portion of all metals.

- {8} The pH shall be measured within fifteen minutes of obtaining the grab sample.
- {9} The permittee shall measure for cyanide and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a composite sample.

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NPDES GENERAL PERMIT
AUTHORIZING OCCASIONAL OR UNINTENTIONAL DISCHARGES
FROM RECYCLED WATER SYSTEMS

October 2007

1. Coverage under this General Permit
 - (a) This general permit covers occasional or unintentional discharges composed entirely of:
 - (1) R-1 water, or
 - (2) R-1 water with any combination of stormwater or potable water or water used primarily for irrigation,where the R-1 water is supplied from a treatment works and is conveyed or used by a recycled water system.
 - (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."
2. Limitations on Coverage under this General Permit
 - (a) This general permit does not cover the following:
 - (1) Recycled water system discharges into a sanitary sewer system;
 - (2) Recycled water system discharges which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval

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is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s);

- (3) Recycled water system discharges which are regulated by an existing individual permit;
 - (4) Recycled water systems which the director finds to have violated, be violating, or contributing to a violation of chapter 11-62;
 - (5) Recycled water system discharges that the director finds more appropriately should be regulated under an individual permit; and
 - (6) Treatment works discharges that are not from an approved recycled water system.
- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

- (a) This general permit becomes effective when section 11-55-34.02(b)(9) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires five years after the effective date or when amendments to section 11-55-34.02(b)(9) are adopted, whichever is earlier.
- (b) A notice of general permit coverage under this general permit expires:

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- (1) Five years after the effective date of this general permit;
- (2) When the notice of general permit coverage specifies; or
- (3) When amendments to section 11-55-34.02(b)(9) are adopted,

whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

4. Notice of Intent (NOI) Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
 - (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) Activity for which the recycled water is to be used and the amount in gallons per day of recycled water to be used or conveyed;
 - (3) Name of the owner or operator of treatment works producing or supplying the R-1 water, if different from the permittee;
 - (4) Copy of the agreement(s) relating to R-1 water use between the permittee and the owner or operator of treatment works

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producing the R-1 water, if the owner or operator is different from the permittee; and

- (5) Quantitative data of the R-1 water in the recycled water system.
 - (6) If the recycled water system discharges recycled water to a state water for which a total maximum daily load has been approved by the EPA, the permittee shall develop and submit an implementation and monitoring plan with the notice of intent or within ninety days after the issuance date of the notice of general permit coverage or by the date the permittee claimed automatic coverage as specified in section 11-55-34.09(e)(2). The permittee shall incorporate the total maximum daily load into the recycled water system's best management practices plan within sixty days of the date of submittal of the plan and implement necessary steps to meet the plan.
- (c) The director may require additional information to be submitted.
 - (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health
Wastewater Branch
Environmental Management Division
Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

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5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

6. Implementation of Best Management Practices

(a) The permittee shall:

(1) Implement the best management practices approved by the director under chapter 11-62 before and during the use or conveyance of recycled water;

(2) Minimize discharges to state waters to the maximum extent practicable; and

(b) The permittee shall implement or supplement the best management practices as needed to improve the quality of discharges to state waters, reduce the risk of discharges to state waters, reduce contamination of R-1 water after it is produced, or when instructed by the director.

7. Effluent Limitations and Monitoring Requirements

(a) The discharges shall be limited and monitored by the permittee's supplier as specified under chapter 11-62. (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)

(b) Basic Water Quality Criteria and Inspections

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- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
- (2) The permittee shall timely inspect the receiving state waters, the recycled water, and the implementation of control measures and best management practices to prevent and detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4.
- (3) During each discharge or as soon afterwards as possible, the permittee shall inspect the discharge area and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.
- (4) Discharge and receiving water quality may also be monitored by grab samples or other means, and it shall be monitored by any means and at times specified by the director.

8. Corrective Action

- (a) If the permittee notices any item(s) which adversely affects receiving water quality, the permittee shall immediately stop, reduce, or modify operations, or implement new or revised best management practices as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

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- (b) If the discharge is not of R-1 quality or the best management practices as approved by the director were not being implemented, then the permittee shall immediately stop, reduce, or modify operations, or implement new or revised best management practices as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

9. Reporting Requirements

- (a) If the discharge is of R-1 quality water and the best management practices as approved by the director were implemented, then the permittee shall orally report within twenty-four hours information regarding the discharge and the best management practices implemented. A summary of all discharges shall be tabulated quarterly and submitted to the wastewater branch within thirty days after the quarters ending March, June, September, and December.
- (b) If the discharge is not of R-1 quality, best management practices approved by the director were not being implemented, or water quality is adversely affected, then the permittee shall immediately notify the director of any discharge to state waters, corrective measures taken, and shall report in writing all of a month's discharges and corrective measures within five days after that month.
- (c) The permittee shall make oral reports by telephone to the Wastewater Branch at (808) 586-4294 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.

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10. Submittal Requirements

- (a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health
Wastewater Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

- (b) The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or

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submittals may be a basis for delay of the processing of the document(s).

11. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

12. Record Retention

The permittee shall retain all records and information resulting from the activities required by this general permit for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

13. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF STORM WATER AND
CERTAIN NON-STORM WATER DISCHARGES FROM
SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS

October 2007

1. Coverage under this General Permit

- (a) This general permit covers storm water and certain non-storm water discharges, provided they do not cause or contribute to any violation of water quality standards, to state waters from small municipal separate storm sewer systems.

Non-storm water discharges authorized by this general permit, provided that they do not cause or contribute to any violation of water quality standards, include:

- (1) Water line flushing;
- (2) Landscape irrigation;
- (3) Diverted stream flows;
- (4) Rising ground waters;
- (5) Uncontaminated ground water infiltration (as defined in 40 CFR §35.2005(20));
- (6) Uncontaminated pumped ground water;
- (7) Discharges from potable water sources and foundation drains;
- (8) Air conditioning condensate;
- (9) Irrigation water;

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- (10) Springs;
- (11) Water from crawl space pumps and footing drains;
- (12) Lawn watering runoff;
- (13) Water from individual residential car washing;
- (14) Flows from riparian habitats and wetlands;
- (15) Dechlorinated swimming pool discharges;
- (16) Residual street wash water; and
- (17) Discharges or flows from fire fighting activities.

- (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."

2. Limitations on Coverage under this General Permit

- (a) This general permit does not cover the following:
 - (1) Storm water discharges into a sanitary sewer system;
 - (2) Storm water discharges from construction activities greater than one acre which

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discharges into the permittee's small municipal separate storm sewer system;

- (3) Storm water discharges from industrial facilities as defined in 40 CFR §§122.26(b)(14)(i) through 122.26(b)(14)(ix) and 122.26(b)(14)(xi) which discharges into the permittee's small municipal separate storm sewer system;
 - (4) Storm water discharges from small municipal separate storm sewer systems which initially enter a separate storm water drainage system(s), unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s);
 - (5) Storm water discharges for which the director has issued a notice of general permit coverage under another general permit specific to that type of industrial activity; and
 - (6) Storm water discharges the director finds more appropriately regulated under an individual permit.
- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

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3. Term of General Permit

(a) This general permit becomes effective when section 11-55-34.02(b)(10) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires five years after the effective date or when amendments to section 11-55-34.02(b)(10) are adopted, whichever is earlier.

(b) A notice of general permit coverage under this general permit expires:

(1) Five years after the effective date of this general permit;

(2) When the notice of general permit coverage specifies; or

(3) When amendments to section 11-55-34.02(b)(10) are adopted,

whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

4. Notice of Intent Requirements

(a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge.

(b) The owner or its duly authorized representative shall include the following information in the notice of intent:

(1) Information required in section 34 of appendix A of chapter 11-55;

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- (2) Non-storm water discharge information;
- (3) Facility site map;
- (4) An assessment of the effectiveness of the storm water management plan implemented during the previous permit term in reducing discharges of pollutants to the maximum extent practicable and protecting water quality, and any modifications to the plan proposed to be implemented for compliance with this general permit;
- (5) Storm water management plan, which meets the applicable requirements as specified in section 6 of this general permit, and which has been updated based on the assessment required by section 4(b)(4) of this general permit. The storm water management plan may be submitted to the director with the notice of intent or within one hundred twenty days after the issuance date of the notice of general permit coverage or by the date the applicant claimed automatic coverage as specified in section 11-55-34.09(e)(2), or for proposed small municipal separate storm sewer systems, by the date the permittee's small municipal separate storm sewer system becomes operational. The plan, and all subsequent revisions, shall be kept on-site or at a nearby office or field office; and
- (6) If the small municipal separate storm sewer system discharges storm water and other allowable non-storm water to a state water for which a total maximum daily load has been approved by the EPA,

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the permittee shall develop and submit an implementation and monitoring plan with the notice of intent or within ninety days after the issuance date of the notice of general permit coverage or by the date the permittee claimed automatic coverage as specified in section 11-55-34.09(e)(2). The permittee shall incorporate the total maximum daily load into the small municipal separate storm sewer system's storm water management plan within sixty days of the date of submittal of the plan and implement necessary steps to meet the plan.

- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

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6. Storm Water Management Plan Requirements

The permittee shall develop, implement, and enforce a storm water management plan designed to reduce the discharge of pollutants from the permittee's small municipal separate storm sewer system to the maximum extent practicable in order to protect water quality and satisfy the appropriate water quality requirements of the Clean Water Act. The storm water management plan shall include the minimum control measures identified below with implementation dates and rationales for each measure:

(a) Minimum Control Measures

(1) Public Education and Outreach

Develop and implement a public education program to distribute educational materials to users of the permittee's small municipal separate storm sewer system or equivalent outreach activities emphasizing the following:

- (A) Impacts of storm water discharges on water bodies,
- (B) Hazards associated with illicit discharges, and
- (C) Measures that users of the permittee's small municipal separate storm sewer system can take to reduce pollutants in storm water runoff, including, but not limited to, minimizing fertilizer application and practicing proper storage and disposal of chemicals and wastes;

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(2) Public Involvement/Participation

Include users of the permittee's small municipal separate storm sewer system in developing, implementing, and reviewing the storm water management plan;

(3) Illicit Discharge Detection and Elimination

Develop, implement, and enforce a program to detect and eliminate illicit discharges that, at a minimum, includes the following:

- (A) Establishment of rules, ordinances, or other regulatory mechanism, including enforcement procedures and actions, that prohibit non-storm water discharges, except those listed in section 1 that do not cause or contribute to any violations of water quality standards, into the permittee's small municipal separate storm sewer system,
- (B) Procedures to detect and eliminate illicit discharges (as defined in 40 CFR Section 122.26(b)(2)), and
- (C) Compilation of a list of non-storm water discharges or flows that are considered to be significant contributors of pollutants to the system and measures to be taken to prevent these discharges into the permittee's small municipal separate storm sewer system, or

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reduce the amount of pollutants in these discharges;

(4) Construction Site Runoff Control

Develop, implement, and enforce a program to reduce pollutants in storm water runoff entering the permittee's small municipal separate storm sewer system from construction activities disturbing one acre or more, including construction activities less than one acre that are part of a larger common plan of development or sale that would disturb one acre or more, that, at a minimum, includes the following:

- (A) Establishment of rules, ordinances, or other regulatory mechanism, including enforcement procedures and actions, that require erosion and sediment controls,
- (B) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices,
- (C) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality,
- (D) Procedures for site plan review which incorporate consideration of potential water quality impacts,

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- (E) Procedures for receipt and consideration of information submitted by the public, and
 - (F) Procedures for site inspection and enforcement of control measures;
- (5) Post-Construction Storm Water Management in New Development and Redevelopment

Develop, implement, and enforce a program to reduce pollutants in storm water runoff entering the permittee's small municipal separate storm sewer system from new development and redevelopment projects that disturb greater than or equal to one acre, including construction sites less than one acre that are part of a larger common plan of development or sale that would disturb one acre or more, that, at a minimum, includes the following:

- (A) Establishment of rules, ordinances, or other regulatory mechanism, including enforcement procedures and actions, that address post-construction runoff from new development and redevelopment projects,
- (B) Structural and/or non-structural best management practices to minimize water quality impacts and attempt to maintain pre-development runoff conditions, and
- (C) Procedures for long-term operation and maintenance of best management practices.

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(6) Pollution Prevention/Good Housekeeping

Develop, implement, and enforce an operation and maintenance program to prevent and reduce storm water pollution from activities, including, but not limited to, park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance that, at a minimum, includes the following:

- (A) Good housekeeping and other control measures, and
- (B) Employee and contractor training on good housekeeping practices to ensure that good housekeeping measures and best management practices are properly implemented.

(b) Measurable Goals

The permittee shall develop measurable goals to gauge permit compliance and program effectiveness for each minimum control measure identified above. The permittee shall select measurable goals using an integrated approach that fully addresses the requirements and intent of the minimum control measure.

(c) Modifications

(1) Significant Modifications

- (A) Modifications to the storm water management plan that would result in a major reduction in the overall

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scope or level of effort or both of the storm water management plan must be made for cause and in compliance with 40 CFR §122.62 and 40 CFR Part 124.

- (B) The permittee shall report in writing any proposed modification described above to the Director of Health for approval at least thirty days prior to the initiation date of the modification.

(2) Other Modifications

The permittee shall report and justify all other modifications made to the storm water management plan in the annual report for the year in which the modification was made.

7. Basic Water Quality Criteria and Inspections

- (a) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
- (b) The permittee shall timely inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and

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inspect for items that may be toxic or harmful to human or other life.)

8. Corrective Action

The permittee shall immediately stop, reduce, or modify the discharge as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

9. Reporting Requirements

(a) Annual Report

The submittal of the annual report by the permittee shall be postmarked or received by the department by the twenty-eighth day of January of the following year. The annual report shall cover each calendar year during the term of this permit and include the following:

- (1) Status of compliance with conditions of this permit;
- (2) Assessment of the storm water management plan, including progress towards implementing each minimum control measure;
- (3) Modifications made to the storm water management plan and implementation schedule during that calendar year, including justifications;
- (4) Summary of the storm water activities planned to be undertaken during the next calendar year; and

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(5) Major modifications made to the permittee's small municipal separate storm sewer system, including, but not limited to, addition and removal of outfalls, drainage lines, and treatment facilities.

(b) Planned Changes

The permittee shall report any planned physical alterations or additions to the permitted facility, not covered by 40 CFR §122.41(l)(1)(i), (ii), and (iii) to the director on a quarterly basis.

10. Submittal Requirements

(a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

(b) The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure

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that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

11. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

12. Record Retention

The permittee shall retain all records and information resulting from the monitoring activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

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13. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF CIRCULATION WATER
FROM DECORATIVE PONDS OR TANKS

October 2007

1. Coverage under this General Permit
 - (a) This general permit covers discharges of circulation water from decorative ponds or tanks containing fish or other aquatic species, not including mammals. This general permit also covers discharges of circulation water from decorative ponds or tanks that do not contain fish or other aquatic species provided that the discharge complies with chapter 11-54 titled "Water Quality Standards."
 - (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."
2. Limitations on Coverage Under the General Permit
 - (a) This general permit does not cover the following:
 - (1) Discharges of circulation water from decorative ponds or tanks into a sanitary sewer system and
 - (2) Discharges of circulation water from decorative ponds or tanks which

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initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s).

- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

- (a) This general permit becomes effective when section 11-55-34.02(11) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires when amendments to section 11-55-34.02(b)(11) are adopted, whichever is earlier.
- (b) A notice of general permit coverage under this general permit expires:
 - (1) Five years after the effective date of this general permit;
 - (2) When the notice of general permit coverage specifies; or
 - (3) When amendments to section 11-55-34.02(b)(11) are adopted,

whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

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4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
 - (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) Description of the decorative fish pond or tank and the type of aquatic species being housed. The description should include, but not be limited to: material type of the pond or tank; water volume contained; the type, size, and number of aquatic species being housed; and, the type(s) and quantity of food utilized;
 - (3) Description of the average frequency of flow and duration of any intermittent or seasonal discharge. The frequency of flow means the number of days or months per year when there is an intermittent discharge. Duration means the number of days or hours per discharge. Provide the best estimate for new discharges;
 - (4) Source(s) of the circulation water for the decorative fish pond or tank;
 - (5) Quantitative data on pollutants that the owner or operator of the facility knows or reasonably should know are or will be present in the discharge and for which

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the pollutants numerical criteria for the existing or proposed receiving state waters are specified in chapter 11-54, especially section 11-54-4;

- (6) Name and chemical composition of any water enhancement or treatment additives, if any used;
- (7) Best management practices applied to minimize or eliminate the discharge of pollutants (e.g., feeding procedures, pond or tank cleaning operations, and control measures); and
- (8) A brief description of any treatment system used or to be used. The treatment system plan, and all subsequent revisions, shall be retained on-site or at a nearby office.
- (9) If the decorative fish pond or tank discharges circulation water to a state water for which a total maximum daily load has been approved by the EPA, the permittee shall develop and submit an implementation and monitoring plan with the notice of intent or within ninety days after the issuance date of the notice of general permit coverage or by the date the permittee claimed automatic coverage as specified in section 11-55-34.09(e)(2). The permittee shall incorporate provisions to comply with the total maximum daily load into the facility's best management practices plan within sixty days of the date of submittal of the plan and implement necessary steps to meet the plan.

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- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

6. Effluent Limitations and Monitoring Requirements

- (a) The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.8.

(1) Sampling Points

The permittee shall collect representative discharge samples downstream from the decorative fish pond or tank circulation water discharge point(s) and prior to entering the receiving state water or separate storm water drainage systems or at a location

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that is approved by the department which is representative of the decorative fish pond or tank effluent water quality.

(2) Collection of Samples

The permittee shall take samples and measurements for the purposes of monitoring which are representative of the volume and nature of the total discharge.

(3) Types of Samples

(A) "Grab sample" means an individual sample collected within the first fifteen minutes of a discharge.

(B) "Composite sample" means a combination of a least eight samples aliquots, collected at periodic intervals during the operating hours of the facility over a 24-hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

(4) Test Procedures

(A) The permittee shall use test procedures for the analysis of

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pollutants which conform with regulations published under Section 304(h) of the Act.

(B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.

(C) The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54. If the test result is not detectable, indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.

(5) Recording of Results

The permittee shall comply with section 14(c) of appendix A of chapter 11-55 for each measurement or sample taken under the requirements of this general permit.

(b) Basic Water Quality Criteria and Inspections

(1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.

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- (2) The permittee shall timely inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)
- (c) There shall be no floating solids, foam, or visible oil sheen in the effluent.
- (d) There shall be no discharge of pond or tank cleaning wastewaters that are generated during the cleaning of a pond or tank that has been drained of water below the normal operating level(s).
- (e) There shall be no discharge of filter backwash effluent.
- (f) There shall be no discharge of any water enhancement or treatment additives above applicable water quality standards or above detectable levels or quantities if no applicable water quality standard for such constituents exists.

7. Corrective Action

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The permittee shall immediately stop, reduce, or modify the discharge as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

8. Reporting Requirements

(a) Reporting of Monitoring Results

- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.8 and other requirements of this general permit.
- (2) The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.
- (3) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.
- (4) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.

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(b) Additional Monitoring by the Permittee

If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B), the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.

(c) Reporting of Noncompliance, Unanticipated Bypass, or Upset

- (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:
 - (A) Violation of an effluent limitation specified in Table 34.8 or a basic water quality criteria specified in section 6(b) of this general permit;
 - (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment;
or
 - (C) Unanticipated bypass or upset.
- (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday

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(excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.

- (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:
 - (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;
 - (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
 - (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
 - (D) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset.
- (4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.

(d) Schedule of Maintenance

The permittee shall submit a schedule for approval by the director at least fourteen

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days prior to any maintenance of facilities which might result in exceedance of effluent limitations. For purposes of this general permit only, maintenance shall include, but not be limited to, the routine cleaning of the pond or tank while filled with water and otherwise still operated under normal conditions. The schedule shall include a description of the maintenance and its reason; the period of maintenance, including exact dates and times; and steps taken or planned to reduce, eliminate, and prevent occurrence of noncompliance.

9. Submittal Requirements

- (a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

- (b) The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure

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that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

10. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

11. Record Retention

The permittee shall retain all records and information resulting from the monitoring activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

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12. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

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TABLE 34.8

EFFLUENT LIMITATION AND MONITORING REQUIREMENTS
FOR CIRCULATION WATER FROM DECORATIVE PONDS AND TANKS

| Effluent Parameter | Effluent Limitation {1} | Minimum Monitoring Frequency | Type of Sample |
|-------------------------------------------------|-------------------------|------------------------------|----------------|
| Flow (GPD) | {2} | Once/Quarter | Estimate |
| Total Nitrogen (mg/l) | {2} | Once/Quarter | Grab |
| Nitrate + Nitrite Nitrogen (mg/l) | {2} | Once/Quarter | Grab |
| Ammonia Nitrogen (mg/l) | {2} | Once/Quarter | Grab |
| Total Phosphorus (mg/l) | {2} | Once/Quarter | Grab |
| Chlorophyl a (µg/l) | {2} | Once/Quarter | Grab |
| Total Suspended Solids (mg/l) | 10 | Once/Quarter | Grab |
| Turbidity (NTU) | {3} | Once/Quarter | Grab |
| pH (standard units) | {4} | Once/Quarter | Grab {5} |
| Fecal coliform or Enterococcus (no./100 ml) {6} | {7} | Once/Quarter | Grab |
| Toxic Pollutants {8} | {9} | Once/Quarter | {10} |

GPD = gallons per day
 mg/l = milligrams per liter
 µg/l = micrograms per liter
 NTU = Nephelometric Turbidity Units
 no./100 ml = number per 100 milliliters

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NOTES:

- {1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.
- {2} No limitation at this time. Only monitoring and reporting required.
- {3} Effluent limitation is the specific criteria established in sections 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable.
- {4} The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.
- {5} The pH shall be measured within fifteen minutes of obtaining the grab sample.
- {6} Applicable if potentially present in the discharge.
- {7} Effluent limitation is the specific criteria established in section 11-54-8 for the classification of the receiving state waters, as applicable.
- {8} The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 only if they are identified as potential pollutants requiring monitoring in the notice of intent. The permittee shall measure for the total recoverable portion of all metals.

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- {9} Effluent limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters and specific criteria established in section 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable. For pollutants which do not have established acute water quality standards or specific criteria, the permittee shall report any detected concentration greater than 0.01 µg/l.
- {10} The permittee shall measure for cyanide and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a composite sample.

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**NPDES GENERAL PERMIT
AUTHORIZING POINT SOURCE DISCHARGES FROM THE
APPLICATION OF PESTICIDES**

August 2012

1. Coverage under this General Permit.

This permit covers any Operator of a point source discharge of pollutants (i.e., discharge) resulting from the application of pesticides that meets the eligibility requirements identified in section 1(a) of this pesticide general permit (PGP) and if so required, submits a Notice of Intent (NOI) in accordance with section 1(e) of this general permit. For the purpose of this permit, an Operator is defined in section 11-55-01 to mean any entity associated with the application of pesticides which results in a discharge to state waters that meets either of the following two criteria: (1) any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities); or (2) any entity with control over the decision to perform pesticide applications including the ability to modify those decisions. Operators identified in (1) above are referred to in this permit as Applicators while Operators identified in (2) are referred to in this permit as Decision-makers. As defined, more than one Operator may be responsible for complying with this permit for any single discharge from the application of pesticides.

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For purposes of this permit, all Operators are defined as either an Applicator or a Decision-Maker or both an Applicator and a Decision-maker.

When an Operator is both an Applicator and a Decision-maker, the Operator must comply with all applicable requirements imposed on both Applicators and Decision-makers. When the permit references all "Operators," both Applicators and Decision-makers must comply.

(a) Activities Covered.

This permit is available to Operators who discharge to state waters from the application of (1) biological pesticides or (2) chemical pesticides that leave a residue (collectively called pesticides), when the pesticide application is for at least one of the following pesticide use patterns:

- (1) Mosquito and Other Flying Insect Pest Control - to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include mosquitoes and black flies.
- (2) Weed and Algae Pest Control - to control weeds, algae, and pathogens that are pests in water and at water's edge, including ditches and/or canals.
- (3) Animal Pest Control -to control animal pests in water and at water's edge.

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Animal pests in this use category include, but are not limited to, fish, lampreys, insects, mollusks, and pathogens.

- (4) Forest Canopy Pest Control - application of a pesticide to a forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to water.

(b) Limitations on Coverage under this General Permit

- (1) Discharges to Water Quality Impaired Waters.

Except for discharges from pesticide applications made in response to a declared pest emergency situation or as determined by the director, Operators are not eligible for coverage under this permit for any discharges from a pesticide application to state waters if the water is identified as impaired by a substance which either is an active ingredient in that pesticide or is a degradate of such an active ingredient. For purposes of this general permit, impaired waters are those that have been identified by the State pursuant to Section 303(d) of the CWA as not meeting applicable State water quality standards. Impaired waters, for the purposes of this

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general permit consist of both waters with EPA-approved Total Maximum Daily Loads (TMDLs) and waters for which EPA has not yet approved a TMDL. Coverage under this general permit is allowed for discharges to impaired waters listed generically for "pesticides" where the specific pesticide for which the waterbody is impaired has not been identified and without additional information suggesting that the waterbody is impaired for a specific active ingredient or degradate of the active ingredient.

- (2) Discharges to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 entitled "Water Quality Standards."

Operators are not eligible for coverage under this permit for discharges from a pesticide application to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 entitled "Water Quality Standards."

Except for discharges from the following pesticide applications:

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- (A) made in response to a declared pest emergency situation or as determined by the director;
 - (B) to protect the public health or the environment that either do not degrade water quality or only degrade water quality on a short term basis; or
 - (C) to maintain water flow in agricultural irrigation ditches and canals if the pesticide application is for the activity covered in 1(a)(2) (i.e., weed and algae pest control) or is for the activity covered in 1(a)(3) (i.e., animal pest control) in flooded agricultural fields.
- (3) Discharges to surface drinking water sources (for domestic use) and their tributaries up-stream are not eligible for coverage under this permit. Such discharges will require coverage under an individual NPDES permit.

Except in the following conditions:

- (A) made in response to a declared pest emergency situation or as determined by the director; or
- (B) the following:
 - (i) the NOI indicates whether the proposed application may

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discharge to surface
drinking water sources; and

- (ii) the application to surface drinking water sources is consistent with the FIFRA label, including but not limited to, following any distance restriction and intended use; and
- (iii) the Decision-maker provides the owner (e.g., municipality, private) of the surface drinking water source the following information, including but not limited to: the pesticide(s) to be applied, general location, and approximate frequency and the department receives written consent from the owner of the surface drinking water source for such discharges; and
- (iv) the Operator adheres to the Safe Drinking Water Act and safe drinking water regulations; and
- (v) the Operator shall coordinate with the owner of the surface drinking water source to prevent pesticide-treated water from entering the drinking water intake

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and distribution system
(e.g., the valve to the
drinking water source is
shut, or by diversion).

- (4) Discharges Currently or Previously
Covered by another Permit.

Discharges are not eligible for
coverage under this permit if any of
the following circumstances apply:

- (A) The discharge is covered by
another NPDES permit, or
- (B) The discharge was included in a
permit that in the past five (5)
years has been or is in the
process of being denied,
terminated, or revoked by the
State or EPA (this does not apply
to the routine reissuance of
permits every five (5) years).

- (5) Individual Permit

The Director may require any Operator
authorized by this general permit to
apply for and obtain an individual
permit, in accordance with sections 11-
55-34.05 and 11-55-34.10.

- (c) Term of General Permit

- (1) This general permit becomes effective
when section 11-55-34.02(b)(12) becomes
effective ten days after filing with
the office of the lieutenant governor.

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Hereinafter, the date when section 11-55-34.02(b)(12) becomes effective (i.e., ten days after filing with the office of the lieutenant governor) shall be referred to as "the effective date of the permit." This general permit expires five years after the effective date or when amendments to section 11-55-34.02(b)(12) are adopted, whichever is earlier.

- (2) A notice of general permit coverage under this general permit expires:
- (C) Five years after the effective date of this general permit;
 - (D) When the notice of general permit coverage specifies; or
 - (E) When amendments to section 11-55-34.02(b)(12) are adopted,

Whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

- (d) How to Obtain Authorization.

The following discharges, consistent with the activities covered in section 1(a) and limitations on coverage under this general permit in section 1(b), are automatically authorized by this permit beginning when section 11-55-34.02(b)(12) becomes effective ten days after filing with the office of the lieutenant governor:

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- (1) Eligible discharges made prior to the Notice of Intent submission deadline. See Table 2;
- (2) Eligible discharges for which submission of an NOI is not required. See sections 1(e) and 1(f).

To obtain authorization under this permit for all other eligible discharges, a Decision-maker must submit a timely, complete, and accurate NOI consistent with the requirements of sections 1(e) and 1(f), be issued a Notice of General Permit Coverage (NGPC) and meet all conditions of the NGPC, unless the Operator claimed automatic coverage in writing under the automatic provision of section 11-55-34.09(e)(2) and assumes the risks in section 11-55-34.09(f); and this general permit to the satisfaction of the department.

- (e) Decision-makers Required to Submit an NOI.

Any "Decision-maker Who is or Will be Required to submit an NOI" is identified in Table 1.

For calculating annual treatment area totals for purposes of determining if an NOI must be submitted, see the definition for, "annual treatment area threshold" in section 11-55-01.

An NOI provides notice to the State that a Decision-maker intends to discharge to state waters from pesticide application activities eligible for coverage under this permit.

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Information required to be provided is on the NOI form. The NOI must identify the pest management area where the Decision-maker will conduct activities resulting in discharges to state waters to be covered under this permit.

If required to submit an NOI, a Decision-maker must submit the NOI once, in accordance with the deadlines in Section 1(f), Table 2. The Decision-maker must submit an updated NOI if the criteria in section 1(f), Table 3 are met. Late NOIs may be accepted, but authorization to discharge will not be retroactive.

Coverage will be available for the duration of this general permit for Decision-makers who file an NOI and are issued an NGPC and who meet all conditions of the NGPC and this general permit to the satisfaction of the department or for those rightfully (refer to the risks in section 11-55-34.09(f)) claiming coverage in writing under the automatic provision of section 11-55-34.09(e)(2), including the Decision-makers' employees, contractors, subcontractors, and other agents, for all activities identified on the NOI unless coverage is terminated pursuant to appendix A of chapter 11-55. If a submitted NOI is not timely, accurate, or complete, and an NGPC is not issued or any condition not met, any employee, contractor, subcontractor or other entity that discharges is not covered by this permit.

Applicators who are not also Decision-makers do not need to submit an NOI, however they

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are still required to comply with other requirements, as applicable in this general permit.

(f) Discharge Authorization Date

Except for discharges identified in Tables 1 through 3, any Operator with eligible discharges is automatically authorized to discharge under this permit without submission of an NOI. Decision-makers with eligible discharges identified in Tables 1 through 3 are authorized under this permit consistent with the requirements in those tables.

On the basis of a review of an NOI or other information, the Director may delay authorization to discharge beyond any timeframe identified in Table 2, determine that additional technology-based and/or water quality-based effluent limitations or other conditions are necessary, or deny coverage under this permit and require submission of an application for an individual NPDES permit, as detailed in section 1(b)(5).

All Operators with eligible discharges are authorized for permit coverage up until 60 calendar days from the effective date of the permit without submission of an NOI. Hereinafter, the 60 calendar day timeframe provided after the effective date of the permit shall be referred to as the "adjustment period." After the adjustment period, all Operators with eligible discharges for which an NOI is not required

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also are automatically covered under this permit. By the adjustment period, all Decision-makers with eligible discharges for which an NOI is required are required to submit an NOI consistent with the earliest applicable due date identified in Table 2. Decision-makers may submit multiple NOIs with different activities on each of those NOIs when a pesticide use pattern is not already covered within the same treatment area under another NOI.

Decision-makers who are required to submit an NOI must begin complying with Section 2(b) when section 11-55-34.02(b)(12) becomes effective ten days after filing with the office of the lieutenant governor.

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Table 1. Decision-makers Required to Submit NOIs

| PGP Section/ Pesticide Use | Which Decision- makers Must Submit NOIs? | For Which Pesticide Application Activities? |
|---------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| All four use patterns identified in section 1(a) | Any Decision-maker with an eligible discharge to water quality impaired waters; class 1, inland or class AA, marine waters, or areas restricted in accordance with the State's "no discharge" policy; or to surface drinking waters and their tributaries up-stream consistent with sections 1(b)(1), 1(b)(2), or 1(b)(3). | Activities resulting in a discharge to water quality impaired waters, class 1, inland or class AA, marine waters, or areas restricted in accordance with the State's "no discharge" policy, or to surface drinking waters and their tributaries up-stream. |
| 1(a)(1) - Mosquito and Other Flying Insect Pest Control | Any Federal or State government entities for which pest management for land resource stewardship is an integral part of the organization's operations. | All mosquito and other flying insect pest control activities resulting in a discharge to state waters. |
| | Mosquito control districts, or similar pest control districts. | All mosquito and other flying insect pest control activities |

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| | | |
|---------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| | | resulting in a discharge to state waters. |
| | Counties or other entities that exceed the annual treatment area threshold identified here. | Adulticide treatment if more than 6,400 acres during a calendar year. {1} |
| 1(a)(2) - Weed and Algae Pest Control | Any Federal or State government entities for which pest management for land resource stewardship is an integral part of the organization's operations. | All weed and algae pest control activities resulting in a discharge to state waters. |
| | Irrigation and weed control districts, or similar pest control districts. | All weed and algae pest control activities resulting in a discharge to state waters. |
| | Counties or other entities that exceed the annual treatment area threshold identified here. | Treatment during a calendar year if more than either: 20 linear miles OR 80 acres of water. {2} |
| 1(a)(3) - Animal Pest Control | Any Federal or State government entities for which pest management for land resource | All animal pest control activities resulting in a discharge to state waters. |

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| | stewardship is an integral part of the organization's operations. | |
| | Counties or other entities that exceed the annual treatment area threshold identified here. | Treatment during a calendar year if more than either: 20 linear miles OR 80 acres of water. {2} |
| 1(a)(4) - Forest Canopy Pest Control | Any Federal or State government entities for which pest management for land resource stewardship is an integral part of the organization's operations. | All forest canopy pest control activities resulting in a discharge to state waters. |
| | Counties or other entities that exceed the annual treatment area threshold identified here. | Treatment if more than 6,400 acres during a calendar year. {1} |

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Table 2. NOI Submittal Deadlines and Discharge Authorization Dates for Discharges from the Application of Pesticides

| <p>After the adjustment period, any eligible discharge for which an NOI is required must submit an NOI consistent with the earliest due date identified below. If the Director receives an NOI at least 30 calendar days before the end of the adjustment period, uninterrupted coverage may continue {3}. NOI due dates for any discharges occurring on or after the adjustment period are as follows:</p> | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Operator Type | NOI Submission Deadline | Discharge Authorization Date {3} |
| <p>Any Decision-maker with a discharge in response to a Declared Pest Emergency for which that activity triggers the NOI requirement identified in Section 1(e).</p> | <p>At least 30 calendar days after beginning discharge.</p> | <p>Immediately upon beginning to discharge for activities conducted in response to a Declared Pest Emergency Situation {4}.</p> |
| <p>Any Decision-maker that exceeds any annual treatment area threshold.</p> | <p>At least 30 calendar days before exceeding an annual treatment area threshold.</p> | <p>Upon NGPC issuance {5} or if the operator claimed automatic coverage in writing under the automatic provision of section 11-55-34.09(e) (2) and assumes the risks in section 11-55-34.09(f).</p> |

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| <p>Any Decision-maker otherwise required to submit an NOI as identified in Table 1.</p> | <p>At least 30 calendar days before any discharge for which an NOI is required.</p> | <p>Upon NGPC issuance {5} or if the Operator claimed automatic coverage in writing under the automatic provision of section 11-55-34.09(e)(2) and assumes the risks in section 11-55-34.09(f).</p> |
|-----------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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Table 3. Change of Information, resulting in a Major Modification {6} of the NGPC, Submittal Deadlines and Discharge Authorization Dates

| Operator Type | NOI Submission Deadline | Discharge Authorization Date |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Any Decision-makers discharging to a class 1, inland water; class AA, marine water; or area restricted in accordance with the State's "no discharge" policy not specifically identified by name on a previously submitted NOI for this permit.</p> | <p>At least 30 calendar days before beginning to discharge in that newly identified class 1, inland water; class AA, marine water; or area restricted in accordance with the State's "no discharge" policy unless discharges are in response to a declared pest emergency in which case not later than 30 days after beginning discharge.</p> | <p>After reissuance of the NGPC to include the change {5}, unless discharges are in response to a declared pest emergency in which case coverage is available immediately upon beginning to discharge from activities conducted in response to declared pest emergency {4}.</p> |
| <p>Any Decision-maker with any discharge to state waters requiring permit coverage for a newly identified pest management</p> | <p>At least 30 calendar days before beginning to discharge in that newly identified pest management area or new pesticide</p> | <p>After reissuance of the NGPC to include the change {5}, unless discharges are in response to a declared pest</p> |

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| | | |
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| <p>area or new pesticide use pattern not identified on a previously submitted NOI for this permit. This includes changes in any treatment area, pesticide product, method or rate of application, or approximate dates of applications.</p> | <p>use pattern not identified on a previously submitted NOI for this permit unless discharges are in response to a declared pest emergency in which case not later than 30 days after beginning discharge.</p> | <p>emergency in which case coverage is available immediately upon beginning to discharge from activities conducted in response to declared pest emergency {4}.</p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Notes:

- {1} Treatment during a calendar year if more than 6,400 acres, as discussed for the categories "Mosquito and Other Flying Insect Pest Control" and "Forest Canopy Pest Control," refers to the total area to which pesticide applications (e.g. aerial spraying) are made, when any part of those areas is a state water and shall be treated as separate treatment areas to be additive in a calendar year. If the additive total areas in a calendar year to which pesticides application are made exceeds 6,400 acres, when any part of these areas is a state water, submittal of an NOI is required for those Decision-makers required to submit an NOI as identified in Table 1. For example, applying pesticides three times a year to the same three thousand acre site (i.e., total area to which pesticide applications are made, when any part of those areas is a state water)

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should be counted as nine thousand acres of treatment area.

- {2} For the categories "Weed and Algae Pest Control" and "Animal Pest Control", "20 linear miles" means 20 linear miles of river, stream, riverbank, or other linear water feature subject to coverage under this permit, counting each bank of the water feature separately if pesticides are applied to both banks. This means that applications four times a year to both banks of a three-mile long reach of stream will count as a total of twenty four linear miles (three miles * two banks * for applications per year = twenty four miles to which pesticides are applied in a calendar year) and require submission of an NOI. For applications made to the water of a linear water feature, the length of the reach or surface area may be used to determine if the annual treatment area threshold is exceeded. Treatment during a calendar year if more than "80 acres of water (i.e., surface area)" means application of pesticides to a waterbody surface area of greater than 80 acres.
- {3} On the basis of a review of an NOI or other information, the Director may delay authorization to discharge beyond any timeframe identified in Table 1, determine that additional technology-based and/or water quality-based effluent limitations or other conditions are necessary, or deny coverage under this permit and require submission of an application for an individual NPDES permit, as detailed in Section 1(b)(5).
- {4} To remain authorized, an NOI must be submitted no later than 30 calendar days after beginning discharge and result in issuance of an NGPC. At

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no time, during the processing the NOI, shall the time between the department's request for more information, and its receipt from the Decision-maker be longer than 30 calendar days. If longer than 30 calendar days, coverage under this general permit may be terminated automatically.

- {5) All requirements in the NGPC must be complied with and in the timeframe as specified, including this general permit and any additional requirements as determined by the State to the satisfaction of the department.
- {6) The department may require submittal of a new NOI if it is determined that the modification of the information is significant or more than one (1) change to the information used in the issuance of its NGPC is required.

(g) Standard Conditions

The Decision-maker shall comply with the standard conditions as specified in appendix A of chapter 11-55, excluding biocides as identified in section 1.a.(4) of appendix A. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, excluding biocides as identified in section 1.a.(4) of appendix A, the more stringent conditions shall apply.

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(h) Other Federal and State Laws.

Operators must comply with all other applicable federal and state laws and regulations that pertain to pesticides. The pesticide must be registered by the EPA, licensed by the State Department of Agriculture or other lead state agency regulating pesticides, and used in a manner consistent with the labeling of the pesticide under the Federal, Insecticide, Fungicide, and Rodenticide Act (FIFRA). This permit does not negate the requirements under FIFRA and its implementing regulations to use registered pesticides consistent with the product's labeling. In fact, applications in violation of certain FIFRA requirements could also be a violation of the permit and therefore a violation of the CWA (e.g. exceeding label application rates). Additionally, other laws and regulations might apply to certain activities that are also covered under this permit (e.g., United States Coast Guard regulations).

2. Technology-Based Effluent Limitations

This Section includes technology-based effluent limitations applicable to all Operators, as defined in section 11-55-01, for any discharges authorized under this permit, with compliance required upon beginning such discharge. All Operators are classified as either "Applicators" or "Decision-makers," as defined in section 11-55-01, or both. Applicators must perform the tasks identified in section 2(a) - Applicators' Responsibilities. Decision-makers must perform

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the tasks identified in section 2(b) - Decision-makers' Responsibilities. There may be instances when a single entity acts as both an Applicator and a Decision-maker.

As stated in section 1(h), this general permit requires all Operators to comply with all other applicable federal or state laws and regulations that pertain to application of pesticides by the Operator.

(a) Applicators' Responsibilities

To meet the effluent limitations of this permit, all Applicators must implement section 2(a) to minimize the discharge of pesticides to state waters from the application of pesticides, through the use of Pest Management Measures, as defined in section 11-55-01.

- (1) To the extent not determined by the Decision-maker, use only the amount of pesticide and frequency of pesticide application necessary to control the target pest, using equipment and application procedures appropriate for this task.
- (2) Maintain pesticide application equipment in proper operating condition, including requirement to calibrate, clean, and repair such equipment and prevent leaks, spills, or other unintended discharges.
- (3) Assess weather conditions (e.g. temperature, precipitation and wind

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speed) in the treatment area to ensure application is consistent with all applicable federal requirements.

(b) Decision-makers' Responsibilities

For All Decision-makers

To meet the effluent limitations in section 2(b), all Decision-makers must minimize the discharge of pesticides to state waters from the application of pesticides, through the use of Pest Management Measures, as defined in section 11-55-01.

To the extent the Decision-maker determines the amount of pesticide or frequency of pesticide application, the Decision-maker must use only the amount of pesticide and frequency of pesticide application necessary to control the target pest.

For Any Decision-maker Who is or Will be Required to Submit an NOI

To meet the effluent limitations of this permit, prior to pesticide application, any Decision-maker who is or will be required to submit an NOI as required in section 1(e) must also implement sections 2(b)(1) - 2(b)(4) to minimize the discharge of pesticides to state waters from the application of pesticides, through the use of Pest Management Measures, as defined in section 11-55-01.

(1) Mosquito and Other Flying Insect Pest Control

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This section applies to discharges from the application of pesticides for mosquito and other flying insect pest control as defined in section 1(a)(1) of this general permit.

(A) Identify the Problem.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must do the following for each pest management area, as defined in section 11-55-01:

- (i) Establish densities for larval and adult mosquito or flying insect pest populations or identify environmental condition(s), either current or based on historical data, to serve as action threshold(s) for implementing Pest Management Measures;
- (ii) Identify target pest(s) to develop Pest Management Measures based on developmental and behavioral

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considerations for each pest;

- (iii) Identify known breeding sites for source reduction, larval control program, and habitat management;
- (iv) Analyze existing surveillance data to identify new or unidentified sources of mosquito or flying insect pest problems as well as sites that have recurring pest problems; and
- (v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in section 2(b)(1)(A) of this general permit.

(B) Pest Management Options.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must select and implement efficient and effective

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means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control mosquitoes or other flying insect pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

- (i) No action
 - (ii) Prevention
 - (iii) Mechanical or physical methods
 - (iv) Cultural methods
 - (v) Biological control agents
 - (vi) Pesticides
- (C) Pesticide Use.

If a pesticide is selected to manage mosquitoes or flying insect pests, and application of the pesticide will result in a discharge to a state water, any Decision-maker who is or will be required to submit an NOI must:

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- (i) Conduct larval and/or adult surveillance in an area that is representative of the pest problem or evaluate existing larval surveillance data, environmental conditions, or data from adjacent area(s) prior to each pesticide application to assess the pest management area and to determine when the action threshold(s) is met;
- (ii) Reduce the impact on the environment and on non-target organisms by applying the pesticide only when the action threshold(s) has been met;
- (iii) In situations or locations where practicable and feasible for efficacious control, use larvicides as a preferred pesticide for mosquito or flying insect pest control when the larval action threshold(s) has been met; and
- (iv) In situations or locations where larvicide use is not practicable or feasible for efficacious control, use adulticides for mosquito or flying insect pest control

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when the adult action
threshold(s) has been met.

(2) Weed and Algae Pest Control

This section applies to discharges from the application of pesticides for control of weeds, algae, and pathogens as defined in section 1(a)(2) of this general permit.

(A) Identify the Problem.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must do the following for each pest management area, as defined in section 11-55-01:

- (i) Identify areas with pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g. wildlife habitat, fisheries, vegetation, and recreation);
- (ii) Identify target pest(s);

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- (iii) Identify possible factors causing or contributing to the pest problem (e.g., nutrients, invasive species, etc.);
 - (iv) Establish any pest- and site-specific action threshold, as defined in HAR, Chapter 11-55-01, for implementing section 2(b)(2)(B); and
 - (v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in section 2(b)(2)(A) of this general permit.
- (B) Pest Management Options.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides

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to pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

- (i) No action
 - (ii) Prevention
 - (iii) Mechanical or physical methods
 - (iv) Cultural methods
 - (v) Biological control agents
 - (vi) Pesticides
- (C) Pesticide Use.

If a pesticide is selected to manage pests, and application of the pesticide will result in a discharge to state waters, any Decision-maker who is or will be required to submit an NOI must:

- (i) Conduct surveillance in an area that is representative of the pest problem prior to each pesticide application to assess the pest

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management area and to determine when the action threshold(s) is met; and

- (ii) Reduce the impact on the environment and non-target organisms by applying the pesticide only when the action threshold has been met.

(3) Animal Pest Control

This section applies to discharges from the application of pesticides for control of animal pests as defined in section 1(a)(3) of this general permit.

(A) Identify the Problem.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must do the following for each pest management area, as defined in section 11-55-01:

- (i) Identify areas with pest problems and characterize the extent of the problems, including, for example,

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water use goals not attained (e.g. wildlife habitat, fisheries, vegetation, and recreation);

- (ii) Identify target pest(s);
- (iii) Identify possible factors causing or contributing to the problem (e.g., nutrients, invasive species);
- (iv) Establish any pest- and site-specific action threshold, as defined in section 11-55-01, for implementing section 2(b)(3)(B); and
- (v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in section 2(B)(3)(A).

(B) Pest Management Options.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each year thereafter prior to the first pesticide application during that calendar year, any Decision-maker who is or

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will be required to submit an NOI must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

- (i) No action
 - (ii) Prevention
 - (iii) Mechanical or physical methods
 - (iv) Biological control agents
 - (v) Pesticides
- (C) Pesticide Use.

If a pesticide is selected to manage pests, and application of the pesticide will result in a discharge to state waters, any Decision-maker who is or will be required to submit an NOI must:

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- (i) Conduct surveillance in an area that is representative of the pest problem prior to each application to assess the pest management area and to determine when the action threshold(s) is met; and
 - (ii) Reduce the impact on the environment and non-target organisms by evaluating site restrictions, application timing, and application method in addition to applying the pesticide only when the action threshold(s) has been met.
- (4) Forest Canopy Pest Control

This section applies to discharges from the application of pesticides for forest canopy pest control as defined in section 1(a)(4) of this general permit.

(A) Identify the Problem.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application in that calendar year, any Decision-maker who is or will be required to submit an NOI must do the

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following for each pest management area, as defined in section 11-55-01:

- (i) Establish any pest- and site-specific action threshold, as defined in section 11-55-01, for implementing section 2(b)(4)(B);
- (ii) Identify target pest(s) to develop Pest Management Measures based on developmental and behavioral considerations for each pest;
- (iii) Identify current distribution of the target pest and assess potential distribution in the absence of Pest Management Measures; and
- (iv) In the event there are no data for pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in section 2(B)(4)(A).

(B) Pest Management Options.

Prior to the first pesticide application covered under this permit that will result in a

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discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control pests. In developing the Pest Management Measures for pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

- (i) No action
- (ii) Prevention
- (iii) Mechanical or physical methods
- (iv) Cultural methods
- (v) Biological control agents
- (vi) Pesticides

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(C) Pesticide Use.

If a pesticide is selected to manage forestry pests, and application of the pesticide will result in a discharge to state waters, any Decision-maker who is or will be required to submit an NOI must:

- (i) Conduct surveillance in an area that is representative of the pest problem prior to each application to assess the pest management area and to determine when the pest action threshold is met;
- (ii) Reduce the impact on the environment and non-target organisms by evaluating the restrictions, application timing, and application methods in addition to applying the pesticide only when the action threshold(s) has been met; and
- (iii) Evaluate using pesticides against the most susceptible developmental stage.

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3. Water Quality-Based Effluent Limitations

All Operators must control discharges as necessary to meet applicable numeric and narrative state water quality standards, as required in chapter 11-54, for discharges authorized under this permit, with compliance required upon beginning such discharge.

If at any time an Operator becomes aware (e.g., through self-monitoring or by notification from the state or EPA), or the Director determines, that the Operator's discharge causes or contributes to an excursion of any applicable water quality standard, the Operator must take corrective action as required in section 6 and section 7 of appendix A, chapter 11-55, up to and including the ceasing of the discharge, if necessary.

4. Monitoring

(a) Visual Monitoring Requirements for Pesticide Applicators.

During any pesticide application with discharges authorized under this permit, all Applicators must, when considerations for safety and feasibility allow, visually assess the area to and around where pesticides are applied for possible and observable adverse incidents, as defined in section 11-55-01, caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.

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- (b) Visual Monitoring Requirements for all Operators.

During any Operator post-application surveillance of any pesticide application with discharges authorized under this permit, all Operators must visually assess the area to and around where pesticides were applied for possible and observable adverse incidents, as defined in section 11-55-01, caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.

5. Pesticide Discharge Management Plan

Any Decision-maker who is or will be required to submit an NOI, as required in section 1(e), and is a large entity, as defined in section 11-55-01, must prepare a Pesticide Discharge Management Plan (PDMP) by the time the NOI is submitted to the department, except (for which a PDMP is not required to be developed) any applications made in response to a Declared Pest Emergency Situation, as defined in section 11-55-01.

The PDMP does not contain effluent limitations; the effluent limitations are specified in sections 2 and 3 of this general permit. The PDMP documents how Decision-makers will implement the effluent limitations in sections 2 and 3 of this general permit, including the evaluation and selection of Pest Management Measures to meet those effluent limitations in order to minimize discharges. In the PDMP, Decision-makers may incorporate by reference any procedures or plans

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in other documents that meet the requirements of this general permit. If Decision-makers rely upon other documents to comply with the effluent limitations in this general permit, such as a pre-existing pest management plan, the Decision-makers must attach to the PDMP a copy of any portions of any documents that are used to document the implementation of the effluent limitations.

- (a) Contents of the Pesticide Discharge Management Plan.

The PDMP must include the following elements:

- (1) Pesticide Discharge Management Team

Decision-makers must identify all the persons (by name and contact information) that compose the team as well as each person's individual responsibilities, including:

- (A) Person(s) responsible for managing pests in relation to the pest management area
- (B) Person(s) responsible for developing and revising the PDMP; and
- (C) Person(s) responsible for developing, revising, and implementing corrective actions and other effluent limitation requirements.

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(2) Problem Identification

(A) Pest problem description.

Document a description of the pest problem at the pest management area, including identification of the target pest(s), source(s) of the pest problem, and source of data used to identify the problem in sections 2(b)(1), 2(b)(2), 2(b)(3), and 2(b)(4).

(B) Action Threshold(s).

Describe the action threshold(s) for the pest management area, including data used in developing the action threshold(s) and method(s) to determine when the action threshold(s) has been met.

(C) General location map.

In the plan, include a general location map (e.g., USGS quadrangle map, a portion of a city or county map, or other map) that identifies the geographic boundaries of the area to which the plan applies and location of the state water and

(D) Water quality standards.

Document any water(s) identified as impaired by a substance which either is an active ingredient or

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a degradate of such an active ingredient.

(3) Pest Management Options Evaluation

Decision-makers must document the evaluation of the pest management options, including combination of the pest management options, to control the target pest(s). Pest management options include the following: No action, prevention, mechanical/physical methods, cultural methods, biological control agents, and pesticides. In the evaluation, Decision-makers must consider the impact to water quality, impact to non-target organisms, feasibility, cost effectiveness, and any relevant previous Pest Management Measures.

(4) Response Procedures.

Decision-makers must document the following procedures in the PDMP:

(A) Spill Response Procedures.

At a minimum, Decision-makers must have:

- (i) Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases to state waters.

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Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of the PDMP team.

- (ii) Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies.

(B) Adverse Incident Response Procedures.

At a minimum, Decision-makers must have:

- (i) Procedures for responding to any adverse incident resulting from pesticide applications;
- (ii) Procedures for notification of the adverse incident, both internal to the Decision-maker's agency/organization and external.

Contact information for state/federal permitting agency, nearest emergency

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medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.

(5) Signature Requirements.

Decision-makers must sign, date and certify the PDMP in accordance with section 15 of appendix A, chapter 11-55.

(b) Pesticide Discharge Management Plan Modifications.

Decision-makers must modify the PDMP whenever necessary to address any of the triggering conditions for corrective action in section 6(a) or when a change in pest control activities significantly changes the type or quantity of pollutants discharged. Changes to the PDMP must be made before the next pesticide application that results in a discharge, if practicable, or if not, no later than 90 calendar days after any change in pesticide application activities. The revised PDMP must be signed and dated in accordance with section 15 of appendix A, chapter 11-55.

(c) Pesticide Discharge Management Plan Availability.

Decision-makers must retain a copy of the current PDMP, along with all supporting maps and documents, at each address provided in the NOI. The PDMP and all supporting

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documents must be readily available, upon request, and copies of any of these documents provided, upon request, to the state, EPA, or local agency governing discharges or pesticide applications within their respective jurisdictions; and representatives of the United States Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS). The Director may provide copies of the PDMP or other information related to this permit that is in its possession to members of the public. Any Confidential Business Information (CBI), as defined in 40 CFR Part 2, may be withheld from the public provided that a claim of confidentiality is properly asserted and documented in accordance with 40 CFR Part 2; however, CBI must be submitted to the Director, if requested, and may not be withheld from those staff within EPA, FWS, and NMFS cleared for CBI review.

6. Corrective Action

All Operators must comply with the provisions of section 6 for any discharges authorized under this general permit, with compliance required upon beginning such discharge.

- (a) Situations Requiring Revision of Pest Management Measures.
Operators must review and, as necessary, revise the evaluation and selection of Pest Management Measures consistent with section 2(a) and 2(b) for the following situations:

- (1) An unauthorized release or discharge associated with the application of

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pesticides (e.g., spill, leak, or discharge not authorized by this or another NPDES permit) occurs.

- (2) Operators become aware, or the Director concludes, that Pest Management Measures are not adequate/sufficient for the discharge to meet applicable water quality standards.
 - (3) Any monitoring activities indicate failure to meet applicable technology-based effluent limitations in section 2.
 - (4) An inspection or evaluation of activities by the Director, an EPA official, local, or state entity, reveals that modifications to the Pest Management Measures are necessary to meet the effluent limitations in this general permit.
 - (5) Any Operator observes or is otherwise made aware of an adverse incident as defined in section 11-55-01.
- (b) Corrective Action Deadlines.

If an Operator determines that changes to Pest Management Measures are necessary to eliminate any situation identified in section 6(a), such changes must be made before or, if not practicable, as soon as possible after the next pesticide application that results in a discharge.

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(c) Effect of Corrective Action.

The occurrence of a situation identified in section 6(a) of this general permit may constitute a violation of the permit. Correcting the situation according to section 6(a) of this general permit does not absolve the Operator of liability for any original violation. However, failure to comply with Section 6(a) of this general permit constitutes an additional permit violation. The Director will consider the appropriateness and promptness of corrective action in determining enforcement responses to permit violations.

The Director, EPA or a court may impose additional requirements and schedules of compliance, including requirements to submit additional information concerning the condition(s) triggering corrective action or schedules and requirements more stringent than specified in this permit. Those requirements and schedules will supersede those of Section 6(a) of this general permit if such requirements conflict.

(d) Adverse Incident Documentation and Reporting

(1) Twenty-Four (24) Hour Adverse Incident Notification

(A) Adverse Incident Notification Required

Except as provided for in section 6(d)(4), if an Operator observes or is otherwise made aware of an

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adverse incident, as defined in section 11-55-01, which may have resulted from a discharge from a pesticide application, the Operator must immediately notify the Director. This notification must be made by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours, which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State hospital Operator at (808) 247-2191 outside of regular office hours, within 24 hours of the Operator becoming aware of the adverse incident; and State Department of Agriculture or other state lead agency for pesticide regulation and must include at least the following information:

- (i) The caller's name and telephone number;
- (ii) Operator name and mailing address;
- (iii) If covered under an NOI, the NPDES file number, if applicable;
- (iv) The name and telephone number of a contact person, if different than the person providing the 24-hour notice;

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- (v) How and when the Operator became aware of the adverse incident;
- (vi) Description of the location of the adverse incident;
- (vii) Description of the adverse incident identified and the pesticide product, including EPA pesticide registration number, for each product applied in the area of the adverse incident;
- (viii) Description of any steps the Operator has taken or will take to correct, repair, remedy, clean up, or otherwise address any adverse effects; and
- (ix) If known, the identity of any other Operators authorized for coverage under this permit for discharges from the pesticide application activities that resulted in the adverse incident.

If an Operator is unable to notify the Clean Water Branch within 24 hours, the Operator must do so as soon as possible and also provide an appropriate rationale for why the Operator was unable to provide such notification within 24 hours.

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The adverse incident notification and reporting requirements are in addition to what the registrant is required to submit under FIFRA section 6(a)(2) and its implementing regulations at 40 CFR Part 159.

(B) Adverse Incident Notification Not Required

Reporting of adverse incidents is not required under this permit in the following situations:

- (i) An Operator is aware of facts that indicate that the adverse incident was not related to toxic effects or exposure from the pesticide application;
- (ii) An Operator has been notified by the Director, and retains such notification, that the reporting requirement has been waived for this incident or category of incidents;
- (iii) An Operator receives information of an adverse incident, but that information is clearly erroneous; or

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(iv) An adverse incident occurs to pests that are similar in kind to potential target pests identified on the FIFRA label.

(2) Thirty (30) Calendar Day Adverse Incident Written Report.

Except as provided for in section 6(d)(4), within 30 calendar days of a reportable adverse incident pursuant to section 6(d)(1), Operators must provide a written report of the adverse incident to the Clean Water Branch and to the State Department of Agriculture or other state lead agency for pesticide regulation. The adverse incident report must include at least the following information:

- (A) Information required to be provided in Section 6(d)(1);
- (B) Date and time the Operator notified the Clean Water Branch and the State Department of Agriculture of the adverse incident and who the Operator spoke with and any instructions you received;
- (C) Location of incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc.);

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- (D) A description of the circumstances of the adverse incident including species affected, estimated number of individual and approximate size of dead or distressed organisms;
- (E) Magnitude and scope of the affected area (e.g. aquatic square area or total stream distance affected);
- (F) Pesticide application rate; intended use site (e.g., on the bank, above waters, or directly to water); method of application; and the name of pesticide product and EPA registration number;
- (G) Description of the habitat and the circumstances under which the adverse incident occurred (including any available ambient water data for pesticides applied);
- (H) If laboratory tests were performed, an indications or which test(s) were performed, and when; additionally, a summary of the test results must be provided within five (5) calendar days after they become available if not available at the time of submission of the 30-day report;
- (I) Description of actions to be taken to prevent recurrence of adverse incidents; and

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(J) Signature, date, and certification in accordance with section 15 of appendix A, chapter 11-55.

(3) Adverse Incident to Threatened or Endangered Species or Critical Habitat

Notwithstanding any of the other adverse incident notification requirements of this section, if an Operator becomes aware of an adverse incident affecting a federally-listed threatened or endangered species or its federally-designated critical habitat, which may have resulted from a discharge from the Operator's pesticide application, the Operator must immediately notify the NMFS in the case of an anadromous or marine species, or the FWS in the case of a terrestrial or freshwater species. This notification must be made by telephone immediately upon the Operator becoming aware of the adverse incident and must include at least the following information:

- (A) The caller's name and telephone number;
- (B) Operator name and mailing address;
- (C) The name of the affected species;
- (D) How and when the Operator became aware of the adverse incident;

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- (E) Description of the location of the adverse incident;
- (F) Description of the adverse incident and the pesticide product, including the EPA pesticide registration number for each product applied in the area of the adverse incident; and
- (G) Description of any steps the Operator has taken or will take to alleviate the adverse impact to the species.

Additional information on federally-listed threatened or endangered species and federally-designated critical habitat is available from NMFS (www.nmfs.noaa.gov) for anadromous or marine species or FWS (www.fws.gov) for terrestrial or freshwater species.

(4) Notification and Reporting for Adverse Incidents Involving Multiple Operators

Where multiple Operators are authorized for a discharge that results in an adverse incident, notification and reporting by any one of the Operators constitutes compliance for all of the Operators, provided a copy of the written report required in section 6(d)(2) is also provided to all of the other authorized Operators within 30 calendar days of the reportable adverse incident.

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(e) Reportable Spills and Leaks

(1) Spill, Leak, or Other Unpermitted Discharge Notification

Where a leak, spill, or other release into state waters containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302 occurs in any 24-hour period, an Operator must notify the Clean Water Branch at (808) 586-4309 during regular office hours, which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State hospital Operator at (808) 247-2191 outside of regular office hours and the National Response Center immediately at (800) 424-8802 in accordance with the requirements of 40 CFR Part 110, 40 CFR Part 117, and 40 CFR Part 302 as soon as the Operator has knowledge of the release. Contact information must be in locations that are readily accessible and available in the area where the spill, leak, or other unpermitted discharge may occur.

State or local requirements may necessitate also reporting spills or leaks to local emergency response, public health, or drinking water supply agencies.

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(2) Thirty-Day Spill, Leak, or Other Unpermitted Discharge Documentation

If an Operator becomes aware of a spill, leak, or other unpermitted discharge which triggers the notification in section 6(e)(1) and results in an adverse incident, then the Operator must report the incident per the guidelines in section 6(d)(1) and 6(d)(2). If the spill, leak, or other unpermitted discharge triggers the notification in section 6(e)(1), but does not result in an adverse incident, then the Operator must document and retain the following information within 30 calendar days of becoming aware of the situation:

- (A) Information required to be provided in section 6(e)(1);
- (B) Summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and
- (C) Any measures to prevent recurrence of such a spill or leak or other discharge, including notice of whether PDMP modifications are required as a result of the spill or leak.

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(f) Other Corrective Action Documentation.

For situations identified in section 6(a), other than for adverse incidents (addressed in section 6(d)), or reportable spills or leaks (addressed in section 6(e)), Operators must document the situation triggering corrective action and planned corrective action within 30 calendar days of becoming aware of that situation, and retain a copy of this documentation. This documentation must include the following information:

- (1) Identification of the condition triggering the need for corrective action review, including any ambient water quality monitoring that assisted in determining that discharges did not meet water quality standards;
- (2) Brief description of the situation;
- (3) Date the problem was identified;
- (4) Brief description of how the problem was identified, how the Operator learned of the situation, and date the Operator learned of the situation;
- (5) Summary of corrective action taken or to be taken, including date initiated and date completed or expected to be completed; and
- (6) Any measures to prevent reoccurrence of such an incident, including notice of whether PDMP modifications are required as a result of the incident.

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7. Recordkeeping and Annual Reporting

The recordkeeping and annual reporting requirements vary depending on the type of Operator and whether a Decision-maker is a small or large entity. Table 4 references applicable requirements for the range of Operators covered under this permit.

Table 4: Applicable Recordkeeping and Annual Reporting Requirements for Different Types of Operators.

| PGP Section | Applicable Type of Operator |
|-------------|---------------------------------------------------------------------------------------------|
| 7(a) | Recordkeeping: All Operators |
| 7(b) | Recordkeeping: All Operators who are Applicators, as defined in section 11-55-01 |
| 7(c) | Recordkeeping: Any Decision-maker required to submit an NOI and who is a small entity{1} |
| 7(d) | Recordkeeping: Any Decision-maker required to submit an NOI and who is a large entity{2} |
| 7(e) | Retention of Records: All Operators |
| 7(f) | Annual Reporting: Any Decision-maker required to submit an NOI and who is a large entity{2} |

{1} Small Entity - As defined in section 11-55-01, is any (1) public entity that serves a population of 10,000 or less or (2) private enterprise that does not exceed the Small Business Administration size standard as identified at 13 CFR 121.201.

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{2} Large Entity - As defined in section 11-55-01, is any (1) public entity that serves a population greater than 10,000 or (2) private enterprise that exceeds the Small Business Administration size standard as identified at 13 CFR 121.201.

Operators must keep written records as required in this permit for all discharges covered under this general permit. These records must be accurate and complete to demonstrate the Operator's compliance with the conditions of this general permit. Operator's may rely on records and documents developed for other obligations, such as requirements under FIFRA, and state or local pesticide programs, provided that all requirements of this general permit are satisfied.

The Director recommends that all Decision-makers, who are or may be required to submit an NOI based on their annual treatment area, keep records of acres or linear miles treated for all applicable use patterns covered under this general permit. The records should be kept up-to-date to help Decision-makers determine if the annual treatment area threshold, is exceeded during any calendar year.

(a) Recordkeeping For All Operators.

All Operators must keep the following records:

- (1) A copy of any Adverse Incident Reports (See section 6(d)(2));

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- (2) Rationale for any determination that reporting of an identified adverse incident is not required consistent with allowances identified in Section 6(d)(1)(B);
 - (3) A copy of any corrective action documentation (See section 6(f)); and
 - (4) A copy of any spill and leak or other unpermitted discharge documentation (See section 6(e)(2)).
- (b) Recordkeeping for All Operators who are Applicators.

After the adjustment period, any Operator who is an Applicator, as defined in section 11-55-01, must retain the following records:

- (1) Documentation of equipment calibration; and
- (2) Information on each treatment area to which pesticides are discharged, including:
 - (A) Description of each treatment area, including location and size (acres or linear feet) of treatment area and identification of any waters, either by name or by location, to which pesticide(s) are discharged;
 - (B) Pesticide use pattern(s) (i.e., mosquito and other flying insects,

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weed and algae, animal pest, or forest canopy);

- (C) Target pest(s);
 - (D) Documentation of any assessment of weather conditions in the treatment area prior to and during application to ensure application is consistent with all applicable federal requirements;
 - (E) Name of each pesticide product used including the EPA registration number;
 - (F) Quantity of each pesticide product applied to each treatment area;
 - (G) Pesticide application date(s); and
 - (H) Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.
- (c) Recordkeeping for Any Decision-maker Required to Submit an NOI and Who is a Small Entity.

After the adjustment period, any Decision-maker required to submit an NOI that is defined as a small entity, must retain the

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following records at the address provided on the NOI.

- (1) Copy of the NOI submitted to the Director, any correspondence exchanged between the Decision-maker and the Director specific to coverage under this permit, and a copy of the NGPC;
- (2) Documentation of equipment calibration (only if Decision-maker is also the Applicator);
- (3) Information on each treatment area to which pesticides are discharged, including:
 - (A) Description of treatment area, including location and size (acres or linear feet) of treatment area and identification of any state waters, either by name or by location, to which pesticides are discharged;
 - (B) Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy);
 - (C) Target pest(s) and explanation of need for pest control;
 - (D) Description of pest management measure(s) implemented prior to the first pesticide application;

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- (E) Company name and contact information for pesticide applicator;
 - (F) Name of each pesticide product used including the EPA registration number;
 - (G) Quantity of each pesticide product applied to each treatment area;
 - (H) Pesticide Application Start Date;
 - (I) Pesticide Application End Date; and
 - (J) Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.
- (d) Recordkeeping for Any Decision-maker Required to Submit an NOI and Who is a Large Entity.

After the adjustment period, any Decision-maker required to submit an NOI that is defined as a large entity must retain the following records at the Operator's business address provided on the NOI:

- (1) Copy of the NOI submitted to the Director, any correspondence exchanged between the Decision-maker and the

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Director specific to coverage under this permit, and a copy of the NGPC;

- (2) A copy of your PDMP, including any modifications made to the PDMP during the term of this general permit.
- (3) Copy of annual reports submitted to the Director;
- (4) Documentation of equipment calibration (only if Decision-maker is also the Applicator);
- (5) Information on each treatment area to which pesticides are discharged, including:
 - (A) Description of each treatment area, including location and size (acres or linear feet) of treatment area and identification of any state waters, either by name or by location, to which pesticide(s) are discharged;
 - (B) Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy);
 - (C) Target pest(s) and explanation of need for pest control;
 - (D) Action Thresholds;

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- (E) Method and/or data used to determine that action threshold(s) has been met;
- (F) Description of pest management measure(s) implemented prior to the first pesticide application;
- (G) Company name and contact information for pesticide applicator;
- (H) Name of each pesticide product used including the EPA registration number;
- (I) Quantity of each pesticide product applied to each treatment area;
- (J) Pesticide application date(s); and
- (K) Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.

(e) Retention of Records for All Operators.

All required records must be documented as soon as possible but no later than 14 calendar days following completion of each pesticide application. Operators must retain any records required under this permit for at least five (5) years after the

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Operator's coverage under this permit expires or is terminated. Operators must make available to the State, including EPA or an authorized representative of EPA, all records kept under this permit upon request and provide copies of such records, upon request.

- (f) Annual Reporting for Any Decision-maker Required to Submit an NOI and Who is a Large Entity.

Any Decision-makers required to submit an NOI and are defined as a large entity in section 11-55-01, must submit an annual report to the Director. Once a Decision-maker meets the obligation to submit an annual report, the Decision-maker must submit the annual report each calendar year thereafter for the duration of coverage under this general permit, whether or not the Decision-maker has discharges from the application of pesticides in any subsequent calendar year. The Decision-maker must submit the annual report to the Director no later than February 15, in pdf format (minimum of 300 dpi) on CD/DVD, of the following year for all pesticide activities covered under this permit occurring during the previous calendar year. Annual reporting requirements begin with those discharges occurring after the adjustment period.

Any Decision-maker required to submit an NOI based on an annual treatment area threshold must include information for the calendar year, with the first annual report required

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to include activities for the portion of the calendar year after the point at which the Decision-maker exceeded the annual treatment area threshold. If the Decision-maker first exceeds an annual treatment area threshold after December 1, an annual report is not required for that first partial year but an annual report is required thereafter, with the first annual report submitted also including information from the first partial year.

When Decision-makers terminate permit coverage, as specified in appendix A of chapter 11-55, an annual report must be submitted for the portion of the year up through the date of termination. The annual report is due no later than February 15 of the next year.

The annual report must contain the following information:

- (1) Decision-maker's name and contact information;
- (2) NPDES file number
- (3) Contact person name, title, e-mail address (if any), and phone number; and
- (4) For each treatment area, report the following information:
 - (A) Description of treatment area, including location and size (acres or linear feet) of treatment area and identification of any state

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waters, either by name or by location, to which pesticide(s) are discharged;

- (B) Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy) and target pest(s);
- (C) Company name(s) and contact information for pesticide applicator(s), if different from the Decision-maker;
- (D) Total amount of each pesticide product applied for the reporting year by the EPA registration number(s) and by application method (e.g., aerially by fixed-wing or rotary aircraft, broadcast spray, etc.);
- (E) Whether this pest control activity was addressed in the PDMP prior to pesticide application;
- (F) The approximate date(s) of any discharge;
- (G) If applicable, an annual report of any adverse incidents as a result of these treatment(s), for incidents, as described in Section 6(d)(1) of this general permit; and
- (H) If applicable, description of any corrective action(s), including

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spill responses, resulting from pesticide application activities and the rationale for such action(s).

(g) Submittal Requirements

- (1) All submittals shall be addressed to the Director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

- (2) The operator or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

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

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

- (3) The operator or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number on future correspondence or submittals may be a basis for delay of the processing of the document(s).

8. Notice of Intent Requirements

- (a) The owner or duly authorized representative shall submit a complete NOI in accordance with the deadline in Section 1(f), Table 2 or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or duly authorized representative shall include the following information in the notice of intent:
 - (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) Pesticide use activities that trigger the PGP requirements;
 - (3) If the operator is a Large entity that triggers developing a PDMP and submittal of an annual report;

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- (4) Pest Management Area name and map of the location of the area or description of the Pest Management Area in detail; and
- (5) Name of the water quality impaired waters; class 1, inland or class AA, marine waters, or areas restricted in accordance with the State's "no discharge" policy; or to surface drinking waters and their tributaries up-stream for which permit coverage is being requested and demonstration of eligibility for such discharges.

Modified

- 23) HAR §§ 11-55-01, 11-55-04, 11-55-15, 11-55-34.02(b), 11-55-34.04(b), 11-55-34.06, 11-55-34.08(j), 11-55-34.09(d) and (e), 11-55-34.11, 11-55-40, Appendices A through L amended**

Relating to Definitions; NPDES permit; Notice of intent; Notice of general permit coverage; Field citations; December 6, 2013 for NPDES General permits

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-55
Hawaii Administrative Rules

(insert adoption date)

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

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 55

WATER POLLUTION CONTROL

| | |
|-----------|----------------------------------------------------------------------------------------|
| §11-55-01 | Definitions |
| §11-55-02 | General policy of water pollution control |
| §11-55-03 | General prohibition |
| §11-55-04 | Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion |
| §11-55-05 | Receipt of federal information |
| §11-55-06 | Transmission of information to regional administrator |
| §11-55-07 | Identity of signatories to NPDES forms |
| §11-55-08 | Formulation of tentative determinations and draft permit |
| §11-55-09 | Public notice of applications |
| §11-55-10 | Fact sheet |
| §11-55-11 | Notice to other government agencies |
| §11-55-12 | Public access to information |
| §11-55-13 | Public hearings |
| §11-55-14 | Public notice of public hearings |
| §11-55-15 | Issuance of NPDES permits |
| §11-55-16 | Modification or revocation and reissuance of NPDES permits |

| | |
|--------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| §11-55-17 | Termination of permits and denial of renewal |
| §11-55-18 | Reporting discontinuance or dismantlement |
| §11-55-19 | Application of effluent standards and limitations, water quality standards, and other requirements |
| §11-55-20 | Effluent limitations in issued NPDES permits |
| §11-55-21 | Schedule of compliance in issued NPDES permits |
| §11-55-22 | Compliance schedule reports |
| §11-55-23 | Other terms and conditions of issued NPDES permits |
| §11-55-24 | National pretreatment standards and users of publicly owned treatment works |
| §11-55-25 | Transmission to regional administrator of proposed NPDES permits |
| §11-55-26 | Transmission to regional administrator of issued NPDES permits |
| §11-55-27 | Renewal of NPDES permits |
| §11-55-28 | Monitoring |
| §11-55-29 | Recording of monitoring activities and results |
| §11-55-30 | Reporting of monitoring results |
| §11-55-31 | Sampling and testing methods |
| §11-55-32 | Malfunction, maintenance, and repair of equipment |
| §11-55-33 | Agency board membership |
| §11-55-34 | General permit definitions |
| §11-55-34.01 | General permit policy |
| §11-55-34.02 | General permit authority and adoption |
| §11-55-34.03 | General permit terms |
| §11-55-34.04 | General permit conditions |
| §11-55-34.05 | Requiring an individual permit |
| §11-55-34.06 | [Relationship of general and individual permits] <u>Reserved</u> |
| §11-55-34.07 | Degree of waste treatment |
| §11-55-34.08 | Notice of intent |
| §11-55-34.09 | Notice of intent review, notice of general permit coverage, additional conditions, terms, renewals, effective dates, and automatic coverage |

| | |
|--------------|---------------------------------------------------------------------------------------------------------------------------------|
| §11-55-34.10 | Review of coverage issues and notice of intent and notice of general permit coverage decisions |
| §11-55-34.11 | Notice of general permit coverage [modification,] revocation [and reissuance,] and termination |
| §11-55-34.12 | General permit compliance |
| §11-55-35 | Penalties and remedies |
| §11-55-36 | Hearings and appeals |
| §11-55-37 | Severability clause |
| §11-55-38 | Repealed |
| §11-55-39 | Public interest |
| §11-55-40 | Field Citations |
| Appendix A | Department of Health Standard General Permit Conditions |
| Appendix B | NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities |
| Appendix C | NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity |
| Appendix D | NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities |
| Appendix E | NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day |
| Appendix F | NPDES General Permit Authorizing Discharges of Hydrotesting Waters |
| Appendix G | NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering |
| Appendix H | NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals |
| Appendix I | NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities |

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- Appendix J** NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems
- Appendix K** NPDES General Permit Authorizing Discharges of Storm Water from Small Municipal Separate Storm Sewer Systems
- Appendix L** NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks
- Appendix M NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides

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

§11-55-01 Definitions

"13 CFR" means the Code of Federal Regulations, Title 13, Business Credit and Assistance, revised as of [January 1, 2011] January 1, 2013 unless otherwise specified.

"40 CFR" means the Code of Federal Regulations, Title 40, Protection of Environment, revised as of [July 1, 2011] July 1, 2012 unless otherwise specified.

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

"Action threshold" means the point at which pest populations or environmental conditions necessitate that pest control action be taken based on economic, human health, aesthetic, or other effects. An action threshold may be based on current and/or past

environmental factors that are or have been demonstrated to be conducive to pest emergence and/or growth, as well as past and/or current pest presence. Action thresholds are those conditions that indicate both the need for control actions and the proper timing of such actions.

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

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

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

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

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

submerged or emergent aquatic plants; other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.). The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin rashes) or domesticated animals that occur either from direct contact with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or animals containing pesticides) to state waters that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

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

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

"Annual treatment area threshold" means the additive area (in acres) or linear distance (in miles) in a calendar year to which a decision-maker is authorizing and/or performing pesticide applications in that area for activities covered under Appendix M. For calculating annual treatment areas for mosquitoes and other flying insect pest control and forest canopy pest for comparing with any threshold in table 1 of Appendix M, count each pesticide application activity to a treatment area (i.e., that area where a pesticide application is intended to provide pesticidal benefits within the pest management area) as a separate area treated. For example, applying pesticides three times a year to the same three thousand acre site should be counted as nine thousand acres of treatment area for purposes of determining if such an application exceeds an annual treatment area threshold. Similarly, for calculating annual treatment areas for weed and algae control and animal pest control for comparing with any threshold in table 1 of Appendix M, calculations should

include either the linear extent of or the surface area of waters for each application made to state waters or at water's edge adjacent to state waters. For calculating the annual treatment area, count each treatment area as a separate area treated. Also, for linear features (e.g., a canal or ditch), count the length of the linear feature each time an application is made to that feature during the calendar year, including counting separately applications made to each bank of the water feature if pesticides are applied to both banks. For example, applications four times a year to both banks of a three-mile long reach of stream will count as a total of twenty four linear miles (three miles * two banks * four applications per year = twenty four miles to which pesticides are applied in a calendar year).

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

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

- (1) Approved or permitted to remain in effect by the Administrator under Section 303(a) or Section 303(c) of the Act, 33 U.S.C. §1313(a) or §1313(c); or
- (2) Promulgated by the Administrator under Section 303(b) of the Act, 33 U.S.C. §1313(b).

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

"Best management practices" or "BMPs" means schedules of activities, prohibitions or designations of practices, maintenance procedures, and other

management practices to prevent or reduce the pollution of state waters. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

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

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

- (1) is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi;
- (2) is a procaryotic microorganism, including, but not limited to, eubacteria and archaebacteria; or
- (3) is a parasitically replicating microscopic element, including but not limited to, viruses. (See 40 CFR 158.2100(b)).

"Biochemical pesticide" means a pesticide that is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and has a non-toxic mode of action to the target pest(s). (See 40 CFR 158.2000(a)(1)).

"Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or produce thereof. (See 40 CFR 174.3).

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

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

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

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

"Cooling water" means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage of a facility's intake flow that is used for cooling purposes in 40 CFR §125.91(a)(4).

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

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

"Decision-maker" means any entity with control over the decision to perform pesticide applications

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including the ability to modify those decisions that result in a discharge to state waters.

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

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

"Department" means the state department of health.

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

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

"Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to state waters from any point source, or any addition of any pollutant or combination of pollutants to the water of the contiguous zone or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation. This includes additions of pollutants into state waters from: surface runoff that is collected or channeled by man; or discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. (Excerpted from 40 CFR 122.2).

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

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

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

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

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

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

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

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

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

"HRS" means the Hawaii Revised Statutes.

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

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

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

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

"Industrial user" means a source of indirect discharge.

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

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

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

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

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

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

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

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

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

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

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318, and 405 of the Act.

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

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

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

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

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

"Non-target Organisms" includes the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

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

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

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

"NPDES form" means any form provided by the Administrator or director for use in obtaining or

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

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

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

"Once-through cooling water system" means a system designed to withdraw water from a natural or other water source, use it at the facility to support contact or noncontact or both cooling uses, and then discharge it to a waterbody without recirculation. Once-through cooling systems sometimes employ canals, channels, ponds, or nonrecirculating cooling towers to dissipate waste heat from the water before it is discharged.

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

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

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

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

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

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

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

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

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

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

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

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

agriculture or agricultural storm water runoff, except return flows from agriculture irrigated with reclaimed water. (See 40 CFR §122.2).

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

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

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

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

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

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

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

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

"Small entity" means any:

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

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

- (1) Owned or operated by the United States, a state, city, town, borough, county, parish,

district, association, or other public body (created by or under state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Act that discharges to state waters;

- (2) Not defined as "large" or "medium" municipal separate storm sewer systems under 40 CFR §122.2(b)(4) and (b)(7), or designated under section 11-55-04(a)(4) or 11-55-34.08(k)(2) or 40 CFR §122.26(a)(1)(v); and
- (3) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

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

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

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

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

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

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

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

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

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

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

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

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

"Water quality impaired" see "Impaired Water".

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

The definitions of the following terms contained in Section 502 of the Act, 33 U.S.C. §1362, shall be applicable to the terms as used in this part unless the context otherwise requires: "biological monitoring," "contiguous zone," "discharge," "discharge of a pollutant," "effluent limitations," "municipality," "navigable waters," "ocean," "pollutant," "schedule of compliance," "territorial seas," and "toxic pollutant." [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; am and comp

] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 183B-1, 342D-1, 342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subpart A and D; Part 125; §122.2)

- §11-55-02 General policy of water pollution control. (a) It is the public policy of this State:
- (1) To conserve state waters;
 - (2) To protect, maintain, and improve the quality of state waters:
 - (A) For drinking water supply, and food processing;
 - (B) For the growth, support, and propagation of shellfish, fish, and other desirable species of marine and aquatic life;
 - (C) For oceanographic research;
 - (D) For the conservation of coral reefs and wilderness areas; and

- (E) For domestic, agricultural, industrial, and other legitimate uses;
- (3) To provide that no waste be discharged into any state waters without first being given the degree of treatment necessary to protect the legitimate beneficial uses of the waters;
- (4) To provide for the prevention, abatement, and control of new and existing water pollution; and
- (5) To cooperate with the federal government in carrying out the objectives listed in paragraphs (1) through (4).

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

(c) Permits issued under this chapter, and the related applications, processing, issuance, and post-issuance procedures and requirements, shall be at least as stringent as those required by 40 CFR §123.25(a). [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1251, 1288, 1311, 1312, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.25(a))

§11-55-03 General prohibition. No person shall violate any provision of section 342D-50, HRS, or any NPDES permit issued under this chapter. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp] (Auth: HRS §§342D-4, 342D-5, 603-23; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50, 603-23; 33 U.S.C. §§1251, 1342, 1370, 1251-

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1387; 40 CFR Parts 122; 123; 124, Subparts A and D;
125)

§11-55-04 Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion. (a) Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, or substantially altering the quality of any discharges, or substantially increasing the quantity of any discharges, a person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), submit a complete notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M) or, for certain storm water discharges, meet all requirements for a conditional "no exposure" exclusion. Submittal of a notice of intent for coverage under a general permit shall comply with and be regulated by sections 11-55-34.08 through 11-55-34.10. Conditional "no exposure" exclusions shall comply with and be regulated by subsection (e). An NPDES permit application shall be submitted:

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

established under Section 208(b)(2)(C) of the Act, 33 U.S.C. §1288(b)(2)(C), and any other applicable water quality standards and applicable effluent standards and limitations;

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

separate storm sewer system with the following elements, at a minimum: discharge to sensitive waters, high growth or growth potential, high population density, contiguity to an urbanized area, significant contributor of pollutants to state waters, and ineffective protection of water quality by other programs. The NPDES permit application shall be submitted within one hundred eighty days of notice from the department;

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

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

conditions. Only one permit is required for a single facility or activity.

(c) The director may require the submission of additional information after an NPDES permit application has been submitted, and shall ensure that, if an NPDES permit application is incomplete or otherwise deficient, processing of the application shall not be completed until the owner or its duly authorized representative has supplied the missing information or otherwise corrected the deficiency.

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

- (1) When an NPDES permit application is submitted for an individual permit for a substantial alteration or addition to a treatment works or waste outlet and where an individual permit had previously been granted for the treatment works or waste outlet, the owner or operator shall pay a \$1,000 filing fee which shall be submitted with the NPDES permit application;
- (2) A new owner of a discharge facility covered by an individual permit shall submit a new NPDES permit application for a new individual permit unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The owner or operator shall pay a \$500 filing fee which shall be submitted with the NPDES permit application or notice of automatic transfer that meets 40 CFR §122.61(b);
- (3) An NPDES individual permittee shall submit a new NPDES permit application for the transfer of discharge from one permanent location to another permanent location. The owner or operator shall pay the \$1,000 filing fee

which shall be submitted with the NPDES permit application;

- (4) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.

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

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

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

(f) (Reserved)

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

(h) (Reserved) [Eff 11/27/81; am and comp 10/29/92; am 09/23/96; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; am and comp 6/25/09; am and comp 10/21/12; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1288(b)(2)(C), 1316, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21, 122.23, 122.24, 122.25, 122.26, 122.27, 122.61, 123.25(a), 124.3)

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

- (1) Prompt transmittal to the director from the regional administrator of copies of any NPDES permit applications, or other relevant information collected by the regional administrator prior to the state or interstate agency's participation in the NPDES; and
- (2) A procedure to ensure that the director will not issue an individual permit on the basis of any NPDES permit application received from the regional administrator which the regional administrator has identified as incomplete or otherwise deficient until the director has received information sufficient to correct the deficiency to the satisfaction of the regional administrator. [Eff 11/27/81; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/25/09; comp 10/21/12; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS

- (7) A brief description of the nature of the hearing, including the rules and procedures to be followed; and
- (8) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:
 - (A) Obtain further information;
 - (B) Request a copy of each draft permit prepared under section 11-55-08(b);
 - (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
 - (D) Inspect and copy NPDES forms and related documents.

(c) All publication and mailing costs associated with the public notification of the director's determinations to hold public hearing with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

§11-55-15 Issuance of NPDES permits. (a) The director may issue an NPDES permit for any period not exceeding five years and may renew a permit for any additional periods not exceeding five years. The director may administratively extend the permit until the effective date of the new permit for discharges

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that the permit covered prior to expiration. If the director administratively extends the permit, all permit limitations and conditions remain in force and effect. Projects that do not submit a renewal NPDES application prior to the expiration date may not be administratively extended.

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

- (1) The existing treatment works or waste outlet is designed, built, and equipped in accordance with:
 - (A) The best practicable control technology currently available or the best available technology economically achievable or the best conventional pollutant control technology for point sources other than publicly owned treatment works; and
 - (B) For publicly owned treatment works, secondary treatment or the best practicable waste treatment technology, so as to reduce wastes to a minimum;
- (2) New treatment works or waste outlets are designed and built in compliance with the applicable standards of performance;
- (3) The new or existing treatment works or waste outlet is designed and will be constructed or modified to operate without causing a violation of applicable rules of the department;
- (4) The new or existing treatment works or waste outlet will not endanger the maintenance or attainment of applicable water quality standards;
- (5) The facility shall comply with effluent standards and limitations, water quality standards and other requirements, as applicable in sections 11-55-19, 11-55-20, and 11-55-22; and
- (6) The facility shall comply with sections 11-55-27 through 11-55-32.

- (c) NPDES permits at a minimum shall include conditions and requirements at least as stringent as:
- (1) Those conditions contained in sections 11-55-16, 11-55-17, 11-55-23, and 40 CFR §122.41;
 - (2) The requirement that the owner or operator provide the facilities as necessary for monitoring of the authorized waste discharge into state waters and the effects of the wastes on the receiving state waters. The monitoring program shall comply with sections 11-55-28 through 11-55-32;
 - (3) The requirement of compliance with any applicable effluent standards and limitations, water quality standards, and other requirements imposed by the director under sections 11-55-19, 11-55-20, and 11-55-22; and
 - (4) Conditions requested by the Corps of Engineers and other government agencies as described in 40 CFR §124.59.
- (d) [The director may issue a permit to an existing facility which does not or cannot presently comply with subsections (b) and (c) only if the permit includes a schedule of compliance with specific deadlines for bringing the facility into compliance with subsections (b) and (c). Schedule of compliance shall comply with section 11-55-21.] In permits where more stringent effluent limitations are included, compliance schedules may be provided in the permits if the requirements of 11-55-21 and 40 CFR 122.2 and 122.47 are met.
- (e) In acting upon an NPDES permit application for an individual permit the director shall deny the application unless the information submitted shows that the new or existing treatment works or waste outlet described in the NPDES permit application can, conditionally or otherwise, meet the conditions of subsection (b) or (c).
- (f) Notwithstanding the provisions of subsections (a) through (e), the director shall not issue a permit

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or grant a modification or variance for any of the following:

- (1) Discharge of any radiological or biological warfare agent, or high-level radioactive waste into state waters;
- (2) Discharge which the Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage and navigation;
- (3) Discharge to which the regional administrator has objected in writing under any right to object provided the Administrator in Section 402(d) of the Act, 33 U.S.C. §1342(d);
- (4) Discharge from a point source which is in conflict with a plan or amendment thereto approved under Section 208(b) of the Act, 33 U.S.C. §1288(b); or
- (5) When prohibited by 40 CFR §122.4.

(g) The issuance of a permit does not convey any property rights of any sort or any exclusive privilege. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.4, 122.5, 122.41, 122.43, 122.44, 122.45, 122.46, 123.25(a), 124.5, 124.59)

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

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- (6) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 Federal Register 15202 (May 1, 1974); or
- (7) Any other appropriate division or combination of boundaries. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.2, 122.28, 123.25(a)(11))

§11-55-34.01 General permit policy. It is the policy of the State that general permits shall comply, at a minimum, with federal requirements for general permits, especially 40 CFR §122.28. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

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

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

- (1) Appendix B, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial [Activities, " [dated October 2007,]Activities" for discharges composed entirely of storm water

- associated with certain industrial activities as identified in 40 CFR §§122.26(b)(14)(i) through 122.26(b)(14)(ix) and §122.26(b)(14)(xi);
- (2) Appendix C, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction [Activity," dated October 2007,]Activity" for storm water discharges from construction activities which result in the disturbance of five acres or more of total land area or small construction activities which result in the disturbance of one to less than five acres of total land area or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area;
 - (3) Appendix D, titled "NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial [Activities," dated October 2007,]Activities" for the discharge of treated effluent from the leaking underground storage tank remedial activities;
 - (4) Appendix E, titled "NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per [Day," dated October 2007,]Day" for the discharge of once-through, non-contact cooling water for one million gallons per day or less;
 - (5) Appendix F, titled "NPDES General Permit Authorizing Discharges of Hydrotesting [Waters," dated October 2007,]Waters" for the discharge of non-polluted hydrotesting water;
 - (6) Appendix G, titled "NPDES General Permit Authorizing Discharges Associated with Construction Activity [Dewatering," dated October 2007,]Dewatering" for the discharge

- of dewatering effluent from a construction activity;
- (7) Appendix H, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals," dated October 2007,] Terminals" for the discharge of treated process wastewater effluent from petroleum bulk stations and terminals;
 - (8) Appendix I, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities," dated October 2007,] Activities" for the discharge of treated process wastewater effluent associated with well drilling activities;
 - (9) Appendix J, titled "NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems," dated October 2007,] Systems" for the discharge of treated process wastewater effluent from recycled water distribution systems;
 - (10) Appendix K, titled "NPDES General Permit Authorizing Discharges of Storm Water and Certain Non-Storm Water Discharges from Small Municipal Separate Storm Sewer Systems," dated October 2007,] Systems" for the discharge of storm water and certain non-storm water discharges from a small municipal separate storm sewer system as defined in 40 CFR §122.26(b)(16);
 - (11) Appendix L, titled "NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks," dated October 2007,] Tanks" for the discharge of circulation water from decorative ponds or tanks; and
 - (12) Appendix M, titled "NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides," dated

[January]August 2012. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; am and comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122;; 124; 125; §§122.26, 122.28, 123.25(a)(11))

§11-55-34.03 General permit terms. General permits shall be for terms of not more than five years. [Eff and comp 10/29/92; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 10/21/12; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.46, 123.25(a)(11))

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

(b) **Appendix A**, titled "Department of Health Standard General Permit [Conditions," dated October 2007]Conditions" and located at the end of this chapter is adopted, incorporated by reference, and applies to each general permit.

(c) Special conditions apply as specified in each general permit, e.g., appendices B through M, respectively. [Eff and comp 10/29/92; am and comp

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09/22/97; comp 01/06/01; am and comp 11/07/02; comp
08/01/05; am and comp 10/22/07; comp 6/15/09; am and
comp 10/21/12; am and comp] (Auth: HRS
§§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387;
40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5,
342D-50; 33 U.S.C. §§1311, 1318, 1319, 1321, 1323,
1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123;
124; 125; §§122.26, 122.28, 122.41, 122.42,
123.25(a)(11))

§11-55-34.05 Requiring an individual permit.

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

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

disposal practice covered by the general permit; or

- (7) The discharge(s) is a significant contributor of pollutants to state waters. In making this determination, the director may consider the following factors:
- (A) The location of the discharge with respect to state waters;
 - (B) The size of the discharge;
 - (C) The quantity and nature of the pollutants discharged to the state waters; and
 - (D) Other relevant factors.

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

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

(d) When an individual permit is issued to an owner or operator otherwise covered by a general permit, the coverage of the general permit to the individual permittee is automatically terminated on the effective date of the individual permit.

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

(f) The director may require any activity and/or discharge that has commenced prior to obtaining the required coverage under a general permit to apply for an individual NPDES permit. For construction activities which have commenced prior to obtaining general permit coverage, restoration of the site to preconstruction conditions may re-qualify it for coverage under the general permit. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28(b)(3)[(i)], 123.25(a)(11))

§11-55-34.06 [Relationship of general and individual permits. (a) Any owner or operator covered by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application with reasons supporting the request to the director.

(b) When an individual permit is issued to an owner or operator otherwise covered by a general permit, the coverage of the general permit to the individual permittee is automatically terminated on the effective date of the individual permit.

(c) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source. [Eff and comp 10/29/92; am and

comp 09/22/97; comp 01/06/01; comp 11/07/02; comp
08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12;
comp] (Auth: HRS §§342D-4, 342D-5; 33
U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp:
HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C.
§§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123;
124; 125; §122.28(b)(3)(iii-v),
123.25(a)(11))](Reserved)

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

- (1) Effluent limitations established by the EPA under Sections 301, 302, 306, 307, 318, and 405 of the Act;
- (2) Criteria and standards for best management practices established by the EPA under Section 304(e) of the Act;
- (3) Notwithstanding paragraphs (1) and (2), more stringent effluent limitations may be required as deemed necessary by the director:
 - (A) To meet any existing federal laws or regulations; or
 - (B) To ensure compliance with any applicable state water quality standards, effluent limitations, treatment standards, or schedule of compliance; and
- (4) Calculations and specifications of effluent limits and standards shall be made in accordance with the provisions of federal regulations, 40 CFR §122.45. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C.

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§§1311, 1312, 1314, 1316, 1317, 1318, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

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

(b) A notice of intent shall:

- (1) Be submitted on forms provided by the director;
- (2) Comply with the notice of intent requirements of the respective general permit; and
- (3) Be accompanied by all pertinent information which the director may require in order to establish effluent limitations or best management practices, including, but not limited to, complete engineering reports, schedule of progress, plans, specifications, maps, measurements, quantitative and qualitative determinations, records, and all related materials.

(c) The director may require that all reports, plans, specifications, and other material submitted to the director be prepared by a licensed professional engineer.

(d) Material submitted shall be complete and accurate.

(e) Any notice of intent form submitted to the director shall be signed in accordance with section 11-55-07(a).

(f) All other reports or responses to requests for information required by the director shall be signed in accordance with section 11-55-07(b).

(g) Any change in the written authorization submitted to the director under subsection (f) which occurs after the issuance of a permit shall be reported to the director by submitting a copy of a new written authorization which meets the requirements of

subsections (e) and (f).(h) Any person signing a document under subsections (e) and (f) shall make a certification in accordance with 40 CFR §122.22(d).

(i) Each owner or operator who submits a notice of intent to be covered under the general permit provisions or for renewal of general permit coverage shall pay a filing fee of \$500. This filing fee shall be submitted with the notice of intent and shall not be refunded nor applied to any subsequent NPDES individual permit application following final action denying coverage under the general permit provisions.

- (1) When a notice of intent is submitted to the director for a substantial alteration or addition to the treatment works or waste outlet and where a general permit authorization has previously been granted for the treatment works or waste outlet, the owner or operator shall be assessed the fee of \$500;
- (2) A new owner or operator or both of a discharge facility covered by the general permit provisions shall submit a new notice of intent unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The new owner or operator shall be assessed the fee of \$500;
- (3) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.

(j) A notice of intent shall be submitted to the director at least thirty days before the earlier of:

- (1) The beginning of any discharge, which is not covered under Appendix C or except for coverage under Appendix M for a declared pest emergency situation where the notice of intent shall be submitted no later than thirty days after beginning [discharge]the pesticide discharge;
- (2) The beginning of any construction activity which is covered under Appendix C[;], unless

- coverage is required for an emergency-related construction activity where an NOI shall be submitted no later than 30 calendar days after the start of construction activities;
- (3) The expiration date of the existing general permit; or
 - (4) The expiration date of the existing notice of general permit coverage.
 - (k) (Reserved).
 - (l) (Reserved).
 - (m) A notice of intent shall be submitted to the director for:
 - (1) Any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill; or
 - (2) Any discharge from an existing regulated small municipal separate storm sewer system which is qualified to obtain coverage under the general permit. A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas are designated to submit a notice of intent if the department determines that the storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment

of designated uses, or other significant water quality impacts, including habitat and biological impacts. The notice of intent shall be submitted within thirty days of notice from the department.

(n) (Reserved).

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

§11-55-34.09 Notice of intent review, notice of general permit coverage, additional conditions, terms, renewals, effective dates, and automatic coverage. (a) After receipt of a notice of intent, the director may notify the owner or operator or its duly authorized representative in writing that the notice of intent is complete or incomplete, whether the proposed activity or discharge(s) is covered under a general permit, or whether an individual permit application is required. The director may deny without prejudice the notice of intent to be covered by a general permit if the owner or operator or its duly authorized representative does not respond or failed to respond in writing within

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thirty days of the date of the director's written notification that the notice of intent is incomplete.

(b) After receipt of the complete notice of intent, the director may notify the owner or operator in writing of a notice of general permit coverage. This includes issuing a notice of general permit coverage after automatic coverage applies under subsection (e)(2) even if the owner or operator has not waived automatic coverage. The director may impose conditions in a notice of general permit coverage or add conditions to an issued notice of general permit coverage to ensure that the activity or discharge(s) complies with the terms and conditions of the general permit and to ensure that state water quality standards will not be violated.

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

(d) The director may, automatically or by notification, administratively extend a notice of general permit coverage upon receipt of a complete notice of intent for renewal of a notice of general permit coverage before the expiration of the general permit or [the term of]when the notice of general permit coverage[,] specifies, whichever occurs first. A notice of general permit coverage shall be considered to have been automatically extended unless the department informs the Permittee otherwise. An administrative extension of an NGPC granted, automatically or by notification, for a project which later is found to be in non-compliance will be automatically terminated and may be required to apply for individual NPDES permit coverage. If administratively extended, the terms and conditions of the expired permit will continue to be effective for projects that submitted NOIs prior to the expiration date. The department intends that projects that do not submit NOIs prior to the expiration date will not be administratively extended.

The permittee who submits a notice of intent for renewal of the notice of general permit coverage shall

be treated as an owner or operator applying for permit renewal under section 342D-6(h), HRS.

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

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

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

- (1) The notice of intent may later be found to be incomplete by the director or by a court;
- (2) The person may not be covered under the terms of the general permit, even if the notice of intent is complete;
- (3) The person may be acting in noncompliance with the general permit or this chapter, even if the person is complying with its notice of intent; and
- (4) The director may modify, revoke and reissue, or terminate a notice of general permit coverage under section 11-55-34.11. The director may revoke automatic coverage and issue a notice of general permit coverage or terminate an automatic coverage under section 11-55-34.11.

The person claiming automatic coverage on the notice of intent shall submit all site-specific plans, general contractor information, and all necessary permits and

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approvals (i.e., county-approved erosion and sediment control plan or approved substitute, approval to connect or discharge to a separate storm sewer system, etc.). Nothing in or with the notice of intent shall be submitted less than thirty days before the start of construction activities.

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

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

(i) All submittals in compliance with a condition of the notice of general permit coverage shall be signed in accordance with section 11-55-34.08(e), (f), or (g) and include a certification in accordance with 40 CFR §122.22(d). [Eff and comp 10/29/92; am 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp

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

§11-55-34.10 Review of coverage issues and notice of intent and notice of general permit coverage decisions. Any interested person may petition the director under section 91-8, HRS, for a declaratory ruling on whether an individual permit is required for, or a general permit covers, a discharge. The director's decision requiring a person to apply for an individual permit or excluding a person from general permit coverage shall remain effective pending the outcome of the petition. [Eff and comp 10/29/92; am

and comp 09/22/97; comp 01/06/01; §11-55-34.1; am, ren,
and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp
6/15/09; comp 10/21/12; comp] (Auth:
HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-
1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4,
342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-
1387; 40 CFR Parts 122; 123; 124; 125; §122.28,
123.25(a)(11))

§11-55-34.11 Notice of general permit coverage
[modification,] revocation [and reissuance, and] and/or
termination. [(a)] A notice of general permit
coverage and automatic coverage under section
11-55-34.09(e)(2) may be [modified or revoked and
reissued under the criteria and procedures of section
11-55-16.

(b) A notice of general permit coverage and
automatic coverage under section 11-55-34.09(e)(2) may
be] terminated under the criteria of sections 11-55-17
and 11-55-34.05 and the procedures of section
11-55-17(d).] revoked and/or terminated in accordance
with section 11-55-34.05 or as determined by the
director. [Eff and comp 10/29/92; am and comp
09/22/97; comp 01/06/01; am and comp 11/07/02; comp
08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12;
am and comp] (Auth: HRS §§342D-4,
342D-5; 33 U.S.C. §§1342, 1370, 1251-1387;
40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5,
342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387;
40 CFR Parts 122; 123; 124; 125; §122.28,
123.25(a)(11))

§11-55-34.12 General permit compliance. Any
person who discharges under a general permit shall
comply with section 11-55-34.04, all general permit
standard conditions, all applicable special conditions,
and all applicable additional notice of general permit
coverage conditions. [Eff and comp 10/29/92; am and
comp 09/22/97; comp 01/06/01; comp 11/07/02; comp

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08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12;
comp] (Auth: HRS §§342D-4, 342D-5; 33
U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp:
HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C.
§§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123;
124; 125; §122.28, 123.25(a)(11))

§11-55-35 Penalties and remedies. Any person who
violates any provision of this chapter or the terms or
conditions of any permit issued under this chapter
shall be subject to the penalties and remedies provided
in chapter 342D, HRS. [Eff 11/27/81; am and comp
10/29/92; am and comp 09/22/97; comp 01/06/01; am and
comp 11/07/02; comp 08/01/05; comp 10/22/07; comp
6/15/09; comp 10/21/12; comp] (Auth:
HRS §§342D-4, 342D-5, 342D-30, 342D-31, 342D-32,
342D-33, 342D-34, 342D-35; 33 U.S.C. §§1251, 1342,
1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-9,
342D-11, 342D-17, 342D-30, 342D-31, 342D-32, 342D-33,
342D-34, 342D-35; 33 U.S.C. §§1251, 1342, 1370, 1251-
1387; 40 CFR Parts 122; 123; 124, Subparts A and D;
125)

§11-55-36 Hearing and appeals. Hearings before
the director on any violations of these rules and
appeals from any of the director's decisions shall
comply with chapters 91 and 342D, HRS. [Eff 11/27/81;
am and comp 10/29/92; am and comp 09/22/97; comp
01/06/01; comp 11/07/02; comp 08/01/05; am and comp
10/22/07; comp 6/15/09; comp 10/21/12; comp
] (Auth: HRS §§342D-4, 342D-5, 342D-12,
342D-56, 342D-57; 33 U.S.C. §§1251, 1342, 1370) (Imp:
HRS Ch. 91 and §§342D-2, 342D-4, 342D-5, 342D-6,
342D-9, 342D-11, 342D-12, 342D-31; 33 U.S.C. §§1251,
1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124,
Subparts A and D; 125)

§11-55-37 Severability clause. If any provision of this chapter, or its application to any person or circumstance, is held invalid, the application of the provision to other persons or circumstances, and the remainder of this chapter, shall not be affected. [Eff 11/27/81; comp 10/29/92; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-38 Repealed. [Eff and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; R 6/15/09] (Auth: HRS ch. 6E, §§6E-1, 6E-42(a)) (Imp: HRS ch. 6E, §§6E-1, 6E-42(a))

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

- (1) The environmental impact of the proposed action beside the water quality effects already covered in the application and supporting materials;
- (2) Any adverse environmental effects which cannot be avoided should the action be implemented;
- (3) The alternatives to the proposed action;
- (4) The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity;
- (5) Any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented; and
- (6) The optimum balance between economic development and environmental quality.

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

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

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

(1) Offer to settle; penalties.

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

(i) Any person who causes or allows a discharge of pollutants into

state waters or municipal
separate storm sewer systems
without coverage under an
[individual permit or notice of
general permit coverage or
conditional "no exposure"
exclusion;] NPDES permit, or in
excess of limitations established
by an NPDES permit;

- (ii) Any person who begins [any
construction activity which
involves the disturbance of one
acre or more of total land area
or any construction activity that
involves the disturbance of less
than one acre of total land area
that is part of a larger common
plan of development or sale if
the larger common plan will
ultimately disturb one acre or
more of total land area and who
has not obtained coverage under
an individual permit or notice of
general permit coverage;] an
activity and/or discharges
pollutants prior to obtaining the
required individual NPDES permit,
coverage under a general permit,
and/or authorization from the
director;
- (iii) Any person who fails to correctly
install, implement, maintain, or
repair site best management
practices as called for in their
storm water pollution control
plan or best management practices
plan or other plan;
- (iv) Any person who fails to retain a
copy of the NPDES permit
application or notice of intent
or "no exposure" certification;

storm water pollution control plan or best management practices plan or other plan, and all subsequent revisions; individual NPDES permit or notice of general permit coverage or conditional "no exposure" exclusion on-site or at a nearby office or field office[.];

(v) Any person who fails to submit documents, reports, and/or submittals required by the applicable NPDES permit, whole or in part, including but not limited to discharge monitoring reports, monthly compliance information, pollution prevention plans, notification to the director, and/or notices of cessation.

(B) A field citation shall assess the following penalties for violations:

(i) Any person who violates paragraph (1)(A)(i) shall be fined \$500 for first violation, and \$1,000 for a subsequent violation;

(ii) Any person who violates paragraph (1)(A)(ii) shall be fined \$500 for the first violation, and \$1,000 for a subsequent violation;

(iii) Any person who violates paragraph (1)(A)(iii) shall be fined \$500 for first violation, and \$1,000 for a subsequent violation;

(iv) Any person who violates paragraph (1)(A)(iv) shall be fined \$100 for first violation, and \$200 for a subsequent violation[.];

(v) Any person who violates paragraph 1(A)(v) shall be fined \$500 for

first violation, and \$1,000 for a subsequent violation.

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

other law. For all other violations the director retains authority to seek any available remedies.

- (3) Form of citation. The department shall prescribe a field citation form." [Eff and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp _____](Auth: HRS §§321-11, 342D-1, 342D-4, 342D-5) (Imp: HRS §§321-11, 342D-2, 342D-4, 342D-5, 342D-9, 342D-18, 342D-30, 342D-31, 342D-50, 603-23)

2. Material, except source notes, to be repealed is bracketed. New Material, except for Appendix C is underscored.

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

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

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

LORETTA J. FUDDY, A.C.S.W., M.P.H.
Director of Health

APPROVED AS TO FORM:

Edward G. Bohlen
Deputy Attorney General

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-55

Hawaii Administrative Rules

DEC 06 2013

SUMMARY

1. §11-55-01 is amended.
2. §11-55-04 is amended.
3. §11-55-15 is amended.
4. §11-55-34.02 is amended.
5. §11-55-34.04 is amended.
6. §11-55-34.05 is amended.
7. §11-55-34.06 is reserved.
8. §11-55-34.08 is amended.
9. §11-55-34.09 is amended.
10. §11-55-34.11 is amended.
11. §11-55-40 is amended.
12. Appendix A is amended.
13. Appendix B is amended.
14. Appendix C is amended.
15. Appendix D is amended.
16. Appendix E is amended.
17. Appendix F is amended.

18. Appendix G is amended.
19. Appendix H is amended.
20. Appendix I is amended.
21. Appendix J is amended.
22. Appendix K is amended.
23. Appendix L is amended.
24. Chapter 55 is complied.



"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 55

WATER POLLUTION CONTROL

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|-----------|----------------------------------------------------------------------------------------------------|
| §11-55-01 | Definitions |
| §11-55-02 | General policy of water pollution control |
| §11-55-03 | General prohibition |
| §11-55-04 | Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion |
| §11-55-05 | Receipt of federal information |
| §11-55-06 | Transmission of information to regional administrator |
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| §11-55-08 | Formulation of tentative determinations and draft permit |
| §11-55-09 | Public notice of applications |
| §11-55-10 | Fact sheet |
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| §11-55-14 | Public notice of public hearings |
| §11-55-15 | Issuance of NPDES permits |
| §11-55-16 | Modification or revocation and reissuance of NPDES permits |
| §11-55-17 | Termination of permits and denial of renewal |
| §11-55-18 | Reporting discontinuance or dismantlement |
| §11-55-19 | Application of effluent standards and limitations, water quality standards, and other requirements |
| §11-55-20 | Effluent limitations in issued NPDES permits |
| §11-55-21 | Schedule of compliance in issued NPDES permits |
| §11-55-22 | Compliance schedule reports |

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|--------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| §11-55-23 | Other terms and conditions of issued NPDES permits |
| §11-55-24 | National pretreatment standards and users of publicly owned treatment works |
| §11-55-25 | Transmission to regional administrator of proposed NPDES permits |
| §11-55-26 | Transmission to regional administrator of issued NPDES permits |
| §11-55-27 | Renewal of NPDES permits |
| §11-55-28 | Monitoring |
| §11-55-29 | Recording of monitoring activities and results |
| §11-55-30 | Reporting of monitoring results |
| §11-55-31 | Sampling and testing methods |
| §11-55-32 | Malfunction, maintenance, and repair of equipment |
| §11-55-33 | Agency board membership |
| §11-55-34 | General permit definitions |
| §11-55-34.01 | General permit policy |
| §11-55-34.02 | General permit authority and adoption |
| §11-55-34.03 | General permit terms |
| §11-55-34.04 | General permit conditions |
| §11-55-34.05 | Requiring an individual permit |
| §11-55-34.06 | Reserved |
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| §11-55-34.08 | Notice of intent |
| §11-55-34.09 | Notice of intent review, notice of general permit coverage, additional conditions, terms, renewals, effective dates, and automatic coverage |
| §11-55-34.10 | Review of coverage issues and notice of intent and notice of general permit coverage decisions |
| §11-55-34.11 | Notice of general permit coverage revocation and termination |
| §11-55-34.12 | General permit compliance |
| §11-55-35 | Penalties and remedies |
| §11-55-36 | Hearings and appeals |
| §11-55-37 | Severability clause |
| §11-55-38 | Repealed |
| §11-55-39 | Public interest |
| §11-55-40 | Field Citations |

| | |
|------------|---------------------------------------------------------------------------------------------------------------------------------|
| Appendix A | Department of Health Standard General Permit Conditions |
| Appendix B | NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities |
| Appendix C | NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity |
| Appendix D | NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities |
| Appendix E | NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day |
| Appendix F | NPDES General Permit Authorizing Discharges of Hydrotesting Waters |
| Appendix G | NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering |
| Appendix H | NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals |
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| Appendix J | NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems |
| Appendix K | NPDES General Permit Authorizing Discharges of Storm Water from Small Municipal Separate Storm Sewer Systems |
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| Appendix M | NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides |

§11-55-01

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

§11-55-01 Definitions

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

"40 CFR" means the Code of Federal Regulations, Title 40, Protection of Environment, revised as of July 1, 2012 unless otherwise specified.

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

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

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

and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance. (See 40 CFR 174.3).

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

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

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

The phrase "toxic or adverse effects" includes effects that occur within state waters on non-target plants, fish or wildlife that are unusual or unexpected (e.g., effects are to organisms not otherwise described on the pesticide product label or otherwise not expected to be present) as a result of exposure to a pesticide residue, and may include: distressed or dead juvenile and small fishes; washed up or floating fish; fish swimming abnormally or erratically; fish lying lethargically at water surface or in shallow water; fish that are listless or nonresponsive to disturbance; stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants; other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.). The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin rashes) or domesticated animals that occur either from direct contact with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or animals containing pesticides) to state waters that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

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

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

"Annual treatment area threshold" means the additive area (in acres) or linear distance (in miles) in a calendar year to which a decision-maker is authorizing and/or performing pesticide applications in that area for activities covered under Appendix M. For calculating annual treatment areas for mosquitoes and other flying insect pest control and forest canopy pest for comparing with any threshold in table 1 of Appendix M, count each pesticide application activity to a treatment area (i.e., that area where a pesticide application is intended to provide pesticidal benefits within the pest management area) as a separate area treated. For example, applying pesticides three times a year to the same three thousand acre site should be counted as nine thousand acres of treatment area for purposes of determining if such an application exceeds an annual treatment area threshold. Similarly, for calculating annual treatment areas for weed and algae control and animal pest control for comparing with any threshold in table 1 of Appendix M, calculations should include either the linear extent of or the surface area of waters for each application made to state waters or at water's edge adjacent to state waters. For calculating the annual treatment area, count each treatment area as a separate area treated. Also, for linear features (e.g., a canal or ditch), count the length of the linear feature each time an application is made to that feature during the calendar year, including counting separately applications made to each bank of the water feature if pesticides are applied to both banks. For example, applications four times a year to both banks of a three-mile long reach of stream will count as a total of twenty four linear miles (three miles * two banks * four applications per year =

twenty four miles to which pesticides are applied in a calendar year).

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

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

- (1) Approved or permitted to remain in effect by the Administrator under Section 303(a) or Section 303(c) of the Act, 33 U.S.C. §1313(a) or §1313(c); or
- (2) Promulgated by the Administrator under Section 303(b) of the Act, 33 U.S.C. §1313(b).

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

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

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

"Biological pesticides" (also called biopesticides) include microbial pesticides, biochemical pesticides and plant-incorporated

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protectants (PIP). "Microbial pesticide" means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or dessicant, that:

- (1) is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi;
- (2) is a procaryotic microorganism, including, but not limited to, eubacteria and archaeobacteria; or
- (3) is a parasitically replicating microscopic element, including but not limited to, viruses. (See 40 CFR 158.2100(b)).

"Biochemical pesticide" means a pesticide that is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and has a non-toxic mode of action to the target pest(s). (See 40 CFR 158.2000(a)(1)).

"Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or produce thereof. (See 40 CFR 174.3).

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

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

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

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

"Cooling water" means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage of a facility's intake flow that is used for cooling purposes in 40 CFR §125.91(a)(4).

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

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

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

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

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

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"Department" means the state department of health.

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

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

"Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to state waters from any point source, or any addition of any pollutant or combination of pollutants to the water of the contiguous zone or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation. This includes additions of pollutants into state waters from: surface runoff that is collected or channeled by man; or discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. (Excerpted from 40 CFR 122.2).

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

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

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

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

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

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

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

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

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

"HRS" means the Hawaii Revised Statutes.

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

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

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

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

"Industrial user" means a source of indirect discharge.

"Inert ingredient" means any substance (or group of structurally similar substances if designated by the EPA), other than an active ingredient, that is intentionally included in a pesticide product, (see 40

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CFR 152.3). Inert ingredient also means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that the genetic material is intentionally introduced into a living plant in addition to the active ingredient (see 40 CFR 174.3).

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

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

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

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

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

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

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

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

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems under 40 CFR §122.26(b)(4), (b)(7), and

(b)(16) or that the director designates consistently with 40 CFR §122.26(a)(1)(v). A "municipal separate storm sewer system" is also known as a "municipal separate storm water drainage system."

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318, and 405 of the Act.

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

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

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

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

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

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storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

"Non-target Organisms" includes the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

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

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

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

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

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

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

"Once-through cooling water system" means a system designed to withdraw water from a natural or other water source, use it at the facility to support contact or noncontact or both cooling uses, and then discharge it to a waterbody without recirculation. Once-through cooling systems sometimes employ canals, channels, ponds, or nonrecirculating cooling towers to dissipate waste heat from the water before it is discharged.

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

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

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

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

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

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

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

"Pest management measure" means any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements

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and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to state waters.

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

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

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

"Point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff, except return flows from agriculture irrigated with reclaimed water. (See 40 CFR §122.2).

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

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

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

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

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

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

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

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

"Small entity" means any:

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

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

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

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municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

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

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

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

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

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

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

"Treatment area" means the entire area, whether over land or water, where a pesticide application is intended to provide pesticidal benefits within the pest management area. In some instances, the treatment area will be larger than the area where pesticides are actually applied. For example, the treatment area for

a stationary drip treatment into a canal includes the entire width and length of the canal over which the pesticide is intended to control weeds. Similarly, the treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

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

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

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

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

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

"Water quality impaired" see "Impaired Water".

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

The definitions of the following terms contained in Section 502 of the Act, 33 U.S.C. §1362, shall be applicable to the terms as used in this part unless the context otherwise requires: "biological monitoring," "contiguous zone," "discharge," "discharge of a pollutant," "effluent limitations," "municipality," "navigable waters," "ocean," "pollutant," "schedule of

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compliance," "territorial seas," and "toxic pollutant."
[Eff 11/27/81; am and comp 10/29/92; am and comp
09/22/97; am and comp 01/06/01; am and comp 11/07/02;
am and comp 08/01/05; am and comp 10/22/07; comp
6/15/09; am and comp 10/21/12; am and comp

DEC 06 2013] (Auth: HRS §§342D-4, 342D-5; 33
U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a),
183B-1, 342D-1, 342D-2, 342D-4, 342D-5; 33 U.S.C.
§§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123;
124, Subpart A and D; Part 125; §122.2)

- §11-55-02 General policy of water pollution control.
- (a) It is the public policy of this State:
- (1) To conserve state waters;
 - (2) To protect, maintain, and improve the quality of state waters:
 - (A) For drinking water supply, and food processing;
 - (B) For the growth, support, and propagation of shellfish, fish, and other desirable species of marine and aquatic life;
 - (C) For oceanographic research;
 - (D) For the conservation of coral reefs and wilderness areas; and
 - (E) For domestic, agricultural, industrial, and other legitimate uses;
 - (3) To provide that no waste be discharged into any state waters without first being given the degree of treatment necessary to protect the legitimate beneficial uses of the waters;
 - (4) To provide for the prevention, abatement, and control of new and existing water pollution; and
 - (5) To cooperate with the federal government in carrying out the objectives listed in paragraphs (1) through (4).
- (b) Any industrial, public, or private project or development which could be considered a new source of pollution or an increased source of pollution shall, in its initial project design and subsequent construction,

provide the highest and best degree of waste treatment practicable under existing technology.

(c) Permits issued under this chapter, and the related applications, processing, issuance, and post-issuance procedures and requirements, shall be at least as stringent as those required by 40 CFR §123.25(a). [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1251, 1288, 1311, 1312, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.25(a))

§11-55-03 General prohibition. No person shall violate any provision of section 342D-50, HRS, or any NPDES permit issued under this chapter. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 603-23; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50, 603-23; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-04 Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion. (a) Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, or substantially altering the quality of any discharges, or substantially increasing the quantity of any discharges, a person shall submit a complete NPDES permit application (which shall include

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whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), submit a complete notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M) or, for certain storm water discharges, meet all requirements for a conditional "no exposure" exclusion. Submittal of a notice of intent for coverage under a general permit shall comply with and be regulated by sections 11-55-34.08 through 11-55-34.10. Conditional "no exposure" exclusions shall comply with and be regulated by subsection (e). An NPDES permit application shall be submitted:

- (1) At least one hundred eighty days before the discharge or construction begins or before the expiration date of the existing permit. The director may waive this one hundred eighty day requirement by issuing the permit with an effective date before the one hundred eighty days expire;
- (2) In sufficient time prior to the beginning of the discharge of pollutants to ensure compliance with the requirements of new source performance standards under Section 306 of the Act, 33 U.S.C. §1316, or with any applicable zoning or site requirements established under Section 208(b)(2)(C) of the Act, 33 U.S.C. §1288(b)(2)(C), and any other applicable water quality standards and applicable effluent standards and limitations;
- (3) For any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill;
- (4) For any discharge from an existing regulated small municipal separate storm sewer system which is not qualified to obtain coverage under the general permit. The permit

application shall be made under 40 CFR §122.33 if the small municipal separate storm sewer system is designated under 40 CFR §122.32(a)(1). A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas shall submit an NPDES permit application if the department determines that the system's storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The department shall evaluate the small municipal separate storm sewer system with the following elements, at a minimum: discharge to sensitive waters, high growth or growth potential, high population density, contiguity to an urbanized area, significant contributor of pollutants to state waters, and ineffective protection of water quality by other programs. The NPDES permit application shall be submitted within one hundred eighty days of notice from the department;

- (5) For any discharge from a regulated concentrated animal feeding operation. The permit application shall be made under 40 CFR §122.21;
- (6) (Reserved); or

- (7) At least one hundred eighty days before the construction activity as identified in 40 CFR §122.26 (b)(14)(x) or small construction activity as defined in 40 CFR §122.26(b)(15)(i) begins and is not qualified to obtain coverage under the general permit.

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

(c) The director may require the submission of additional information after an NPDES permit application has been submitted, and shall ensure that, if an NPDES permit application is incomplete or otherwise deficient, processing of the application shall not be completed until the owner or its duly authorized representative has supplied the missing information or otherwise corrected the deficiency.

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

- (1) When an NPDES permit application is submitted for an individual permit for a substantial alteration or addition to a treatment works or waste outlet and where an individual permit had previously been granted for the treatment works or waste outlet, the owner or operator shall pay a \$1,000 filing fee which shall be submitted with the NPDES permit application;
- (2) A new owner of a discharge facility covered by an individual permit shall submit a new NPDES permit application for a new individual permit unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The owner or operator shall pay a \$500 filing fee which shall be submitted with the NPDES permit application or notice of automatic transfer that meets 40 CFR §122.61(b);
- (3) An NPDES individual permittee shall submit a new NPDES permit application for the transfer of discharge from one permanent location to another permanent location. The owner or operator shall pay the \$1,000 filing fee which shall be submitted with the NPDES permit application;
- (4) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.
- (e) Discharges composed entirely of storm water are not storm water discharges associated with industrial activity, and do not require an individual permit or general permit coverage, if there is "no exposure" of industrial materials and activities to rain, snow, snowmelt or runoff or any combination of the above, and the owner or operator of the discharge:
 - (1) Meets the conditions of 40 CFR §§122.26(g)(1) through 122.26(g)(4), except 40 CFR §122.26(g)(1)(iii);

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

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

(f) (Reserved)

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

(h) (Reserved) [Eff 11/27/81; am and comp 10/29/92; am 09/23/96; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; am and comp 6/25/09; am and comp 10/21/12; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1288(b)(2)(C), 1316, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21, 122.23, 122.24, 122.25, 122.26, 122.27, 122.61, 123.25(a), 124.3)

§11-55-05 Receipt of federal information. The director shall receive any relevant information collected by the regional administrator prior to

participation in the NPDES in a manner as the director and the regional administrator shall agree. Any agreement between the director and the regional administrator shall provide for at least the following:

- (1) Prompt transmittal to the director from the regional administrator of copies of any NPDES permit applications, or other relevant information collected by the regional administrator prior to the state or interstate agency's participation in the NPDES; and
- (2) A procedure to ensure that the director will not issue an individual permit on the basis of any NPDES permit application received from the regional administrator which the regional administrator has identified as incomplete or otherwise deficient until the director has received information sufficient to correct the deficiency to the satisfaction of the regional administrator. [Eff 11/27/81; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/25/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.42)

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

- (1) Prompt transmittal to the regional administrator of a complete copy of any NPDES form received by the State;

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- (2) Procedures for the transmittal to the national data bank of a complete copy, or relevant portions thereof, of any appropriate NPDES forms received by the State;
- (3) Procedures for acting on the regional administrator's written waiver, if any, of the regional administrator's rights to receive copies of NPDES forms with respect to classes, types, and sizes within any category of point sources and with respect to minor discharges or discharges to particular state waters or parts thereof subject to the limits in 40 CFR §123.24(d);
- (4) An opportunity for the regional administrator to object in writing to deficiencies in any NPDES permit application or reporting form received by the regional administrator and to have the deficiency corrected. If the regional administrator's objection relates to an NPDES permit application, the director shall send the regional administrator any information necessary to correct the deficiency and shall, if the regional administrator so requests, not issue the individual permit until the department receives notice from the regional administrator that the deficiency has been corrected;
- (5) Procedures for the transmittal, if requested by the regional administrator, of copies of any notice received by the director from publicly owned treatment works under section 11-55-23(7) and 11-55-23(8); and
- (6) Variance applications shall be processed in accordance with the procedures set forth in section 342D-7, HRS, and 40 CFR §§122.21(m) through (o), 124.62, and 403.13. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12;

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comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21(m), 122.21(n), 122.21(o), 123.25(a), 123.43, 123.44, 124.62, 403.13)

§11-55-07 Identity of signatories to NPDES forms.

(a) Any NPDES form and its certification, as stated in 40 CFR §122.22(d), submitted to the director shall be signed as follows:

- (1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - (A) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or
 - (B) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where

authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

- (2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or
- (3) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:
 - (A) The chief executive officer of the agency, or
 - (B) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrators of EPA);
- (4) For a trust. By a trustee; or
- (5) For a limited liability company (LLC). By a manager or a member authorized to make management decisions for the LLC and who is in charge of a principal business function, or who performs similar policy- or decision-making functions for the LLC.

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

- (1) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, superintendent, or position of equivalent responsibility, or an individual or position

having overall responsibility for environmental matters for the company, (A duly authorized representative may thus be either a named individual or any individual occupying a named position.);

- (2) The authorization is made in writing by a person designated under subsection (a); and
- (3) The written authorization is submitted to the director.

(c) If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.22, 123.25(a))

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

- (1) A proposed determination, including those contained in 40 CFR §122.44(m) if applicable, to issue or deny an individual permit for the discharge described in the NPDES permit application; and

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

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

(c) The director shall prepare draft permits when required by 40 CFR §124.5(c) or (d). [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.44(m), 123.25(a), 124.5, 124.6)

§11-55-09 Public notice of applications. (a) The director shall notify the public of every complete application for an individual permit in a manner

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

- (1) Notice shall be circulated within the geographical areas of the proposed discharge; circulation includes any or all of the following:
 - (A) Posting in the post office and public places of the municipality nearest the premises of the owner or operator in which the effluent source is located;
 - (B) Posting near the entrance to the owner's or operator's premises and in nearby places; or
 - (C) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation.
- (2) Notice shall be mailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v); and
- (3) The director shall add the name of any person, including those specified in 40 CFR §§124.10(c)(1)(ix) and (x), or group upon request to a mailing list to receive copies of notices for all NPDES permit applications within the State or within a certain geographical area.
 - (b) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the NPDES permit application. All written comments submitted during the thirty-day comment period shall be retained by the director and considered in the formulation of the director's final

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determination with respect to the NPDES permit application. The director shall respond to comments, at a minimum, when and as required by

40 CFR §§124.17(a) and (c). The comment period may be extended at the discretion of the director.

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

- (1) Name and address of the agency issuing the public notice;
- (2) Name and address of each owner or operator or both and the name and address of the facility or activity;
- (3) A brief description of the activities or operations which result in the discharge described in the NPDES permit application;
- (4) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;
- (5) A statement of the tentative determination to issue or deny an individual permit for the discharge described in the NPDES permit application;
- (6) A brief description of the procedures for the formulation of final determinations, including the procedures for public comment, requesting a public hearing, and any other means of public participation offered;
- (7) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:
 - (A) Obtain further information;
 - (B) Request a copy of the draft permit prepared under section 11-55-08(b);
 - (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
 - (D) Inspect and copy NPDES forms and related documents; and
- (8) Requirements applicable to cooling water intake structures under section 316(b) of the

Act, in accordance with Part 125, Subparts I and J.

(d) All publication and mailing costs associated with the public notification of the director's tentative determinations with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1326(a), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.13, 124.17, 124.57)

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

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

- (1) A sketch or detailed description of the location of the discharge described in the NPDES permit application; a brief description

- of the type of facility or activity which is the subject of the draft permit;
- (2) A quantitative description of the discharge described in the NPDES permit application which includes at least the following:
 - (A) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day or cubic feet per second;
 - (B) For thermal discharges subject to limitation under the Act, the average summer and winter temperatures in degrees Fahrenheit or Celsius; and
 - (C) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under Sections 301, 302, 306, or 307 of the Act, 33 U.S.C. §§1311, 1312, 1316 or 1317, and regulations published under those sections;
 - (3) The tentative determinations required under section 11-55-08;
 - (4) A brief citation, including a brief identification of the uses for which the receiving state waters have been classified, of the water quality standards, and effluent standards and limitations applied to the proposed discharge;
 - (5) A more detailed description of the procedures for the formulation of final determinations than that given in the public notice including:
 - (A) The thirty-day comment period required by section 11-55-09(b);
 - (B) Procedures for requesting a public hearing and the nature thereof; and

- (C) Any other procedures by which the public may participate in the formulation of the final determinations;
- (6) The name and telephone number of a person to contact for additional information; and
- (7) The information required by 40 CFR §§124.8(b)(5), 124.56(a), 124.56(b), 124.56(c), 124.56(e), and Part 125, subpart M.

(c) The director shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1311, 1312, 1316, 1317, 1342, 1370, 1252-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 501; §§123.25(a), 124.8, 124.56, 501.15(d)(4))

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

(a) The director shall notify other appropriate government agencies of each complete NPDES permit application for an individual permit and shall provide the agencies an opportunity to submit their written views and recommendations.

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

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

- (1) Waiver by the District Engineer of the District Engineer's right to receive fact sheets with respect to classes, types, and sizes within any category of point sources

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and with respect to discharges to particular state waters or parts thereof; and

- (2) Any procedures for the transmission of forms, period for comment by the District Engineer (e.g., thirty days), and for objections of the District Engineer.

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

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

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

(f) The director shall notify and coordinate with appropriate public health agencies for the purpose of assisting the owner or its duly authorized representative in coordinating the applicable requirements of the Act with any applicable requirements of the public health agencies. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1288(b), 1313(e), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

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

(b) The director shall protect any information (other than effluent data) as confidential upon a request and showing by any person at the time of submission that the information, if made public, would divulge methods or processes entitled to protection as trade secrets of a person. Any information obtained from a state and subject to a claim of confidentiality shall be treated in accordance with the regulations in 40 CFR Part 2 and section 92F-13, HRS. Claims of confidentiality shall be denied regarding the following: name and address of any owner or operator or permittee applying for an individual permit, notice of general permit coverage, or "no exposure" certification; NPDES permits; and effluent data. Information required by NPDES permit application forms may not be claimed confidential. This includes information supplied in attachments to the NPDES permit application forms. If, however, the information being considered for confidential treatment is contained in an NPDES form, the director shall forward the information to the regional administrator for the regional administrator's concurrence in any determination of confidentiality. If the regional administrator advises the director that the regional administrator does not concur in the withholding of the information, the director shall then make available to the public, upon request, that information determined by the regional administrator not to constitute trade secrets.

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

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

- (1) Ensure that a machine or device for the copying of papers and documents is available for a reasonable fee; or
- (2) Otherwise provide for or coordinate with copying facilities or services so that requests for copies of nonconfidential documents may be honored promptly. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp] (Auth: HRS §§342D-4, 342D-5, 342D-14; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-14, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 2; 122; 123; 124, Subparts A and D; 125; §§122.7, 123.25(a), 123.41)

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

(b) The director shall provide the public notice of public hearing to the owner or operator or its duly

authorized representative for publication according to section 11-55-14. The public notice shall include the information required by 40 CFR §§124.10(d)(1) and (d)(2).

(c) The director shall hold a hearing if the director determines that there is a significant public interest (including the submitting of requests or petitions for a hearing) in holding a hearing.

Instances of doubt should be resolved in favor of holding the hearing. Any hearing brought under this subsection shall be held in the geographical area of the proposed discharge or other appropriate area, at the director's discretion, and may, as appropriate, consider related groups of NPDES permit applications.

(d) Any person may submit oral or written statements and data concerning the draft permit. The public comment period under section 11-55-09 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6, 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-57; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.11, 124.12)

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§11-55-14 Public notice of public hearings. (a)

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

- (1) Published at least once in a newspaper of general circulation within the geographical area of the discharge;

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- (2) Sent to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES permit application;
 - (3) Mailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v), (ix), and (x); and
 - (4) Effected under paragraphs (1) and (3) at least thirty days in advance of the hearing.
- (b) The public notice of any hearing held under section 11-55-13 shall include at least the following information:
- (1) Name and address of the agency holding the public hearing;
 - (2) Name and address of each owner or operator or both whose NPDES permit application will be considered at the hearing and the name and address of the facility or activity;
 - (3) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;
 - (4) A brief reference to the public notice for proposed action issued for each NPDES permit application, including identification number and date of issuance, if applicable;
 - (5) Information regarding the date, time, and location of the hearing;
 - (6) The purpose of the hearing, including a concise statement of the issues raised by the persons requesting the hearing, as applicable;
 - (7) A brief description of the nature of the hearing, including the rules and procedures to be followed; and
 - (8) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:
 - (A) Obtain further information;
 - (B) Request a copy of each draft permit prepared under section 11-55-08(b);

- (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
- (D) Inspect and copy NPDES forms and related documents.

(c) All publication and mailing costs associated with the public notification of the director's determinations to hold public hearing with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

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

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

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- (1) The existing treatment works or waste outlet is designed, built, and equipped in accordance with:
 - (A) The best practicable control technology currently available or the best available technology economically achievable or the best conventional pollutant control technology for point sources other than publicly owned treatment works; and
 - (B) For publicly owned treatment works, secondary treatment or the best practicable waste treatment technology, so as to reduce wastes to a minimum;
- (2) New treatment works or waste outlets are designed and built in compliance with the applicable standards of performance;
- (3) The new or existing treatment works or waste outlet is designed and will be constructed or modified to operate without causing a violation of applicable rules of the department;
- (4) The new or existing treatment works or waste outlet will not endanger the maintenance or attainment of applicable water quality standards;
- (5) The facility shall comply with effluent standards and limitations, water quality standards and other requirements, as applicable in sections 11-55-19, 11-55-20, and 11-55-22; and
- (6) The facility shall comply with sections 11-55-27 through 11-55-32.
- (c) NPDES permits at a minimum shall include conditions and requirements at least as stringent as:
 - (1) Those conditions contained in sections 11-55-16, 11-55-17, 11-55-23, and 40 CFR §122.41;
 - (2) The requirement that the owner or operator provide the facilities as necessary for monitoring of the authorized waste discharge

into state waters and the effects of the wastes on the receiving state waters. The monitoring program shall comply with sections 11-55-28 through 11-55-32;

- (3) The requirement of compliance with any applicable effluent standards and limitations, water quality standards, and other requirements imposed by the director under sections 11-55-19, 11-55-20, and 11-55-22; and
- (4) Conditions requested by the Corps of Engineers and other government agencies as described in 40 CFR §124.59.

(d) In permits where more stringent effluent limitations are included, compliance schedules may be provided in the permits if the requirements of 11-55-21 and 40 CFR 122.2 and 122.47 are met.

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

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

- (1) Discharge of any radiological or biological warfare agent, or high-level radioactive waste into state waters;
- (2) Discharge which the Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage and navigation;
- (3) Discharge to which the regional administrator has objected in writing under any right to object provided the Administrator in Section 402(d) of the Act, 33 U.S.C. §1342(d);
- (4) Discharge from a point source which is in conflict with a plan or amendment thereto

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approved under Section 208(b) of the Act, 33 U.S.C. §1288(b); or

(5) When prohibited by 40 CFR §122.4.

(g) The issuance of a permit does not convey any property rights of any sort or any exclusive privilege. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.4, 122.5, 122.41, 122.43, 122.44, 122.45, 122.46, 123.25(a), 124.5, 124.59)

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

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

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

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

(e) All applications made under section 342D-7, HRS, for a variance from the terms and conditions of an NPDES permit shall also be deemed as applications for a modification under this section. Any variances, if granted, shall be for a period not to exceed five years. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09;

comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-7; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-7, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.62, 122.63, 123.25(a), 124.5)

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

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

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

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

(d) The director shall follow the applicable state procedures in terminating any NPDES permit under this section, except that if the entire discharge is

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permanently terminated by elimination of the flow or by connection to a publicly owned treatment works (but not by land application or disposal into a well), the director may terminate the permit by notice to the permittee. Termination by notice shall be effective thirty days after notice is sent ("expedited termination"), unless the permittee objects in writing during that time. If the permittee objects during that period, the director shall follow applicable state procedures for termination. Expedited termination is not available to permittees who are subject to pending state or federal or both enforcement actions including citizen suits brought under state or federal law. If requesting expedited termination, a permittee shall certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under 40 CFR §124.6. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.64, 122.64(b), 123.25(a), 124.5, 124.5(d), 124.15(a))

§11-55-18 Reporting discontinuance or dismantlement.
An NPDES permittee shall report within thirty days after the permanent discontinuance or dismantlement of that treatment works or waste outlet for which the NPDES permit had been issued by submitting a notice of cessation. [Eff 11/27/81; comp 10/29/92; comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33

U.S.C. §§1252, 1342, 1370, 1251-1387;
40 CFR 40 CFR Parts 122; 123; 124, Subparts A and D;
125; §122.64, 124.5)

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

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

concentrated animal feeding
operations in 40 CFR §123.36, 40
CFR §122.42, and 40 CFR Part 412;
or

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

described in subsection (a)(1), (2), and (3), the director shall state that the discharge authorized by the permit shall not violate applicable water quality standards and shall have prepared some explicit verification of that statement. In any case where an issued NPDES permit applies any more stringent effluent limitation based upon applicable water quality standards, a waste load allocation shall be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1311, 1312, 1313, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125, Subparts A, B, C, D, H, I, J, K, L, M; 129; 133; 136; 401; 403; 405-432; 434-436; 439-440; 443; 446-447; 454-455; 457-460; 503; 400-471, Subparts N; §§122.42, 122.43, 122.44, 123.25(a))

§11-55-20 Effluent limitations in issued NPDES permits. In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements under section 11-55-19, each issued NPDES permit shall specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The director, at the director's discretion, in addition to the specification of daily quantitative limitations by weight, may specify other limitations, such as average or maximum concentration limits. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5,

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342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.45(f), 123.25(a))

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

- (1) In accordance with any legally applicable schedule of compliance contained in:
 - (A) Applicable effluent standards and limitations;
 - (B) If more stringent, effluent standards and limitations needed to meet water quality standards; or
 - (C) If more stringent, effluent standards and limitations needed to meet legally applicable requirements listed in section 11-55-19; or
- (2) In the absence of any legally applicable schedule of compliance, in the shortest, reasonable period of time, which shall be consistent with the guidelines and requirements of the Act.

(b) When a schedule specifies compliance longer than one year after permit issuance, the schedule of compliance shall specify interim requirements and the dates for their achievement and in no event shall more than one year elapse between interim dates. If the time necessary for completion of the interim requirement (such as the construction of a treatment facility) exceeds one year and is not readily divided into stages for completion, the schedule shall specify interim dates for the submission of reports of progress towards completion of the interim requirements. For

each NPDES permit schedule of compliance, interim dates, reporting dates, and the final date for compliance shall, to the extent practicable, fall on the last day of the month of March, June, September, and December. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a))

§11-55-22 Compliance schedule reports. (a)

Either before or up to fourteen days following each interim date and the final date of compliance, the permittee shall provide the director with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

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

- (1) Name, address, and permit number of each noncomplying permittee;
- (2) A short description of each instance of noncompliance for which 40 CFR §123.45(a)(2) requires reporting (e.g., failure to submit preliminary plans; two weeks delay in beginning construction of treatment facility;

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failure to notify director of compliance with interim requirement to complete construction by June 30th, etc.);

- (3) The date(s) and a short description of any actions or proposed actions by the permittee or the director to comply or enforce compliance with the interim or final requirement; and
- (4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objection from state fish and wildlife agency, etc.).

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

(d) If a permittee fails or refuses to comply with an interim or final requirement in an NPDES permit, noncompliance shall constitute a violation of the permit for which the director may modify, revoke and reissue, or terminate the permit under sections 11-55-16 and 11-55-17 or may take direct enforcement action. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a), 123.45)

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

- (1) All discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the NPDES permit;
- (2) The permittee shall report at least as required by 40 CFR §122.41(1), and where applicable, 40 CFR §122.42(a), (b), (c), (d), and (e);
- (3) Facility expansions, production increase, or process modifications which result in new or increased discharges of pollutants shall be reported by submission of a new NPDES permit application, or, if the discharge does not violate effluent limitations specified in the NPDES permit, by submission to the director of notice of the new or increased discharges of pollutants under 40 CFR §122.42(a);
- (4) The discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the NPDES permit shall constitute a violation of the terms and conditions of the NPDES permit;
- (5) The permittee shall allow the director or an authorized agent, including a contractor of the Administrator, upon the presentation of credentials to:
 - (A) Enter the permittee's premises in which an effluent source is located or in which any records are kept under terms and conditions of the NPDES permit;
 - (B) Have access to and copy any records kept under terms and conditions of the NPDES permit;
 - (C) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the NPDES permit; or

- (D) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location;
- (6) Any treatment facility treating domestic sewage and also receiving industrial waste from one or more indirect dischargers may be required to develop for the director's approval a pretreatment program in accordance with applicable requirements in 40 CFR Part 403. The pretreatment program approved by the director may then be incorporated into the NPDES permit as a permit condition;
- (7) If the NPDES permit is for a discharge from a publicly or privately owned treatment works, the permittee shall notify the director in writing of the following:
 - (A) Any new introduction of pollutants into a publicly or privately owned treatment works from an indirect discharger which would be subject to Sections 301 and 306 of the Act, 33 U.S.C. §1311 and §1316, if the indirect discharger were directly discharging those pollutants;
 - (B) Any substantial change in volume or character of pollutants being introduced into the treatment works by a source introducing pollutants into the treatment works at the time of issuance of the permit;
 - (C) The quality and quantity of effluent to be introduced into a treatment works; and
 - (D) Any anticipated impact caused by a change in the quality or quantity of effluent to be discharged from a publicly or privately owned treatment works;
- (8) If the NPDES permit is for a discharge from a publicly owned treatment works with an

approved pretreatment program under section 11-55-24, the director shall incorporate the approved pretreatment program into the NPDES permit as a permit condition. The permittee shall require any industrial user of the treatment works to comply with the requirements contained in the approved pretreatment program and the requirements of Sections 204(b), 307, and 308 of the Act, 33 U.S.C. §§1284, 1317, and 1318. The permittee shall also require each industrial user subject to the requirements of Section 307 of the Act, 33 U.S.C. §1317, to forward copies of periodic reports (over intervals not to exceed nine months) of progress towards full compliance with Section 307 of the Act, 33 U.S.C. §1317 requirements, to the permittee and the director;

- (9) The permittee at all times shall maintain in good working order and operate as efficiently as possible any facility or system of control installed by the permittee to achieve compliance with the terms and conditions of the NPDES permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit; and
- (10) If a toxic effluent standard or prohibition (including any schedule of compliance specified in the effluent standards or prohibition) is promulgated under Section 307(a) of the Act, 33 U.S.C. §1317(a), for a toxic pollutant which is present in the permittee's discharge and the standard or prohibition is more stringent than any limitation upon the pollutant in the NPDES

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permit, the director shall revise or modify the permit in accordance with the toxic effluent standard or prohibition and notify the permittee; and

- (11) A copy of the NPDES permit application, notice of intent, "no exposure" certification, individual permit, notice of general permit coverage, and conditional "no exposure" exclusion, as applicable, shall be retained on-site or at a nearby office or field office. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-8, 342D-50, 342D-55; 33 U.S.C. §§1251, 1284, 1311, 1316, 1317, 1318, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 403; §§122.41, 122.42, 122.44, 123.25(a))

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

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

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

- (1) Enter the premises of a person subject to pretreatment requirements in which an effluent source is located or in which any records are kept under terms and conditions of a pretreatment requirement;
 - (2) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations required by a pretreatment requirement; and
 - (3) Sample any discharge of pollutants or effluent.
- (d) No person shall introduce into any publicly owned treatment works any pollutant or effluent in violation of 40 CFR §403.5.
- (e) The director may require any person discharging any pollutant or effluent into a publicly owned treatment works to:
- (1) Establish and maintain records;
 - (2) Make reports;
 - (3) Install, use, and maintain monitoring equipment or methods;
 - (4) Sample effluent and state waters;
 - (5) Provide access to and copying of any records which are maintained; and
 - (6) Provide other information as the department may require. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-8, 342D-50, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 403, §122.41(i))

§11-55-25 Transmission to regional administrator of proposed NPDES permits. The director shall transmit to the regional administrator copies of NPDES permits proposed to be issued by the agency in a manner as the

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director and regional administrator shall agree upon or as stated in 40 CFR §123.44(j). Any agreement between the State and regional administrator shall provide for at least the following:

- (1) Except as waived under paragraph (4), the transmission by the director of any and all terms, conditions, requirements, or documents which are a part of the proposed NPDES permit or which affect the authorization by the proposed NPDES permit of the discharge of pollutants;
- (2) A period of time (up to ninety days) in which the regional administrator, under any right to object provided in Section 402(d) of the Act, 33 U.S.C. §1342(d), may comment upon, object to, or make recommendations with respect to the proposed NPDES permit;
- (3) Procedures for state acceptance or rejection of a written objection by the regional administrator; and
- (4) Any written waiver by the regional administrator of the regional administrator's rights to receive, review, object to, or comment upon proposed NPDES permits for classes, types, or sizes within any category of point sources. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013** STU] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.24(d), 123.43, 123.44)

§11-55-26 Transmission to regional administrator of issued NPDES permits. The director shall transmit to the regional administrator a copy of every issued NPDES permit, immediately following issuance, along

with any and all terms, conditions, requirements, or documents which are a part of the NPDES permit or which affect the authorization by the NPDES permit of the discharge of pollutants. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 123.43(a)(3))

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

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

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

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modifications of the effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

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

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

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

(e) Application for renewal of an NPDES permit shall comply with section 11-55-04. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**]
(Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21(d), 122.29, 122.41(b), 122.41(1), 122.44, 123.25(a))

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

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

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

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

(c) Monitored items:

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

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

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the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels shall be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.41, 122.43, 122.48, 123.25(a))

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

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

the discharge of pollutants by the permittee or when requested by the director or regional administrator. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 122.41(j))

§11-55-30 Reporting of monitoring results. The director shall require periodic reporting (at a frequency of not less than once per year) on the proper NPDES discharge monitoring report form, or other form as specified by the director, of monitoring results obtained by a permittee under monitoring requirements in an NPDES permit. In addition to the NPDES discharge monitoring report form, or other form as specified by the director, the director may require submission of any other information regarding monitoring results as determined to be necessary. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 122.41(1)(4), 122.44(i))

§11-55-31 Sampling and testing methods. (a) All sampling and testing shall be done in accordance with test procedures approved under 40 CFR Part 136 unless other test procedures have been specified in the permit or approved by the director and, when applicable, with guidelines establishing test procedures for the

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analysis of pollutants published by the Administrator in accordance with Section 304(h) of the Act, 33 U.S.C. §1314(h). All tests shall be made under the direction of persons knowledgeable in the field of water pollution control.

(b) The director may conduct tests of waste discharges from any source. Upon request of the director, the person responsible for the source to be tested shall provide necessary sampling stations and other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the waste discharge. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1314, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.41(j)(4), 136)

§11-55-32 Malfunction, maintenance, and repair of equipment. (a) There shall be no shut-down of water pollution treatment facilities for purposes of maintenance unless a schedule or plan for the maintenance has been submitted to and approved by the director prior to the shut-down.

(b) In the case of a shut-down of water pollution control equipment for necessary maintenance, the intent to shut down the equipment shall be reported to and approved by the director at least twenty-four hours prior to the planned shut-down. The prior notice shall include, but is not limited to, the following:

- (1) Identification of the specific facility to be taken out of service, as well as its location and NPDES permit number;
- (2) The expected length of time that the water pollution control equipment will be out of service;

- (3) The nature and quantity of discharge of water pollutants likely to be emitted during the shut-down period;
- (4) Measures that will be taken to minimize the length of the shut-down period, such as the use of off-shift labor and equipment;
- (5) Identification of any adverse impacts to the receiving state waters which could be caused by the wastes which are to be bypassed; and
- (6) The reasons that it would be impossible or impractical to shut down the source operation during the maintenance period.

(c) In the event that any water pollution control equipment or related facility breaks down in a manner causing the discharge of water pollutants in violation of applicable rules, the person responsible for the equipment shall immediately notify the director of the failure or breakdown and provide a statement giving all pertinent facts, including the estimated duration of the breakdown. The director shall be notified when the condition causing the failure or breakdown has been corrected and the equipment is again in operation.

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

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

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

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

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

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

(f) For the purposes of this section, income is not received "directly or indirectly from permittees or persons applying for an NPDES permit" where it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary sources of income. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 123.25(c))

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

"Category of sources" means either:

- (1) Storm water point sources; or

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

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

- (1) Designated planning areas under Sections 208 and 303 of the Act;
- (2) Sewer districts or sewer authorities;
- (3) City, county, or state political boundaries;
- (4) State highway systems;
- (5) Standard metropolitan statistical areas as defined by the Office of Management and Budget;
- (6) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 Federal Register 15202 (May 1, 1974); or
- (7) Any other appropriate division or combination of boundaries. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.2, 122.28, 123.25(a)(11))

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§11-55-34.01 General permit policy. It is the policy of the State that general permits shall comply, at a minimum, with federal requirements for general permits, especially 40 CFR §122.28. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

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

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

- (1) Appendix B, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities" for discharges composed entirely of storm water associated with certain industrial activities as identified in 40 CFR §§122.26(b)(14)(i) through 122.26(b)(14)(ix) and §122.26(b)(14)(xi);
- (2) Appendix C, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity" for storm water discharges from construction activities which result in the disturbance of five acres or more of total land area or small construction activities which result in the disturbance of one to less than five acres of total land area or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the

- larger common plan will ultimately disturb one acre or more of total land area;
- (3) Appendix D, titled "NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities" for the discharge of treated effluent from the leaking underground storage tank remedial activities;
 - (4) Appendix E, titled "NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day" for the discharge of once-through, non-contact cooling water for one million gallons per day or less;
 - (5) Appendix F, titled "NPDES General Permit Authorizing Discharges of Hydrotesting Waters" for the discharge of non-polluted hydrotesting water;
 - (6) Appendix G, titled "NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering" for the discharge of dewatering effluent from a construction activity;
 - (7) Appendix H, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals" for the discharge of treated process wastewater effluent from petroleum bulk stations and terminals;
 - (8) Appendix I, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities" for the discharge of treated process wastewater effluent associated with well drilling activities;
 - (9) Appendix J, titled "NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems" for the discharge of treated process wastewater effluent from recycled water distribution systems;

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- (10) Appendix K, titled "NPDES General Permit Authorizing Discharges of Storm Water and Certain Non-Storm Water Discharges from Small Municipal Separate Storm Sewer Systems" for the discharge of storm water and certain non-storm water discharges from a small municipal separate storm sewer system as defined in 40 CFR §122.26(b)(16);
- (11) Appendix L, titled "NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks" for the discharge of circulation water from decorative ponds or tanks; and
- (12) Appendix M, titled "NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides," dated August 2012. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; am and comp **DEC 06 2013**]
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28)
(Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122;; 124; 125; §§122.26, 122.28, 123.25(a)(11))

§11-55-34.03 General permit terms. General permits shall be for terms of not more than five years. [Eff and comp 10/29/92; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.46, 123.25(a)(11))

§11-55-34.04 General permit conditions.

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

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

(c) Special conditions apply as specified in each general permit, e.g., appendices B through M, respectively. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; am and comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1318, 1319, 1321, 1323, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.41, 122.42, 123.25(a)(11))

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§11-55-34.05 Requiring an individual permit.

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

- (1) The discharger or "treatment works treating domestic sewage" is not in compliance with the conditions of the general permit;
- (2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

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- (3) Effluent limitation guidelines are promulgated for point sources covered by the general permit;
- (4) A water quality management plan containing requirements applicable to the point sources is approved;
- (5) Circumstances have changed since the time of the request to be covered so that the permittee is no longer appropriately controlled under the general permit or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
- (6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general permit; or
- (7) The discharge(s) is a significant contributor of pollutants to state waters. In making this determination, the director may consider the following factors:
 - (A) The location of the discharge with respect to state waters;
 - (B) The size of the discharge;
 - (C) The quantity and nature of the pollutants discharged to the state waters; and
 - (D) Other relevant factors.

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

terminated by the director in accordance with 11-55-34.11. The director may grant additional time upon request of the applicant.

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

(d) When an individual permit is issued to an owner or operator otherwise covered by a general permit, the coverage of the general permit to the individual permittee is automatically terminated on the effective date of the individual permit.

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

(f) The director may require any activity and/or discharge that has commenced prior to obtaining the required coverage under a general permit to apply for an individual NPDES permit. For construction activities which have commenced prior to obtaining general permit coverage, restoration of the site to preconstruction conditions may re-qualify it for coverage under the general permit. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28(b)(3), 123.25(a)(11))

§11-55-34.06 (Reserved)

§11-55-34.07

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

- (1) Effluent limitations established by the EPA under Sections 301, 302, 306, 307, 318, and 405 of the Act;
- (2) Criteria and standards for best management practices established by the EPA under Section 304(e) of the Act;
- (3) Notwithstanding paragraphs (1) and (2), more stringent effluent limitations may be required as deemed necessary by the director:
 - (A) To meet any existing federal laws or regulations; or
 - (B) To ensure compliance with any applicable state water quality standards, effluent limitations, treatment standards, or schedule of compliance; and
- (4) Calculations and specifications of effluent limits and standards shall be made in accordance with the provisions of federal regulations, 40 CFR §122.45. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1312, 1314, 1316, 1317, 1318, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

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

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

§11-55-34.08

permit application following final action denying coverage under the general permit provisions.

- (1) When a notice of intent is submitted to the director for a substantial alteration or addition to the treatment works or waste outlet and where a general permit authorization has previously been granted for the treatment works or waste outlet, the owner or operator shall be assessed the fee of \$500;
- (2) A new owner or operator or both of a discharge facility covered by the general permit provisions shall submit a new notice of intent unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The new owner or operator shall be assessed the fee of \$500;
- (3) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.
- (j) A notice of intent shall be submitted to the director at least thirty days before the earlier of:
 - (1) The beginning of any discharge, which is not covered under Appendix C or except for coverage under Appendix M for a declared pest emergency situation where the notice of intent shall be submitted no later than thirty days after beginning the pesticide discharge;
 - (2) The beginning of any construction activity which is covered under Appendix C, unless coverage is required for an emergency-related construction activity where an NOI shall be submitted no later than 30 calendar days after the start of construction activities;
 - (3) The expiration date of the existing general permit; or
 - (4) The expiration date of the existing notice of general permit coverage.
- (k) (Reserved).

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

§11-55-34.08

representative that the notice of intent is incomplete, the thirty day period shall start over upon receipt of the revised notice of intent. The director may waive this thirty day requirement by notifying the owner or operator in writing of a notice of general permit coverage before the thirty days expire. [Eff and comp 10/29/92; am 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; am and comp 6/15/09; am and comp 10/21/12; am and comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.22, 122.26, 122.28(b)(2)(ii) and (iii), 123.25(a)(11))

§11-55-34.09 Notice of intent review, notice of general permit coverage, additional conditions, terms, renewals, effective dates, and automatic coverage. (a) After receipt of a notice of intent, the director may notify the owner or operator or its duly authorized representative in writing that the notice of intent is complete or incomplete, whether the proposed activity or discharge(s) is covered under a general permit, or whether an individual permit application is required. The director may deny without prejudice the notice of intent to be covered by a general permit if the owner or operator or its duly authorized representative does not respond or failed to respond in writing within thirty days of the date of the director's written notification that the notice of intent is incomplete.

(b) After receipt of the complete notice of intent, the director may notify the owner or operator in writing of a notice of general permit coverage. This includes issuing a notice of general permit coverage after automatic coverage applies under subsection (e)(2) even if the owner or operator has not waived automatic coverage. The director may impose conditions in a notice of general permit coverage or add conditions to an issued notice of general permit

coverage to ensure that the activity or discharge(s) complies with the terms and conditions of the general permit and to ensure that state water quality standards will not be violated.

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

(d) The director may, automatically or by notification, administratively extend a notice of general permit coverage upon receipt of a complete notice of intent for renewal of a notice of general permit coverage before the expiration of the general permit or when the notice of general permit coverage specifies, whichever occurs first. A notice of general permit coverage shall be considered to have been automatically extended unless the department informs the Permittee otherwise. An administrative extension of an NGPC granted, automatically or by notification, for a project which later is found to be in non-compliance will be automatically terminated and may be required to apply for individual NPDES permit coverage. If administratively extended, the terms and conditions of the expired permit will continue to be effective for projects that submitted NOIs prior to the expiration date. The department intends that projects that do not submit NOIs prior to the expiration date will not be administratively extended.

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

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

- (1) Notification by the department of general permit coverage under subsection (b); or
- (2) The thirtieth day after receipt at the clean water branch of the department of a complete notice of intent for a new notice of general permit coverage and the applicable filing fee, unless before the thirtieth day the director notifies the owner or its duly

authorized representative that the notice of intent is incomplete. This paragraph does not apply to a notice of intent for renewal of a notice of general permit coverage.

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

- (1) The notice of intent may later be found to be incomplete by the director or by a court;
- (2) The person may not be covered under the terms of the general permit, even if the notice of intent is complete;
- (3) The person may be acting in noncompliance with the general permit or this chapter, even if the person is complying with its notice of intent; and
- (4) The director may modify, revoke and reissue, or terminate a notice of general permit coverage under section 11-55-34.11. The director may revoke automatic coverage and issue a notice of general permit coverage or terminate an automatic coverage under section 11-55-34.11.

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

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

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

(i) All submittals in compliance with a condition of the notice of general permit coverage shall be signed in accordance with section 11-55-34.08(e), (f), or (g) and include a certification in accordance with 40 CFR §122.22(d). [Eff and comp 10/29/92; am 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.10 Review of coverage issues and notice of intent and notice of general permit coverage decisions. Any interested person may petition the director under section 91-8, HRS, for a declaratory ruling on whether an individual permit is required for, or a general permit covers, a discharge. The director's decision requiring a person to apply for an individual permit or excluding a person from general permit coverage shall remain effective pending the outcome of the petition. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; §11-55-34.1; am, ren, and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.11

§11-55-34.11 Notice of general permit coverage revocation and/or termination. A notice of general permit coverage and automatic coverage under section 11-55-34.09(e)(2) may be revoked and/or terminated in accordance with section 11-55-34.05 or as determined by the director. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.12 General permit compliance. Any person who discharges under a general permit shall comply with section 11-55-34.04, all general permit standard conditions, all applicable special conditions, and all applicable additional notice of general permit coverage conditions. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-35 Penalties and remedies. Any person who violates any provision of this chapter or the terms or conditions of any permit issued under this chapter shall be subject to the penalties and remedies provided in chapter 342D, HRS. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-30, 342D-31, 342D-32, 342D-33, 342D-34, 342D-35; 33 U.S.C. §§1251, 1342,

1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-9, 342D-11, 342D-17, 342D-30, 342D-31, 342D-32, 342D-33, 342D-34, 342D-35; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-36 Hearing and appeals. Hearings before the director on any violations of these rules and appeals from any of the director's decisions shall comply with chapters 91 and 342D, HRS. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5, 342D-12, 342D-56, 342D-57; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS Ch. 91 and §§342D-2, 342D-4, 342D-5, 342D-6, 342D-9, 342D-11, 342D-12, 342D-31; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-37 Severability clause. If any provision of this chapter, or its application to any person or circumstance, is held invalid, the application of the provision to other persons or circumstances, and the remainder of this chapter, shall not be affected. [Eff 11/27/81; comp 10/29/92; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-38 Repealed. [Eff and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; R 6/15/09] (Auth: HRS ch. 6E, §§6E-1, 6E-42(a)) (Imp: HRS ch. 6E, §§6E-1, 6E-42(a))

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

- (1) The environmental impact of the proposed action beside the water quality effects already covered in the application and supporting materials;
- (2) Any adverse environmental effects which cannot be avoided should the action be implemented;
- (3) The alternatives to the proposed action;
- (4) The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity;
- (5) Any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented; and
- (6) The optimum balance between economic development and environmental quality.

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

(c) The department may consider other information relevant to the public interest, including information in an environmental assessment; environmental impact statement; other document prepared for another permit, license, or approval; or elsewhere. If the department considers information unknown to the applicant, the department shall notify the applicant and allow the applicant to respond in a timely manner. [Eff and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09;

comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS
§§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-4, 342D-5,
342D-6)

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

(1) Offer to settle; penalties.

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

- (i) Any person who causes or allows a discharge of pollutants into state waters or municipal separate storm sewer systems without coverage under an NPDES permit, or in excess of limitations established by an NPDES permit;
- (ii) Any person who begins an activity and/or discharges pollutants prior to obtaining the required individual NPDES permit, coverage under a general permit, and/or authorization from the director;
- (iii) Any person who fails to correctly install, implement, maintain, or repair site best management practices as called for in their storm water pollution control plan or best management practices plan or other plan;

- (iv) Any person who fails to retain a copy of the NPDES permit application or notice of intent or "no exposure" certification; storm water pollution control plan or best management practices plan or other plan, and all subsequent revisions; individual NPDES permit or notice of general permit coverage or conditional "no exposure" exclusion on-site or at a nearby office or field office;
 - (v) Any person who fails to submit documents, reports, and/or submittals required by the applicable NPDES permit, whole or in part, including but not limited to discharge monitoring reports, monthly compliance information, pollution prevention plans, notification to the director, and/or notices of cessation.
- (B) A field citation shall assess the following penalties for violations:
- (i) Any person who violates paragraph (1)(A)(i) shall be fined \$500 for first violation, and \$1,000 for a subsequent violation;
 - (ii) Any person who violates paragraph (1)(A)(ii) shall be fined \$500 for the first violation, and \$1,000 for a subsequent violation;
 - (iii) Any person who violates paragraph (1)(A)(iii) shall be fined \$500 for first violation, and \$1,000 for a subsequent violation;
 - (iv) Any person who violates paragraph (1)(A)(iv) shall be fined \$100

for first violation, and \$200 for a subsequent violation;

- (v) Any person who violates paragraph 1(A)(v) shall be fined \$500 for first violation, and \$1,000 for a subsequent violation.

(2) Resolution of field citation.

(A) A person issued a field citation may accept the citation by:

- (i) Signing the field citation;
- (ii) Paying the full amount assessed by the field citation. Payment shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director;
- (iii) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty days after the person receives the field citation; and
- (iv) Correction within seven days, or unless otherwise specified on the field citation, of any violation of section 11-55-03;

(B) By signing the field citation, the person to whom it was issued agrees to:

- (i) Give up the right to a contested case hearing under chapter 91 or 342D, HRS, or otherwise challenge the field citation;
- (ii) Pay the penalty assessed; and
- (iii) Correct the violation;

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(C) If the field citation is not accepted in compliance with paragraph (2)(A), the director may seek for that cited violation any remedies available under this chapter; chapter 342D, HRS; or any other law. For all other violations the director retains authority to seek any available remedies.

(3) Form of citation. The department shall prescribe a field citation form." [Eff and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp **DEC 06 2013**] (Auth: HRS §§321-11, 342D-1, 342D-4, 342D-5) (Imp: HRS §§321-11, 342D-2, 342D-4, 342D-5, 342D-9, 342D-18, 342D-30, 342D-31, 342D-50, 603-23)

§11-54-11 Revision. These water quality criteria are based upon the best currently available data. Studies made in connection with the implementation program may suggest improvements to this chapter. For this reason, the chapter will be subject to periodic review and, where necessary, to change. Any change will be made only after public hearing, held in compliance with chapter 91, HRS and the rules of practice and procedures of the department. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

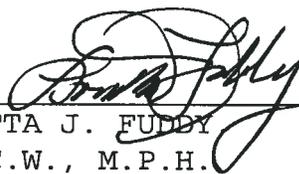
§11-54-12 Severability. If any provisions of this chapter, or the application thereof to any person or circumstances, is held invalid, the invalidity does not affect other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp **DEC 06 2013**] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

OFFICE OF THE ATTORNEY GENERAL

J3 WDA SR 63:13

Amendments and compilation of chapter 54, title 11, Hawaii Administrative Rules, on the Summary Page dated **DEC 06 2013** were adopted on **DEC 06 2013** following a public hearing held on August 21, 2013, after public notice was given in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Isle on July 12, 2013.

The adoption of chapter 11-54 shall take effect ten days after filing with the Office of the Lieutenant Governor



LORETTA J. FUDDY
A.S.C.W., M.P.H.
Director of Health



NEIL ABERCROMBIE
Governor
State of Hawaii

Dated: 11.26.13

Filed

13 NOV 26 P3:17

LIEUTENANT GOVERNOR'S
OFFICE

APPROVED AS TO FORM:



EDWARD G. BOHLEN
Deputy Attorney General

CHAPTER 11-55 APPENDIX A

DEPARTMENT OF HEALTH
STANDARD GENERAL PERMIT CONDITIONS

DEC 06 2013

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Note: All references to Title 40 of the Code of Federal Regulations (40 CFR) are to regulations that are in effect on July 1, 2012 unless otherwise specified. The Clean Water Act (Act) is also known as the Federal Water Pollution Control Act, as amended by the Clean Water Act, and appears at 33 U.S.C. §§1251 to 1387.

The permittee shall comply with the following standard conditions.

1. Basic water quality criteria (section 11-54-4)
 - a. The permittee shall not cause or contribute to a violation of the basic water quality criteria specified in section 11-54-4(a) which states:
 - "(a) All waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants, including:
 - (1) Materials that will settle to form objectionable sludge or bottom deposits;
 - (2) Floating debris, oil, grease, scum, or other floating materials;

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- (3) Substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts sufficient to produce objectionable color, turbidity or other conditions in the receiving waters;
 - (4) High or low temperatures; biocides; pathogenic organisms; toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water;
 - (5) Substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life; and
 - (6) Soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways; subdivisions; recreational, commercial, or industrial developments; or the cultivation and management of agricultural lands."
- b. The discharge shall not cause or contribute to a violation of the basic requirements of section 11-54-4(b).

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2. Onshore or offshore construction

The applicable general permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any state waters.

3. Sampling requirements and definitions

(a) Sampling Points

All samples shall be taken at the monitoring points specified in the applicable general permit and, unless otherwise specified, before the effluent joins or is diluted by any other wastestream, body of water, or substance. Monitoring points shall not be changed without notification to and the approval of the director. No discharge is authorized which does not totally pass through the final monitoring point.

(b) Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to ensure the accuracy and reliability of measurements of the volume of discharges. The devices shall be installed, calibrated and maintained to ensure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than plus or minus ten per cent from the true discharge rates throughout the range of expected discharge volumes. Once-

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through condenser cooling water flow which is monitored by pump logs or pump hour meters as specified in the applicable general permit based on the manufacturer's pump curves shall not be subject to this requirement. Guidance in selection, installation, calibration, and operation of acceptable flow measurement devices can be obtained from the following references:

- (1) "A Guide of Methods and Standards for the Measurement of Water Flow," U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 421, May 1975, 97 pp. (Available from the U.S. Government Printing Office, Washington, D.C. 20402. Order by SD catalog No. C13.10:421.) (Also available from National Technical Information Service (NTIS). Order by NTIS No. COM-7510683.)
- (2) "Water Measurement Manual," U.S. Department of Interior, Bureau of Reclamation, Third Edition, Revised Reprint, 2001, 485 pp. (Available from the U.S. Government Bookstore. Order by Stock No. 024-003-00186-4 and ISBN 0-16-061763-4.) (Also available from National Technical Information Service (NTIS). Order by NTIS No. PB2002-100323.)
- (3) "Flow Measurement in Open Channels and Closed Conduits," U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 484, October 1977, 982 pp. (Available in paper copy

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or microfiche from National Technical Information Service (NTIS), Springfield, VA 22151. Order by NTIS No. PB-273 535/5ST.)

- (4) "NPDES Compliance Flow Measurement Manual," U.S. Environmental Protection Agency, Office of Water Enforcement, Publication MCD-77, EPA No. 832B81102, September 1981, 149 pp. (Available from the National Technical Information Service (NTIS). Order by NTIS No. PB82-131178.)

(c) Calibration

The permittee shall periodically calibrate and perform maintenance on all monitoring and analytical equipment used to monitor the pollutants discharged under the applicable general permit, at intervals which will ensure the accuracy of measurements, but no less than the manufacturer's recommended intervals or six-month intervals (whichever comes first). Records of calibration shall be kept under section 14.

(d) pH Effluent Limitations Under Continuous Monitoring

If the permittee continuously measures the pH of the effluent under a requirement or option in the applicable general permit, excursions from the range provided in the general permit or as specified in chapter 11-54 are permitted, provided:

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- (1) The pH limitation in the general permit is based upon a requirement imposed under 40 CFR Subchapter N, Effluent Guidelines and Standards;
- (2) The total time during which the pH values are outside the required range of pH values shall not exceed four hundred forty-six minutes in any calendar month;
- (3) No individual excursions from the range of pH values shall exceed sixty minutes; and
- (4) For purposes of this section, an "excursion" is an unintentional and temporary incident in which the pH value of the effluent exceeds the range set forth in the applicable general permit. The number of individual excursions exceeding sixty minutes and the total accumulated excursion time in minutes occurring in any calendar month shall be reported in accordance with the applicable general permit.

(e) Average

As used in the applicable general permit, unless otherwise stated, the term "average" means the arithmetic mean of values taken at the frequency required for each parameter over the specified period. For fecal coliform, enterococcus, or *clostridium perfringens*, the "average" shall be the geometric mean. For total coliform, the "average" shall be the median.

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(f) Mass/Day Measurements

- (1) The "daily discharge" is the total mass (weight) of a pollutant discharged during a calendar day. The daily discharge shall be determined by using the following equations:

$$\text{Daily Discharge (lbs/day)} = 8.34 \times Q \times C;$$

$$\text{Daily Discharge (kg/day)} = 3.785 \times Q \times C;$$

and

where "C" (in mg/l) is the measured daily concentration of the pollutant and "Q" (in million gallons per day) is the measured effluent flow rate for the same calendar day.

If only one sample is taken during any calendar day, the mass (weight) of pollutant discharged that is calculated from it is the "daily discharge."

- (2) The "average monthly discharge" is defined as the total mass of all daily discharges sampled or measured or both during a calendar month on which daily discharges are sampled and measured, divided by the number of daily discharges sampled or measured or both during such month. It is, therefore, an arithmetic mean found by adding the weights of the pollutant found each day of the month and then dividing this sum by the number of days. This limitation is identified as "Monthly Average" in

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the applicable general permit and the average monthly discharge value is reported in the "Average" column under "Quantity" on the discharge monitoring report form.

- (3) The "average weekly discharge" is defined as the total mass of all daily discharges sampled or measured or both during the calendar week in which daily discharges are sampled or measured or both. It is, therefore, an arithmetic mean found by adding the weights of pollutants found each day of the week and then dividing this sum by the number of days. This limitation is identified as "Weekly Average" in the applicable general permit and the average weekly discharge value is reported in the "Maximum" column under "Quantity" on the discharge monitoring report form.
- (4) The "maximum daily discharge" is the highest daily discharge value recorded, sampled, or measured during the reporting period. This limitation is identified as "Daily Maximum" in the applicable general permit and the maximum daily discharge value is reported in the "Maximum" column under "Quantity" on the discharge monitoring report form.

(g) Concentration Measurements

- (1) The "daily concentration" is the concentration of a pollutant discharged

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during a calendar day. It is equal to the concentration of a composite sample or in the case of grab samples, it is the arithmetic mean (weighted by flow value) of all samples collected during that calendar day. If only one sample is taken during any calendar day, it represents the "daily concentration."

- (2) The "average monthly concentration," other than for fecal coliform, enterococcus, *clostridium perfringens*, or total coliform, is the sum of the daily concentrations sampled or measured or both divided by the number of daily discharges sampled or measured or both during such month (arithmetic mean of the daily concentration values). The average monthly count for fecal coliform, enterococcus, or *clostridium perfringens* is the geometric mean of the counts for samples collected during a calendar month. The average monthly count for total coliform is the median of the counts for samples collected (not less than five discrete samples) during a calendar month. This limitation is identified as "Monthly Average" or "Daily Average" under "Other Limits" in the applicable general permit and the average monthly concentration value is reported under the "Average" column under "Quality" on the discharge monitoring report form.
- (3) The "average weekly concentration," other than for fecal coliform,

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enterococcus, or *clostridium perfringens*, or total coliform, is the sum of the concentrations of all daily discharges sampled or measured or both during a calendar week on which daily discharges are sampled and measured divided by the number of daily discharges sampled or measured or both during such week (arithmetic mean of the daily concentration values). The average weekly count for fecal coliform, enterococcus, or *clostridium perfringens* is the geometric mean of the counts for samples collected during a calendar week. The average weekly count for total coliform is the median of the counts for samples collected during a calendar week. This limitation is identified as "Weekly Average" under "Other Limits" in the applicable general permit and the average weekly concentration value is reported under the "Maximum" column under "Quality" on the discharge monitoring report form.

- (4) The "maximum daily concentration" is the highest daily concentration value recorded, sampled, or measured during the reporting period. This limitation identified as "Daily Maximum" under "Other Limits" in the applicable general permit and the maximum daily concentration is reported under the "Maximum" column under "Quality" on the discharge monitoring report form.

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- (h) The effluent flow expressed as cubic meters per day or million gallons per day (MGD), is the twenty-four-hour average flow averaged monthly. It is the arithmetic mean of the total daily flows recorded during the calendar month. Where monitoring requirements for flow are specified in the applicable general permit, the flow rate values are reported in the "Average" column under "Quantity" on the discharge monitoring report form.
- (1) An "instantaneous flow measurement" is a measure of flow taken at the time of sampling, when both the sample and flow will be representative of the total discharge.
- (2) Where monitoring requirements for pH, dissolved oxygen or fecal coliform, enterococcus, or *clostridium perfringens* are specified in the applicable general permit, the values are generally reported in the "Quality or Concentration" column on the discharge monitoring report form.
- (i) The "arithmetic mean" of any set of values is the summation of the individual values divided by the number of individual values.
- (j) The "geometric mean" of any set of values is the Nth root of the product of the individual values where N is equal to the number of individual values. The geometric mean is equivalent to the antilog of the arithmetic mean of the logarithms of the individual values. For purposes of



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calculating the geometric mean, values of zero shall be considered to be one.

- (k) "Weighted by flow value" means the summation of each concentration times its respective flow divided by the summation of the respective flows.
- (l) The "median" of any set of ordered values is the value below and above which there is an equal number of values or which is the arithmetic mean of the two middle values if there is no one middle number.
- (m) A calendar day is defined as the period from midnight of one day until midnight of the next day. However, for the purposes of the applicable general permit, any consecutive twenty-four-hour period that reasonably represents the calendar day may be used for sampling.
- (n) "Removal efficiency" is the ratio of pollutants removed by the treatment unit to pollutants entering the treatment unit. Removal efficiencies of a treatment plant shall be determined using the average monthly concentrations (C, in mg/l) of influent and effluent samples collected about the same time and the following equation (or its equivalent):

$$\text{Removal Efficiency} = 100 \times \left(1 - \frac{C_{\text{effluent}}}{C_{\text{influent}}}\right)$$

(per cent)

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4. Duty to reapply

If the permittee wishes to continue an activity regulated by the applicable general permit after the expiration of the notice of general permit coverage or in the case of automatic coverage, the expiration of the general permit itself, the permittee shall follow the procedures as specified in sections 11-55-34.08 and 11-55-34.09.

5. Applications (comply with 40 CFR §122.22)

6. Duty to comply (comply with 40 CFR §122.41(a))

7. Need to halt or reduce activity not a defense (comply with 40 CFR §122.41(c))

8. Duty to mitigate (based in part on 40 CFR §122.41(d))

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the applicable general permit or applicable law.

9. Proper operation and maintenance (comply with 40 CFR §122.41(e))

10. Permit actions (comply with 40 CFR §122.41(f))

11. Property rights (comply with 40 CFR §122.41(g))

12. Duty to provide information (comply with 40 CFR §122.41(h))

13. Inspection and entry (comply with 40 CFR §122.41(i))

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14. Monitoring and records (based in part on 40 CFR §122.41(j))
- (a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

As used in this section, a representative sample means that the content of the sample shall:

- (1) Be identical to the content of the substance sampled at the time of the sampling;
- (2) Accurately represent the monitored item (for example, sampling to monitor final effluent quality shall accurately represent that quality, even though the sampling is done upstream of the discharge point); and
- (3) Accurately represent the monitored item for the monitored time period (for example, sampling to represent monthly average effluent flows shall be taken at times and on days that cover significant variations).
Representative sampling may include weekends and storm events and may mean taking more samples than the minimum number specified elsewhere in the applicable general permit.
The burden of proving that sampling or monitoring is representative is on the permittee.

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- (b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the applicable general permit, and records of all data used to complete the application for the applicable general permit, for a period of at least five years from the date of the sample, measurement, report or application. This period may be extended by request of the director at any time.
- (c) Records of monitoring information shall include:
- (1) The date, exact place, and time of sampling or measurements;
 - (2) The individual(s) who performed the sampling or measurements;
 - (3) The date(s) the analyses were performed;
 - (4) The individual(s) who performed the analyses;
 - (5) The analytical techniques or methods used; and
 - (6) The results of the analyses.
- (d) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part

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503, unless other test procedures have been specified in the applicable general permit.

- (e) The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained by the applicable general permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than two years per violation, or by both for a first conviction. For a second conviction, the person is subject to a fine of not more than \$20,000 per day of violation, or by imprisonment for not more than four years, or both. (Updated under the Water Quality Act of 1987)

- 15. Signatory requirement (comply with 40 CFR §§122.22 and 122.41(k))
- 16. Reporting requirements (comply with 40 CFR §122.41(1))
- 17. Bypass (based in part on 40 CFR §122.41(m))

(a) Definitions

- (1) "Bypass" means the intentional diversion of any waste streams from any portion of a treatment facility.
- (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and

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permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

- (b) Prohibition of bypass. Every bypass is prohibited, and the director may take enforcement action against a permittee for bypass, except as provided in section 17(c).
- (c) Exceptions to bypass prohibition
 - (1) Bypass not exceeding limitations. A bypass is allowable under this paragraph only if it does not cause any effluent limitation to be exceeded, and only if the bypass is necessary for essential maintenance to assure efficient operation.
 - (2) Bypass unavoidable to prevent specified harm. A bypass is allowable under this paragraph if:
 - (A) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up

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equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

-
- (C) The permittee submitted notices as required under section 17(d).
- (3) Approved anticipated bypass. An anticipated bypass is allowable if the director approves it. The director shall approve the anticipated bypass only if the director receives information sufficient to show compliance with section 17(c)(2), including information on the potential adverse effects with and without the bypass, and information on the search for and the availability of alternatives, whether the permittee ultimately considers the alternatives feasible or not.
- (d) Notice
- (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, the permittee shall submit prior notice, if possible at least ten days before the date of the bypass.
- (2) Unanticipated bypass. The permittee shall report unanticipated bypasses.

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- (A) Reports required by the reporting requirements of the applicable general permit shall be made in accordance with that section. If the permittee questions whether the reporting requirements of the applicable general permit applies, it shall follow the reporting requirements of the applicable general permit;
 - (B) For all other bypasses, reports shall be made orally within twenty-four hours from the time the permittee becomes aware of the bypass. Written reports may be required on a case-by-case basis.
 - (e) Burden of proof. In any enforcement proceeding the party seeking to establish that any exception to the bypass prohibition applies has the burden of proof. Proof that effluent limitations were met requires effluent monitoring during the bypass.
18. Upset (based in part on 40 CFR §122.41(n))
- (a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment

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facilities, lack of preventive maintenance, or careless or improper operation.

- (b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with the technology based permit effluent limitations if the requirements of section 18(c) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- (c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An upset occurred and that the permittee can identify the cause(s) of the upset;
 - (2) The permitted facility was at the time being properly operated;
 - (3) The permittee submitted within twenty-four hours a notice of any upset which exceeded any effluent limitation in the applicable general permit; and
 - (4) The permittee complied with any remedial measures required under 40 CFR §122.41(d).

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- d. Burden of proof. In any enforcement proceeding, any person seeking to establish the occurrence of an upset has the burden of proof.
19. Existing manufacturing, commercial, mining, and silvicultural dischargers (comply with 40 CFR §122.42(a))
20. Publicly owned treatment works (comply with 40 CFR §122.42(b))
21. Reopener clause (comply with 40 CFR §122.44(c) and 40 CFR §125.123(d)(4))
22. Privately owned treatment works (The following conditions were established by EPA Region 9 to enforce applicable requirements of the Resource Conservation and Recovery Act and 40 CFR §122.44(m))

This section applies only to privately owned treatment works as defined at 40 CFR §122.2.

- (a) Materials authorized to be disposed of into the privately owned treatment works and collection system are typical domestic sewage. Unauthorized materials are hazardous waste (as defined at 40 CFR Part 261), motor oil, gasoline, paints, varnishes, solvents, pesticides, fertilizers, industrial wastes, or other materials not generally associated with toilet flushing or personal hygiene, laundry, or food preparation, unless specifically listed under "Authorized Non-domestic Sewer Dischargers" elsewhere in the applicable general permit. The Domestic

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Sewage Exclusion (40 CFR §261.4) does not apply to hazardous wastes mixed with domestic sewage in a sewer leading to a privately owned treatment works.

- (b) It is the permittee's responsibility to inform users of the privately owned treatment works and collection system of the prohibition against unauthorized materials and to ensure compliance with the prohibition. The permittee must have the authority and capability to sample all discharges to the collection system, including any from septic haulers or other unsewered dischargers, and shall take and analyze such samples for conventional, toxic, or hazardous pollutants when instructed by the permitting authority or by an EPA or state inspector. The permittee must provide adequate security to prevent unauthorized discharges to the collection system.
- (c) Should a user of the privately owned treatment works desire authorization to discharge non-domestic wastes, the permittee shall submit a request for permit modification and an application, under 40 CFR §122.44(m), describing the proposed discharge. The application shall, to the extent possible, be submitted using forms provided by the Administrator, unless another format is requested by the permitting authority. If the privately owned treatment works or collection system user is different from the permittee, and the permittee agrees to allow the non-domestic discharge, the user shall submit

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the application and the permittee shall submit the applicable general permit modification request. The application and request for modification shall be submitted at least six months before authorization to discharge non-domestic wastes to the privately owned treatment works or collection system is desired.

23. Transfers by modification (comply with 40 CFR §122.61(a))
24. Automatic transfers (comply with 40 CFR §122.61(b) and section 11-55-34.08(i)(2))
25. Minor modification of permits (comply with 40 CFR §122.63)
26. Termination of permits (comply with 40 CFR §122.64)
27. Removed substances (under Sections 301 and 405 of the Act and 40 CFR §125.3(g))

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner which prevents any pollutant from the materials from entering state waters.

28. Availability of reports (under Section 308 of the Act)

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of the applicable general permit shall be available for public inspection at the offices of the director. As required by the Act, permit applications,

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permits, and effluent data shall not be considered confidential.

29. Civil and criminal liability (under Section 309 of the Act)

Except as provided in the applicable general permit conditions on "Bypass" (section 17) and "Upset" (section 18), nothing in the applicable general permit shall be construed to relieve the permittee from civil or criminal penalties or remedies for noncompliance.

30. Oil and hazardous substance liability (under Section 311 of the Act)

Nothing in the applicable general permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

31. Federal facility construction (under Section 313(b) of the Act)

Construction shall not be initiated for facilities for treatment of wastewater at any federal property or facility if alternative methods for wastewater treatment at the property or facility utilizing innovative treatment processes and techniques, including, but not limited to, methods utilizing recycle and reuse techniques and land treatment are not utilized, unless the life cycle cost of the alternative treatment works exceeds the life cycle cost of the most effective alternative by more than fifteen per cent.

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32. State law (under Section 510 of the Act)

Nothing in the applicable general permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established under any applicable state law or regulation.

33. Severability (under Section 512 of the Act)

The provisions of the applicable general permit are severable and if any provision of the applicable general permit, or the application of any provision of the applicable general permit to any circumstance, is held invalid, the application of the provision to other circumstances, and the remainder of the applicable general permit, shall not be affected thereby.

34. Notice of Intent Requirements (comply with section 11-55-34.08)

The owner or its duly authorized representative shall include the following information in the notice of intent (NOI):

- (a) Legal name(s), street address, contact person's name and position title, and telephone and email address of the owner, operator, except for Appendix C and duly authorized representative, if applicable;

Note: For a construction activity, the operator is usually the general contractor.

- (b) Ownership status as federal, state, private, public or other entity;

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- (c) Name, street address, island, tax map key number(s), contact person's name and position title, and telephone and email address of the facility or project for which the notice of intent is submitted;
- (d) Name(s) of the receiving state water(s) that the effluent enters or will enter, the latitude and longitude of each outfall or discharge point to the nearest receiving state water(s), and the classification of the receiving state water(s).

If the effluent initially enters a separate storm water drainage system, the owner or its duly authorized representative shall provide the following information:

- (1) Name of the owner of the drainage system; and
 - (2) Copy of the permit, license, or equivalent written approval granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s).
- (e) Type of general permit required for the proposed discharge;
 - (f) Quantity of discharge; the source of the discharge; and the period of discharge, i.e., continuous, seasonal, occasional, or emergency;
 - (g) Topographic map or maps of the area extending at least one mile beyond the property boundaries of the site which clearly show the following:

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- (1) Legal boundaries of the site;
 - (2) Location and an identification number for each of the site's existing and proposed intake and discharge structures; and
 - (3) Receiving state water(s) or receiving storm water drainage system(s) identified and labeled. If the receiving state water is a wetland, submit a map showing the delineated wetland.
- (h) Flow chart or line drawing showing the general route taken by the discharge from the intake or source to the discharge point, except for Appendices B, C, and K. The owner or its duly authorized representative shall show any treatment system(s) or erosion control(s) used or to be used for new discharges. The flow contributed by each source may be estimated if no data is available;
- (i) List of existing or pending permits, licenses, or approvals and corresponding file numbers; and
- (j) Certifying person's name and position title, company name, and telephone and fax numbers.

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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF STORM WATER
ASSOCIATED WITH INDUSTRIAL ACTIVITIES

This General Permit is effective on

DEC 06 2013

and expires four years from this date,
unless amended earlier.

1. Coverage under this General Permit
 - (a) This general permit covers discharges composed entirely of storm water runoff associated with industrial activity, as defined in 40 CFR §§122.26(b)(14)(i) through 122.26(b)(14)(ix) and 122.26(b)(14)(xi).
 - (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."
2. Limitations on Coverage under this General Permit
 - (a) This general permit does not cover the following:
 - (1) Storm water discharges associated with industrial facilities which flow into a sanitary sewer system;
 - (2) Storm water discharges in categories for which storm water discharge limitation guidelines have been promulgated by the EPA;

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- (3) Storm water discharges associated with construction activities;
- (4) Storm water discharges from industrial facilities which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system;
- (5) Storm water discharges for which the director has issued a notice of general permit coverage under another general permit specific to that type of industrial activity;
- (6) Storm water discharges for which the director has received a "no exposure" certification for a conditional "no exposure" exclusion;
- (7) Storm water discharges from municipal separate storm water drainage systems;
- (8) Storm water discharges the director finds more appropriately regulated under an individual permit; and
- (9) Storm water discharges where the circumstances have changed since the time of the request to be covered so that the permittee is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination

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of the authorized discharge is necessary.

- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

- (a) This general permit becomes effective when section 11-55-34.02(b)(1) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires four years after the effective date or when amendments to section 11-55-34.02(b)(1) are adopted, whichever is earlier.
- (b) A notice of general permit coverage under this general permit expires:
 - (1) Four years after the effective date of this general permit;
 - (2) When the notice of general permit coverage specifies; or
 - (3) When amendments to section 11-55-34.02(b)(1) are adopted,whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete

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notice of intent no later than thirty days before the proposed starting date of the facility industrial activity or thirty days before the expiration date of the applicable notice of general permit coverage.

- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
- (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) List of up to four Standard Industrial Classification codes or North American Industrial Classification System codes that best represent the products or activities of the facility;
 - (3) Existing quantitative and qualitative data which describe the concentrations of pollutants in storm water discharges. In cases when this data is not available at the time of notice of intent submission due to lack of representative rainfall event for sampling, the permittee shall monitor the next representative rainfall event and submit the data to the director of health within sixty calendar days after sample collection;
 - (4) Facility site map; and
 - (5) Storm water pollution control plan, which meets the applicable requirements as specified in sections 6 or 7 or both of this general permit.

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- (A) The applicant for a proposed facility shall submit the storm water pollution control plan to the director within one hundred twenty days after the issuance date of the notice of general permit coverage or by the date the applicant claimed automatic coverage as specified in section 11-55-34.09(e)(2), or by the date the facility begins operations. The permittee for a proposed facility shall implement its storm water pollution control plan within one hundred eighty days after submittal to the director.
- (B) The permittee for a facility which is currently covered by a notice of general permit coverage shall submit its existing or updated storm water pollution control plan, which meets the applicable requirements as specified in sections 6 or 7 or both of this general permit, with the notice of intent and shall continue to implement the storm water pollution control plan during the processing of the notice of intent.
- (C) The applicant for an existing facility not currently covered by a notice of general permit coverage shall submit a storm water pollution control plan with the notice of intent, which meets the applicable requirements in sections 6 or 7 or both of this general

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permit. If a storm water pollution control plan is not available at the time of the notice of intent submittal, the applicant may request that the storm water pollution control plan be submitted within one hundred twenty days after the issuance date of the notice of general permit coverage or by the date the applicant claimed automatic coverage as specified in section 11-55-34.09(e)(2). The permittee shall implement its storm water pollution control plan upon submittal to the director.

- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

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6. Storm Water Pollution Control Plan Requirements

- (a) The permittee shall develop and implement a storm water pollution control plan to minimize the discharge of pollutants in storm water runoff and to maintain compliance with conditions of this general permit. The storm water pollution control plan shall include the following:
- (1) Brief facility description;
 - (2) Site map identifying the locations of drainage structures; outline of each drainage area; paved areas and buildings and other ground cover within each drainage area; each past or present area for outdoor storage, industrial activities, or disposal of materials; each past or present area of a significant spill (as identified in sections 6(a)(5) and 6(a)(6) of this general permit); structural measures for the control of storm water; material loading and access areas; areas where pesticides, herbicides, soil conditioners and fertilizers are applied; hazardous waste storage or disposal areas or both; underground injection wells; sampling locations, outfall locations; and the nearest receiving state water(s);
 - (3) Pollutant control strategy identifying potential pollutants, pollutant sources, and control strategies used to minimize the discharge of pollutants. The permittee shall consider the use of containment structures, covering materials by roof or tarpaulin,

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preventive maintenance, good housekeeping measures, waste minimization, removal of exposed pollutants, and spill prevention practices;

- (4) Spill prevention and response plan that identifies spill prevention and response measures and facility personnel responsible for its implementation and conforms with the reporting requirements. Responsible personnel shall be available at all times when the facility is in operation;
- (5) Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the five years before the submittal of this storm water pollution control plan;
- (6) Existing information regarding any discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required under 40 CFR §110.6 at anytime since November 16, 1987;
- (7) Storm water monitoring plan that includes the following:
 - (A) Rationale for selecting sampling locations. Where two or more outfalls are expected, based on the features and activities within the drainage areas, to convey substantially similar storm water discharges, the permittee may

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request to monitor only one of those outfalls. The director may approve the request if the permittee demonstrates that the outfalls monitored are representative for the overall storm water discharges from the facility. The justification for the outfall sampling locations chosen shall be incorporated into the monitoring plan. The permittee shall sample for all potentially present pollutants as identified in the notice of intent; as listed in Federal Register, Vol. 73, No. 189, pages 56572-56578, dated September 29, 2008; or the storm water pollution control plan;

- (B) Sample collection methods, including quality assurance/quality control methods;
- (C) List of parameters to be monitored;
- (D) Type of sample to be taken for each parameter to be monitored;
- (E) Test procedures to be used for each parameter to be monitored;
- (F) Detection limit for each test procedure;
- (G) Method to calculate storm water flow;
- (H) Procedures to collect storm event information, including the date,

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duration, and starting and ending times of the storm event, and the duration between the storm event and the end of the previous rainfall event with rainfall greater than 0.1 inches; and

- (I) Procedures to inspect receiving state waters, storm water runoff, control measures, and best management practices to detect violations of the basic water quality criteria as specified in section 11-54-4;
- (8) Procedures for implementing, reviewing, and updating the storm water pollution control plan including:
- (A) Annual employee education or training program that ensures the storm water pollution control plan will be properly implemented;
 - (B) Protocol for inspections that ensures the pollutant control strategy and the spill prevention and response plan are being effectively carried out; and
 - (C) Documentation procedures for all inspections and reviews required in the storm water pollution control plan.
- (b) The permittee shall retain the storm water pollution control plan, and all subsequent revisions, on-site or at a nearby office.

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(c) The permittee shall conduct facility inspections as specified in Federal Register, Vol. 73, No. 189, pages 56572-56578, dated September 29, 2008; to ensure that the storm water pollution control plan remains effective. Otherwise, the permittee shall conduct facility inspections at least semi-annually. The permittee shall maintain a record of the following:

- (1) Dates on which inspections were conducted;
- (2) Inspection findings; and
- (3) Corrective actions taken.

(d) The permittee shall review and update the storm water pollution control plan as often as needed to comply with the conditions of this general permit or conditions of the notice of general permit coverage, whichever is more stringent, or as required by the director. The permittee shall document and report any changes to the storm water pollution control plan to the director within thirty days of when the changes arise. The permittee shall retain the storm water pollution control plan and all accompanying records, reports, and changes, for a period of at least five years after the expiration of this general permit unless otherwise noted in section 13 of this general permit.

7. Additional Conditions for Facilities Subject to Superfund Amendments and Reauthorization Act Section 313 Requirements.

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The permittee for facilities subject to reporting requirements under Superfund Amendments and Reauthorization Act of 1986, Title III, Section 313, 42 U.S.C. §11023 for chemicals which are classified as "Section 313 water priority chemicals" in accordance with the definition in section 7(c) shall describe and ensure in the storm water pollution control plan the implementation of practices which are necessary to provide conformance with the following guidelines:

- (a) In areas where Section 313 water priority chemicals are stored, processed or otherwise handled, the permittee shall provide appropriate containment, drainage control or diversionary structures or both. At a minimum, the permittee shall use one of the following preventive systems or its equivalent:
 - (1) Curbing, culverting, gutters, sewers or other forms of drainage control to prevent or minimize the potential for storm water runoff to come into contact with significant sources of pollutants;
or
 - (2) Roofs, covers or other forms of protection to prevent storage piles from exposure to storm water and wind.

- (b) In addition to the minimum standards listed under section 7(a) above, the permittee shall include in the storm water pollution control plan a complete discussion of measures taken to conform with the following applicable guidelines, other effective storm water pollution control procedures, and applicable state rules, regulations, and guidelines:

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- (1) Liquid storage areas where storm water comes into contact with any equipment, tank, container, or other vessel used for Section 313 water priority chemicals.
 - (A) The permittee shall not use any tank or container for the storage of a Section 313 water priority chemical unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature, etc.
 - (B) The permittee shall operate liquid storage areas for Section 313 water priority chemicals to minimize discharges of Section 313 chemicals. Appropriate measures to minimize discharges of Section 313 chemicals may include secondary containment provided for at least the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation, a strong spill contingency and integrity testing plan or other equivalent measures or both.
- (2) The permittee shall incorporate drainage or other control features which will minimize the discharge of Section 313 water priority chemicals from material storage areas for Section 313 water priority chemicals other than liquids which are subject to runoff, leaching, or wind.

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- (3) The permittee shall operate truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals to minimize discharges of Section 313 water priority chemicals. The permittee shall provide protection such as overhangs or door skirts to enclose trailer ends at truck loading/unloading docks as appropriate. Appropriate measures to minimize discharges of Section 313 chemicals may include: the placement and maintenance of drip pans (including the proper disposal of materials collected in the drip pans) where spillage may occur (such as hose connections, hose reels and filler nozzles) for use when making and breaking hose connections; a strong spill contingency and integrity testing plan; or other equivalent measures or any combination thereof.
- (4) The permittee shall operate processing equipment and materials handling equipment in facility areas where Section 313 water priority chemicals are transferred, processed, or otherwise handled to minimize discharges of Section 313 water priority chemicals. Materials used in piping and equipment shall be compatible with substances handled. The permittee shall provide drainage from process and materials handling areas to minimize storm water contact with Section 313 water priority chemicals. The permittee shall provide additional protection such as covers or guards to prevent exposure to wind,

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spraying or releases from pressure relief vents from causing a discharge of Section 313 water priority chemicals to the drainage system as appropriate. The Permittee shall perform visual inspections or leak tests for overhead piping conveying Section 313 water priority chemicals without secondary containment.

- (5) Discharges from areas covered by section 7(b)(1), 7(b)(2), 7(b)(3), or 7(b)(4).
 - (A) The permittee shall prevent the discharge of a spill or other excessive leakage of Section 313 water priority chemicals by restraining drainage from areas covered by section 7(b)(1), 7(b)(2), 7(b)(3), or 7(b)(4) by valves or other positive means. Where containment units are employed, the permittee shall manually activate pumps or ejectors to empty units.
 - (B) The Permittee shall not use flapper-type drain valves to drain containment areas. As much as practicable, the Permittee shall use manual valves designed to open-and-close.
 - (C) If facility drainage is not engineered as described above, the permittee shall equip all in-facility storm sewers with a diversion system that could, in the event of an uncontrolled spill

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of Section 313 water priority chemicals, return the spilled material to the facility.

- (D) The permittee shall keep records of the frequency and estimated volume (in gallons) of discharges from containment areas.
- (6) The permittee shall incorporate the necessary drainage or other control features to prevent discharge of spilled or improperly disposed Section 313 water priority chemicals from other areas of the facility not addressed in sections 7(b)(1), 7(b)(2), 7(b)(3), or 7(b)(4) and ensure the mitigation of pollutants in runoff or leachate, from which runoff which may contain or spills of Section 313 water priority chemicals could cause a discharge.
- (7) The permittee shall inspect all areas of the facility at specific intervals for leaks or conditions that could lead to discharges of Section 313 water priority chemicals or direct contact of storm water with raw materials, intermediate materials, waste materials or products. In particular, the permittee shall examine facility piping, pumps, storage tanks and bins, pressure vessels, process and material handling equipment, and material bulk storage areas for any conditions or failures which could cause a discharge.
- (A) The permittee shall include an inspection for leaks, areas affected by wind, corrosion,

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support or foundation failure, or other forms of deterioration or noncontainment.

- (B) The permittee shall specify inspection intervals in the storm water pollution control plan. The permittee shall base inspection intervals on design and operational experience where different areas may require different inspection intervals.
 - (C) Where a leak or other condition is discovered which may result in significant releases of Section 313 water priority chemicals to state waters, the permittee shall take immediate action to stop the leak or otherwise prevent the significant release of Section 313 water priority chemicals to state waters or immediately shut down the unit or process until such action can be taken.
 - (D) When a leak or noncontainment of a Section 313 water priority chemical has occurred, the permittee shall promptly remove and dispose contaminated soil, debris, or other material in accordance with federal, state, and local requirements and as described in the storm water pollution control plan.
- (8) The permittee shall have the necessary security systems to prevent accidental or intentional entry which could cause

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a discharge from the facility. The permittee shall address fencing, lighting, vehicular traffic control, and securing of equipment and buildings in the storm water pollution control plan.

- (9) The permittee shall train and inform employees and contractor personnel (who work in areas where Section 313 water priority chemicals are used or stored) on preventive measures at the facility.
- (A) The permittee shall conduct employee training at intervals specified in the storm water pollution control plan, but not less than once a year, in matters of pollution laws and regulations, and in the storm water pollution control plan and the particular features of the facility and its operation which are designed to minimize discharges of Section 313 water priority chemicals.
- (B) The permittee shall designate and include in the storm water pollution control plan a person who is accountable for spill prevention at the facility and who will set up the necessary spill emergency procedures and reporting requirements so that spills and emergency releases of Section 313 water priority chemicals can be isolated and contained before a discharge of a Section 313 water priority chemical can occur.



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- (C) The permittee shall inform contractors or temporary personnel of plant operation and design features in order to prevent discharges or spills from occurring.
- (10) The permittee shall have the storm water pollution control plan for a facility subject to Superfund Amendments and Reauthorization Act, Title III, Section 313 requirements for chemicals which are classified as "Section 313 water priority chemicals" reviewed and certified by a licensed professional engineer. The permittee shall have the licensed professional engineer recertify the storm water pollution control plan every three years thereafter or as soon as practical after significant modifications are made to the facility. The licensed professional engineer, having examined the facility and being familiar with the provisions of this part, shall attest that the storm water pollution control plan has been prepared in accordance with good engineering practices. The certification shall in no way relieve the permittee of a facility covered by the storm water pollution control plan of their duty to prepare and fully implement the storm water pollution control plan.
- (c) "Section 313 water priority chemical" means a chemical or chemical categories which:

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- (1) Are listed at 40 CFR §372.65 under Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 also titled the Emergency Planning and Community Right-to-Know Act;
- (2) Are present at or above threshold levels at a facility subject to Superfund Amendments and Reauthorization Act, Title III, Section 313 reporting requirements; and
- (3) Meet at least one of the following criteria:
 - (A) Are listed in Appendix D of 40 CFR §122 on either Table II (organic priority pollutants), Table III (certain metals, cyanide, and phenols) or Table V (certain toxic pollutants and hazardous substances);
 - (B) Are listed as a hazardous substance under Section 311(b)(2)(A) of the Act at 40 CFR §116.4; or
 - (C) Are pollutants for which the EPA has published acute or chronic water quality criteria.

8. Storm Water Discharge Limitations and Monitoring Requirements

- (a) The storm water discharge shall be limited and monitored by the permittee as specified in this section and in Table 34.1. (Daily maximum storm water discharge limitations

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for saline water apply only when discharges to saline water occur and daily maximum storm water discharge limitations for fresh water apply only when discharges to fresh water occur.)

(1) Sampling Points

The permittee shall monitor the storm water outfalls, prior to mixing with receiving state water or entering separate storm water drainage systems, as identified in the storm water pollution control plan.

(2) Collection of Samples

(A) The permittee shall collect samples from a discharge resulting from a representative storm event as defined in section 11-55-01.

(B) The permittee shall take samples and measurements for the purposes of monitoring which are representative of the volume and nature of the total discharge.

(3) Types of Samples

Definitions for grab sample and composite sample are in note {2} of Table 34.1.

(4) Test Procedures

(A) The permittee shall use test procedures for the analysis of pollutants which conform with

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regulations published under Section 304(h) of the Act.

(B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.

(C) The permittee shall use test methods with detection limitations that reflect the applicable numerical limitations as specified in chapter 11-54. If the test result is not detectable, indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.

(5) Recording of Results

The permittee shall comply with section 14(c) of appendix A of chapter 11-55 for each measurement or sample taken under the requirements of this general permit.

(6) Quantity of Flow

The permittee shall estimate or calculate the quantity of storm water discharged and submit the calculations.

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- (b) Non-numeric Technology-Based Effluent Limitations. The permittee shall comply with Section 2.1.2 and applicable sector-specific requirements in Part 8 of the EPA's 2008 Multi-Sector General Permit.
- (c) Basic Water Quality Criteria and Inspections
- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
 - (2) The permittee shall timely inspect the receiving state waters, storm water runoff, control measures, and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at the storm water discharge and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)
- (d) Storm Event Information. The permittee shall collect the following information for the storm event monitored:
- (1) Date, duration (in hours), and starting and ending times of the storm event; and

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- (2) Duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch) rainfall event.

9. Corrective Action

The permittee shall immediately stop, reduce, or modify the discharge as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

10. Reporting Requirements

(a) Reporting of Monitoring Results

- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.1 and other requirements of this general permit.
- (2) The permittee shall submit monitoring results at least annually and the results shall be postmarked or received by the department no later than sixty calendar days after sample collection. The first monitoring year shall start on January 1st of the year of the issuance date of the notice of general permit coverage or other date specified by the director in written correspondence to the permittee and end on December 31st. The subsequent

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monitoring years shall be calendar years.

- (3) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; storm water flow calculations; date, duration, starting and ending times of the storm event; date of the previous 0.1 inch rainfall event; and any additional pollutant control strategies to be implemented based on monitoring results.
- (4) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.

(b) Additional Monitoring by the Permittee

- (1) If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 8(a)(4)(B) of this general permit, the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.
- (2) If the permittee exceeds any limitation, the permittee shall comply with section 10(c) of this general permit, and continue to monitor every representative storm until limitations

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are met, unless as otherwise informed by the director.

- (c) Reporting of Noncompliance, Unanticipated Bypass, or Upset
- (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:
 - (A) Violation of a storm water discharge limitation specified in Table 34.1 or a basic water quality criteria specified in section 8(b) of this general permit;
 - (B) Discharge or noncompliance with storm water discharge limitations which may endanger health or the environment; or
 - (C) Unanticipated bypass or upset.
 - (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.
 - (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the



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circumstances. The written report shall include the following:

- (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;
 - (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
 - (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
 - (D) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset.
- (4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.
- (d) Planned Changes

The permittee shall report any planned physical alterations or additions to the permitted facility, not covered by 40 CFR §122.41(1)(1)(i), (ii), and (iii) to the director on a quarterly basis.

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11. Submittal Requirements

- (a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

- (b) The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

- (c) The owner or its duly authorized representative shall include the notice of

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general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

12. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

13. Record Retention

The permittee shall retain all records and information resulting from the monitoring activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

14. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

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TABLE 34.1

LIMITATIONS AND MINIMUM MONITORING REQUIREMENTS FOR
STORM WATER DISCHARGES

| Storm Water Discharge Parameter | Storm Water Discharge Limitation {1} | Minimum Monitoring Frequency | Type of Sample {2} |
|------------------------------------------|--------------------------------------|------------------------------|-------------------------|
| Quantity of Discharge (gallons) | {3} | Annually | Calculated or Estimated |
| Biochemical Oxygen Demand (5-day) (mg/l) | {3} | Annually | Composite {4} |
| Chemical Oxygen Demand (mg/l) | {3} | Annually | Composite {4} |
| Total Suspended Solids (mg/l) | {3} | Annually | Composite {4} |
| Total Phosphorus (mg/l) | {3} | Annually | Composite {4} |
| Total Nitrogen {5} (mg/l) | {3} | Annually | Composite {4} |
| Nitrate+Nitrite Nitrogen (mg/l) | {3} | Annually | Composite {4} |
| Oil and Grease (mg/l) | 15 | Annually | Grab {6} |
| pH (standard units) | {7} | Annually | Grab {8} |
| Toxic Pollutants (mg/l) {9} | {10} | Annually | {11} |

mg/l = milligrams per liter

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NOTES:

- {1} Pollutant concentration levels shall not exceed the storm water discharge limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those storm water discharge limits or are outside those ranges shall be reported to the director as required in section 10(c) of this general permit.
- {2} The permittee shall collect samples for analysis from a discharge resulting from a representative storm. A representative storm means a rainfall that accumulates more than 0.1 inch of rain and occurs at least seventy-two hours after the previous measurable (greater than 0.1 inch) rainfall event.

"Grab sample" means a sample collected during the first fifteen minutes of the discharge.

"Composite sample" means a combination of at least two sample aliquots, collected at periodic intervals. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot must be proportional to the total flow of storm water discharge flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

Samples for analysis shall be collected during the first fifteen minutes of the discharge and at fifteen-minute intervals thereafter for the duration of the discharge, as applicable. If the discharge lasts for over an hour, sample collection may cease.

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- {3} The value shall not exceed the applicable not to exceed the given value more than ten per cent of the time wet or dry season limit as specified in chapter 11-54 for the applicable classification of the receiving state waters. If no limitation is specified in chapter 11-54, then the permittee shall monitor and report the analytical result. The department may include discharge limitations specified in section 11-55-19 and discharge limitations based on Federal Register, Vol. 73, No. 189, pages 56572-56578, dated September 29, 2008.
- {4} If the duration of the discharge event is less than thirty minutes, the sample collected during the first fifteen minutes of the discharge shall be analyzed as a grab sample and reported toward the fulfillment of this composite sample specification. If the duration of the discharge event is greater than thirty minutes, the Permittee shall analyze two or more sample aliquots as a composite sample.
- {5} The total nitrogen parameter is a measure of all nitrogen compounds in the sample (nitrate, nitrite, ammonia, dissolved organic nitrogen, and organic matter present as particulates).
- {6} Oil and Grease shall be measured by EPA Method 1664, Revision A.
- {7} The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.
- {8} The pH shall be measured within fifteen minutes of obtaining the grab sample.

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- {9} The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 CFR Part 122; in the Federal Register, Vol. 73, No. 189, pages 56572-56578, dated September 29, 2008; or in section 11-54-4. The permittee shall measure for the total recoverable portion of all metals. If monitoring results indicate that the discharge limitation was equaled or exceeded, the storm water pollution control plan shall be amended to include additional best management practices targeted to reduce the parameter which was in excess of the discharge limitation.
- {10} Storm water discharge limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters. For pollutants which do not have established acute water quality standards, the permittee shall report any detected concentration greater than 0.01 µg/l.
- {11} The permittee shall measure for cyanide and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants, as identified in Appendix D of 40 CFR Part 122; in Federal Register, Vol. 73, No. 189, pages 56572-56578, dated September 29, 2008; or in section 11-54-4 using a composite sample.

CHAPTER 11-55 APPENDIX C

**NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF STORM WATER
ASSOCIATED WITH CONSTRUCTION ACTIVITY**

This General Permit is effective on

DEC 06 2013

and expires five years from this date.

1. Coverage under this General Permit

1.1.

This general permit covers discharges composed entirely of storm water runoff associated with construction activities, including, but not limited to, clearing, grading, excavation, and construction support activities that result in the disturbance of one acre or more of total land area. This general permit also covers activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area.

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

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section and if applicable, section 6, for discharges from the support activity areas.

1.2.

This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 entitled "Water Quality Standards."

1.3.

This general permit shall automatically cover discharges of storm water from construction activities in response to a public emergency proclaimed by the President of the United States or State Governor if all of the following conditions are met:

1.3.1.

The earth-disturbing activities are in response to a public emergency (e.g., natural disaster, widespread disruption in essential public services); and the related work requires immediate authorization to avoid imminent endangerment to human health, public safety, or the environment, or to reestablish essential public services; and

1.3.2.

Provide documentation to substantiate the issuance of the public emergency proclamation by the President of the United States or State Governor.

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1.4.

"Disturbance of land" refers to the penetration, turning, or moving of soil or resurfacing of pavement with exposure of the base course or the exposure of bare soil or ground surface, including the land surface exposed by construction roads, baseyards, staging areas, demolition, headquarters, and parking areas. It does not include grass or weed cutting, bush or tree trimming or felling that leaves soil or ground intact. It includes "grubbing" in its normal meaning of the use of equipment to knock down and push vegetation out of the way, typically uprooting vegetation and disturbing the ground surface.

1.5.

A "larger common plan of development or sale" means a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan. "Common plan" is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot.

Note: Projects within a common plan of development must submit separate Notice of Intents (NOIs). For the purpose of this permit, a "project" means separate and distinct construction activities.

1.6.

A "SWPPP" (Storm Water Pollution Prevention Plan) is a site-specific, written document that, among other things: (1) identifies potential sources of storm water

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pollution at the construction site; (2) describes storm water control measures to reduce or eliminate pollutants in storm water discharges from the construction site; and (3) identifies procedures the permittee will implement to comply with the terms and conditions of this general permit.

1.7

"Infeasible" means not technologically possible, or cost prohibitive and not achievable in light of best industry practices.

2. Limitations on Coverage under this General Permit

2.1.

This general permit does not cover the following:

2.1.1.

Storm water discharges associated with construction activity which flow into a sanitary sewer system;

2.1.2.

Storm water discharges from construction activities using polymers, flocculants, or other treatment chemicals;

2.1.3

Storm water discharges associated with construction activities that are regulated by existing individual permits;

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2.1.4.

Storm water discharges from a construction activity which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system;

2.1.5

Storm water discharges from construction approved under a CWA Section 404 permit or;

2.1.6.

Storm water discharges from the clearing of lands specifically for agricultural purposes in accordance with 40 CFR 122.3(e);

2.1.7.

Storm water discharges for which the director has issued a notice of general permit coverage under another general permit specific to that type of construction or industrial activity; and

2.1.8.

Storm water discharges that the director finds more appropriately regulated under an individual permit.

2.2.

Discharges of storm water from new sources that have the reasonable potential to cause, or contribute to an excursion above any applicable water quality standard are not eligible for coverage under this permit, except

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

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

2.3.

The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.11.

3. Term of the General Permit and Notice of General Permit Coverage

3.1. Term of the General Permit

This general permit becomes effective when section 11-55-34.02(b)(2) becomes effective, ten days after filing with the office of the lieutenant governor. This general permit expires the sooner of when section 11-55-34.02(b)(2) is amended and becomes effective or five years after section 11-55-34.02(b)(2) became effective.

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3.2. Term of the Notice of General Permit Coverage

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

3.2.1.

As specified on Page 55-C-1; or 3.2.2.

When the notice of general permit coverage specifies.

4. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

5. Effluent Limitation Applicable To All Discharges From Construction Sites

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

Note: If the project is an "existing project" meaning that an administrative extension of the NGPC was granted or the NGPC was renewed under this general permit; or if the permittee is new because of a transfer of ownership and/or operation replaces the permittee of an already issued NGPC, and it is infeasible for the permittee to comply with a specific requirement in this section because (1) the requirement was not part of the permit previously covered under

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(i.e., the 2007 Appendix C), and (2) because the permittee is prevented from compliance due to the nature or location of earth disturbances that commenced prior to the issuance date of this general permit, or because the permittee is unable to comply with the requirement due to the manner in which storm water controls have already been installed or were already designed prior to the issuance date of this general permit, the permittee is required to document this fact in the SWPPP, refer to section 7, and are waived from complying with that requirement. This flexibility applies only to the requirements in sections 5.1 and 5.3.3. through 5.3.5. (except for sections 5.3.3.1., 5.3.3.2.2., 5.3.3.3.3.a., and 5.3.3.4.). This only applies to those portions of the site that have already commenced earth-disturbing activities or where storm water controls implemented in compliance with the previous permit have already been installed.

5.1. Erosion and sediment control requirements.

The permittee shall design, install, and maintain erosion and sediment controls that minimize the discharge of pollutants from earth-disturbing activities. For purposes of this general permit, "Minimize" means to reduce and/or eliminate to the extent achievable using storm water controls that are technologically available and economically practicable and achievable in light of best industry practices. To meet this requirement, the permittee shall comply with the following provisions.

5.1.1. General requirements applicable to all construction sites.

5.1.1.1. Area of disturbance.

The permittee is required to minimize the amount of soil exposed during construction activities. The

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permittee is also subject to the deadlines for temporarily and/or permanently stabilizing exposed portions of the site pursuant to section 5.2.

5.1.1.2. Design requirements.

5.1.1.2.1.

The permittee shall account for the following factors in designing storm water controls:

5.1.1.2.1.1.

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

5.1.1.2.1.2.

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

5.1.1.2.1.3.

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

5.1.1.2.2.

The permittee shall direct discharges from storm water controls to vegetated areas of the site, including any natural buffers established under section 5.1.2.1., and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible. Use velocity dissipation devices if necessary to minimize soil erosion in order

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to minimize pollutant discharges when directing storm water to vegetated areas.

5.1.1.3. Installation requirements.

5.1.1.3.1.

Complete installation of storm water controls prior to earth-disturbance. Prior to earth-disturbing activities in any given portion of the site have begun the permittee shall install and make operational any downgradient sediment controls (e.g., buffers or equivalent sediment controls, perimeter controls, exit point controls, storm drain inlet protection) that control discharges from the initial site clearing, grading, excavating, and other land-disturbing activities.

Note: The requirement to install storm water controls prior to earth-disturbance of the project does not apply to the earth disturbance associated with the actual installation of these controls.

5.1.1.3.2.

Use good engineering practices and follow manufacturer's specifications. The permittee shall install all storm water controls in accordance with good engineering practices, including applicable design specifications.

Note: Design specifications may be found in manufacturer specifications and/or in applicable erosion and sediment control manuals or ordinances. Any departures from such specifications must reflect good engineering practice and must be explained in the SWPPP.

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5.1.1.4. Maintenance Requirements

5.1.1.4.1.

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

5.1.1.4.2.

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

5.1.1.4.2.1.

Initiate work to fix the problem immediately after discovering the problem, and complete such work by the close of the next work day, if the problem does not require significant repair or replacement, or if the problem can be corrected through routine maintenance.

5.1.1.4.2.2.

When installation of a new erosion or sediment control or a significant repair is needed, the permittee shall install the new or modified control and make it operational, or complete the repair, by no later than 7 calendar days from the time of discovery where feasible. If it is infeasible to complete the installation or repair within 7 calendar days, the permittee shall document in its records why it is

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infeasible to complete the installation or repair within the 7-day timeframe and document the schedule for installing the storm water control(s) and making it operational as soon as practicable after the 7-day timeframe. Where these actions result in changes to any of the storm water controls or procedures documented in the SWPPP, the permittee shall modify the SWPPP accordingly within 7 calendar days of completing this work.

5.1.2.

Erosion and sediment control requirements applicable to all sites.

5.1.2.1.

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

Note: The department does not consider all storm water control features (e.g., storm water conveyance channels, storm drain inlets, sediment basins) to be state waters.

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

The permittee shall ensure that any discharges to state waters through the area between the disturbed portions of the property and any state waters located within 50 feet of the site are treated by an area of undisturbed natural buffer and sediment controls.

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

5.1.2.1.1. Compliance Alternatives.

The permittee can comply with this requirement in one of the following ways:

5.1.2.1.1.1.

Provide and maintain a 50-foot undisturbed natural buffer and sediment control; or

Note: If the earth disturbances are located 50 feet or further from a state water and have installed sediment control, then the permittee has complied with this alternative.

5.1.2.1.1.2.

Provide and maintain an undisturbed natural buffer that is less than 50 feet and double sediment control (e.g., double perimeter control) spaced a minimum of 5 feet apart; or

5.1.2.1.1.3.

If it is infeasible to provide and maintain an undisturbed natural buffer of any size, the permittee shall provide and maintain double sediment control (e.g., perimeter control) spaced a minimum of 5 feet apart and complete stabilization within 7 calendar days of the temporary or permanent cessation of earth-disturbing activities.

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Note: For the compliance alternatives in sections 5.1.2.1.1.1. and 5.1.2.1.1.2., the permittee is not required to enhance the quality of the vegetation that already exists in the buffer, or provide vegetation if none exists. The permittee only need to retain and protect from disturbance the natural buffer that existed prior to the commencement of construction. Any preexisting structures or impervious surfaces are allowed in the natural buffer provided the permittee retain and protect from disturbance the natural buffer area outside the preexisting disturbance.

The permittee shall document the selected compliance alternative in the SWPPP, and comply with the applicable additional requirements described in section 5.1.2.1.2. and 5.1.2.1.3. below.

The compliance alternative selected above must be maintained throughout the duration of permit coverage, except that the permittee may select a different compliance alternative during the period of permit coverage, in which case the permittee shall modify the SWPPP to reflect this change.

5.1.2.1.2.

Additional Requirements for the Compliance Alternatives in section 5.1.2.1.1.1. and 5.1.2.1.1.2. If either of the compliance alternatives in section 5.1.2.1.1.1. or 5.1.2.1.1.2. is chosen above, throughout the period of coverage under this permit, the permittee shall comply with the following additional requirements:

5.1.2.1.2.1.

Ensure that all discharges from the area of earth disturbance to the natural buffer are first treated by the site's erosion and sediment controls, and use velocity dissipation devices if necessary to minimize

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soil erosion in order to minimize pollutant discharges caused by storm water within the buffer;

5.1.2.1.2.2.

Document in the SWPPP the natural buffer width retained on the property, and show the buffer boundary on the site plan; and

5.1.2.1.2.3.

Delineate, and clearly mark off, with flags, tape, or other similar marking device all natural buffer areas.

5.1.2.1.3.
Additional Requirement for the Compliance Alternative in section 5.1.2.1.1.3. If the compliance alternative in section 5.1.2.1.1.3. is chosen, the permittee shall also include in the SWPPP a description of why it is infeasible to provide and maintain an undisturbed natural buffer of any size.

5.1.2.1.4. Exceptions.

5.1.2.1.4.1.

If there is no discharge of storm water to state waters through the area between the site and any state waters located within 50 feet of the site, the permittee is not required to comply with the requirements in this section. This includes situations where control measures have been implemented, such as a berm or other barrier, that will prevent such discharges.

5.1.2.1.4.2.

For "linear construction projects" where "linear construction projects" means the construction of roads, bridges, conduits, substructures, pipelines, sewer

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lines, towers, poles, cables, wires, connectors, switching, regulating and transforming equipment and associated ancillary facilities in a long, narrow area, the permittee is not required to comply with the requirements in this section if site constraints (e.g., limited right-of-way) prevent the permittee from meeting any of the compliance alternatives in section 5.1.2.1.1., provided that, to the extent practicable, the permittee limit disturbances within 50 feet of state waters and/or the permittee provide erosion and sediment controls to treat storm water discharges from earth disturbances within 50 feet of the state water. The permittee shall also document in the SWPPP the rationale as to why it is infeasible to comply with the requirements in section 5.1.2.1.1., and describe any buffer width retained and/or erosion and sediment controls installed.

5.1.2.1.4.3.

The following disturbances within 50 feet of a state water are exempt from the requirements in this Part: construction approved under a CWA 404 permit; or construction of a water-dependent structure or water access area (e.g., pier, boat ramp, trail).

The permittee shall document in the SWPPP if any of the above disturbances will occur within the buffer area on the site.

5.1.2.2 Install perimeter controls.

5.1.2.2.1.

Installation requirements: The permittee shall install sediment controls along those perimeter areas of the site that will receive storm water from earth-disturbing activities.

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For linear projects with rights-of-way that restrict or prevent the use of such perimeter controls, the permittee shall maximize the use of these controls where practicable and document in the SWPPP why it is impracticable in other areas of the project.

5.1.2.2.2.

Maintenance Requirements: The permittee shall remove sediment before it has accumulated to one-half of the above-ground height of any perimeter control.

5.1.2.3. Minimize sediment track-out.

The permittee shall minimize the track-out of sediment onto off-site streets, other paved areas, and sidewalks from vehicles exiting the construction site. To comply with this requirement, the permittee shall:

5.1.2.3.1.

Restrict vehicle use to properly designated exit points;

5.1.2.3.2.

Use appropriate stabilization techniques at all points that exit onto paved roads so that sediment removal occurs prior to vehicle exit;

5.1.2.3.3.

Where necessary, use additional controls to remove sediment from vehicle tires prior to exit; and

5.1.2.3.4.

Where sediment has been tracked-out from the site onto the surface of off-site streets, other paved areas, and

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sidewalks, the permittee shall remove the deposited sediment by the end of the same work day in which the track-out occurs or by the end of the next work day if track-out occurs during non-working hours. The permittee shall remove the track-out by sweeping, shoveling, or vacuuming these surfaces, or by using other similarly effective means of sediment removal. The permittee is prohibited from hosing or sweeping tracked-out sediment into any storm water conveyance (unless it is connected to a sediment basin, sediment trap, or similarly effective control), storm drain inlet, or state water.

Note: The department recognizes that some fine grains may remain visible on the surfaces of off-site streets, other paved areas, and sidewalks even after the implementation of sediment removal practices. Such "staining" is not a violation of this section.

5.1.2.4. Control discharges from stockpiled sediment or soil.

For any stockpiles or land clearing debris composed, in whole or in part, of sediment or soil, the permittee shall comply with the following requirements:

Note: For the purposes of this permit, sediment or soil stockpiles are defined as the storage for multiple days of soil or other sediment material to be used in the construction project.

5.1.2.4.1.

Locate the piles outside of any natural buffers established under section 5.1.2.1.1. and physically separated from other storm water controls implemented in accordance with section 5.1.;

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5.1.2.4.2.

Protect from contact with storm water (including run-on) using a temporary perimeter sediment barrier;

5.1.2.4.3.

Where practicable, provide cover or appropriate temporary stabilization to avoid direct contact with precipitation or to minimize sediment discharge;

5.1.2.4.4.

Do not hose down or sweep soil or sediment accumulated on pavement or other impervious surfaces into any storm water conveyance (unless connected to a sediment basin, sediment trap, or similarly effective control), storm drain inlet, or state water; and

5.1.2.4.5.

Unless infeasible, contain and securely protect from wind.

5.1.2.5. Minimize dust.

In order to avoid pollutants from being discharged into state waters, to the extent feasible, the permittee shall minimize the generation of dust through the appropriate application of water or other dust suppression techniques.

5.1.2.6. Minimize the disturbance of steep slopes.

The permittee shall minimize the disturbance of "steep slopes." For this permit, "steeps slopes" means those that are 15 percent or greater in grade.

Note: The permit does not prevent or prohibit disturbance on steep slopes. For some projects,

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disturbance on steep slopes may be necessary for construction (e.g., a road cut in mountainous terrain). If a disturbance to steep slopes is required for the project, the department would recognize that it is not economically achievable to avoid the disturbance to steep slopes. However, in cases where steep slope disturbances are required, minimizing the disturbances to steep slopes consistent with this requirement can be accomplished through the implementation of a number of standard erosion and sediment control practices, such as by phasing disturbances to these areas and using stabilization practices designed to be used on steep grades.

5.1.2.7. Preserve topsoil.

The permittee shall preserve native topsoil on the site, unless infeasible. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed.

Note: Some projects may be designed to be highly impervious after construction, and therefore little or no vegetation is intended to remain. In these cases, preserving topsoil at the site would not be feasible. Some sites may not have space to stockpile topsoil on site for later use, in which case, it may also not be feasible to preserve topsoil.

Note: Stockpiling of topsoil at off-site locations, or transfer of topsoil to other locations, is an example of a practice that is consistent with the requirements in this section.

5.1.2.8. Minimize soil compaction.

In areas of the site where final vegetative stabilization will occur or where infiltration

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practices will be installed, the permittee shall either:

5.1.2.8.1. Restrict vehicle/equipment use.

Restrict vehicle and equipment use in these locations to avoid soil compaction; or

5.1.2.8.2. Use soil conditioning techniques.

Prior to seeding or planting areas of exposed soil that have been compacted, use techniques that condition the soils to support vegetative growth, if necessary and feasible.

5.1.2.9. Protect storm drain inlets.

If discharging to any storm drain inlet that carries storm water flow from the site directly to a state water (and it is not first directed to a sediment basin, sediment trap, or similarly effective control), and the permittee has authority to access the storm drain inlet, the permittee shall:

5.1.2.9.1. Installation requirements.

Install inlet protection measures that remove sediment from the discharge prior to entry into the storm drain inlet.

Note: Inlet protection measures can be removed in the event of flood conditions where safety or loss of property is of concern or to prevent erosion.

5.1.2.9.2. Maintenance requirements.

Clean, or remove and replace, the protection measures as sediment accumulates, the filter becomes clogged, and/or performance is compromised. Where there is evidence of sediment accumulation adjacent to the inlet

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protection measure, the permittee shall remove the deposited sediment by the end of the same work day in which it is found or by the end of the following work day if removal by the same work day is not feasible.

5.1.2.10 Contaminated soil and contaminated soil stockpiles.

The permittee shall either:

5.1.2.10.1.

Prevent storm water from contacting contaminated soil and contaminated soil stockpiles; or

5.1.2.10.2.

Prevent the discharge of storm water runoff from contaminated soil and contaminated soil stockpiles.

5.1.3.

Requirements applicable only to sites using these specific storm water controls.

The permittee is required to comply with the following requirements if installing any of the following storm water controls at the site:

5.1.3.1. Constructed storm water conveyance channels.

Design storm water conveyance channels to avoid unstabilized areas on the site and to reduce erosion, unless infeasible. Minimize erosion of channels and their embankments, outlets, adjacent streambanks, slopes, and downstream waters during discharge conditions through the use of erosion controls and velocity dissipation devices within and along the length of any constructed storm water conveyance

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channel, and at any outlet to provide a non-erosive flow velocity.

5.1.3.2. Sediment Basins.

If installing a sediment basin, the permittee shall comply with the following:

5.1.3.2.1. Design requirements.

5.1.3.2.1.1.

Provide storage for either (1) the calculated volume of runoff from a minimum 2-year, 24-hour storm , or (2) 3,600 cubic feet per acre drained;

5.1.3.2.1.2.

When discharging from the sediment basin, utilize outlet structures that withdraw water from the surface in order to minimize the discharge of pollutants, unless infeasible;

Note: The department believes that the circumstances in which it is infeasible to design outlet structures in this manner are rare. If determined by the permittee that it is infeasible to meet this requirement, the permittee shall provide documentation in the SWPPP to support the determination.

5.1.3.2.1.3.

Prevent erosion of (1) the sediment basin using stabilization controls (e.g., erosion control blankets), and (2) the inlet and outlet using erosion controls and velocity dissipation devices; and

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5.1.3.2.1.4.

Sediment basins must be situated outside of state waters and any natural buffers established under section 5.1.2.1.1., and must be designed to avoid collecting water from wetlands.

5.1.3.2.2. Maintenance requirements.

Keep in effective operating condition and remove accumulated sediment to maintain at least $\frac{1}{2}$ of the design capacity of the sediment basin at all times.

5.1.3.3. Dewatering practices.

The permittee is prohibited from discharging ground water or accumulated storm water that is removed from excavations, trenches, foundations, vaults, or other similar points of accumulation.

5.2. Stabilization Requirements.

The permittee is required to stabilize exposed portions of the site in accordance with the requirements of this section.

Note: For the purposes of this permit, "exposed portions of the site" means areas of exposed soil that are required to be stabilized. Note that the department does not expect that temporary or permanent stabilization measures to be applied to areas that are intended to be left unvegetated or unstabilized following construction (e.g., dirt access roads, utility pole pads, areas being used for storage of vehicles, equipment, or materials). Otherwise, permanent stabilization is required for disturbed areas.

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5.2.1. Deadlines for initiating and completing stabilization.

5.2.1.1. Deadline to initiate stabilization.

The permittee shall initiate soil stabilization measures immediately whenever earth-disturbing activities have permanently or temporarily ceased on any portion of the site. In limited circumstances, stabilization may not be required immediately (or, in even more limited circumstances, permanently) if the intended function of a specific area of the site necessitates that it remain disturbed.

Note: The Department can envision only limited cases where a disturbed area would not require stabilization because it should remain disturbed. Permittees must still minimize discharges from disturbed areas.

Note: Earth-disturbing activities have permanently ceased when clearing and excavation within any area of the construction site that will not include permanent structures has been completed.

Note: Earth-disturbing activities have temporarily ceased when clearing, grading, and excavation within any area of the site that will not include permanent structures will not resume (i.e., the land will be idle) for a period of 14 or more calendar days, but such activities will resume in the future.

The 14 calendar day timeframe above begins counting as soon as the permittee knows that construction work on a portion of the site will be temporarily ceased. In circumstances where the permittee experiences unplanned or unanticipated delays in construction due to circumstances beyond the permittee's control (e.g., sudden work stoppage due to unanticipated problems associated with construction labor, funding, or other

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issues related to the ability to work on the site; weather conditions rendering the site unsuitable for the continuation of construction work) and it is not known at first how long the work stoppage will continue, the permittee's requirement to immediately initiate stabilization is triggered as soon as it is known with reasonable certainty that work will be stopped for 14 or more additional calendar days. At that point, the permittee shall comply with sections 5.2.1.1. and 5.2.1.2.

Note: For the purposes of this permit, the department will consider any of the following types of activities to constitute the initiation of stabilization:

- a. prepping the soil for vegetative or non-vegetative stabilization;
- b. applying mulch or other non-vegetative product to the exposed area;
- c. seeding or planting the exposed area;
- d. starting any of the activities in a - c on a portion of the area to be stabilized, but not on the entire area; and
- e. finalizing arrangements to have stabilization product fully installed in compliance with the applicable deadline for completing stabilization in sections 5.2.1.2. and 5.2.1.3.

This list of examples is not exhaustive.

Note: The term "immediately" is used to define the deadline for initiating stabilization measures. In the context of this provision, "immediately" means as soon as practicable, but no later than the end of the next

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work day, following the day when the earth-disturbing activities have temporarily or permanently ceased.

5.2.1.2. Deadline to complete stabilization activities.

As soon as practicable, but no later than 14 calendar days after the initiation of soil stabilization measures consistent with section 5.2.1.1. , the permittee is required to have completed:

5.2.1.2.1.

For vegetative stabilization, all activities necessary to initially seed or plant the area to be stabilized; and/or

5.2.1.2.2.

For non-vegetative stabilization, the installation or application of all such non-vegetative measures.

5.2.1.3. Exceptions to the deadlines for initiating and completing stabilization.

5.2.1.3.1

Deadlines for projects that are affected by circumstances beyond the control of the permittee that delay the initiation and/or completion of vegetative stabilization as required in sections 5.2.1.1. and/or 5.2.1.2. If the permittee is unable to meet the deadlines in sections 5.2.1.1. and/or 5.2.1.2. due to circumstances beyond the permittee's control (e.g. problems with the supply of seed stock or with the availability of specialized equipment, unsuitability of soil conditions due to excessive precipitation and/or flooding), and the permittee is using vegetative cover for temporary or permanent stabilization, the permittee

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may comply with the following stabilization deadlines instead:

5.2.1.3.1.1.

Immediately initiate, and within 14 calendar days complete, the installation of temporary non-vegetative stabilization measures to prevent erosion;

5.2.1.3.1.2.

Complete all soil conditioning, seeding, watering or irrigation installation, mulching, and other required activities related to the planting and initial establishment of vegetation as soon as conditions or circumstances allow it on the site; and

Note: The permittee is required to have stabilized the exposed portions of the site consistent with section 5.2.2. prior to terminating permit coverage.

5.2.1.3.1.3.

Document the circumstances that prevent the permittee from meeting the deadlines required in sections 5.2.1.1. and/or 5.2.1.2. and the schedule the permittee will follow for initiating and completing stabilization.

5.2.1.3.2.

Deadlines for sites discharging to impaired waters. For any portion of the site that discharges to a sediment or nutrient-impaired water (see section 6.2.), the permittee is required to complete the stabilization activities specified in sections 5.2.1.2.1. and/or 5.2.1.2.2. within 7 calendar days after the temporary or permanent cessation of earth-disturbing activities.

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Note: If the permittee qualifies for the deadlines for initiating and completing stabilization in section 5.2.1.3.1. or 5.2.1.3.2., the permittee may comply with the stabilization deadlines in section 5.2.1.3.1. or 5.2.1.3.2. for any portion of the site that discharges to an impaired water.

5.2.2. Criteria for stabilization.

To be considered adequately stabilized, the permittee shall meet the criteria below depending on the type of cover the permittee is using, either vegetative or non-vegetative.

5.2.2.1. Vegetative stabilization.

5.2.2.1.1.

For all sites, except those located on agricultural lands.

5.2.2.1.1.1.

If the permittee is vegetatively stabilizing any exposed portion of the site through the use of seed or planted vegetation, the permittee shall provide established uniform vegetation (e.g., evenly distributed without large bare areas), which provides 70 percent or more of the density of coverage that was provided by vegetation prior to commencing earth-disturbing activities. The permittee should avoid the use of invasive species;

5.2.2.1.1.2.

For final stabilization, vegetative cover must be perennial; and

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5.2.2.1.1.3.

Immediately after seeding or planting the area to be vegetatively stabilized, to the extent necessary to prevent erosion on the seeded or planted area, the permittee shall select, design, and install non-vegetative erosion controls that provide cover (e.g., mulch, rolled erosion control products) to the area while vegetation is becoming established.

5.2.2.1.2.

For sites located on land used for agriculture. Disturbed areas on land used for agricultural purposes (e.g., pipelines across crop or range land, staging areas for highway construction) that are restored to their pre-construction agricultural use are not subject to these final stabilization criteria. Areas disturbed that were not previously used for agricultural activities, and areas that are not being returned to preconstruction agricultural use, must meet the conditions for stabilization in this section.

5.2.2.2. Non-Vegetative Stabilization.

If the permittee is using non-vegetative controls to stabilize exposed portions of the site, or if the permittee is using such controls to temporarily protect areas that are being vegetatively stabilized, the permittee shall provide effective non-vegetative cover to stabilize any such exposed portions of the site.

5.3. Pollution prevention requirements.

The permittee is required to design, install, and maintain effective pollution prevention measures in order to prevent the discharge of pollutants. Consistent with this requirement, the permittee shall:

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- a. Eliminate certain pollutant discharges from the site (see section 5.3.1.);
- b. Properly maintain all pollution prevention controls (see section 5.3.2.); and
- c. Comply with pollution prevention standards for pollutant-generating activities that occur at the site (see section 5.3.3.).

These requirements apply to all areas of the construction site and any and all support activities covered by this permit consistent with section 5.

5.3.1. Prohibited Discharges.

The permittee is prohibited from discharging the following from the construction site:

- 5.3.1.1. Wastewater from washout of concrete;
- 5.3.1.2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials,;
- 5.3.1.3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
- 5.3.1.4. Soaps, solvents, or detergents used in vehicle and equipment washing; and
- 5.3.1.5. Toxic or hazardous substances from a spill or other release.

5.3.2. General Maintenance Requirements.

The permittee shall ensure that all pollution prevention controls installed in accordance with this

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section remain in effective operating condition and are protected from activities that would reduce their effectiveness. The permittee shall inspect all pollutant-generating activities and pollution prevention controls in accordance with the inspection frequency requirements in sections 9.1.2 or 6.2.2.1. to avoid situations that may result in leaks, spills, and other releases of pollutants in storm water discharges to receiving waters, and must document the findings in accordance with section 9.1.7. If the permittee finds that controls need to be replaced, repaired, or maintained, the permittee shall make the necessary repairs or modifications in accordance with the following:

5.3.2.1.

Initiate work to fix the problem immediately after discovering the problem, and complete such work by the close of the next work day, if the problem does not require significant repair or replacement, or if the problem can be corrected through routine maintenance.

5.3.2.2.

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

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in the SWPPP, the permittee shall modify the SWPPP accordingly within 7 calendar days of completing this work.

5.3.3. Pollution prevention standards.

The permittee is required to comply with the pollution prevention standards in this section if the permittee conducts any of the following activities at the site or at any construction support activity areas covered by this permit (see section 5):

- a. Fueling and maintenance of equipment or vehicles;
- b. Washing of equipment and vehicles;
- c. Storage, handling, and disposal of construction materials, products, and wastes; and
- d. Washing of applicators and containers used for paint, concrete, or other materials.

The pollution prevention standards are as follows:

5.3.3.1. Fueling and maintenance of equipment or vehicles.

If the permittee conducts fueling and/or maintenance of equipment or vehicles at the site, the permittee shall provide an effective means of eliminating the discharge of spilled or leaked chemicals, including fuel, from the area where these activities will take place.

To comply with the prohibition in section 5.3.1.3., the permittee shall:

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5.3.3.1.1.

If applicable, comply with the Spill Prevention Control and Countermeasures (SPCC) requirements in 40 CFR 112 and section 311 of the CWA;

5.3.3.1.2.

Ensure adequate supplies are available at all times to handle spills, leaks, and disposal of used liquids;

5.3.3.1.3.

Use drip pans and absorbents under or around leaky vehicles and equipment;

5.3.3.1.4.

Dispose of or recycle oil and oily wastes in accordance with other federal, state, and local requirements;

5.3.3.1.5.

Clean up spills or contaminated surfaces immediately, using dry clean up measures where possible, and eliminate the source of the spill to prevent a discharge or a furtherance of an ongoing discharge; and

5.3.3.1.6.

Do not clean surfaces by hosing the area down.

5.3.3.2. Washing of equipment and vehicles.

5.3.3.2.1.

The permittee shall provide an effective means to prevent the discharge of pollutants from equipment and

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vehicle washing, wheel wash water, and other types of washing; and

5.3.3.2.2.

To comply with the prohibition in section 5.3.1.4., for storage of soaps, detergents, or solvents, the permittee shall provide either (1) cover (e.g., plastic sheeting or temporary roofs) to prevent these detergents from coming into contact with rainwater, or (2) a similarly effective means designed to prevent the discharge of pollutants from these storage areas.

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

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

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

To ensure meeting this requirement, the permittee shall:

5.3.3.3.1.

For building products: In storage areas, provide either:

- a. Cover (e.g., plastic sheeting or temporary roofs) to prevent these products from coming into contact with rainwater, or

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- b. A similarly effective means designed to prevent the discharge of pollutants from these areas.

5.3.3.3.2.

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

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

5.3.3.3.3.

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

- a. To comply with the prohibition in section 5.3.1.3., store chemicals in water-tight containers, and provide either (1) cover (e.g., plastic sheeting or temporary roofs) to prevent these containers from coming into contact with rainwater, or (2) a similarly effective means designed to prevent the discharge of pollutants from these areas (e.g., spill kits), or provide secondary containment (e.g., spill berms, decks, spill containment pallets); and
- b. Clean up spills immediately, using dry clean-up methods where possible, and dispose of used materials properly. Do not clean surfaces or spills by hosing the area down. Eliminate the

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source of the spill to prevent a discharge or a continuation of an ongoing discharge.

5.3.3.3.4.

For hazardous or toxic waste:

Separate hazardous or toxic waste from construction and domestic waste;

- a. Store waste in sealed containers, which are constructed of suitable materials to prevent leakage and corrosion, and which are labeled in accordance with applicable Resource Conservation and Recovery Act (RCRA) requirements and all other applicable federal, state, and local requirements;
- b. Store all containers that will be stored outside away from surface waters and within appropriately-sized secondary containment (e.g., spill berms, decks, spill containment pallets) to prevent spills from being discharged, or provide a similarly effective means designed to prevent the discharge of pollutants from these areas (e.g., storing chemicals in covered area or having a spill kit available on site);
- c. Dispose of hazardous or toxic waste in accordance with the manufacturer's recommended method of disposal and in compliance with federal, state, and local requirements; and
- d. Clean up spills immediately, using dry clean-up methods where possible, and dispose of used materials properly. Do not clean surfaces or spills by hosing the area down. Eliminate the source of the spill to prevent a discharge or a furtherance of an ongoing discharge.

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5.3.3.3.5.

For construction and domestic waste:

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

- a. On work days, clean up and dispose of waste in designated waste containers; and
- b. Clean up immediately if containers overflow.

5.3.3.3.6.

For sanitary waste:

Position portable toilets so that they are secure and will not be tipped or knocked over.

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

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

5.3.3.4.1.

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

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5.3.3.4.2.

Handle washout or cleanout wastes as follows:

- a. Do not dump liquid wastes in storm sewers;
- b. Dispose of liquid wastes in accordance with applicable requirements in section 5.3.3.3.; and
- c. Remove and dispose of hardened concrete waste consistent with the handling of other construction wastes in section 5.3.3.3.; and

5.3.3.4.3.

Locate any washout or cleanout activities as far away as possible from state waters and storm water inlets or conveyances, and, to the extent practicable, designate areas to be used for these activities and conduct such activities only in these areas.

5.3.4. Emergency spill notification.

The permittee is prohibited from discharging toxic or hazardous substances from a spill or other release, consistent with section 5.3.1.5. Where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302 occurs during a 24-hour period, the permittee shall notify the National Response Center (NRC) at (800) 424-8802, the Clean Water Branch during regular business hours at 586-4309, and the Hawaii State Hospital Operator at 247-2191 and the Clean Water Branch via email at cleanwaterbranch@doh.hawaii.gov during non-business hours as soon as the permittee has knowledge of the discharge. The permittee shall also, within 7 calendar days of knowledge of the release, provide a description

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of the release, the circumstances leading to the release, and the date of the release. State and local requirements may necessitate additional reporting of spills or discharges to local emergency response, public health, or drinking water supply agencies.

5.3.5. Fertilizer discharge restrictions.

The permittee is required to minimize discharges of fertilizers containing nitrogen or phosphorus. To meet this requirement, the permittee shall comply with the following requirements:

- 5.3.5.1. Apply at a rate and in amounts consistent with manufacturer's specifications, or document departures from the manufacturer specifications where appropriate in section 7.2.7.2. of the SWPPP;
- 5.3.5.2. Apply at the appropriate time of year for the location, and preferably timed to coincide as closely as possible to the period of maximum vegetation uptake and growth;
- 5.3.5.3. Avoid applying before heavy rains that could cause excess nutrients to be discharged;
- 5.3.5.4. Never apply to storm water conveyance channels with flowing water; and
- 5.3.5.5. Follow all other federal, state, and local requirements regarding fertilizer application.

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6. Water Quality-Based Effluent Limitations

6.1 General Effluent limitation to meet applicable water quality standards.

The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.

In the absence of information demonstrating otherwise, the department expects that compliance with the conditions in this permit will result in storm water discharges being controlled as necessary to meet applicable water quality standards. If at any time the permittee becomes aware, or the department determines, that the discharge is not being controlled as necessary to meet applicable water quality standards, the permittee must take corrective action as required in section 10.2.1., and document the corrective actions as required in section 10.2.1. and section 10.4.

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

6.2. Discharge limitations for impaired waters

If discharge is to a state water that is impaired for (1) sediment or a sediment-related parameter, such as total suspended solids (TSS) or turbidity, and/or (2) nutrients, including impairments for nitrogen and/or

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phosphorus, the permittee is required to comply with the requirements in section 6.2.2.

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

If discharge is to an impaired water that is impaired for a parameter other than a sediment-related parameter or nutrients, the department will inform the permittee if any additional limits or controls are necessary for the discharge to be controlled as necessary to meet water quality standards, including for it to be consistent with the assumptions of any available wasteload allocation in any applicable TMDL, or if coverage under an individual permit is necessary.

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

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6.2.1. Identify if you discharge to an impaired water.

If discharge is to an impaired water, the permittee shall provide the following information in the NOI:

- a. A list of all impaired waters to which discharge enters;
- b. The pollutant(s) for which the state water is impaired; and

6.2.2. Requirements for discharges to sediment or nutrient-impaired waters.

If discharge is to a state water that is impaired for (1) sediment or a sediment-related parameter (e.g., total suspended solids (TSS) or turbidity) and/or (2) nutrients (e.g., nitrogen and/or phosphorus), including impaired waters for which a TMDL has been approved or established for the impairment, the permittee is required to comply with the following storm water control requirements in sections 6.2.2.1. and 6.2.2.2., which supplement the requirements applicable to the site in other corresponding sections of the permit.

The department will also impose additional water quality-based limitations on a site-specific basis, or require the permittee to obtain coverage under an individual permit, if it is determined that the controls will not be sufficient to control discharges consistent with the assumptions and requirements of an applicable wasteload allocation of an approved or established TMDL or to prevent the site from contributing to the impairment.

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6.2.2.1. Frequency of site inspection.

The permittee shall conduct inspections at the frequency specified in section 9.1.3.

6.2.2.2. Deadline to complete stabilization.

The permittee shall comply with the deadlines for completing site stabilization as specified in section 5.2.1.3.2.

7. Storm Water Pollution Prevention Plan (SWPPP)

7.1. Requirement to develop a SWPPP prior to submitting an NOI.

All permittees and their contractors with a construction project to be covered under this permit must develop a SWPPP.

The Permittee is required to develop the site's SWPPP prior to submitting the NOI. The SWPPP must include at a minimum the information required in section 7.2. and as specified in other sections of this general permit and any other information as requested by the director. The permittee shall also update the SWPPP as required in section 7.4.

If a Site Specific Construction Best Management Practices (SSCBMP) Plan was previously developed for coverage under a previous version of this general permit, the permittee shall review and update the SSCBMP Plan to ensure that requirements of this permit's SWPPP are addressed prior to submitting the NOI.

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7.2. SWPPP Contents

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

7.2.1. Storm water team.

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

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

7.2.2. Nature of construction activities.

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

7.2.3. Emergency-related projects.

If conducting earth-disturbing activities in response to a public emergency (see section 1.3.), the permittee shall document the cause of the public emergency (e.g., natural disaster, extreme flooding conditions, etc.), information substantiating its occurrence (e.g., state emergency proclamation or similar state proclamation),

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and a description of the construction necessary to reestablish effected public services. The proclamation of a civil defense emergency or similar proclamation is required to be from the President of the United States or State Governor.

7.2.4. Identification of other site contractors.

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

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

7.2.5. Sequence and estimated dates of construction activities.

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

7.2.5.1.

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

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7.2.5.2.

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

7.2.5.3.

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

7.2.5.4.

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

7.2.5.5.

Removal of temporary storm water conveyances/channels and other storm water control measures, removal of construction equipment and vehicles, and cessation of any pollutant-generating activities.

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

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7.2.6. Site map.

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

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

7.2.6.1.

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

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

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7.2.6.2.

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

7.2.6.3.

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

7.2.6.4.

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

7.2.6.5.

Storm water discharge locations, including:

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

7.2.6.6.

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

7.2.6.7.

Locations of storm water control measures; and

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7.2.6.8.

Locations where chemicals will be used and stored.

7.2.7. Construction site pollutants.

The SWPPP must include the following:

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

7.2.8. Sources of non-storm water.

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

7.2.9. Buffer documentation.

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

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any additional requirements to provide documentation in section 5.1.2.1.

7.2.10. Description of storm water control measures.

7.2.10.1 Storm water control measures to be used during construction Activity.

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

- a. Information on the type of storm water control measure to be installed and maintained, including design information;
- b. What specific sediment controls will be installed and made operational prior to conducting earth-disturbing activities in any given portion of the site to meet the requirement of section 5.1.2.2.1.;
- c. If contaminated soil exists on-site, the control measures to either prevent the contact of storm water with the contaminated soil, including any contaminated soil stockpiles, or prevent the discharge of any storm water runoff which has contacted contaminated soil or any contaminated soil stockpiles;
- d. For exit points on the site, document stabilization techniques the permittee will use and any additional controls that are planned to remove sediment prior to vehicle exit consistent with section 5.1.2.3.; and

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- e. For linear projects, where the permittee has determined that the use of perimeter controls in portions of the site is impracticable, document why the permittee believes this to be the case (see section 5.1.2.2.1.).

7.2.10.2. Stabilization practices.

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

7.2.10.3. Post construction measures.

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

7.2.11 Pollution prevention procedures.

7.2.11.1. Spill prevention and response procedures.

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

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

The permittee may also reference the existence of Spill Prevention Control and Countermeasure (SPCC) plans developed for the construction activity under Part 311 of the CWA, or spill control programs otherwise required by an NPDES permit for the construction activity, provided that the permittee keeps a copy of that other plan onsite.

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

7.2.11.2. Waste management procedures.

The SWPPP must describe procedures for how the permittee will handle and dispose of all wastes generated at the site, including, but not limited to, clearing and demolition debris, sediment removed from

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the site, construction and domestic waste, hazardous or toxic waste, and sanitary waste.

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

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

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

7.2.13. Staff training.

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

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7.2.13.1.

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

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

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

7.2.13.2.

The permittee is responsible for ensuring that all activities on the site comply with the requirements of

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

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

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

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

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

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

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

7.2.15.1. Contractor information.

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

7.2.15.2. Other state, federal, or county permits.

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

- a. Copy of the drainage system owner's approval allowing the discharge to enter their drainage system;
- b. Copy of the county-approved grading permit;

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- c. Copy of the department of the army permit and section 401 water quality certification; and
- d. A list of other permits.

7.2.16. Any other information as requested by the director.

7.2.17. SWPPP certification.

The permittee must certify, sign, and date the SWPPP in accordance with section 15 of appendix A, chapter 11-55.

7.2.18. Post-authorization additions to the SWPPP.

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

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

7.3. On-site availability of the SWPPP.

The permittee is required to keep a current copy of the SWPPP at the site or at an easily accessible location so that it can be made available at the time of an on-site inspection or upon request by the department; EPA; or local agency approving storm water management plans; the operator of a storm water drainage system receiving discharges from the site; or representatives of the

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U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS).

The department may provide access to portions of the SWPPP to a member of the public upon request. Confidential Business Information (CBI) will be withheld from the public, but may not be withheld from EPA, USFWS, or NMFS.

Note: Information covered by a claim of confidentiality will be disclosed by the department only to the extent of, and by means of, the procedures set forth in 40 CFR Part 2, Subpart B. In general, submitted information protected by a business confidentiality claim may be disclosed to other employees, officers, or authorized representatives of the United States concerned with implementing the CWA. The authorized representatives, including employees of other executive branch agencies, may review CBI during the course of reviewing draft regulations.

If an onsite location is unavailable to keep the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance of the construction site.

7.4. Required SWPPP modifications.

7.4.1. List of conditions requiring SWPPP modification.

The permittee shall modify the SWPPP, including the site map(s), in response to any of the following conditions:

7.4.1.1.

Whenever new contractors become active in construction activities on the site, or changes are made to the

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construction plans, storm water control measures, pollution prevention measures, or other activities at the site that are no longer accurately reflected in the SWPPP. This includes changes made in response to corrective actions triggered under section 10. The permittee does not need to modify the SWPPP if the estimated dates in section 7.2.5. change during the course of construction;

7.4.1.2.

To reflect areas on the site map where operational control has been transferred (and the date of transfer) since initiating permit coverage;

7.4.1.3.

If inspections or investigations by site staff, or by local, state, or federal officials determine that SWPPP modifications are necessary for compliance with this permit;

7.4.1.4.

Where the department determines it is necessary to impose additional requirements on the discharge, the following must be included in the SWPPP:

- a. A copy of any correspondence describing such requirements; and
- b. A description of the storm water control measures that will be used to meet such requirements.

7.4.1.5.

To reflect any revisions to applicable federal, state, and local requirements that affect the storm water control measures implemented at the site; and

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7.4.2. Deadlines for SWPPP modifications.

The permittee shall complete required revisions to the SWPPP within 7 calendar days following the occurrence of any of the conditions listed in section 7.4.1.

7.4.3. SWPPP modification records.

The permittee shall maintain records showing the dates of all SWPPP modifications. The records must include a signature of the person authorizing each change (see section 7.2.17. above), date, and a brief summary of all changes.

7.4.4. Certification requirements.

All modifications made to the SWPPP consistent with section 7.4. must be certified, signed, and dated by the Certifying Person that meets the requirements in section 15 of appendix A, chapter 11-55 or the duly authorized representative that meets the requirements of 11-55-07(b).

7.4.5. Required notice to other contractors.

Upon determining that a modification to the SWPPP is required, if there are multiple contractors covered under this permit, the permittee shall immediately notify any contractors who may be impacted by the change to the SWPPP.

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

8.1.

The permittee shall design, operate, implement, and maintain the SWPPP to ensure that storm water discharges associated with construction activities will

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not cause or contribute to a violation of applicable state water quality standards.

8.2.

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

9. Inspections

9.1 Site Inspections

The permittee shall timely inspect the receiving state waters, storm water runoff and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at storm water discharges and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.) Except, if the discharge enters an MS4 or separate drainage system, then the permittee may inspect their discharge when it enters a drainage system rather than at the receiving water (excluding an upset event, BMP failure, or rainfall events greater than 0.25 inches).

9.1.1. Person(s) responsible for inspecting site.

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

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

9.1.2. Frequency of Inspections.

At a minimum, the permittee shall conduct a site inspection in accordance with one of the two schedules listed below, unless subject to section 9.1.3. or section 9.1.4.:

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

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

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

Note: "Within 24 hours of the occurrence of a storm event" means that the permittee is required to conduct

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

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

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

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

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

Note: "Within 24 hours of the occurrence of a storm event" means that the permittee is required to conduct

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

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

9.1.4. Reductions in inspection frequency.

For stabilized areas. The permittee may reduce the frequency of inspections to once per month in any area of the site where the stabilization steps in sections 5.2.1.2.1. and 5.2.1.2.2. have been completed. If construction activity resumes in this portion of the site at a later date, the inspection frequency immediately increases to that required in sections 9.1.2. or 9.1.3., if applicable. The permittee shall document the beginning and ending dates of this period in the records.

9.1.5. Areas that need to be inspected.

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

- a. All areas that have been cleared, graded, or excavated and that have not yet completed stabilization consistent with section 5.2.;

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- b. All storm water controls (including pollution prevention measures) installed at the site to comply with this permit;
- c. Material, waste, borrow, or equipment storage and maintenance areas that are covered by this permit;
- d. All areas where storm water typically flows within the site, including drainageways designed to divert, convey, and/or treat storm water;
- e. All points of discharge from the site; and
- f. All locations where stabilization measures have been implemented.

The permittee is not required to inspect areas that, at the time of the inspection, are considered unsafe to inspection personnel.

9.1.6. Requirements for inspections. During the site inspection, the permittee shall at a minimum:

9.1.6.1.

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

9.1.6.2.

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

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9.1.6.3.

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

9.1.6.4.

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

9.1.6.5.

Identify any and all incidents of noncompliance observed.

9.1.6.6.

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

- a. Identify all points of the property from which there is a discharge;
- b. Observe and document the visual quality of the discharge, and take note of the characteristics of the storm water discharge, including color, odor, floating, settled, or suspended solids, foam, oil sheen, and other obvious indicators of storm water pollutants; and
- c. Document whether the storm water controls are operating effectively, and describe any such controls that are clearly not operating as intended or are in need of maintenance.

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9.1.6.7.

Based on the results of the inspection, initiate corrective action under section 10.

9.1.7. Inspection report.

9.1.7.1.

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

- a. The inspection date;
- b. Names and titles of personnel making the inspection;
- c. A summary of the inspection findings, covering at a minimum the observations made in accordance with section 9.1.6.;
- d. If inspecting the site at the frequency specified in section 9.1.2.b., section 9.1.3., or section 9.1.4., and have conducted an inspection because of rainfall measuring 0.25 inches or greater, the permittee shall include the applicable rain gauge or weather station readings that triggered the inspection; and
- e. If determined that it is unsafe to inspect a portion of the site, the permittee shall describe the reason to be unsafe and specify the locations that this condition applied to.

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9.1.7.2. Signature Requirements.

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

9.1.7.3. Recordkeeping Requirements.

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

All inspection reports completed for this section must be retained for at least 5 years from the date that the permit coverage expires or is terminated.

9.2. Inspection by the department or EPA.

The permittee shall allow the department, EPA, or an authorized representative of the EPA, to conduct the following activities at reasonable times:

- a. Enter onto areas of the site, including any construction support activity areas covered by this permit (see Section 5), and onto locations where records are kept under the conditions of this permit;
- b. Access and copy any records that must be kept under the conditions of this permit;
- c. Inspect the construction site, including any construction support activity areas covered by this permit (see section 5) and any storm water controls installed and maintained at the site; and

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- d. Sample or monitor for the purpose of ensuring compliance.

10. Corrective Action

The permittee shall immediately stop, reduce, or modify construction, or implement new or revised best management practices as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

10.1 "Corrective actions" defined.

Corrective actions are actions taken in compliance with this section to:

- a. Repair, modify, or replace any storm water control used at the site;
- b. Clean up and properly dispose of spills, releases, or other deposits; or
- c. Remedy a permit violation.

10.2. Requirements for taking corrective actions.

The permittee shall complete the following corrective actions in accordance with the deadlines specified in this section. In all circumstances, the permittee shall immediately take all reasonable steps to minimize or prevent the discharge of pollutants until a permanent solution is installed and made operational, including cleaning up any contaminated surfaces so that the material will not discharge in subsequent storm events.

Note: In this context, the term "immediately" requires construction contractors to, on the same day a condition requiring corrective action is found, take

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all reasonable steps to minimize or prevent the discharge of pollutants until a permanent solution is installed and made operational. However, if the problem is identified at a time in the work day when it is too late to initiate corrective action, the initiation of corrective action must begin on the following work day.

10.2.1.

For any of the following conditions on the site, the permittee shall install a new or modified control and make it operational, or complete the repair, by no later than 7 calendar days from the time of discovery. If it is infeasible to complete the installation or repair within 7 calendar days, the permittee shall document in the records why it is infeasible to complete the installation or repair within the 7 calendar day timeframe and document a schedule for installing the storm water control(s) and making it operational as soon as practicable after the 7-day timeframe.

- a. A required storm water control was never installed, was installed incorrectly, or not in accordance with the requirements in sections 5 and/or 6; or
- b. The permittee becomes aware that the storm water controls installed and being maintained are not effective enough for the discharge to meet applicable water quality standards or applicable requirements in section 6.1. In this case, the permittee shall notify the department by the end of the next work day; or
- c. One of the prohibited discharges in section 5.3.1. is occurring or has occurred.

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10.2.2.

Where corrective actions result in changes to any of the storm water controls or procedures documented in the SWPPP, the permittee shall modify the SWPPP accordingly within 7 calendar days of completing corrective action work.

10.3. Corrective actions required by the department.

The permittee shall comply with any corrective actions required by the department as a result of permit violations found during an inspection carried out under section 9.2.

10.4. Corrective action report.

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

10.4.1.

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

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

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10.4.2.

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

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

10.4.3.

Each corrective action report must be certified and signed in accordance with section 15 of appendix A, chapter 11-55 or the duly authorized representative that meets the requirements of 11-55-07(b).

10.4.4.

The permittee shall keep a current copy of all corrective action reports at the site or at an easily accessible location, so that it can be made available at the time of an onsite inspection or upon request by the department.

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All corrective action reports completed for this Part must be retained for at least 5 years from the date that the permit coverage expires or is terminated.

11. Notice of Intent requirements

11.1

The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the construction activity or thirty days before the expiration date of the applicable notice of general permit coverage.

11.2.

The owner or its duly authorized representative shall include the following information in the notice of intent:

11.2.1.

Information required in section 34 of appendix A of chapter 11-55;

11.2.2.

That coverage is being requested as a result of an emergency and meets the eligibility requirements under this permit and information required in section 7.2.3.

11.2.3.

That coverage is being requested for discharge to an impaired water, if applicable;

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11.2.4.

Preparation of a SWPPP in accordance with section 7 prior to submitting the NOI;

11.2.5.

Information required in section 7.2.2 - Nature of construction activities.

11.2.6.

Information required in section 7.2.5. - Sequence and estimated dates of construction activities.

11.2.7.

Information required in section 7.2.6. - Site map, except for sections 7.2.6.6. - 7.2.6.8.

11.2.8.

If applicable, army corps of engineers' jurisdictional determination and section 401 water quality certification best management practices plan.

11.2.9.

Agreement to the terms, conditions, and requirements in this general permit and all other applicable State, County, and Federal regulations.

11.3.

The director may require additional information to be submitted.

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11.4

The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

12. Reporting Requirements

12.1

The permittee shall immediately notify the director of the incident and identify the pollutant(s) source(s) and the proposed and implemented control or mitigative measures as required in section 16 of appendix A of chapter 11-55.

12.2

The permittee shall notify the director of the construction start date by e-mail at cleanwaterbranch@doh.hawaii.gov or fax at (808) 586-4352 within seven (7) calendar days before the start of construction activities. All communication, including but not limited to the e-mail and fax, with the department shall include the file number and the certification statement. The notification will only be accepted from the person qualified in accordance with section 11-55-34.08(f).



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13. Submittal Requirements

13.1

The owner or its duly authorized representative shall prepare a monthly compliance report, which shall include but is not limited to information as required in this general permit and NGPC, any incidences of non-compliance and corrective actions. The monthly compliance report shall be kept on-site and available by the end of the next business day when requested by the department. Upon the department receiving EPA's Cross-Media Electronic Reporting Regulation (CROMERR), the monthly compliance reports shall be submitted through the e-Permitting Portal. Any comments provided by the department shall be answered in the time specified and to the satisfaction of the department. If the activity is in compliance and none of the information on file with the department requires updating, or there were no incidences of non-compliance, preparation of the monthly compliance information is still required which states that there were "no changes, updates, or any incidences of non-compliance to report."

Note: EPA's Cross-Media Electronic Reporting Regulation (CROMERR) sets performance-based, technology-neutral standards for systems that states, tribes, and local governments use to receive electronic reports from facilities they regulate under EPA-authorized programs and requires program modifications or revisions to incorporate electronic reporting. CROMERR also addresses electronic reporting directly to EPA.

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13.2

When all construction activities have ceased, the owner shall submit to the department a completed Notice of Cessation form. The department shall receive this information within 7 calendar days after the end of the month.

13.3

The owner or its duly authorized representative shall submit signed copies of all reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

13.4

The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant

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penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

13.5

The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

14. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

15. Record Retention

The permittee shall retain all records and information resulting from the activities required by this general permit for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

16. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

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**NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF TREATED EFFLUENT FROM
LEAKING UNDERGROUND STORAGE TANK REMEDIAL ACTIVITIES**

This General Permit is effective on

DEC 06 2013

and expires four years from this date,
unless amended earlier.

1. Coverage under this General Permit
 - (a) This general permit covers only facilities where petroleum hydrocarbons have been released from underground storage tanks and the cleanup (or remedial action) involves a release or discharge of treated ground water to state waters.
 - (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."
2. Limitations on Coverage under this General Permit
 - (a) This general permit does not cover the following:
 - (1) Discharges of treated ground water into a sanitary sewer system and
 - (2) Discharges of treated ground water which initially enter separate storm water

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drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system;

- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

- (a) This general permit becomes effective when section 11-55-34.02(b)(3) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires four years after the effective date or when amendments to section 11-55-34.02(b)(3) are adopted, whichever is earlier.
- (b) A notice of general permit coverage under this general permit expires:
 - (1) Four years after the effective date of this general permit;
 - (2) When the notice of general permit coverage specifies; or
 - (3) When amendments to section 11-55-34.02(b)(3) are adopted,

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whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
 - (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) List of up to four Standard Industrial Classification codes or North American Industrial Classification System codes that best represent the products or activities of the facility;
 - (3) Quantitative data on pollutants that the owner or operator of the facility knows or reasonably should know are or will be present in the discharge and for which pollutants numerical criteria for the existing or proposed receiving state waters are specified in section 11-54-4;
 - (4) Treatment system operations plan which specifies the treatment system to be used and describes its operation in detail.

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If any treatment technology is being considered other than the Granular-Activated Carbon Process or the Air-Stripping Process, then additional technical information on the technology which is consistent with this permit shall be submitted to the director for review as soon as the decision for its use has been made. The treatment system operations plan shall include a contingency plan to be activated in the event of an emergency; provisions for system shut-down and any other measures for the protection of health and safety of employees and the public; a sampling plan; and a detailed schedule for sampling and analysis of the treated groundwater. The treatment system operations plan shall be modified as required by the director. The permittee shall retain the plan, and all subsequent revisions, on-site or at a nearby office.

- (5) Certification report certifying the adequacy of each component of the proposed treatment facility along with the associated treatment system operations plan. The certification report shall describe accepted engineering practice of how the process and physical design of the treatment facilities will ensure compliance with this general permit. The signature and professional engineering license number of the design engineer shall be placed on the report. Each report shall also certify that:

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- (A) All of the startup and operation instruction manuals for the treatment facility are adequate and available to operating personnel;
 - (B) All treatment facility maintenance and testing schedules are included in the treatment facility treatment system operations plan; and
 - (C) Effluent sampling locations and ports are located in areas where samples representative of the waste stream to be monitored can be obtained.
- (6) The average and maximum daily flow rates of effluent discharge;
 - (7) The best estimate of the date(s) on which the facility will begin and terminate the discharge.
- (c) The director may require additional information to be submitted.
 - (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378

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Honolulu, Hawaii 96801-3378

5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

6. Effluent Limitations and Monitoring Requirements

- (a) The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.2. (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)

(1) Sampling Point

The permittee shall collect representative discharge samples at the nearest accessible point after final treatment and prior to actual discharge or mixing with the receiving state waters.

(2) Collection of Samples

The permittee shall take samples and measurements for the purposes of monitoring which are representative of

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the volume and nature of the total discharge.

(3) Types of Samples

(A) "Grab sample" means an individual sample collected within the first fifteen minutes of a discharge.

(B) "Composite sample" means a combination of at least eight sample aliquots, collected at periodic intervals during the operating hours of the facility over a twenty-four-hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically unless otherwise stated.

(4) Test Procedures

(A) The permittee shall use test procedures for the analysis of pollutants which conform with regulations published under Section 304(h) of the Act.

(B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed

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in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.

- (C) The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54. If the test result is not detectable, indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.

(5) Recording of Results

The permittee shall comply with section 14(c) of appendix A of chapter 11-55 for each measurement or sample taken under the requirements of this general permit.

(b) Basic Water Quality Criteria and Inspections

- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
- (2) The permittee shall timely inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as

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specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)

- (c) There shall be no visible oil sheen in the effluent.
- (d) The permittee shall take all reasonable steps to minimize or prevent any discharge, use, or disposal of sludge or sediments in violation of this general permit or applicable law. Sludge, sediments, or any other material generated by any treatment process must be disposed of in a manner which prevents its entrance into or pollution of any state waters. Additionally, the disposal of such sludge or other material shall be in compliance with 40 CFR Parts 501 and 503.

7. Whole Effluent Toxicity Limitations And Monitoring Requirements

(a) Monitoring Requirements

- (1) The permittee shall conduct, or have a contract laboratory conduct, monthly static or flow-through bioassays on composite effluent samples in accordance with the methods described in "Short-term Methods for Estimating the Chronic

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Toxicity of Effluents and Receiving Waters to Freshwater Organisms" (EPA 821/R-02-013, October 2002), and "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms" (EPA 821/R-02-014, October 2002).

- (2) Tests shall be conducted in one hundred per cent effluent for a period of ninety-six hours unless the methods specify a shorter period for a definitive test for a particular species (e.g. forty-eight hours for *ceriodaphnia dubia*).
 - (3) If the permittee uses static tests, the daily renewal solutions shall be fresh twenty-four-hour composite samples. The permittee may conduct tests using locally available species at ambient temperature.
 - (4) Test results for each species used shall be reported on the permittee's monthly discharge monitoring report form. Results shall be reported as per cent survival with respect to controls.
 - (5) If necessary, the permittee may adjust the salinity of a discharge using salts to allow testing with marine species.
- (b) Species Selection
- (1) The permittee shall select three species for monitoring from the EPA manual identified in section 7(a)(1). The Permittee may use *ceriodaphnia dubia*

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(life stage - twenty-four hours) in freshwater only. The permittee shall submit the selection to the director for approval within thirty days after receiving written approval from the director to perform chronic toxicity tests.

- (2) The permittee shall obtain written approval from the director before changing any of the three selected species after the initial notification.
 - (3) The permittee shall conduct monitoring, at a minimum, on one of the three selected species each month. The permittee shall rotate the three selected species on a monthly basis.
- (c) Preparation of Initial Investigation Toxicity Reduction Evaluation Workplan

The Permittee shall submit to the director an initial investigation toxicity reduction evaluation workplan (approximately one to two pages) within one hundred twenty days after the issuance date of the notice of general permit coverage, the date the permittee claimed automatic coverage as specified in section 11-55-34.09(e)(2), or the date the facility begins operations. This workplan shall describe steps which the permittee intends to follow in the event that toxicity is detected, and should include at a minimum the following information:

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- (1) Description of the investigation and evaluation techniques that would be used to identify potential causes or sources or both of toxicity, effluent variability, treatment system efficiency;
 - (2) Description of the facility's method of maximizing in-house treatment efficiency, good housekeeping practices, and a list of all chemicals used in operation of the facility; and
 - (3) If a toxicity identification evaluation is necessary, who (e.g., contract laboratory, etc.) will conduct the toxicity identification evaluation.
- (d) Additional Toxicity Testing
- (1) If toxicity is detected, then the permittee shall conduct six additional weekly tests. Effluent sampling for the first test of the six additional tests shall begin within approximately twenty-four hours of receipt of the test results exceeding a toxicity discharge limitation;
 - (2) However, if implementation of the initial investigation toxicity reduction evaluation workplan indicates the source of toxicity (e.g., a temporary plant upset, etc.), then the permittee shall conduct only the first test of the six additional tests required above. If toxicity is not detected in this first test, the permittee may return to the

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normal sampling frequency as specified in Table 34.2. If toxicity is detected in this first test, then section 7(e) of this general permit shall apply.

- (3) If toxicity is not detected in any of the six additional tests required above, then the permittee may return to the normal sampling frequency as specified in Table 34.2.
- (e) Toxicity Reduction Evaluation/Toxicity Identification Evaluation
- (1) If toxicity is detected in any of the six additional tests, then, based on an evaluation of the test results and additional available information, the director may determine that the permittee shall initiate a toxicity reduction evaluation, in accordance with the permittee's initial investigation toxicity reduction evaluation workplan and "Toxicity Reduction Evaluation Guidance for Municipal Wastewater Treatment Plants" (EPA 833-B-99-002, 1999). Moreover, the permittee shall develop a detailed toxicity reduction evaluation workplan which includes:
 - (A) Further actions to investigate and identify the cause(s) of toxicity;
 - (B) Actions the permittee has taken or will take to mitigate the impact of the discharge, to correct the

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noncompliance, and to prevent the recurrence of toxicity;

- (C) A schedule under which these actions will be implemented;

and shall submit this workplan to the director for approval.

- (2) As part of this toxicity reduction evaluation process, the permittee may initiate a toxicity identification evaluation using the test methods manuals, EPA/600/6-91/005F (Phase I), EPA/600/R-92/080 (Phase II), and EPA/600/R-92/081 (Phase III), to identify the cause(s) of toxicity.

- (3) If a toxicity reduction evaluation/toxicity identification evaluation is initiated prior to completion of the accelerated testing schedule required by section 7(d) of this general permit, then the accelerated testing schedule may be terminated, or used as necessary in performing the toxicity reduction evaluation/toxicity identification evaluation.

(f) Reporting

- (1) The permittee shall submit a full report of toxicity test results, including any toxicity testing required by sections 7(d) and 7(e) of this general permit, with the discharge monitoring report for the month in which the toxicity tests are

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conducted. A full report shall consist of: toxicity test results; dates of sample collection and initiation of each toxicity test; and toxicity discharge limitation. Toxicity test results shall be reported according to the test methods manual chapter on report preparation.

If the initial investigation toxicity reduction evaluation workplan is used to determine that additional toxicity testing is unnecessary, these results shall be submitted with the discharge monitoring report for the month in which investigations conducted under the toxicity reduction evaluation workplan occurred.

- (2) Within fourteen days of receipt of test results exceeding a toxicity discharge limitation, the permittee shall provide to the director written notification of:
 - (1) Findings of the toxicity reduction evaluation or other investigation to identify the cause(s) of toxicity;
 - (2) Actions the permittee has taken or will take, to mitigate the impact of the discharge and to prevent the recurrence of toxicity;
 - (3) When corrective actions, including a toxicity reduction evaluation, have not been completed, a schedule under which corrective actions will be implemented; or

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- (4) The reason for not taking corrective action, if no action has been taken.

8. Corrective Action

The permittee shall immediately stop, reduce, or modify the discharge as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

9. Reporting Requirements

(a) Reporting of Monitoring Results

- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.2 and other requirements of this general permit.
- (2) The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.
- (3) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.

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- (4) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.

- (b) Additional Monitoring by the Permittee

If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B) of this general permit, the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.

- (c) Reporting of Noncompliance, Unanticipated Bypass, or Upset

- (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:

- (A) Violation of an effluent limitation specified in Table 34.2 or a basic water quality criteria specified in section 6(b) of this general permit;

- (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment; or

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- (C) Unanticipated bypass or upset.
- (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.
- (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:
- (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;
 - (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
 - (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
 - (D) Steps taken or plans to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset.

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(4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.

(d) Planned Changes

The permittee shall report any planned physical alterations or additions to the permitted facility, not covered by 40 CFR §122.41(l)(1)(i), (ii), and (iii) to the director on a quarterly basis.

(e) Reporting of Chemical Uses

The permittee shall submit to the director by the twenty-eighth of January of each year an annual summary of the quantities of all chemicals (including the material safety data sheet), listed by both chemical and trade names, which are used in ground water treatment and which are discharged.

(f) Schedule of Maintenance

The permittee shall submit a schedule for approval by the director at least fourteen days prior to any maintenance of facilities which might result in exceedance of effluent limitations. The schedule shall include a description of the maintenance and its reason; the period of maintenance, including exact dates and times; and steps taken or planned to reduce, eliminate, and prevent occurrence of noncompliance.

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10. Submittal Requirements

- (a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

- (b) The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

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(c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

11. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

12. Record Retention

The permittee shall retain all records and information resulting from the monitoring activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

13. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

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TABLE 34.2

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS FOR
DISCHARGE OF TREATED EFFLUENT FROM
LEAKING UNDERGROUND STORAGE TANK REMEDIAL ACTIVITIES

| Effluent Parameter | Effluent Limitations {1} | | Monitoring Requirements | |
|-----------------------------------------------------|--------------------------|-----------------|-------------------------|-------------------------|
| | For Saline Water | For Fresh Water | Minimum Frequency | Type of Sample |
| Flow (GPD) | {2} | {2} | Continuous | Calculated or Estimated |
| Total Petroleum Hydrocarbons as Gasoline (mg/l) {3} | {2} | {2} | Weekly | Grab |
| Total Petroleum Hydrocarbons as Diesel (mg/l) {3} | {2} | {2} | Weekly | Grab |
| Benzene (mg/l) {4} | 1.7 | 1.8 | Weekly | Grab |
| Toluene (mg/l) {4} | 2.1 | 5.8 | Weekly | Grab |
| Xylenes (mg/l) {4} | {2} | {2} | Weekly | Grab |
| Ethylbenzene (mg/l) {4} | 0.14 | 11 | Weekly | Grab |
| Lead (mg/l) {5} | 0.14 | 0.029 | Weekly | Grab |
| Organic Lead (mg/l) {6} | {2} | {2} | Weekly | Grab |

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| Effluent Parameter | Effluent Limitations {1} | | Monitoring Requirements | |
|----------------------------|-----------------------------------|-----------------|-------------------------|----------------|
| | For Saline Water | For Fresh Water | Minimum Frequency | Type of Sample |
| pH (standard units) | {7} | | Weekly | Grab {8} |
| Whole Effluent Toxicity | 80% survival in 100% effluent {9} | | Monthly | Composite |
| Toxic Pollutants mg/l {10} | {11} | | Annually | {12} |

GPD = gallons per day
 mg/l = milligrams per liter

NOTES:

- {1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section(9(c) of this general permit.
- {2} The value shall not exceed the applicable limit as specified in chapter 11-54 for the applicable classification of the receiving state waters. If no limitation is specified in chapter 11-54, then the permittee shall monitor and report the analytical result. The department may include discharge limitations specified in section 11-55-19.
- {3} The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004) method 5030/8015 for the measurement

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of Total Petroleum Hydrocarbons as Gasoline and EPA method 3550/8015 shall be used for the measurement of Total Petroleum Hydrocarbons as Diesel.

- {4} The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005;), or EPA methods 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, for the measurement of benzene, ethylbenzene, and toluene. EPA method 8260B, or an equivalent method, shall be used for the measurement of xylenes.
- {5} The permittee shall measure for the total recoverable portion of all metals.
- {6} The method for measuring for organic lead shall be the one referenced in the State of Hawaii's Technical Guidance Manual for Underground Storage Tank Closure and Release Response (March 2000).
- {7} The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.
- {8} The pH shall be measured within fifteen minutes of obtaining the grab sample.
- {9} Whole Effluent Toxicity measuring shall be performed in accordance with the provisions of section 7 of this general permit.
- {10} The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4, only if they are identified as potential pollutants requiring monitoring in the

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notice of intent or as identified by the director. If monitoring results indicate that the discharge limitation was equaled or exceeded, the treatment system operations plan shall be amended to include additional best management practices targeted to reduce the parameter which was in excess of the discharge limitation.

-
- {11} Storm water discharge limitations are the chronic water quality standards established in section 11-54-4, for either fresh or saline waters. For pollutants which do not have established chronic water quality standards, the permittee shall report any detected concentration greater than 0.01 µg/l.
- {12} The permittee shall measure for cyanide and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a composite sample.



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**NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF ONCE THROUGH COOLING WATER
LESS THAN ONE (1) MILLION GALLONS PER DAY**

This General Permit is effective on

DEC 06 2013

and expires three years from this date,
unless amended earlier.

1. Coverage under this General Permit
 - (a) This general permit covers only once through cooling water discharges of a total flow of less than one million gallons per day (mgd) to state waters. "Once through cooling water" means water passed through the main cooling condensers one or two times for the purpose of removing waste heat.
 - (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."
2. Limitations on Coverage under this General Permit
 - (a) This general permit does not cover the following:
 - (1) Discharges of once through cooling water into a sanitary sewer system and
 - (2) Discharges of once through cooling water which initially enter separate

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storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system.

- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

- (a) This general permit becomes effective when section 11-55-34.02(b)(4) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires three years after the effective date or when amendments to section 11-55-34.02(b)(4) are adopted, whichever is earlier.
- (b) A notice of general permit coverage under this general permit expires:
 - (1) Three years after the effective date of this general permit;
 - (2) When the notice of general permit coverage specifies; or
 - (3) When amendments to section 11-55-34.02(b)(4) are adopted, whichever is earliest, unless the notice of general

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permit coverage is administratively extended under section 11-55-34.09(d).

4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
 - (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) List of up to four Standard Industrial Classification codes or North American Industrial Classification System codes that best represent the products or activities of the facility;
 - (3) The average frequency of flow and duration of any intermittent or seasonal discharge. The frequency of flow means the number of days or months per year when there is an intermittent discharge. Duration means the number of days or hours per discharge. The owner or its duly authorized representative shall provide the best estimate for new discharges;
 - (4) Source(s) of the once-through cooling water;

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- (5) Quantitative data of the pollutant or parameter as specified in 40 CFR §122.21(h)(4)(i);
 - (6) The name of the cooling water additives, if any used;
 - (7) The best estimate of the date on which the facility will begin to discharge; and
 - (8) A brief description of any treatment system used or to be used. The permittee shall retain the treatment system plan, and all subsequent revisions, on-site or at a nearby office.
- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the

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standard general permit conditions, the more stringent conditions shall apply.

6. Effluent Limitations and Monitoring Requirements

- (a) The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.3. (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)

(1) Sampling Points

Samples taken in compliance with the monitoring requirements shall be taken at the following point(s):

- (A) The permittee shall collect influent samples downstream from any additions to the source water and prior to the cooling system.
- (B) The permittee shall collect effluent samples downstream from the cooling system and prior to actual discharge or mixing with the receiving state waters.

(2) Collection of Samples

The permittee shall take samples and measurements for the purposes of monitoring which are representative of the volume and nature of the total discharge.

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(3) Type of Sample

"Grab sample" means an individual sample collected within the first fifteen minutes of a discharge.

(4) Test Procedures

- (A) The permittee shall use test procedures for the analysis of pollutants which conform with regulations published under Section 304(h) of the Act.
- (B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.
- (C) The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54. If the test result is not detectable, indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.

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(5) Recording of Results

The permittee shall comply with section 14(c) of appendix A of chapter 11-55 for each measurement or sample taken under the requirements of this general permit.

(b) Basic Water Quality Criteria and Inspections

(1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.

(2) The permittee shall timely inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)

(c) The date, duration (in hours), starting and ending times, and volume of each discharge shall be collected for intermittent discharges.

(d) There shall be no visible oil sheen in the effluent.

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- (e) There shall be no discharge of waste from the physical cleaning of the cooling system.
- (f) There should be no discharge of compounds used in closed-loop systems.

7. Corrective Action

The permittee shall immediately stop, reduce, or modify the discharge as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

8. Reporting Requirements

(a) Reporting of Monitoring Results

- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.3 and other requirements of this general permit.
- (2) The permittee shall submit monitoring results obtained during the previous calendar month postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.
- (3) The permittee shall also submit the monitoring results with laboratory reports, including quality

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assurance/quality control data; influent and effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.

- (4) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.

(b) Additional Monitoring by the Permittee

If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B) of this general permit, the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.

(c) Reporting of Noncompliance, Unanticipated Bypass, or Upset

- (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:

- (A) Violation of an effluent limitation specified in Table 34.3 or a basic water quality criteria specified in section 6(b) of this general permit;

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- (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment; or
 - (C) Unanticipated bypass or upset.
- (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.
- (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:
- (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;
 - (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
 - (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
 - (D) Steps taken or planned to reduce, eliminate, and prevent

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reoccurrence of the noncompliance, unanticipated bypass, or upset.

- (4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.

(d) Planned Changes

The permittee shall report any planned physical alterations or additions to the permitted facility, not covered by 40 CFR §122.41(1)(1)(i), (ii), and (iii) to the director on a quarterly basis.

(e) Reporting of Chemical Uses

The permittee shall submit to the director by the twenty-eighth of January of each year an annual summary of the quantities of all chemicals (including the material safety data sheet), listed by both chemical and trade names, which are used in once through cooling water treatment and which are discharged.

(f) Schedule of Maintenance

The permittee shall submit a schedule for approval by the director at least fourteen days prior to any maintenance of facilities, which might result in exceedance of effluent limitations. The schedule shall include a description of the maintenance and its reason; the period of maintenance, including exact dates and times; and steps taken or planned to reduce, eliminate, and prevent occurrence of noncompliance.

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9. Submittal Requirements

- (a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

- (b) The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

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(c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

10. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

11. Record Retention

The permittee shall retain all records and information resulting from the monitoring activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation shall be retained for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

12. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

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TABLE 34.3

EFFLUENT LIMITATION AND MONITORING REQUIREMENTS
FOR DISCHARGE OF ONCE THROUGH COOLING WATER
LESS THAN ONE (1) MILLION GALLONS PER DAY

| Effluent Parameter | Effluent Limitation {1} | Minimum Monitoring Frequency | Type of Sample |
|------------------------------------|-------------------------|------------------------------|------------------------|
| Flow (MGD) | {2} | Continuous | Recorder/ Totalizer |
| Temperature (°C) | 30 | Once/Quarter | Grab |
| Total Residual Oxidants (mg/l) {3} | 0.013{4} 0.019{5} | Once/Quarter | Grab |
| Total Suspended Solids (mg/l) | 5 {6} | Once/Quarter | Grab {7} |
| Oil and Grease (mg/l) | 15 | Once/Quarter | Grab {8} |
| pH (standard units) | {9} | Once/Quarter | Grab {10} |

MGD = million gallons per day

°C = degrees celsius

mg/l = milligrams per liter

NOTES:

- {1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.

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- {2} Report. The permittee shall monitor and report the analytical result.
- {3} Total residual oxidants (TRO) is obtained using the amperometric titration method for total residual chlorine described in 40 CFR Part 136.
- {4} Applicable to discharges that enter saline waters as per chapter 11-54.
- {5} Applicable to discharges that enter fresh waters as per chapter 11-54.
- {6} The total suspended solids limits are net increase restrictions of the effluent above that of the influent.
- {7} Both the influent and effluent shall be monitored concurrently.
- {8} Oil and Grease shall be measured by EPA Method 1664, Revision A.
- {9} The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.
- {10} The pH shall be measured within fifteen minutes of obtaining the grab sample.

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**NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF HYDROTESTING WATERS**

This General Permit is effective on

DEC 06 2013

and expires three years from this date,
unless amended earlier.

1. Coverage under this General Permit
 - (a) This general permit covers facilities or activities which involve a release or discharge of hydrotesting waters to state waters. "Hydrotesting Waters" means water used to test the integrity of a tank or pipeline, water used to flush a tank or pipeline, and effluent used to disinfect a tank or pipeline.
 - (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."
2. Limitations on Coverage under this General Permit
 - (a) This general permit does not cover the following:
 - (1) Discharges of hydrotesting waters into a sanitary sewer system and
 - (2) Discharges of hydrotesting waters which initially enter separate storm water

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drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system.

- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

- (a) This general permit becomes effective when section 11-55-34.02(b)(5) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires three years after the effective date or when amendments to section 11-55-34.02(b)(5) are adopted, whichever is earlier.
- (b) A notice of general permit coverage under this general permit expires:
 - (1) Three years after the effective date of this general permit;
 - (2) When the notice of general permit coverage specifies; or
 - (3) When amendments to section 11-55-34.02(b)(5) are adopted,

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whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration of the applicable notice of general permit coverage.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
 - (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) Brief description of the project including an overview of the hydrotesting activities; an estimated timetable for major construction activities; dates on which the hydrotesting activities are projected to occur; estimated average and maximum daily flow rates; and a list of pollutants that may be present in the hydrotesting water and an explanation of its origins;
 - (3) Water quality analysis of the hydrotesting water including any toxic pollutants believed to be present in the hydrotesting water. For the hydrotesting of transmission lines, the water quality analysis for the source

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water may be substituted for the water quality analysis of the hydrotesting water; and

- (4) Hydrotesting best management practices plan, including good housekeeping and mitigative measures to prevent pollutants that may be present in the hydrotesting water from entering state waters, to ensure that the hydrotesting water discharge will meet the conditions of this general permit, basic water quality criteria, and applicable specific water quality parameters. The hydrotesting best management practices plan may be submitted with the notice of intent or thirty days before the start of hydrotesting activities.
- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

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5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

6. Effluent Limitations and Monitoring Requirements for Transmission Line Testing

- (a) If a water quality analysis of the hydrotesting water was not provided with the notice of intent, then the water quality of the hydrotesting water shall be limited and monitored by the permittee as specified in this section and in Table 34.4. (Effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)

(1) Sampling Point

The permittee shall collect representative discharge samples at the end of the effluent discharge point(s) prior to entering the receiving state water or separate storm water drainage systems.

(2) Collection of Samples

The permittee shall take samples and measurements for the purposes of monitoring which are representative of

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the volume and nature of the total discharge.

(3) Types of Samples

(A) "Grab sample" means an individual sample collected within the first fifteen minutes of a discharge.

(B) "Composite sample" means a combination of at least eight sample aliquots, collected at periodic intervals during the operating hours of the facility over a 24-hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

(4) Test Procedures

(A) The permittee shall use test procedures for the analysis of pollutants which conform with regulations published under Section 304(h) of the Act.

(B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part

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136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.

- (C) The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54. If the test result is not detectable, the permittee shall indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.

(5) Recording of Results

The permittee shall comply with section 14(c) of appendix A of chapter 11-55 for each measurement or sample taken under the requirements of this general permit.

(6) Quantity of Flow

The permittee shall estimate or calculate the quantity of hydrotesting water discharged and submit the calculations.

(b) Basic Water Quality Criteria and Inspections

- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.

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- (2) The permittee shall timely inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)

7. Corrective Action

The permittee shall immediately stop, reduce, or modify construction, hydrotesting, or implement new or revised best management practices as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

8. Reporting Requirements

(a) Reporting of Monitoring Results

- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in

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Table 34.4 and other requirements of this general permit.

- (2) The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.
 - (3) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.
 - (4) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.
- (b) Additional Monitoring by the Permittee

If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B) of this general permit, the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.

- (c) Reporting of Noncompliance, Unanticipated Bypass, or Upset

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- (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:
 - (A) Violation of an effluent limitation specified in Table 34.4 or a basic water quality criteria specified in section 6(b) of this general permit;
 - (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment; and
 - (C) Unanticipated bypass or upset.
- (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.
- (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:
 - (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;

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- (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
 - (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
 - (D) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset.
- (4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.
- (d) The permittee shall notify the director of the start of the hydrotesting activities in writing within one week before the start of the hydrotesting activities.
9. Submittal Requirements
- (a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

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- (b) The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

10. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

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11. Record Retention

The permittee shall retain all records and information resulting from the monitoring activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

12. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

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TABLE 34.4

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS
FOR HYDROTESTING WATER DISCHARGES

| Effluent Parameter | Effluent Limitations {1} | Minimum Monitoring Frequency | Type of Sample |
|------------------------------------|--------------------------|------------------------------|-------------------------|
| Quantity of Discharge (gallons) | {2} | Once/Discharge | Calculated or Estimated |
| Total Suspended Solids (mg/l) | {2} | Once/Discharge | Grab {3} |
| Turbidity (NTU) | {2} | Once/Discharge | Grab {3} |
| pH (standard units) | {4} | Once/Discharge | Grab {3}, {5} |
| Total Residual Chlorine (µg/l) {6} | 19{7} 13{8} | Once/Discharge | Grab {3} |
| Toxic Pollutants {9} | {10} | Once/Discharge | {3}, {11} |

mg/l = milligrams per liter
µg/l = micrograms per liter
NTU = nephelometric turbidity units

NOTES:

- {1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.

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- {2} The value shall not exceed the applicable limit as specified in chapter 11-54 for the applicable classification of the receiving state waters. If no limitation is specified in chapter 11-54, then only monitoring and reporting is required.
- {3} The Permittee shall sample the discharge after dechlorination and/or filtration within the first five minutes of discharge.
- {4} The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.
- {5} The pH shall be measured within fifteen minutes of obtaining the grab sample.
- {6} The permittee shall measure for total residual chlorine immediately after obtaining a sample and only when effluent from disinfection operations is discharged.
- {7} This limitation applies when hydrotesting water is discharged into fresh waters.
- {8} This limitation applies when hydrotesting water is discharged into saline waters.
- {9} The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4, only if they are identified as potential pollutants requiring monitoring in the notice of intent or as identified by the director. The permittee shall measure for the total recoverable portion of all metals.
- {10} Effluent limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters. For pollutants

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which do not have established acute water quality standards, the permittee shall report any detected concentration greater than 0.01 µg/l.

- {11) The permittee shall measure for cyanide and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a composite sample.

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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES ASSOCIATED WITH
CONSTRUCTION ACTIVITY DEWATERING

This General Permit is effective on

DEC 06 2013

and expires three years from this date,
unless amended earlier.

1. Coverage under this General Permit
 - (a) This general permit covers discharges from the dewatering process of construction activities of any size, including treated storm water discharges, upon compliance with the applicable general permit requirements.
 - (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."
2. Limitations on Coverage under this General Permit
 - (a) This general permit does not cover the following:
 - (1) Discharges of construction dewatering effluent into a sanitary sewer system;
 - (2) Storm water discharges associated with construction activities for which the director has issued a notice of general

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permit coverage under another general permit;

- (3) Return flow or overflow from dredged material dewatering process that are regulated by the U.S. Army Corps of Engineers under Section 404 of the Act;
- (4) Discharges of construction dewatering effluent which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system;
- (5) Discharges of construction dewatering effluent that is subject to the general permit specified in appendix D of chapter 11-55; and
- (6) Discharges of construction dewatering effluent that the director finds more appropriately regulated under an individual permit.

- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

- (a) This general permit becomes effective when section 11-55-34.02(b)(6) becomes effective ten days after filing with the office of the

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lieutenant governor. This general permit expires three years after the effective date or when amendments to section 11-55-34.02(b)(6) are adopted, whichever is earlier.

- (b) A notice of general permit coverage under this general permit expires:
- (1) Three years after the effective date of this general permit;
 - (2) When the notice of general permit coverage specifies; or
 - (3) When amendments to section 11-55-34.02(b)(6) are adopted,

whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
 - (1) Information required in section 34 of appendix A of chapter 11-55;

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- (2) Legal name, street address, telephone and fax numbers, and contact person(s) for the designer(s) of the dewatering or treatment facility(ies) or both;
- (3) Site characterization report including the history of the land use at the proposed construction site and surrounding area, the potential pollution source(s) at the proposed construction site and surrounding area, the potential pollutant(s) present at the proposed construction site and surrounding area, any proposed corrective measures, and pollutants that may be in the discharge;
- (4) Brief description of the project including the total disturbance area of the project; the portion of the project involving construction dewatering; an estimated timetable for major activities (including the date when the contractor will begin site disturbance); the date when the contractor will begin the construction dewatering process; estimates of the quantity, rate, and frequency of the proposed discharges; and the time frame of the proposed discharges;
- (5) An analysis of the source water quality as specified by the director. The source water quality data may be collected from sites allowed by the director. The analysis shall:
 - (A) Include an explanation addressing the selection of the toxic

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pollutants provided and an evaluation of the source water quality data collected with respect to the applicable numeric criteria and numeric standards for the toxic pollutants specified under section 11-54-4,

- (B) Be based on the history of the land use as reported in paragraph 4(b)(3) or as believed to be present in the discharge,
 - (C) Use test methods as specified in section 6(a)(4)(B), and
 - (D) Be submitted to the director with the notice of intent;
- (6) Dewatering plan designed to comply with the basic water quality criteria specified under chapter 11-54. The plan shall include the pumping devices to be used, their pumping capacity, and the number of devices to be used; treatment design; design concerns; calculations used in the treatment design; and proposed mitigative measures. The site-specific dewatering plan shall be submitted to the director with the notice of intent or thirty days before the start of construction dewatering activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office;
- (7) Dewatering system maintenance plan to ensure that the dewatering effluent

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discharge will meet conditions of this general permit, basic water quality criteria, and applicable specific water quality parameters. The dewatering system maintenance plan shall include:

- (A) Schedule of activities,

- (B) Operation and maintenance procedures to prevent or reduce the pollution of state waters, including:
 - (i) Responsible field person of the system, by title or name;
 - (ii) Operations plan;
 - (iii) Maintenance scheduling or action criteria;
 - (iv) Maintenance program;
 - (v) Sediment handling and disposal plan;
 - (vi) Monitoring and visual inspection program;
 - (vii) Cessation of discharge plan; and
 - (viii) Effluent control plan, and
- (C) Treatment requirements.

The site-specific dewatering system maintenance plan shall be submitted to

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the director with the notice of intent or thirty days before the start of construction dewatering activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office;

- (8) Construction pollution prevention plan to prevent or reduce the pollution of state waters due to other discharges. The construction pollution prevention plan shall include:
- (A) Prohibited practices,
 - (B) Other management practices to prevent or reduce the pollution of state waters, and
 - (C) Practices to control project site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage or stockpiling area(s).

The site-specific construction pollution prevention plan shall be submitted to the director with the notice of intent or thirty days before the start of construction dewatering activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office; and

- (9) For construction projects which are one acre or more, submit a county approved site-specific erosion control plan with the notice of intent or thirty days

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before the start of construction dewatering activities, as applicable.

- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

6. Effluent Limitations and Monitoring Requirements

- (a) The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.5 (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)

- (1) Sampling Point

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The permittee shall collect representative discharge samples at the end of the effluent discharge point(s) prior to entering the receiving state water or separate storm water drainage systems.

(2) Collection of Samples

The permittee shall take samples and measurements for the purposes of monitoring which are representative of the volume and nature of the total discharge.

(3) Types of Samples

- (A) "Grab sample" means an individual sample collected within the first fifteen minutes of a discharge.
- (B) "Composite sample" means a combination of at least eight sample aliquots, collected at periodic intervals during the operating hours of the facility over a 24-hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

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(4) Test Procedures

- (A) The permittee shall use test procedures for the analysis of pollutants which conform with regulations published under Section 304(h) of the Act.
- (B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.
- (C) The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54. If the test result is not detectable, indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.

(5) Recording of Results

The permittee shall comply with section 14(c) of appendix A of chapter 11-55 for each measurement or sample taken under the requirements of this general permit.

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(b) Basic Water Quality Criteria and Inspections

- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
- (2) The permittee shall timely inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)

7. Corrective Action

The permittee shall immediately stop, reduce, or modify construction, or implement a new or revised dewatering system maintenance plan as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

8. Reporting Requirements

(a) Reporting of Monitoring Results

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- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.5 and other requirements of this general permit.
 - (2) The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.
 - (3) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.
 - (4) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.
- (b) Additional Monitoring by the Permittee

If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B) of this

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general permit, the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.

(c) Reporting of Noncompliance, Unanticipated Bypass, or Upset

- (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:
 - (A) Violation of an effluent limitation specified in Table 34.5 or a basic water quality criteria specified in section 6(b) of this general permit;
 - (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment; or
 - (C) Unanticipated bypass or upset.
- (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.

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- (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:
- (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;
 - (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
 - (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
 - (D) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset.
- (4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.
- (d) The permittee shall notify the director of the start of the dewatering activities in writing within one week before the start of the dewatering activities.

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9. Submittal Requirements

- (a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

- (b) The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

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(c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

10. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

11. Record Retention

The permittee shall retain all records and information resulting from the monitoring activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

12. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

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TABLE 34.5

**EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS
FOR CONSTRUCTION DEWATERING DISCHARGES**

| Effluent Parameter | Effluent Limitations {1} | Minimum Monitoring Frequency | Type of Sample |
|------------------------------------|--------------------------|------------------------------|-------------------------|
| Quantity of Discharge (GPD or gpm) | {2} | {3} | Calculated or Estimated |
| Total Suspended Solids (mg/l) | {2} | {4} | Grab |
| Turbidity (NTU) | {2} | {4} | Grab |
| Oil and Grease (mg/l) | 15 | {4} | Grab {5} |
| pH (standard units) | {6} | {4} | Grab {7} |
| Toxic Pollutants {8} | {9} | {4} | {10} |

GPD = gallons per day
 gpm = gallons per minute
 mg/l = milligrams per liter
 NTU = nephelometric turbidity units

NOTES:

{1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.

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- {2} The value shall not exceed the applicable limit as specified in chapter 11-54 for the applicable classification of the receiving state waters. If no limitation is specified in chapter 11-54, then the permittee shall monitor and report the analytical result.

- {3} For intermittent discharges, flow measurement shall be taken once for each discharge for the duration of the discharge. For continuous discharge, continuous flow measurement is required.
- {4} For intermittent discharges, the sample shall be taken once for each discharge. For continuous discharge, the sample shall be taken at least once per week.
- {5} Oil and Grease shall be measured by EPA Method 1664, Revision A.
- {6} The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.
- {7} The pH shall be measured within fifteen minutes of obtaining the grab sample.
- {8} The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 only if they are identified as potential pollutants requiring monitoring in the notice of intent or as identified by the director. For dewatering processes involving only the treated storm water discharges, only those potential pollutants identified in the site characterization report need to be monitored.



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The permittee shall measure for the total recoverable portion of all metals.

- {9} Effluent limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters. For pollutants which do not have established acute water quality standards, the permittee shall report any detected concentration greater than 0.01 µg/l.
- {10} The permittee shall measure for cyanide, temperature, bacterial counts, and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a composite sample.

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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF TREATED
PROCESS WASTEWATER ASSOCIATED WITH
PETROLEUM BULK STATIONS AND TERMINALS

This General Permit is effective on

DEC 06 2013

and expires four years from this date,
unless amended earlier.

1. Coverage under this General Permit
 - (a) This general permit covers only discharges of treated process wastewater effluent from petroleum bulk stations and terminals upon compliance with the applicable general permit requirements. Treated process wastewater effluent covered by this general permit includes tank water draws; product displacement process wastewater; wash down and fire hydrant system test waters; service station tank draws; recovered groundwater; and contaminated storm water runoff from the product storage and handling areas.
 - (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."
2. Limitations on Coverage under this General Permit
 - (a) This general permit does not cover the following:

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- (1) Discharges of treated effluent into a sanitary sewer system and
- (2) Discharges of treated effluent which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system.

- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

- (a) This general permit becomes effective when section 11-55-34.02(b)(7) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires four years after the effective date or when amendments to section 11-55-34.02(b)(7) are adopted, whichever is earlier.
- (b) A notice of general permit coverage under this general permit expires:
 - (1) Four years after the effective date of this general permit;
 - (2) When the notice of general permit coverage specifies; or

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- (3) When amendments to section 11-55-34.02(b)(7) are adopted,

whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
- (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) List of up to four Standard Industrial Classification codes or North American Industrial Classification System codes that best represent the products or activities of the facility;
 - (3) Brief description of the nature of business conducted at the facility;
 - (4) Description of the following for each outfall:
 - (A) All operations contributing wastewater and contaminated storm water runoff to the effluent;

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- (B) The average flow contributed by each operation and contaminated storm water runoff;
 - (C) The treatment received by the wastewater and contaminated storm water runoff; and
 - (D) The average and maximum daily flow rates of the effluent discharge;
- (5) Quantitative data on pollutants that the owner or operator of the facility knows or reasonably should know are or will be present in the discharge and for which the pollutants numerical criteria for the existing or proposed receiving state waters are specified in chapter 11-54, especially section 11-54-4;
- (6) Name, street address, and phone and fax numbers of each contract laboratory or consulting firm that performed any of the analyses in accordance with section 4(b)(5), as applicable. This information shall be submitted with the notice of intent or thirty days before the start of discharge(s); and
- (7) Treatment system operations plan which specifies the treatment system to be used and describes its operation in detail. The plan shall include a sampling plan and a detailed schedule for sampling and analysis of the effluent. The treatment system operations plan shall be modified by the permittee as requested by the

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director. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office.

- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

6. Effluent Limitations and Monitoring Requirements

- (a) The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.6. (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)

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(1) Sampling Points

The permittee shall collect representative discharge samples at the end of effluent discharge point(s) prior to entering the receiving state water or separate storm water drainage systems.

(2) Collection of samples

The permittee shall take samples and measurements for the purposes of monitoring which are representative of the volume and nature of the total discharge.

(3) Type of Sample

"Grab Sample" means an individual sample collected within the first fifteen minutes of a discharge.

(4) Test Procedures

(A) The permittee shall use test procedures for the analysis of pollutants that conform with regulations published under Section 304(h) of the Act.

(B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the

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use of alternative test methods in accordance with 40 CFR §136.4.

- (C) The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54. If the test result is not detectable, indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.

(5) Recording of Results

The permittee shall comply with section 14(c) of appendix A of chapter 11-55 for each measurement or sample taken under the requirements of this general permit.

(b) Basic Water Quality Criteria and Inspections

- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
- (2) The permittee shall timely inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and

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grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)

- (c) The permittee shall collect the following information for each batch discharge: date, duration (in hours), starting and ending times, and volume.
- (d) There shall be no discharge of floating solids or visible foam.
- (e) There shall be no visible oil sheen in the effluent.

7. Corrective Action

The permittee shall immediately stop, reduce, or modify the discharge as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

8. Reporting Requirements

(a) Reporting of Monitoring Results

- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.6 and other requirements of this general permit.

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- (2) The permittee shall submit monitoring results obtained during the previous calendar month and the results shall be postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.
 - (3) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.
 - (4) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.
- (b) Additional Monitoring by the Permittee
- If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B) of this general permit, the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.
- (c) Reporting of Noncompliance, Unanticipated Bypass, or Upset

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- (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:
 - (A) Violation of an effluent limitation specified in Table 34.6 or a basic water quality criteria specified in section 6(b) of this general permit;
 - (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment; or
 - (C) Unanticipated bypass or upset.
- (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.
- (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:
 - (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;

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- (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
 - (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
 - (D) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset.
- (4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.

(d) Planned Changes

The permittee shall report any planned physical alterations or additions to the permitted facility, not covered by 40 CFR §122.41(1)(1)(i), (ii), and (iii) to the director on a quarterly basis.

(e) Schedule of Maintenance

The permittee shall submit a schedule for approval by the director at least fourteen days prior to any maintenance of facilities which might result in exceedance of effluent limitations. The schedule shall include a description of the maintenance and its reason; the period of maintenance, including exact dates and times; and steps taken or planned to reduce, eliminate, and prevent occurrence of noncompliance.

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9. Submittal Requirements

- (a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

- (b) The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

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- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

10. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

11. Record Retention

The permittee shall retain all records and information resulting from the monitoring activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

12. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

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TABLE 34.6

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS
FOR DISCHARGES OF TREATED EFFLUENT FROM
PETROLEUM BULK STATIONS AND TERMINALS

| Effluent Parameter | Effluent Limitations {1} | | Monitoring Requirements {2} | |
|--------------------------------------------|--------------------------|-----------------|-----------------------------|-------------------------|
| | For Saline Water | For Fresh Water | Minimum Frequency | Type of Sample |
| Quantity of Discharge (gallons) | {3} | {3} | Once/Batch Discharge | Calculated or Estimated |
| Oil and Grease (mg/l) | 15 | 15 | Once/Batch Discharge | Grab {4} |
| Total Recoverable Lead (mg/l) {5} | 0.14 | 0.029 | Once/Batch Discharge | Grab |
| Benzene (mg/l) {6} | 1.7 | 1.8 | Once/Batch Discharge | Grab |
| Toluene (mg/l) {6} | 2.1 | 5.8 | Once/Batch Discharge | Grab |
| Xylenes (mg/l) {6} | {3} | {3} | Once/Batch Discharge | Grab |
| Ethyl benzene (mg/l) {6} | 0.14 | 11 | Once/Batch Discharge | Grab |
| Turbidity (NTU) | {7} | {7} | Once/Batch Discharge | Grab |
| Ammonia Nitrogen (NH ₄ -N mg/l) | {7} | {7} | Once/Batch Discharge | Grab |
| pH (standard units) {8} | {7} | {7} | Once/Batch Discharge | Grab {9} |

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| Effluent Parameter | Effluent Limitations {1} | | Monitoring Requirements {2} | |
|--------------------------------|--------------------------|-----------------|-----------------------------|----------------|
| | For Saline Water | For Fresh Water | Minimum Frequency | Type of Sample |
| Dissolved Oxygen (%saturation) | {7} | {7} | Once/Batch Discharge | Grab |

mg/l = milligrams per liter
 NTU = nephelometric turbidity units

NOTES:

- {1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.
- {2} No monitoring of storm water discharge is required if the associated storm event occurs less than seventy-two hours from a previous storm event or provided that the preceding storm event generates storm water which is discharged and monitored for all effluent characteristics specified in accordance with Table 34.6 or both.
- {3} Report. The permittee shall monitor and report the analytical result.
- {4} Oil and Grease shall be measured by EPA Method 1664, Revision A.
- {5} The permittee shall measure for the total recoverable portion of all metals.

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- {6} The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005;), or EPA method 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, for the measurement of benzene, ethylbenzene, and toluene. EPA method 8260B, or an equivalent method, shall be used for the measurement of xylenes.
- {7} Effluent limitations are the specific criteria established in sections 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable. For pollutants which do not have established specific criteria, the permittee shall report any detected concentration greater than 0.01 µg/l.
- {8} The permittee may determine compliance for pH by either monitoring the effluent or the receiving state water. Receiving state water monitoring shall be performed at a minimum of two stations. One sample station shall be monitored at the point where the discharge initially mixes with the receiving state water. One control station shall be monitored at a point where impacts from the discharge would not be expected. The monitoring specification shall be set forth in a monitoring program as approved by the director.
- {9} The pH shall be measured within fifteen minutes of obtaining the grab sample.

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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF TREATED
PROCESS WASTEWATER ASSOCIATED WITH
WELL DRILLING ACTIVITIES

This General Permit is effective on

DEC 06 2013

and expires four years from this date,
unless amended earlier.

1. Coverage under this General Permit
 - (a) This general permit covers only discharges of treated process wastewater associated with well drilling activities upon compliance with the applicable general permit requirements. Treated process wastewater covered by this general permit includes well drilling slurries, lubricating fluids wastewaters, and well purge wastewaters.
 - (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."
2. Limitations on Coverage under this General Permit
 - (a) This general permit does not cover the following:

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- (1) Discharges of treated process wastewater into a sanitary sewer system;
- (2) Discharges of treated process wastewater which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system; and
- (3) Discharges of well pump testing wastewaters which are not associated with well drilling activities.

- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

- (a) This general permit becomes effective when section 11-55-34.02(b)(8) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires four years after the effective date or when amendments to section 11-55-34.02(b)(8) are adopted, whichever is earlier.
- (b) A notice of general permit coverage under this general permit expires:

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- (1) Four years after the effective date of this general permit;
- (2) When the notice of general permit coverage specifies; or
- (3) When amendments to section 11-55-34.02(b)(8) are adopted,

whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
 - (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) Legal name, street address, telephone and fax numbers, and contact person(s) for the designer(s) of the well drilling process wastewater treatment facility(ies);
 - (3) Site characterization report which includes:

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- (A) The history of the land use at the proposed drilling site,
 - (B) The potential pollution source(s) at the proposed drilling site,
 - (C) The potential pollutant(s) present at the proposed drilling site,
 - (D) Any proposed corrective measures, and
 - (E) Pollutants that may be in the effluent;
- (4) Brief description of the project, including:
- (A) An estimated timetable of the drilling activities, including the date when the contractor will begin the well drilling process;
 - (B) Details of the proposed wastewater(s) discharge(s):
 - (i) Estimates of the quantity and frequency of the proposed discharge(s) and
 - (ii) The name(s) of the chemical(s) or material(s) listed by both chemical and trade names that is(are) present in the proposed wastewater(s) discharge(s). Also, provide the material safety data sheet (MSDS) for

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the chemical(s) or
materials; and

- (C) The time frame of the proposed discharges;
- (5) Quantitative data on pollutants that the owner or operator of the activity knows or reasonably should know are or will be present in the discharge and for which pollutants numerical criteria for the receiving state waters are specified in section 11-54-4;
- (6) Name, street address, and phone and fax numbers of each contract laboratory or consulting firm that performed any of the analyses in accordance with section 4(b)(5), as applicable. This information shall be submitted with the notice of intent or thirty days before the start of well drilling activities;
- (7) Well drilling plan designed to comply with the basic water quality criteria specified under chapter 11-54. The plan shall include:
 - (A) The well drilling equipment to be used,
 - (B) Process wastewater treatment design,
 - (C) Design concerns,
 - (D) Calculations used in the treatment design, and

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(E) Proposed mitigative measures.

The site-specific detailed well drilling plan shall be submitted to the director with the notice of intent or thirty days before the start of well drilling activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office; and

(8) Well drilling best management practices plan to ensure that the well drilling effluent discharge will meet conditions of this general permit, basic water quality criteria, and applicable specific water quality parameters. The well drilling best management practices plan shall include:

(A) A schedule of activities;

(B) Prohibited practices;

(C) Operation and maintenance procedures to prevent or reduce the pollution of state waters, including:

(i) Responsible field person of the system, by title or name;

(ii) Operations plan;

(iii) Maintenance scheduling or action criteria, and program;

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- (iv) Effluent monitoring program
(e.g. visual inspection);
 - (v) Cessation of discharge plan;
and
 - (vi) Effluent control plan;
-
- (D) Other management practices to
prevent or reduce the pollution of
state waters;
 - (E) Treatment requirements; and
 - (F) Practices to control project site
runoff, spillage or leaks, sludge
or waste disposal, or drainage
from raw material storage or
stockpiling area(s).

The site-specific detailed well
drilling best management practices plan
shall be submitted to the director with
the notice of intent or thirty days
before the start of well drilling
activities. The plan, and all
subsequent revisions, shall be retained
on-site or at a nearby field office.

- (c) The director may require additional
information to be submitted.
- (d) The owner or its duly authorized
representative shall submit a complete
notice of intent to the director at the
following address or as otherwise specified:

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Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

6. Effluent Limitations and Monitoring Requirements

- (a) The discharges shall be limited and monitored by the permittee as specified in this section and in Table 34.7 (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)

(1) Sampling Points

The permittee shall collect representative discharge samples at the end of effluent discharge point(s) prior to entering the receiving state water or separate storm water drainage systems.

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(2) Collection of Samples

The permittee shall take samples and measurements for the purposes of monitoring which are representative of the volume and nature of the total discharge.

(3) Types of Samples

- (A) "Grab Sample" means an individual sample collected within the first fifteen minutes of a discharge.
- (B) "Composite sample" means a combination of at least eight sample aliquots, collected at periodic intervals during the operating hours of the facility over a 24hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

(4) Test Procedures

- (A) The permittee shall use test procedures for the analysis of pollutants which conform with regulations published under Section 304(h) of the Act.

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(B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.

(C) The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54. If the test result is not detectable, indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.

(5) Recording of Results

The permittee shall comply with section 14(c) of appendix A of chapter 11-55 for each measurement or sample taken under the requirements of this general permit.

(b) Basic Water Quality Criteria and Inspections

(1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.

(2) The permittee shall timely inspect the receiving state waters, effluent, and

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control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce odor or off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)

- (c) There shall be no discharge of floating solids or visible foam.
- (d) There shall be no visible oil sheen in the effluent.
- (e) The permittee shall take all reasonable steps to minimize or prevent any discharge, use, or disposal of sludge or sediments in violation of this general permit or applicable law. Sludge, sediments, or any other material generated by any treatment process shall be disposed of in a manner which prevents its entrance into or pollution of any surface or subsurface waters. Additionally, the disposal of such sludge or other material shall be in compliance with 40 CFR Parts 501 and 503.

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7. Corrective Action

The permittee shall immediately stop, reduce, or modify the discharge as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

8. Reporting Requirements

(a) Reporting of Monitoring Results

- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.7 and other requirements of this general permit.
- (2) The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.
- (3) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.

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- (4) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.

(b) Additional Monitoring by the Permittee

If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B) of this general permit, the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.

(c) Reporting of Noncompliance, Unanticipated Bypass, or Upset

- (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:
 - (A) Violation of an effluent limitation specified in Table 34.7 or a basic water quality criteria specified in section 6(b) of this general permit;
 - (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment; or
 - (C) Unanticipated bypass or upset.

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- (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.
- (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:
 - (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;
 - (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
 - (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
 - (D) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset.
- (4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.

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(d) Planned Changes

The permittee shall report any planned physical alterations or additions to the permitted facility, not covered by 40 CFR §122.41(1)(1)(i), (ii), and (iii) to the director on a quarterly basis.

(e) Schedule of Maintenance

The permittee shall submit a schedule for approval by the director at least fourteen days prior to any maintenance of facilities which might result in exceedance of effluent limitations. The schedule shall include a description of the maintenance and its reason; the period of maintenance, including exact dates and times; and steps taken or planned to reduce, eliminate, and prevent occurrence of noncompliance.

9. Submittal Requirements

- (a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

- (b) The owner or its duly authorized representative shall include the following certification statement and an original

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signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

10. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

11. Record Retention

The permittee shall retain all records and information resulting from the monitoring

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activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

12. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

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TABLE 34.7

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS
FOR DISCHARGE OF TREATED EFFLUENT
FROM WELL DRILLING ACTIVITIES

| Effluent Parameters | Effluent Limitations {1} | | Monitoring Requirements | |
|---------------------------------------------|--------------------------|-----------------|-------------------------|-------------------------|
| | For Saline Water | For Fresh Water | Minimum Frequency | Type of Sample |
| Quantity of Discharge (gallons) | {2} | {2} | Daily | Calculated or Estimated |
| Oil and Grease (mg/l) | 15 | 15 | {3} | Grab {4} |
| Benzene (mg/l) {5} | 1.7 | 1.8 | {3} | Grab |
| Total Suspended Solids (mg/l) | {6} | {6} | {3} | Grab |
| Turbidity (NTU) | {6} | {6} | {3} | Grab |
| Ammonia Nitrogen (NH ₄ -N/l) {7} | {6} | {6} | {3} | Grab |
| pH (standard units) | {6} | {6} | {3} | Grab {8} |
| Toxic Pollutants {7} | {6} | {6} | {3} | {9} |

mg/l = milligrams per liter
NTU = nephelometric turbidity units

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NOTES:

- {1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.
- {2} Report. The permittee shall monitor and report the analytical result.
- {3} For intermittent discharges, the sample shall be taken once for each discharge. For continuous discharge a sample shall be taken at least once per week.
- {4} Oil and Grease shall be measured by EPA Method 1664, Revision A.
- {5} The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005;), or EPA methods 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, or 1624 for the measurement of benzene.
- {6} Effluent limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters and specific criteria established in section 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable. For pollutants which do not have established acute water quality standards or specific criteria, the permittee shall report any detected concentration greater than 0.01 µg/l.

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- {7} The permittee shall measure for toxic pollutants, as identified in appendix D of 40 CFR Part 122 or in section 11-54-4 only if they are identified as potential pollutants requiring monitoring in the notice of intent or as identified by the director. The permittee shall measure for the total recoverable portion of all metals.
- {8} The pH shall be measured within fifteen minutes of obtaining the grab sample.
- {9} The permittee shall measure for cyanide and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a composite sample.

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NPDES GENERAL PERMIT
AUTHORIZING OCCASIONAL OR UNINTENTIONAL DISCHARGES
FROM RECYCLED WATER SYSTEMS

This General Permit is effective on

DEC 06 2013

and expires five years from this date,
unless amended earlier.

1. Coverage under this General Permit
 - (a) This general permit covers occasional or unintentional discharges composed entirely of:
 - (1) R-1 water, or
 - (2) R-1 water with any combination of stormwater or potable water or water used primarily for irrigation,

where the R-1 water is supplied from a treatment works and is conveyed or used by a recycled water system.
 - (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."
2. Limitations on Coverage under this General Permit
 - (a) This general permit does not cover the following:

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- (1) Recycled water system discharges into a sanitary sewer system;
 - (2) Recycled water system discharges which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system;
 - (3) Recycled water system discharges which are regulated by an existing individual permit;
 - (4) Recycled water systems which the director finds to have violated, be violating, or contributing to a violation of chapter 11-62;
 - (5) Recycled water system discharges that the director finds more appropriately should be regulated under an individual permit; and
 - (6) Treatment works discharges that are not from an approved recycled water system.
- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

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3. Term of General Permit

(a) This general permit becomes effective when section 11-55-34.02(b)(9) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires five years after the effective date or when amendments to section 11-55-34.02(b)(9) are adopted, whichever is earlier.

(b) A notice of general permit coverage under this general permit expires:

(1) Five years after the effective date of this general permit;

(2) When the notice of general permit coverage specifies; or

(3) When amendments to section 11-55-34.02(b)(9) are adopted,

whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

4. Notice of Intent (NOI) Requirements

(a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.

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- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
- (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) Activity for which the recycled water is to be used and the amount in gallons per day of recycled water to be used or conveyed;
 - (3) Name of the owner or operator of treatment works producing or supplying the R-1 water, if different from the permittee;
 - (4) Copy of the agreement(s) relating to R-1 water use between the permittee and the owner or operator of treatment works producing the R-1 water, if the owner or operator is different from the permittee; and
 - (5) Quantitative data of the R-1 water in the recycled water system.
- (c) The director may require additional information to be submitted.

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- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health
Wastewater Branch
Environmental Management Division
Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

6. Implementation of Best Management Practices

- (a) The permittee shall:
- (1) Implement the best management practices approved by the director under chapter 11-62 before and during the use or conveyance of recycled water;
 - (2) Minimize discharges to state waters to the maximum extent practicable; and
- (b) The permittee shall implement or supplement the best management practices as needed to improve the quality of discharges to state waters, reduce the risk of discharges to state waters, reduce contamination of R-1

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water after it is produced, or when instructed by the director.

7. Effluent Limitations and Monitoring Requirements

- (a) The discharges shall be limited and monitored by the permittee's supplier as specified under chapter 11-62. (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)
- (b) Basic Water Quality Criteria and Inspections
 - (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
 - (2) The permittee shall timely inspect the receiving state waters, the recycled water, and the implementation of control measures and best management practices to prevent and detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4.
 - (3) During each discharge or as soon afterwards as possible, the permittee shall inspect the discharge area and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and

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inspect for items that may be toxic or harmful to human or other life.

- (4) Discharge and receiving water quality may also be monitored by grab samples or other means, and it shall be monitored by any means and at times specified by the director.

8. Corrective Action

- (a) If the permittee notices any item(s) which adversely affects receiving water quality, the permittee shall immediately stop, reduce, or modify operations, or implement new or revised best management practices as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.
- (b) If the discharge is not of R-1 quality or the best management practices as approved by the director were not being implemented, then the permittee shall immediately stop, reduce, or modify operations, or implement new or revised best management practices as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

9. Reporting Requirements

- (a) If the discharge is of R-1 quality water and the best management practices as approved by the director were implemented, then the permittee shall orally report within twenty-four hours information regarding the discharge and the best management practices implemented. A summary of all discharges

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shall be tabulated quarterly and submitted to the wastewater branch within thirty days after the quarters ending March, June, September, and December.

- (b) If the discharge is not of R-1 quality, best management practices approved by the director were not being implemented, or water quality is adversely affected, then the permittee shall immediately notify the director of any discharge to state waters, corrective measures taken, and shall report in writing all of a month's discharges and corrective measures within five days after that month.
- (c) The permittee shall make oral reports by telephone to the Wastewater Branch at (808) 586-4294 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.

10. Submittal Requirements

- (a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health
Wastewater Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

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- (b) The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

11. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

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12. Record Retention

The permittee shall retain all records and information resulting from the activities required by this general permit for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

13. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.



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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF STORM WATER AND
CERTAIN NON-STORM WATER DISCHARGES FROM
SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS

This General Permit is effective on

DEC 06 2013

and expires three years from this date,
unless amended earlier.

1. Coverage under this General Permit
 - (a) This general permit covers storm water and certain non-storm water discharges, provided they do not cause or contribute to any violation of water quality standards, to state waters from small municipal separate storm sewer systems.

Non-storm water discharges authorized by this general permit, provided that they do not cause or contribute to any violation of water quality standards, include:

- (1) Water line flushing;
- (2) Landscape irrigation;
- (3) Diverted stream flows;
- (4) Rising ground waters;
- (5) Uncontaminated ground water infiltration (as defined in 40 CFR §35.2005(20));
- (6) Uncontaminated pumped ground water;

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- (7) Discharges from potable water sources and foundation drains;
 - (8) Air conditioning condensate;
 - (9) Irrigation water;
 - (10) Springs;
 - (11) Water from crawl space pumps and footing drains;
 - (12) Lawn watering runoff;
 - (13) Water from individual residential car washing;
 - (14) Flows from riparian habitats and wetlands;
 - (15) Dechlorinated swimming pool discharges;
 - (16) Residual street wash water; and
 - (17) Discharges or flows from fire fighting activities.
- (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."

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2. Limitations on Coverage under this General Permit

(a) This general permit does not cover the following:

- (1) Storm water discharges into a sanitary sewer system;
- (2) Storm water discharges from construction activities greater than one acre which discharges into the permittee's small municipal separate storm sewer system;
- (3) Storm water discharges from industrial facilities as defined in 40 CFR §§122.26(b)(14)(i) through 122.26(b)(14)(ix) and 122.26(b)(14)(xi) which discharges into the permittee's small municipal separate storm sewer system;
- (4) Storm water discharges from small municipal separate storm sewer systems which initially enter a separate storm water drainage system(s), unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system;
- (5) Storm water discharges for which the director has issued a notice of general permit coverage under another general permit specific to that type of industrial activity; and

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(6) Storm water discharges the director finds more appropriately regulated under an individual permit.

(b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

(a) This general permit becomes effective when section 11-55-34.02(b)(10) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires three years after the effective date or when amendments to section 11-55-34.02(b)(10) are adopted, whichever is earlier.

(b) A notice of general permit coverage under this general permit expires:

(1) Three years after the effective date of this general permit;

(2) When the notice of general permit coverage specifies; or

(3) When amendments to section 11-55-34.02(b)(10) are adopted,

whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

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4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
 - (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) Non-storm water discharge information;
 - (3) Facility site map;
 - (4) An assessment of the effectiveness of the storm water management plan implemented during the previous permit term in reducing discharges of pollutants to the maximum extent practicable and protecting water quality, and any modifications to the plan proposed to be implemented for compliance with this general permit; and
 - (5) Storm water management plan, which meets the applicable requirements as specified in section 6 of this general permit, and which has been updated based on the assessment required by section 4(b)(4) of this general permit. The storm water management plan may be submitted to the director with the notice of intent or within one hundred

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twenty days after the issuance date of the notice of general permit coverage or by the date the applicant claimed automatic coverage as specified in section 11-55-34.09(e)(2), or for proposed small municipal separate storm sewer systems, by the date the permittee's small municipal separate storm sewer system becomes operational. The plan, and all subsequent revisions, shall be kept on-site or at a nearby office or field office.

- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

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6. Storm Water Management Plan Requirements

The permittee shall develop, implement, and enforce a storm water management plan designed to reduce the discharge of pollutants from the permittee's small municipal separate storm sewer system to the maximum extent practicable in order to protect water quality and satisfy the appropriate water quality requirements of the Clean Water Act. The storm water management plan shall include the minimum control measures identified below with implementation dates and rationales for each measure:

(a) Minimum Control Measures

(1) Public Education and Outreach

Develop and implement a public education program to distribute educational materials to users of the permittee's small municipal separate storm sewer system or equivalent outreach activities emphasizing the following:

- (A) Impacts of storm water discharges on water bodies,
- (B) Hazards associated with illicit discharges, and
- (C) Measures that users of the permittee's small municipal separate storm sewer system can take to reduce pollutants in storm water runoff, including, but not limited to, minimizing fertilizer application and practicing proper

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storage and disposal of chemicals and wastes;

(2) Public Involvement/Participation

Include users of the permittee's small municipal separate storm sewer system in developing, implementing, and reviewing the storm water management plan;

(3) Illicit Discharge Detection and Elimination

Develop, implement, and enforce a program to detect and eliminate illicit discharges that, at a minimum, includes the following:

- (A) Establishment of rules, ordinances, or other regulatory mechanism, including enforcement procedures and actions, that prohibit non-storm water discharges, except those listed in section 1 that do not cause or contribute to any violations of water quality standards, into the permittee's small municipal separate storm sewer system,
- (B) Procedures to detect and eliminate illicit discharges (as defined in 40 CFR Section 122.26(b)(2)), and
- (C) Compilation of a list of non-storm water discharges or flows that are considered to be significant contributors of pollutants to the

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system and measures to be taken to prevent these discharges into the permittee's small municipal separate storm sewer system, or reduce the amount of pollutants in these discharges;

(4) Construction Site Runoff Control

Develop, implement, and enforce a program to reduce pollutants in storm water runoff entering the permittee's small municipal separate storm sewer system from construction activities disturbing one acre or more, including construction activities less than one acre that are part of a larger common plan of development or sale that would disturb one acre or more, that, at a minimum, includes the following:

- (A) Establishment of rules, ordinances, or other regulatory mechanism, including enforcement procedures and actions, that require erosion and sediment controls,
- (B) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices,
- (C) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the

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construction site that may cause adverse impacts to water quality,

- (D) Procedures for site plan review which incorporate consideration of potential water quality impacts,
 - (E) Procedures for receipt and consideration of information submitted by the public, and
 - (F) Procedures for site inspection and enforcement of control measures;
- (5) Post-Construction Storm Water Management in New Development and Redevelopment

Develop, implement, and enforce a program to reduce pollutants in storm water runoff entering the permittee's small municipal separate storm sewer system from new development and redevelopment projects that disturb greater than or equal to one acre, including construction sites less than one acre that are part of a larger common plan of development or sale that would disturb one acre or more, that, at a minimum, includes the following:

- (A) Establishment of rules, ordinances, or other regulatory mechanism, including enforcement procedures and actions, that address post-construction runoff from new development and redevelopment projects,

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- (B) Structural and/or non-structural best management practices to minimize water quality impacts and attempt to maintain pre-development runoff conditions, and
- (C) Procedures for long-term operation and maintenance of best management practices.

(6) Pollution Prevention/Good Housekeeping

Develop, implement, and enforce an operation and maintenance program to prevent and reduce storm water pollution from activities, including, but not limited to, park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance that, at a minimum, includes the following:

- (A) Good housekeeping and other control measures, and
- (B) Employee and contractor training on good housekeeping practices to ensure that good housekeeping measures and best management practices are properly implemented.

(b) Measurable Goals

The permittee shall develop measurable goals to gauge permit compliance and program effectiveness for each minimum control measure identified above. The permittee

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shall select measurable goals using an integrated approach that fully addresses the requirements and intent of the minimum control measure.

(c) Modifications

(1) Significant Modifications

(A) Modifications to the storm water management plan that would result in a major reduction in the overall scope or level of effort or both of the storm water management plan must be made for cause and in compliance with 40 CFR §122.62 and 40 CFR Part 124.

(B) The permittee shall report in writing any proposed modification described above to the Director of Health for approval at least thirty days prior to the initiation date of the modification.

(2) Other Modifications

The permittee shall report and justify all other modifications made to the storm water management plan in the annual report for the year in which the modification was made.

7. Basic Water Quality Criteria and Inspections

(a) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.

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- (b) The permittee shall timely inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)

8. Corrective Action

The permittee shall immediately stop, reduce, or modify the discharge as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

9. Reporting Requirements

(a) Annual Report

The submittal of the annual report by the permittee shall be postmarked or received by the department by the twenty-eighth day of January of the following year. The annual report shall cover each calendar year during the term of this permit and include the following:

- (1) Status of compliance with conditions of this permit;

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- (2) Assessment of the storm water management plan, including progress towards implementing each minimum control measure;
- (3) Modifications made to the storm water management plan and implementation schedule during that calendar year, including justifications;
- (4) Summary of the storm water activities planned to be undertaken during the next calendar year; and
- (5) Major modifications made to the permittee's small municipal separate storm sewer system, including, but not limited to, addition and removal of outfalls, drainage lines, and treatment facilities.

(b) Planned Changes

The permittee shall report any planned physical alterations or additions to the permitted facility, not covered by 40 CFR §122.41(1)(1)(i), (ii), and (iii) to the director on a quarterly basis.

10. Submittal Requirements

- (a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

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Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

- (b) The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

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11. Additional Conditions

The director may impose additional conditions under section 11-55-34.09 (b).

12. Record Retention

The permittee shall retain all records and information resulting from the monitoring activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

13. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF CIRCULATION WATER
FROM DECORATIVE PONDS OR TANKS

This General Permit is effective on

DEC 06 2013

and expires five years from this date,
unless amended earlier.

1. Coverage under this General Permit
 - (a) This general permit covers discharges of circulation water from decorative ponds or tanks containing fish or other aquatic species, not including mammals. This general permit also covers discharges of circulation water from decorative ponds or tanks that do not contain fish or other aquatic species provided that the discharge complies with chapter 11-54 titled "Water Quality Standards."
 - (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."
2. Limitations on Coverage Under the General Permit
 - (a) This general permit does not cover the following:

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- (1) Discharges of circulation water from decorative ponds or tanks into a sanitary sewer system and
- (2) Discharges of circulation water from decorative ponds or tanks which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system.

- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

- (a) This general permit becomes effective when section 11-55-34.02(11) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires when amendments to section 11-55-34.02(b)(11) are adopted, whichever is earlier.
- (b) A notice of general permit coverage under this general permit expires:
 - (1) Five years after the effective date of this general permit;
 - (2) When the notice of general permit coverage specifies; or

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- (3) When amendments to section 11-55-34.02(b)(11) are adopted,

whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
- (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) Description of the decorative fish pond or tank and the type of aquatic species being housed. The description should include, but not be limited to: material type of the pond or tank; water volume contained; the type, size, and number of aquatic species being housed; and, the type(s) and quantity of food utilized;
 - (3) Description of the average frequency of flow and duration of any intermittent or seasonal discharge. The frequency of flow means the number of days or months per year when there is an intermittent discharge. Duration means

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the number of days or hours per discharge. Provide the best estimate for new discharges;

- (4) Source(s) of the circulation water for the decorative fish pond or tank;
 - (5) Quantitative data on pollutants that the owner or operator of the facility knows or reasonably should know are or will be present in the discharge and for which the pollutants numerical criteria for the existing or proposed receiving state waters are specified in chapter 11-54, especially section 11-54-4;
 - (6) Name and chemical composition of any water enhancement or treatment additives, if any used;
 - (7) Best management practices applied to minimize or eliminate the discharge of pollutants (e.g., feeding procedures, pond or tank cleaning operations, and control measures); and
 - (8) A brief description of any treatment system used or to be used. The treatment system plan, and all subsequent revisions, shall be retained on-site or at a nearby office.
- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete

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notice of intent to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

6. Effluent Limitations and Monitoring Requirements

(a) The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.8.

(1) Sampling Points

The permittee shall collect representative discharge samples downstream from the decorative fish pond or tank circulation water discharge point(s) and prior to entering the receiving state water or separate storm water drainage systems or at a location that is approved by the department which is representative of the decorative fish pond or tank effluent water quality.

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(2) Collection of Samples

The permittee shall take samples and measurements for the purposes of monitoring which are representative of the volume and nature of the total discharge.

(3) Types of Samples

(A) "Grab sample" means an individual sample collected within the first fifteen minutes of a discharge.

(B) "Composite sample" means a combination of a least eight samples aliquots, collected at periodic intervals during the operating hours of the facility over a 24-hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

(4) Test Procedures

(A) The permittee shall use test procedures for the analysis of pollutants which conform with regulations published under Section 304(h) of the Act.

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(B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.

(C) The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54. If the test result is not detectable, indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.

(5) Recording of Results

The permittee shall comply with section 14(c) of appendix A of chapter 11-55 for each measurement or sample taken under the requirements of this general permit.

(b) Basic Water Quality Criteria and Inspections

(1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.

(2) The permittee shall timely inspect the receiving state waters, effluent, and

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control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)

- (c) There shall be no floating solids, foam, or visible oil sheen in the effluent.
- (d) There shall be no discharge of pond or tank cleaning wastewaters that are generated during the cleaning of a pond or tank that has been drained of water below the normal operating level(s).
- (e) There shall be no discharge of filter backwash effluent.
- (f) There shall be no discharge of any water enhancement or treatment additives above applicable water quality standards or above detectable levels or quantities if no applicable water quality standard for such constituents exists.

7. Corrective Action

The permittee shall immediately stop, reduce, or modify the discharge as needed to stop or prevent

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a violation of the basic water quality criteria as specified in section 11-54-4.

8. Reporting Requirements

(a) Reporting of Monitoring Results

- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.8 and other requirements of this general permit.
- (2) The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.
- (3) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.
- (4) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.

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(b) Additional Monitoring by the Permittee

If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B), the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.

(c) Reporting of Noncompliance, Unanticipated Bypass, or Upset

- (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:
 - (A) Violation of an effluent limitation specified in Table 34.8 or a basic water quality criteria specified in section 6(b) of this general permit;
 - (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment; or
 - (C) Unanticipated bypass or upset.
- (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday

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(excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.

- (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:
 - (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;
 - (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
 - (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
 - (D) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset.
 - (4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.
- (d) Schedule of Maintenance

The permittee shall submit a schedule for approval by the director at least fourteen

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days prior to any maintenance of facilities which might result in exceedance of effluent limitations. For purposes of this general permit only, maintenance shall include, but not be limited to, the routine cleaning of the pond or tank while filled with water and otherwise still operated under normal conditions. The schedule shall include a description of the maintenance and its reason; the period of maintenance, including exact dates and times; and steps taken or planned to reduce, eliminate, and prevent occurrence of noncompliance.

9. Submittal Requirements

- (a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

- (b) The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure

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that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

10. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

11. Record Retention

The permittee shall retain all records and information resulting from the monitoring activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of

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pollutants by the permittee or when requested by the director or Regional Administrator.

12. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

TABLE 34.8

EFFLUENT LIMITATION AND MONITORING REQUIREMENTS
FOR CIRCULATION WATER FROM DECORATIVE PONDS AND TANKS

| Effluent Parameter | Effluent Limitation {1} | Minimum Monitoring Frequency | Type of Sample |
|-----------------------------------|-------------------------|------------------------------|----------------|
| Flow (GPD) | {2} | Once/Quarter | Estimate |
| Total Nitrogen (mg/l) | {2} | Once/Quarter | Grab |
| Nitrate + Nitrite Nitrogen (mg/l) | {2} | Once/Quarter | Grab |
| Ammonia Nitrogen (mg/l) | {2} | Once/Quarter | Grab |
| Total Phosphorus (mg/l) | {2} | Once/Quarter | Grab |
| Chlorophyl a (µg/l) | {2} | Once/Quarter | Grab |
| Total Suspended Solids (mg/l) | 10 | Once/Quarter | Grab |
| Turbidity (NTU) | {3} | Once/Quarter | Grab |
| pH (standard units) | {4} | Once/Quarter | Grab {5} |

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| Effluent Parameter | Effluent Limitation {1} | Minimum Monitoring Frequency | Type of Sample |
|-------------------------------------------------|-------------------------|------------------------------|----------------|
| Fecal coliform or Enterococcus (no./100 ml) {6} | {7} | Once/Quarter | Grab |
| Toxic Pollutants {8} | {9} | Once/Quarter | {10} |

GPD = gallons per day

mg/l = milligrams per liter

µg/l = micrograms per liter

NTU = Nephelometric Turbidity Units

no./100 ml = number per 100 milliliters

NOTES:

- {1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.
- {2} The value shall not exceed the applicable limit as specified in chapter 11-54 for the applicable classification of the receiving state waters. If no limitation is specified in chapter 11-54, then the permittee shall monitor and report the analytical result.
- {3} Effluent limitation is the specific criteria established in sections 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable.

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- {4} The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.
- {5} The pH shall be measured within fifteen minutes of obtaining the grab sample.
- {6} Applicable if potentially present in the discharge.
- {7} Effluent limitation is the specific criteria established in section 11-54-8 for the classification of the receiving state waters, as applicable.
- {8} The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 only if they are identified as potential pollutants requiring monitoring in the notice of intent. The permittee shall measure for the total recoverable portion of all metals.
- {9} Effluent limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters and specific criteria established in section 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable. For pollutants which do not have established acute water quality standards or specific criteria, the permittee shall report any detected concentration greater than 0.01 µg/l.
- {10} The permittee shall measure for cyanide and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a composite sample.

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**NPDES GENERAL PERMIT
AUTHORIZING POINT SOURCE DISCHARGES FROM THE
APPLICATION OF PESTICIDES**

August 2012

1. Coverage under this General Permit.

This permit covers any Operator of a point source discharge of pollutants (i.e., discharge) resulting from the application of pesticides that meets the eligibility requirements identified in section 1(a) of this pesticide general permit (PGP) and if so required, submits a Notice of Intent (NOI) in accordance with section 1(e) of this general permit. For the purpose of this permit, an Operator is defined in section 11-55-01 to mean any entity associated with the application of pesticides which results in a discharge to state waters that meets either of the following two criteria: (1) any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities); or (2) any entity with control over the decision to perform pesticide applications including the ability to modify those decisions. Operators identified in (1) above are referred to in this permit as Applicators while Operators identified in (2) are referred to in this permit as Decision-makers. As defined, more than one Operator may be responsible for complying with this permit for any single discharge from the application of pesticides.

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For purposes of this permit, all Operators are defined as either an Applicator or a Decision-Maker or both an Applicator and a Decision-maker.

When an Operator is both an Applicator and a Decision-maker, the Operator must comply with all applicable requirements imposed on both Applicators and Decision-makers. When the permit references all "Operators," both Applicators and Decision-makers must comply.

(a) Activities Covered.

This permit is available to Operators who discharge to state waters from the application of (1) biological pesticides or (2) chemical pesticides that leave a residue (collectively called pesticides), when the pesticide application is for at least one of the following pesticide use patterns:

- (1) Mosquito and Other Flying Insect Pest Control - to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include mosquitoes and black flies.
- (2) Weed and Algae Pest Control - to control weeds, algae, and pathogens that are pests in water and at water's edge, including ditches and/or canals.
- (3) Animal Pest Control -to control animal pests in water and at water's edge.

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Animal pests in this use category include, but are not limited to, fish, lampreys, insects, mollusks, and pathogens.

- (4) Forest Canopy Pest Control - application of a pesticide to a forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to water.
- (b) Limitations on Coverage under this General Permit
- (1) Discharges to Water Quality Impaired Waters.

Except for discharges from pesticide applications made in response to a declared pest emergency situation or as determined by the director, Operators are not eligible for coverage under this permit for any discharges from a pesticide application to state waters if the water is identified as impaired by a substance which either is an active ingredient in that pesticide or is a degradate of such an active ingredient. For purposes of this general permit, impaired waters are those that have been identified by the State pursuant to Section 303(d) of the CWA as not meeting applicable State water quality standards. Impaired waters, for the purposes of this

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general permit consist of both waters with EPA-approved Total Maximum Daily Loads (TMDLs) and waters for which EPA has not yet approved a TMDL. Coverage under this general permit is allowed for discharges to impaired waters listed generically for "pesticides" where the specific pesticide for which the waterbody is impaired has not been identified and without additional information suggesting that the waterbody is impaired for a specific active ingredient or degradate of the active ingredient.

- (2) Discharges to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 entitled "Water Quality Standards."

Operators are not eligible for coverage under this permit for discharges from a pesticide application to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 entitled "Water Quality Standards."

Except for discharges from the following pesticide applications:

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- (A) made in response to a declared pest emergency situation or as determined by the director;
 - (B) to protect the public health or the environment that either do not degrade water quality or only degrade water quality on a short term basis; or
 - (C) to maintain water flow in agricultural irrigation ditches and canals if the pesticide application is for the activity covered in 1(a)(2) (i.e., weed and algae pest control) or is for the activity covered in 1(a)(3) (i.e., animal pest control) in flooded agricultural fields.
- (3) Discharges to surface drinking water sources (for domestic use) and their tributaries up-stream are not eligible for coverage under this permit. Such discharges will require coverage under an individual NPDES permit.

Except in the following conditions:

- (A) made in response to a declared pest emergency situation or as determined by the director; or
- (B) the following:
 - (i) the NOI indicates whether the proposed application may

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discharge to surface
drinking water sources; and

- (ii) the application to surface drinking water sources is consistent with the FIFRA label, including but not limited to, following any distance restriction and intended use; and
- (iii) the Decision-maker provides the owner (e.g., municipality, private) of the surface drinking water source the following information, including but not limited to: the pesticide(s) to be applied, general location, and approximate frequency and the department receives written consent from the owner of the surface drinking water source for such discharges; and
- (iv) the Operator adheres to the Safe Drinking Water Act and safe drinking water regulations; and
- (v) the Operator shall coordinate with the owner of the surface drinking water source to prevent pesticide-treated water from entering the drinking water intake

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and distribution system
(e.g., the valve to the
drinking water source is
shut, or by diversion).

- (4) Discharges Currently or Previously
Covered by another Permit.

Discharges are not eligible for
coverage under this permit if any of
the following circumstances apply:

- (A) The discharge is covered by
another NPDES permit, or
- (B) The discharge was included in a
permit that in the past five (5)
years has been or is in the
process of being denied,
terminated, or revoked by the
State or EPA (this does not apply
to the routine reissuance of
permits every five (5) years).

- (5) Individual Permit

The Director may require any Operator
authorized by this general permit to
apply for and obtain an individual
permit, in accordance with sections 11-
55-34.05 and 11-55-34.10.

- (c) Term of General Permit

- (1) This general permit becomes effective
when section 11-55-34.02(b)(12) becomes
effective ten days after filing with
the office of the lieutenant governor.

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Hereinafter, the date when section 11-55-34.02(b)(12) becomes effective (i.e., ten days after filing with the office of the lieutenant governor) shall be referred to as "the effective date of the permit." This general permit expires five years after the effective date or when amendments to section 11-55-34.02(b)(12) are adopted, whichever is earlier.

- (2) A notice of general permit coverage under this general permit expires:
- (C) Five years after the effective date of this general permit;
 - (D) When the notice of general permit coverage specifies; or
 - (E) When amendments to section 11-55-34.02(b)(12) are adopted,

Whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

- (d) How to Obtain Authorization.

The following discharges, consistent with the activities covered in section 1(a) and limitations on coverage under this general permit in section 1(b), are automatically authorized by this permit beginning when section 11-55-34.02(b)(12) becomes effective ten days after filing with the office of the lieutenant governor:

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- (1) Eligible discharges made prior to the Notice of Intent submission deadline. See Table 2;
- (2) Eligible discharges for which submission of an NOI is not required. See sections 1(e) and 1(f).

To obtain authorization under this permit for all other eligible discharges, a Decision-maker must submit a timely, complete, and accurate NOI consistent with the requirements of sections 1(e) and 1(f), be issued a Notice of General Permit Coverage (NGPC) and meet all conditions of the NGPC, unless the Operator claimed automatic coverage in writing under the automatic provision of section 11-55-34.09(e)(2) and assumes the risks in section 11-55-34.09(f); and this general permit to the satisfaction of the department.

- (e) Decision-makers Required to Submit an NOI.

Any "Decision-maker Who is or Will be Required to submit an NOI" is identified in Table 1.

For calculating annual treatment area totals for purposes of determining if an NOI must be submitted, see the definition for, "annual treatment area threshold" in section 11-55-01.

An NOI provides notice to the State that a Decision-maker intends to discharge to state waters from pesticide application activities eligible for coverage under this permit.

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Information required to be provided is on the NOI form. The NOI must identify the pest management area where the Decision-maker will conduct activities resulting in discharges to state waters to be covered under this permit.

If required to submit an NOI, a Decision-maker must submit the NOI once, in accordance with the deadlines in Section 1(f), Table 2. The Decision-maker must submit an updated NOI if the criteria in section 1(f), Table 3 are met. Late NOIs may be accepted, but authorization to discharge will not be retroactive.

Coverage will be available for the duration of this general permit for Decision-makers who file an NOI and are issued an NGPC and who meet all conditions of the NGPC and this general permit to the satisfaction of the department or for those rightfully (refer to the risks in section 11-55-34.09(f)) claiming coverage in writing under the automatic provision of section 11-55-34.09(e)(2), including the Decision-makers' employees, contractors, subcontractors, and other agents, for all activities identified on the NOI unless coverage is terminated pursuant to appendix A of chapter 11-55. If a submitted NOI is not timely, accurate, or complete, and an NGPC is not issued or any condition not met, any employee, contractor, subcontractor or other entity that discharges is not covered by this permit.

Applicators who are not also Decision-makers do not need to submit an NOI, however they

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are still required to comply with other requirements, as applicable in this general permit.

(f) Discharge Authorization Date

Except for discharges identified in Tables 1 through 3, any Operator with eligible discharges is automatically authorized to discharge under this permit without submission of an NOI. Decision-makers with eligible discharges identified in Tables 1 through 3 are authorized under this permit consistent with the requirements in those tables.

On the basis of a review of an NOI or other information, the Director may delay authorization to discharge beyond any timeframe identified in Table 2, determine that additional technology-based and/or water quality-based effluent limitations or other conditions are necessary, or deny coverage under this permit and require submission of an application for an individual NPDES permit, as detailed in section 1(b)(5).

All Operators with eligible discharges are authorized for permit coverage up until 60 calendar days from the effective date of the permit without submission of an NOI. Hereinafter, the 60 calendar day timeframe provided after the effective date of the permit shall be referred to as the "adjustment period." After the adjustment period, all Operators with eligible discharges for which an NOI is not required

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also are automatically covered under this permit. By the adjustment period, all Decision-makers with eligible discharges for which an NOI is required are required to submit an NOI consistent with the earliest applicable due date identified in Table 2. Decision-makers may submit multiple NOIs with different activities on each of those NOIs when a pesticide use pattern is not already covered within the same treatment area under another NOI.

Decision-makers who are required to submit an NOI must begin complying with Section 2(b) when section 11-55-34.02(b)(12) becomes effective ten days after filing with the office of the lieutenant governor.

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Table 1. Decision-makers Required to Submit NOIs

| PGP Section/ Pesticide Use | Which Decision- makers Must Submit NOIs? | For Which Pesticide Application Activities? |
|---------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| All four use patterns identified in section 1(a) | Any Decision-maker with an eligible discharge to water quality impaired waters; class 1, inland or class AA, marine waters, or areas restricted in accordance with the State's "no discharge" policy; or to surface drinking waters and their tributaries up-stream consistent with sections 1(b)(1), 1(b)(2), or 1(b)(3). | Activities resulting in a discharge to water quality impaired waters, class 1, inland or class AA, marine waters, or areas restricted in accordance with the State's "no discharge" policy, or to surface drinking waters and their tributaries up-stream. |
| 1(a)(1) - Mosquito and Other Flying Insect Pest Control | Any Federal or State government entities for which pest management for land resource stewardship is an integral part of the organization's operations. | All mosquito and other flying insect pest control activities resulting in a discharge to state waters. |
| | Mosquito control districts, or similar pest control districts. | All mosquito and other flying insect pest control activities |

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| | | resulting in a discharge to state waters. |
| | Counties or other entities that exceed the annual treatment area threshold identified here. | Adulticide treatment if more than 6,400 acres during a calendar year. {1} |
| 1(a)(2) - Weed and Algae Pest Control | Any Federal or State government entities for which pest management for land resource stewardship is an integral part of the organization's operations. | All weed and algae pest control activities resulting in a discharge to state waters. |
| | Irrigation and weed control districts, or similar pest control districts. | All weed and algae pest control activities resulting in a discharge to state waters. |
| | Counties or other entities that exceed the annual treatment area threshold identified here. | Treatment during a calendar year if more than either: 20 linear miles OR 80 acres of water. {2} |
| 1(a)(3) - Animal Pest Control | Any Federal or State government entities for which pest management for land resource | All animal pest control activities resulting in a discharge to state waters. |

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| | stewardship is an integral part of the organization's operations. | |
| | Counties or other entities that exceed the annual treatment area threshold identified here. | Treatment during a calendar year if more than either: 20 linear miles OR 80 acres of water. {2} |
| 1(a)(4) - Forest Canopy Pest Control | Any Federal or State government entities for which pest management for land resource stewardship is an integral part of the organization's operations. | All forest canopy pest control activities resulting in a discharge to state waters. |
| | Counties or other entities that exceed the annual treatment area threshold identified here. | Treatment if more than 6,400 acres during a calendar year. {1} |

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Table 2. NOI Submittal Deadlines and Discharge Authorization Dates for Discharges from the Application of Pesticides

| <p>After the adjustment period, any eligible discharge for which an NOI is required must submit an NOI consistent with the earliest due date identified below. If the Director receives an NOI at least 30 calendar days before the end of the adjustment period, uninterrupted coverage may continue {3}. NOI due dates for any discharges occurring on or after the adjustment period are as follows:</p> | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Operator Type | NOI Submission Deadline | Discharge Authorization Date {3} |
| <p>Any Decision-maker with a discharge in response to a Declared Pest Emergency for which that activity triggers the NOI requirement identified in Section 1(e).</p> | <p>At least 30 calendar days after beginning discharge.</p> | <p>Immediately upon beginning to discharge for activities conducted in response to a Declared Pest Emergency Situation {4}.</p> |
| <p>Any Decision-maker that exceeds any annual treatment area threshold.</p> | <p>At least 30 calendar days before exceeding an annual treatment area threshold.</p> | <p>Upon NGPC issuance {5} or if the operator claimed automatic coverage in writing under the automatic provision of section 11-55-34.09(e)(2) and assumes the risks in section 11-55-34.09(f).</p> |

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| | | |
|----------------------------------------------------------------------------------|------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Any Decision-maker otherwise required to submit an NOI as identified in Table 1. | At least 30 calendar days before any discharge for which an NOI is required. | Upon NGPC issuance {5} or if the Operator claimed automatic coverage in writing under the automatic provision of section 11-55-34.09(e)(2) and assumes the risks in section 11-55-34.09(f). |
|----------------------------------------------------------------------------------|------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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Table 3. Change of Information, resulting in a Major Modification {6} of the NGPC, Submittal Deadlines and Discharge Authorization Dates

| Operator Type | NOI Submission Deadline | Discharge Authorization Date |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Any Decision-makers discharging to a class 1, inland water; class AA, marine water; or area restricted in accordance with the State's "no discharge" policy not specifically identified by name on a previously submitted NOI for this permit. | At least 30 calendar days before beginning to discharge in that newly identified class 1, inland water; class AA, marine water; or area restricted in accordance with the State's "no discharge" policy unless discharges are in response to a declared pest emergency in which case not later than 30 days after beginning discharge. | After reissuance of the NGPC to include the change {5}, unless discharges are in response to a declared pest emergency in which case coverage is available immediately upon beginning to discharge from activities conducted in response to declared pest emergency {4}. |
| Any Decision-maker with any discharge to state waters requiring permit coverage for a newly identified pest management | At least 30 calendar days before beginning to discharge in that newly identified pest management area or new pesticide | After reissuance of the NGPC to include the change {5}, unless discharges are in response to a declared pest |



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| | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>area or new pesticide use pattern not identified on a previously submitted NOI for this permit. This includes changes in any treatment area, pesticide product, method or rate of application, or approximate dates of applications.</p> | <p>use pattern not identified on a previously submitted NOI for this permit unless discharges are in response to a declared pest emergency in which case not later than 30 days after beginning discharge.</p> | <p>emergency in which case coverage is available immediately upon beginning to discharge from activities conducted in response to declared pest emergency {4}.</p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Notes:

- {1} Treatment during a calendar year if more than 6,400 acres, as discussed for the categories "Mosquito and Other Flying Insect Pest Control" and "Forest Canopy Pest Control," refers to the total area to which pesticide applications (e.g. aerial spraying) are made, when any part of those areas is a state water and shall be treated as separate treatment areas to be additive in a calendar year. If the additive total areas in a calendar year to which pesticides application are made exceeds 6,400 acres, when any part of these areas is a state water, submittal of an NOI is required for those Decision-makers required to submit an NOI as identified in Table 1. For example, applying pesticides three times a year to the same three thousand acre site (i.e., total area to which pesticide applications are made, when any part of those areas is a state water)

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should be counted as nine thousand acres of treatment area.

- {2} For the categories "Weed and Algae Pest Control" and "Animal Pest Control", "20 linear miles" means 20 linear miles of river, stream, riverbank, or other linear water feature subject to coverage under this permit, counting each bank of the water feature separately if pesticides are applied to both banks. This means that applications four times a year to both banks of a three-mile long reach of stream will count as a total of twenty four linear miles (three miles * two banks * for applications per year = twenty four miles to which pesticides are applied in a calendar year) and require submission of an NOI. For applications made to the water of a linear water feature, the length of the reach or surface area may be used to determine if the annual treatment area threshold is exceeded. Treatment during a calendar year if more than "80 acres of water (i.e., surface area)" means application of pesticides to a waterbody surface area of greater than 80 acres.
- {3} On the basis of a review of an NOI or other information, the Director may delay authorization to discharge beyond any timeframe identified in Table 1, determine that additional technology-based and/or water quality-based effluent limitations or other conditions are necessary, or deny coverage under this permit and require submission of an application for an individual NPDES permit, as detailed in Section 1(b)(5).
- {4} To remain authorized, an NOI must be submitted no later than 30 calendar days after beginning discharge and result in issuance of an NGPC. At

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no time, during the processing the NOI, shall the time between the department's request for more information, and its receipt from the Decision-maker be longer than 30 calendar days. If longer than 30 calendar days, coverage under this general permit may be terminated automatically.

- {5} All requirements in the NGPC must be complied with and in the timeframe as specified, including this general permit and any additional requirements as determined by the State to the satisfaction of the department.
- {6} The department may require submittal of a new NOI if it is determined that the modification of the information is significant or more than one (1) change to the information used in the issuance of its NGPC is required.

(g) Standard Conditions

The Decision-maker shall comply with the standard conditions as specified in appendix A of chapter 11-55, excluding biocides as identified in section 1.a.(4) of appendix A. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, excluding biocides as identified in section 1.a.(4) of appendix A, the more stringent conditions shall apply.

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(h) Other Federal and State Laws.

Operators must comply with all other applicable federal and state laws and regulations that pertain to pesticides. The pesticide must be registered by the EPA, licensed by the State Department of Agriculture or other lead state agency regulating pesticides, and used in a manner consistent with the labeling of the pesticide under the Federal, Insecticide, Fungicide, and Rodenticide Act (FIFRA). This permit does not negate the requirements under FIFRA and its implementing regulations to use registered pesticides consistent with the product's labeling. In fact, applications in violation of certain FIFRA requirements could also be a violation of the permit and therefore a violation of the CWA (e.g. exceeding label application rates). Additionally, other laws and regulations might apply to certain activities that are also covered under this permit (e.g., United States Coast Guard regulations).

2. Technology-Based Effluent Limitations

This Section includes technology-based effluent limitations applicable to all Operators, as defined in section 11-55-01, for any discharges authorized under this permit, with compliance required upon beginning such discharge. All Operators are classified as either "Applicators" or "Decision-makers," as defined in section 11-55-01, or both. Applicators must perform the tasks identified in section 2(a) - Applicators' Responsibilities. Decision-makers must perform

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the tasks identified in section 2(b) - Decision-makers' Responsibilities. There may be instances when a single entity acts as both an Applicator and a Decision-maker.

As stated in section 1(h), this general permit requires all Operators to comply with all other applicable federal or state laws and regulations that pertain to application of pesticides by the Operator.

(a) Applicators' Responsibilities

To meet the effluent limitations of this permit, all Applicators must implement section 2(a) to minimize the discharge of pesticides to state waters from the application of pesticides, through the use of Pest Management Measures, as defined in section 11-55-01.

- (1) To the extent not determined by the Decision-maker, use only the amount of pesticide and frequency of pesticide application necessary to control the target pest, using equipment and application procedures appropriate for this task.
- (2) Maintain pesticide application equipment in proper operating condition, including requirement to calibrate, clean, and repair such equipment and prevent leaks, spills, or other unintended discharges.
- (3) Assess weather conditions (e.g. temperature, precipitation and wind

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speed) in the treatment area to ensure application is consistent with all applicable federal requirements.

(b) Decision-makers' Responsibilities

For All Decision-makers

To meet the effluent limitations in section 2(b), all Decision-makers must minimize the discharge of pesticides to state waters from the application of pesticides, through the use of Pest Management Measures, as defined in section 11-55-01.

To the extent the Decision-maker determines the amount of pesticide or frequency of pesticide application, the Decision-maker must use only the amount of pesticide and frequency of pesticide application necessary to control the target pest.

For Any Decision-maker Who is or Will be Required to Submit an NOI

To meet the effluent limitations of this permit, prior to pesticide application, any Decision-maker who is or will be required to submit an NOI as required in section 1(e) must also implement sections 2(b)(1) - 2(b)(4) to minimize the discharge of pesticides to state waters from the application of pesticides, through the use of Pest Management Measures, as defined in section 11-55-01.

(1) Mosquito and Other Flying Insect Pest Control

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This section applies to discharges from the application of pesticides for mosquito and other flying insect pest control as defined in section 1(a)(1) of this general permit.

(A) Identify the Problem.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must do the following for each pest management area, as defined in section 11-55-01:

- (i) Establish densities for larval and adult mosquito or flying insect pest populations or identify environmental condition(s), either current or based on historical data, to serve as action threshold(s) for implementing Pest Management Measures;
- (ii) Identify target pest(s) to develop Pest Management Measures based on developmental and behavioral

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considerations for each pest;

- (iii) Identify known breeding sites for source reduction, larval control program, and habitat management;
- (iv) Analyze existing surveillance data to identify new or unidentified sources of mosquito or flying insect pest problems as well as sites that have recurring pest problems; and
- (v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in section 2(b)(1)(A) of this general permit.

(B) Pest Management Options.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must select and implement efficient and effective

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means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control mosquitoes or other flying insect pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

- (i) No action
 - (ii) Prevention
 - (iii) Mechanical or physical methods
 - (iv) Cultural methods
 - (v) Biological control agents
 - (vi) Pesticides
- (C) Pesticide Use.

If a pesticide is selected to manage mosquitoes or flying insect pests, and application of the pesticide will result in a discharge to a state water, any Decision-maker who is or will be required to submit an NOI must:

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- (i) Conduct larval and/or adult surveillance in an area that is representative of the pest problem or evaluate existing larval surveillance data, environmental conditions, or data from adjacent area(s) prior to each pesticide application to assess the pest management area and to determine when the action threshold(s) is met;
- (ii) Reduce the impact on the environment and on non-target organisms by applying the pesticide only when the action threshold(s) has been met;
- (iii) In situations or locations where practicable and feasible for efficacious control, use larvicides as a preferred pesticide for mosquito or flying insect pest control when the larval action threshold(s) has been met; and
- (iv) In situations or locations where larvicide use is not practicable or feasible for efficacious control, use adulticides for mosquito or flying insect pest control

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when the adult action
threshold(s) has been met.

(2) Weed and Algae Pest Control

This section applies to discharges from the application of pesticides for control of weeds, algae, and pathogens as defined in section 1(a)(2) of this general permit.

(A) Identify the Problem.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must do the following for each pest management area, as defined in section 11-55-01:

- (i) Identify areas with pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g. wildlife habitat, fisheries, vegetation, and recreation);
- (ii) Identify target pest(s);

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- (iii) Identify possible factors causing or contributing to the pest problem (e.g., nutrients, invasive species, etc.);
- (iv) Establish any pest- and site-specific action threshold, as defined in HAR, Chapter 11-55-01, for implementing section 2(b)(2)(B); and
- (v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in section 2(b)(2)(A) of this general permit.

(B) Pest Management Options.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides



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to pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

- (i) No action
 - (ii) Prevention
 - (iii) Mechanical or physical methods
 - (iv) Cultural methods
 - (v) Biological control agents
 - (vi) Pesticides
- (C) Pesticide Use.

If a pesticide is selected to manage pests, and application of the pesticide will result in a discharge to state waters, any Decision-maker who is or will be required to submit an NOI must:

- (i) Conduct surveillance in an area that is representative of the pest problem prior to each pesticide application to assess the pest

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management area and to determine when the action threshold(s) is met; and

- (ii) Reduce the impact on the environment and non-target organisms by applying the pesticide only when the action threshold has been met.

(3) Animal Pest Control

This section applies to discharges from the application of pesticides for control of animal pests as defined in section 1(a)(3) of this general permit.

(A) Identify the Problem.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must do the following for each pest management area, as defined in section 11-55-01:

- (i) Identify areas with pest problems and characterize the extent of the problems, including, for example,

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water use goals not attained
(e.g. wildlife habitat,
fisheries, vegetation, and
recreation);

- (ii) Identify target pest(s);
- (iii) Identify possible factors causing or contributing to the problem (e.g., nutrients, invasive species);
- (iv) Establish any pest- and site-specific action threshold, as defined in section 11-55-01, for implementing section 2(b)(3)(B); and
- (v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in section 2(B)(3)(A).

(B) Pest Management Options.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each year thereafter prior to the first pesticide application during that calendar year, any Decision-maker who is or

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will be required to submit an NOI must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

- (i) No action
- (ii) Prevention
- (iii) Mechanical or physical methods
- (iv) Biological control agents
- (v) Pesticides

(C) Pesticide Use.

If a pesticide is selected to manage pests, and application of the pesticide will result in a discharge to state waters, any Decision-maker who is or will be required to submit an NOI must:

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- (i) Conduct surveillance in an area that is representative of the pest problem prior to each application to assess the pest management area and to determine when the action threshold(s) is met; and
- (ii) Reduce the impact on the environment and non-target organisms by evaluating site restrictions, application timing, and application method in addition to applying the pesticide only when the action threshold(s) has been met.

(4) Forest Canopy Pest Control

This section applies to discharges from the application of pesticides for forest canopy pest control as defined in section 1(a)(4) of this general permit.

(A) Identify the Problem.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application in that calendar year, any Decision-maker who is or will be required to submit an NOI must do the

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following for each pest management area, as defined in section 11-55-01:

- (i) Establish any pest- and site-specific action threshold, as defined in section 11-55-01, for implementing section 2(b)(4)(B);
- (ii) Identify target pest(s) to develop Pest Management Measures based on developmental and behavioral considerations for each pest;
- (iii) Identify current distribution of the target pest and assess potential distribution in the absence of Pest Management Measures; and
- (iv) In the event there are no data for pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in section 2(B)(4)(A).

(B) Pest Management Options.

Prior to the first pesticide application covered under this permit that will result in a

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discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control pests. In developing the Pest Management Measures for pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

- (i) No action
- (ii) Prevention
- (iii) Mechanical or physical methods
- (iv) Cultural methods
- (v) Biological control agents
- (vi) Pesticides

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(C) Pesticide Use.

If a pesticide is selected to manage forestry pests, and application of the pesticide will result in a discharge to state waters, any Decision-maker who is or will be required to submit an NOI must:

- (i) Conduct surveillance in an area that is representative of the pest problem prior to each application to assess the pest management area and to determine when the pest action threshold is met;
- (ii) Reduce the impact on the environment and non-target organisms by evaluating the restrictions, application timing, and application methods in addition to applying the pesticide only when the action threshold(s) has been met; and
- (iii) Evaluate using pesticides against the most susceptible developmental stage.

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3. Water Quality-Based Effluent Limitations

All Operators must control discharges as necessary to meet applicable numeric and narrative state water quality standards, as required in chapter 11-54, for discharges authorized under this permit, with compliance required upon beginning such discharge.

If at any time an Operator becomes aware (e.g., through self-monitoring or by notification from the state or EPA), or the Director determines, that the Operator's discharge causes or contributes to an excursion of any applicable water quality standard, the Operator must take corrective action as required in section 6 and section 7 of appendix A, chapter 11-55, up to and including the ceasing of the discharge, if necessary.

4. Monitoring

(a) Visual Monitoring Requirements for Pesticide Applicators.

During any pesticide application with discharges authorized under this permit, all Applicators must, when considerations for safety and feasibility allow, visually assess the area to and around where pesticides are applied for possible and observable adverse incidents, as defined in section 11-55-01, caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.

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- (b) Visual Monitoring Requirements for all Operators.

During any Operator post-application surveillance of any pesticide application with discharges authorized under this permit, all Operators must visually assess the area to and around where pesticides were applied for possible and observable adverse incidents, as defined in section 11-55-01, caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.

5. Pesticide Discharge Management Plan

Any Decision-maker who is or will be required to submit an NOI, as required in section 1(e), and is a large entity, as defined in section 11-55-01, must prepare a Pesticide Discharge Management Plan (PDMP) by the time the NOI is submitted to the department, except (for which a PDMP is not required to be developed) any applications made in response to a Declared Pest Emergency Situation, as defined in section 11-55-01.

The PDMP does not contain effluent limitations; the effluent limitations are specified in sections 2 and 3 of this general permit. The PDMP documents how Decision-makers will implement the effluent limitations in sections 2 and 3 of this general permit, including the evaluation and selection of Pest Management Measures to meet those effluent limitations in order to minimize discharges. In the PDMP, Decision-makers may incorporate by reference any procedures or plans

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in other documents that meet the requirements of this general permit. If Decision-makers rely upon other documents to comply with the effluent limitations in this general permit, such as a pre-existing pest management plan, the Decision-makers must attach to the PDMP a copy of any portions of any documents that are used to document the implementation of the effluent limitations.

- (a) Contents of the Pesticide Discharge Management Plan.

The PDMP must include the following elements:

- (1) Pesticide Discharge Management Team

Decision-makers must identify all the persons (by name and contact information) that compose the team as well as each person's individual responsibilities, including:

- (A) Person(s) responsible for managing pests in relation to the pest management area
- (B) Person(s) responsible for developing and revising the PDMP; and
- (C) Person(s) responsible for developing, revising, and implementing corrective actions and other effluent limitation requirements.

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(2) Problem Identification

(A) Pest problem description.

Document a description of the pest problem at the pest management area, including identification of the target pest(s), source(s) of the pest problem, and source of data used to identify the problem in sections 2(b)(1), 2(b)(2), 2(b)(3), and 2(b)(4).

(B) Action Threshold(s).

Describe the action threshold(s) for the pest management area, including data used in developing the action threshold(s) and method(s) to determine when the action threshold(s) has been met.

(C) General location map.

In the plan, include a general location map (e.g., USGS quadrangle map, a portion of a city or county map, or other map) that identifies the geographic boundaries of the area to which the plan applies and location of the state water and

(D) Water quality standards.

Document any water(s) identified as impaired by a substance which either is an active ingredient or



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a degradate of such an active ingredient.

(3) Pest Management Options Evaluation

Decision-makers must document the evaluation of the pest management options, including combination of the pest management options, to control the target pest(s). Pest management options include the following: No action, prevention, mechanical/physical methods, cultural methods, biological control agents, and pesticides. In the evaluation, Decision-makers must consider the impact to water quality, impact to non-target organisms, feasibility, cost effectiveness, and any relevant previous Pest Management Measures.

(4) Response Procedures.

Decision-makers must document the following procedures in the PDMP:

(A) Spill Response Procedures.

At a minimum, Decision-makers must have:

- (i) Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases to state waters.

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Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of the PDMP team.

- (ii) Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies.

(B) Adverse Incident Response Procedures.

At a minimum, Decision-makers must have:

- (i) Procedures for responding to any adverse incident resulting from pesticide applications;
- (ii) Procedures for notification of the adverse incident, both internal to the Decision-maker's agency/organization and external.

Contact information for state/federal permitting agency, nearest emergency

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medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.

(5) Signature Requirements.

Decision-makers must sign, date and certify the PDMP in accordance with section 15 of appendix A, chapter 11-55.

(b) Pesticide Discharge Management Plan Modifications.

Decision-makers must modify the PDMP whenever necessary to address any of the triggering conditions for corrective action in section 6(a) or when a change in pest control activities significantly changes the type or quantity of pollutants discharged. Changes to the PDMP must be made before the next pesticide application that results in a discharge, if practicable, or if not, no later than 90 calendar days after any change in pesticide application activities. The revised PDMP must be signed and dated in accordance with section 15 of appendix A, chapter 11-55.

(c) Pesticide Discharge Management Plan Availability.

Decision-makers must retain a copy of the current PDMP, along with all supporting maps and documents, at each address provided in the NOI. The PDMP and all supporting

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documents must be readily available, upon request, and copies of any of these documents provided, upon request, to the state, EPA, or local agency governing discharges or pesticide applications within their respective jurisdictions; and representatives of the United States Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS). The Director may provide copies of the PDMP or other information related to this permit that is in its possession to members of the public. Any Confidential Business Information (CBI), as defined in 40 CFR Part 2, may be withheld from the public provided that a claim of confidentiality is properly asserted and documented in accordance with 40 CFR Part 2; however, CBI must be submitted to the Director, if requested, and may not be withheld from those staff within EPA, FWS, and NMFS cleared for CBI review.

6. Corrective Action

All Operators must comply with the provisions of section 6 for any discharges authorized under this general permit, with compliance required upon beginning such discharge.

(a) Situations Requiring Revision of Pest Management Measures.

Operators must review and, as necessary, revise the evaluation and selection of Pest Management Measures consistent with section 2(a) and 2(b) for the following situations:

- (1) An unauthorized release or discharge associated with the application of

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pesticides (e.g., spill, leak, or discharge not authorized by this or another NPDES permit) occurs.

- (2) Operators become aware, or the Director concludes, that Pest Management Measures are not adequate/sufficient for the discharge to meet applicable water quality standards.
 - (3) Any monitoring activities indicate failure to meet applicable technology-based effluent limitations in section 2.
 - (4) An inspection or evaluation of activities by the Director, an EPA official, local, or state entity, reveals that modifications to the Pest Management Measures are necessary to meet the effluent limitations in this general permit.
 - (5) Any Operator observes or is otherwise made aware of an adverse incident as defined in section 11-55-01.
- (b) Corrective Action Deadlines.

If an Operator determines that changes to Pest Management Measures are necessary to eliminate any situation identified in section 6(a), such changes must be made before or, if not practicable, as soon as possible after the next pesticide application that results in a discharge.

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(c) Effect of Corrective Action.

The occurrence of a situation identified in section 6(a) of this general permit may constitute a violation of the permit. Correcting the situation according to section 6(a) of this general permit does not absolve the Operator of liability for any original violation. However, failure to comply with Section 6(a) of this general permit constitutes an additional permit violation. The Director will consider the appropriateness and promptness of corrective action in determining enforcement responses to permit violations.

The Director, EPA or a court may impose additional requirements and schedules of compliance, including requirements to submit additional information concerning the condition(s) triggering corrective action or schedules and requirements more stringent than specified in this permit. Those requirements and schedules will supersede those of Section 6(a) of this general permit if such requirements conflict.

(d) Adverse Incident Documentation and Reporting

(1) Twenty-Four (24) Hour Adverse Incident Notification

(A) Adverse Incident Notification Required

Except as provided for in section 6(d)(4), if an Operator observes or is otherwise made aware of an

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adverse incident, as defined in section 11-55-01, which may have resulted from a discharge from a pesticide application, the Operator must immediately notify the Director. This notification must be made by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours, which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State hospital Operator at (808) 247-2191 outside of regular office hours, within 24 hours of the Operator becoming aware of the adverse incident; and State Department of Agriculture or other state lead agency for pesticide regulation and must include at least the following information:

- (i) The caller's name and telephone number;
- (ii) Operator name and mailing address;
- (iii) If covered under an NOI, the NPDES file number, if applicable;
- (iv) The name and telephone number of a contact person, if different than the person providing the 24-hour notice;

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- (v) How and when the Operator became aware of the adverse incident;
- (vi) Description of the location of the adverse incident;
- (vii) Description of the adverse incident identified and the pesticide product, including EPA pesticide registration number, for each product applied in the area of the adverse incident;
- (viii) Description of any steps the Operator has taken or will take to correct, repair, remedy, clean up, or otherwise address any adverse effects; and
- (ix) If known, the identity of any other Operators authorized for coverage under this permit for discharges from the pesticide application activities that resulted in the adverse incident.

If an Operator is unable to notify the Clean Water Branch within 24 hours, the Operator must do so as soon as possible and also provide an appropriate rationale for why the Operator was unable to provide such notification within 24 hours.

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The adverse incident notification and reporting requirements are in addition to what the registrant is required to submit under FIFRA section 6(a)(2) and its implementing regulations at 40 CFR Part 159.

(B) Adverse Incident Notification Not Required

Reporting of adverse incidents is not required under this permit in the following situations:

- (i) An Operator is aware of facts that indicate that the adverse incident was not related to toxic effects or exposure from the pesticide application;
- (ii) An Operator has been notified by the Director, and retains such notification, that the reporting requirement has been waived for this incident or category of incidents;
- (iii) An Operator receives information of an adverse incident, but that information is clearly erroneous; or

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(iv) An adverse incident occurs to pests that are similar in kind to potential target pests identified on the FIFRA label.

(2) Thirty (30) Calendar Day Adverse Incident Written Report.

Except as provided for in section 6(d)(4), within 30 calendar days of a reportable adverse incident pursuant to section 6(d)(1), Operators must provide a written report of the adverse incident to the Clean Water Branch and to the State Department of Agriculture or other state lead agency for pesticide regulation. The adverse incident report must include at least the following information:

- (A) Information required to be provided in Section 6(d)(1);
- (B) Date and time the Operator notified the Clean Water Branch and the State Department of Agriculture of the adverse incident and who the Operator spoke with and any instructions you received;
- (C) Location of incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc.);

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- (D) A description of the circumstances of the adverse incident including species affected, estimated number of individual and approximate size of dead or distressed organisms;
- (E) Magnitude and scope of the affected area (e.g. aquatic square area or total stream distance affected);
- (F) Pesticide application rate; intended use site (e.g., on the bank, above waters, or directly to water); method of application; and the name of pesticide product and EPA registration number;
- (G) Description of the habitat and the circumstances under which the adverse incident occurred (including any available ambient water data for pesticides applied);
- (H) If laboratory tests were performed, an indications or which test(s) were performed, and when; additionally, a summary of the test results must be provided within five (5) calendar days after they become available if not available at the time of submission of the 30-day report;
- (I) Description of actions to be taken to prevent recurrence of adverse incidents; and

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- (J) Signature, date, and certification in accordance with section 15 of appendix A, chapter 11-55.
- (3) Adverse Incident to Threatened or Endangered Species or Critical Habitat

Notwithstanding any of the other adverse incident notification requirements of this section, if an Operator becomes aware of an adverse incident affecting a federally-listed threatened or endangered species or its federally-designated critical habitat, which may have resulted from a discharge from the Operator's pesticide application, the Operator must immediately notify the NMFS in the case of an anadromous or marine species, or the FWS in the case of a terrestrial or freshwater species. This notification must be made by telephone immediately upon the Operator becoming aware of the adverse incident and must include at least the following information:

- (A) The caller's name and telephone number;
- (B) Operator name and mailing address;
- (C) The name of the affected species;
- (D) How and when the Operator became aware of the adverse incident;

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- (E) Description of the location of the adverse incident;
- (F) Description of the adverse incident and the pesticide product, including the EPA pesticide registration number for each product applied in the area of the adverse incident; and
- (G) Description of any steps the Operator has taken or will take to alleviate the adverse impact to the species.

Additional information on federally-listed threatened or endangered species and federally-designated critical habitat is available from NMFS (www.nmfs.noaa.gov) for anadromous or marine species or FWS (www.fws.gov) for terrestrial or freshwater species.

(4) Notification and Reporting for Adverse Incidents Involving Multiple Operators

Where multiple Operators are authorized for a discharge that results in an adverse incident, notification and reporting by any one of the Operators constitutes compliance for all of the Operators, provided a copy of the written report required in section 6(d)(2) is also provided to all of the other authorized Operators within 30 calendar days of the reportable adverse incident.

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(e) Reportable Spills and Leaks

(1) Spill, Leak, or Other Unpermitted Discharge Notification

Where a leak, spill, or other release into state waters containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302 occurs in any 24-hour period, an Operator must notify the Clean Water Branch at (808) 586-4309 during regular office hours, which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State hospital Operator at (808) 247-2191 outside of regular office hours and the National Response Center immediately at (800) 424-8802 in accordance with the requirements of 40 CFR Part 110, 40 CFR Part 117, and 40 CFR Part 302 as soon as the Operator has knowledge of the release. Contact information must be in locations that are readily accessible and available in the area where the spill, leak, or other unpermitted discharge may occur.

State or local requirements may necessitate also reporting spills or leaks to local emergency response, public health, or drinking water supply agencies.

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(2) Thirty-Day Spill, Leak, or Other Unpermitted Discharge Documentation

If an Operator becomes aware of a spill, leak, or other unpermitted discharge which triggers the notification in section 6(e)(1) and results in an adverse incident, then the Operator must report the incident per the guidelines in section 6(d)(1) and 6(d)(2). If the spill, leak, or other unpermitted discharge triggers the notification in section 6(e)(1), but does not result in an adverse incident, then the Operator must document and retain the following information within 30 calendar days of becoming aware of the situation:

- (A) Information required to be provided in section 6(e)(1);
- (B) Summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and
- (C) Any measures to prevent recurrence of such a spill or leak or other discharge, including notice of whether PDMP modifications are required as a result of the spill or leak.

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(f) Other Corrective Action Documentation.

For situations identified in section 6(a), other than for adverse incidents (addressed in section 6(d)), or reportable spills or leaks (addressed in section 6(e)), Operators must document the situation triggering corrective action and planned corrective action within 30 calendar days of becoming aware of that situation, and retain a copy of this documentation. This documentation must include the following information:

- (1) Identification of the condition triggering the need for corrective action review, including any ambient water quality monitoring that assisted in determining that discharges did not meet water quality standards;
- (2) Brief description of the situation;
- (3) Date the problem was identified;
- (4) Brief description of how the problem was identified, how the Operator learned of the situation, and date the Operator learned of the situation;
- (5) Summary of corrective action taken or to be taken, including date initiated and date completed or expected to be completed; and
- (6) Any measures to prevent reoccurrence of such an incident, including notice of whether PDMP modifications are required as a result of the incident.

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7. Recordkeeping and Annual Reporting

The recordkeeping and annual reporting requirements vary depending on the type of Operator and whether a Decision-maker is a small or large entity. Table 4 references applicable requirements for the range of Operators covered under this permit.

Table 4: Applicable Recordkeeping and Annual Reporting Requirements for Different Types of Operators.

| PGP Section | Applicable Type of Operator |
|-------------|---------------------------------------------------------------------------------------------|
| 7(a) | Recordkeeping: All Operators |
| 7(b) | Recordkeeping: All Operators who are Applicators, as defined in section 11-55-01 |
| 7(c) | Recordkeeping: Any Decision-maker required to submit an NOI and who is a small entity{1} |
| 7(d) | Recordkeeping: Any Decision-maker required to submit an NOI and who is a large entity{2} |
| 7(e) | Retention of Records: All Operators |
| 7(f) | Annual Reporting: Any Decision-maker required to submit an NOI and who is a large entity{2} |

{1} Small Entity - As defined in section 11-55-01, is any (1) public entity that serves a population of 10,000 or less or (2) private enterprise that does not exceed the Small Business Administration size standard as identified at 13 CFR 121.201.

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{2} Large Entity - As defined in section 11-55-01, is any (1) public entity that serves a population greater than 10,000 or (2) private enterprise that exceeds the Small Business Administration size standard as identified at 13 CFR 121.201.

Operators must keep written records as required in this permit for all discharges covered under this general permit. These records must be accurate and complete to demonstrate the Operator's compliance with the conditions of this general permit. Operator's may rely on records and documents developed for other obligations, such as requirements under FIFRA, and state or local pesticide programs, provided that all requirements of this general permit are satisfied.

The Director recommends that all Decision-makers, who are or may be required to submit an NOI based on their annual treatment area, keep records of acres or linear miles treated for all applicable use patterns covered under this general permit. The records should be kept up-to-date to help Decision-makers determine if the annual treatment area threshold, is exceeded during any calendar year.

(a) Recordkeeping For All Operators.

All Operators must keep the following records:

- (1) A copy of any Adverse Incident Reports (See section 6(d)(2));

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- (2) Rationale for any determination that reporting of an identified adverse incident is not required consistent with allowances identified in Section 6(d)(1)(B);
 - (3) A copy of any corrective action documentation (See section 6(f)); and
 - (4) A copy of any spill and leak or other unpermitted discharge documentation (See section 6(e)(2)).
- (b) Recordkeeping for All Operators who are Applicators.

After the adjustment period, any Operator who is an Applicator, as defined in section 11-55-01, must retain the following records:

- (1) Documentation of equipment calibration; and
- (2) Information on each treatment area to which pesticides are discharged, including:
 - (A) Description of each treatment area, including location and size (acres or linear feet) of treatment area and identification of any waters, either by name or by location, to which pesticide(s) are discharged;
 - (B) Pesticide use pattern(s) (i.e., mosquito and other flying insects,

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weed and algae, animal pest, or forest canopy);

- (C) Target pest(s);
 - (D) Documentation of any assessment of weather conditions in the treatment area prior to and during application to ensure application is consistent with all applicable federal requirements;
 - (E) Name of each pesticide product used including the EPA registration number;
 - (F) Quantity of each pesticide product applied to each treatment area;
 - (G) Pesticide application date(s); and
 - (H) Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.
- (c) Recordkeeping for Any Decision-maker Required to Submit an NOI and Who is a Small Entity.

After the adjustment period, any Decision-maker required to submit an NOI that is defined as a small entity, must retain the

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following records at the address provided on the NOI.

- (1) Copy of the NOI submitted to the Director, any correspondence exchanged between the Decision-maker and the Director specific to coverage under this permit, and a copy of the NGPC;
- (2) Documentation of equipment calibration (only if Decision-maker is also the Applicator);
- (3) Information on each treatment area to which pesticides are discharged, including:
 - (A) Description of treatment area, including location and size (acres or linear feet) of treatment area and identification of any state waters, either by name or by location, to which pesticides are discharged;
 - (B) Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy);
 - (C) Target pest(s) and explanation of need for pest control;
 - (D) Description of pest management measure(s) implemented prior to the first pesticide application;

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- (E) Company name and contact information for pesticide applicator;
 - (F) Name of each pesticide product used including the EPA registration number;
 - (G) Quantity of each pesticide product applied to each treatment area;
 - (H) Pesticide Application Start Date;
 - (I) Pesticide Application End Date; and
 - (J) Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.
- (d) Recordkeeping for Any Decision-maker Required to Submit an NOI and Who is a Large Entity.

After the adjustment period, any Decision-maker required to submit an NOI that is defined as a large entity must retain the following records at the Operator's business address provided on the NOI:

- (1) Copy of the NOI submitted to the Director, any correspondence exchanged between the Decision-maker and the

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Director specific to coverage under this permit, and a copy of the NGPC;

- (2) A copy of your PDMP, including any modifications made to the PDMP during the term of this general permit.
- (3) Copy of annual reports submitted to the Director;
- (4) Documentation of equipment calibration (only if Decision-maker is also the Applicator);
- (5) Information on each treatment area to which pesticides are discharged, including:
 - (A) Description of each treatment area, including location and size (acres or linear feet) of treatment area and identification of any state waters, either by name or by location, to which pesticide(s) are discharged;
 - (B) Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy);
 - (C) Target pest(s) and explanation of need for pest control;
 - (D) Action Thresholds;

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- (E) Method and/or data used to determine that action threshold(s) has been met;
- (F) Description of pest management measure(s) implemented prior to the first pesticide application;
- (G) Company name and contact information for pesticide applicator;
- (H) Name of each pesticide product used including the EPA registration number;
- (I) Quantity of each pesticide product applied to each treatment area;
- (J) Pesticide application date(s); and
- (K) Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.

(e) Retention of Records for All Operators.

All required records must be documented as soon as possible but no later than 14 calendar days following completion of each pesticide application. Operators must retain any records required under this permit for at least five (5) years after the

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Operator's coverage under this permit expires or is terminated. Operators must make available to the State, including EPA or an authorized representative of EPA, all records kept under this permit upon request and provide copies of such records, upon request.

- (f) Annual Reporting for Any Decision-maker Required to Submit an NOI and Who is a Large Entity.

Any Decision-makers required to submit an NOI and are defined as a large entity in section 11-55-01, must submit an annual report to the Director. Once a Decision-maker meets the obligation to submit an annual report, the Decision-maker must submit the annual report each calendar year thereafter for the duration of coverage under this general permit, whether or not the Decision-maker has discharges from the application of pesticides in any subsequent calendar year. The Decision-maker must submit the annual report to the Director no later than February 15, in pdf format (minimum of 300 dpi) on CD/DVD, of the following year for all pesticide activities covered under this permit occurring during the previous calendar year. Annual reporting requirements begin with those discharges occurring after the adjustment period.

Any Decision-maker required to submit an NOI based on an annual treatment area threshold must include information for the calendar year, with the first annual report required

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to include activities for the portion of the calendar year after the point at which the Decision-maker exceeded the annual treatment area threshold. If the Decision-maker first exceeds an annual treatment area threshold after December 1, an annual report is not required for that first partial year but an annual report is required thereafter, with the first annual report submitted also including information from the first partial year.

When Decision-makers terminate permit coverage, as specified in appendix A of chapter 11-55, an annual report must be submitted for the portion of the year up through the date of termination. The annual report is due no later than February 15 of the next year.

The annual report must contain the following information:

- (1) Decision-maker's name and contact information;
- (2) NPDES file number
- (3) Contact person name, title, e-mail address (if any), and phone number; and
- (4) For each treatment area, report the following information:
 - (A) Description of treatment area, including location and size (acres or linear feet) of treatment area and identification of any state

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- waters, either by name or by location, to which pesticide(s) are discharged;
- (B) Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy) and target pest(s);
 - (C) Company name(s) and contact information for pesticide applicator(s), if different from the Decision-maker;
 - (D) Total amount of each pesticide product applied for the reporting year by the EPA registration number(s) and by application method (e.g., aerially by fixed-wing or rotary aircraft, broadcast spray, etc.);
 - (E) Whether this pest control activity was addressed in the PDMP prior to pesticide application;
 - (F) The approximate date(s) of any discharge;
 - (G) If applicable, an annual report of any adverse incidents as a result of these treatment(s), for incidents, as described in Section 6(d)(1) of this general permit; and
 - (H) If applicable, description of any corrective action(s), including

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spill responses, resulting from pesticide application activities and the rationale for such action(s).

(g) Submittal Requirements

- (1) All submittals shall be addressed to the Director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

- (2) The operator or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

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I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- (3) The operator or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number on future correspondence or submittals may be a basis for delay of the processing of the document(s).

8. Notice of Intent Requirements

- (a) The owner or duly authorized representative shall submit a complete NOI in accordance with the deadline in Section 1(f), Table 2 or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or duly authorized representative shall include the following information in the notice of intent:
 - (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) Pesticide use activities that trigger the PGP requirements;
 - (3) If the operator is a Large entity that triggers developing a PDMP and submittal of an annual report;

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- (4) Pest Management Area name and map of the location of the area or description of the Pest Management Area in detail; and
- (5) Name of the water quality impaired waters; class 1, inland or class AA, marine waters, or areas restricted in accordance with the State's "no discharge" policy; or to surface drinking waters and their tributaries up-stream for which permit coverage is being requested and demonstration of eligibility for such discharges.

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Modified

24) HAR § 11-55-40

Relating to **Field Citations; Non-Compliance with NPDES requirements**

Department of Health

Rules Amending Title 11
Hawaii Administrative Rules

(insert adoption date)

1. Chapter 55 of Title 11, Hawaii Administrative Rules, entitled "Water Pollution Control", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 55

WATER POLLUTION CONTROL

| | |
|-----------|----------------------------------------------------------------------------------------|
| §11-55-01 | Definitions |
| §11-55-02 | General policy of water pollution control |
| §11-55-03 | General prohibition |
| §11-55-04 | Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion |
| §11-55-05 | Receipt of federal information |
| §11-55-06 | Transmission of information to regional administrator |
| §11-55-07 | Identity of signatories to NPDES forms |
| §11-55-08 | Formulation of tentative determinations and draft permit |
| §11-55-09 | Public notice of applications |
| §11-55-10 | Fact sheet |
| §11-55-11 | Notice to other government agencies |
| §11-55-12 | Public access to information |
| §11-55-13 | Public hearings |
| §11-55-14 | Public notice of public hearings |
| §11-55-15 | Issuance of NPDES permits |
| §11-55-16 | Modification or revocation and reissuance of NPDES permits |

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|--------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| §11-55-17 | Termination of permits and denial of renewal |
| §11-55-18 | Reporting discontinuance or dismantlement |
| §11-55-19 | Application of effluent standards and limitations, water quality standards, and other requirements |
| §11-55-20 | Effluent limitations in issued NPDES permits |
| §11-55-21 | Schedule of compliance in issued NPDES permits |
| §11-55-22 | Compliance schedule reports |
| §11-55-23 | Other terms and conditions of issued NPDES permits |
| §11-55-24 | National pretreatment standards and users of publicly owned treatment works |
| §11-55-25 | Transmission to regional administrator of proposed NPDES permits |
| §11-55-26 | Transmission to regional administrator of issued NPDES permits |
| §11-55-27 | Renewal of NPDES permits |
| §11-55-28 | Monitoring |
| §11-55-29 | Recording of monitoring activities and results |
| §11-55-30 | Reporting of monitoring results |
| §11-55-31 | Sampling and testing methods |
| §11-55-32 | Malfunction, maintenance, and repair of equipment |
| §11-55-33 | Agency board membership |
| §11-55-34 | General permit definitions |
| §11-55-34.01 | General permit policy |
| §11-55-34.02 | General permit authority and adoption |
| §11-55-34.03 | General permit terms |
| §11-55-34.04 | General permit conditions |
| §11-55-34.05 | Requiring an individual permit |
| §11-55-34.06 | Reserved |
| §11-55-34.07 | Degree of waste treatment |
| §11-55-34.08 | Notice of intent |
| §11-55-34.09 | Notice of intent review, notice of general permit coverage, additional conditions, terms, renewals, effective dates, and automatic coverage |
| §11-55-34.10 | Review of coverage issues and notice of intent and notice of general permit coverage decisions |

| | |
|--------------|------------------------------------------------------------------------------------------------------------------------------------------|
| §11-55-34.11 | Notice of general permit coverage revocation and termination |
| §11-55-34.12 | General permit compliance |
| §11-55-35 | Penalties and remedies |
| §11-55-36 | Hearings and appeals |
| §11-55-37 | Severability clause |
| §11-55-38 | Repealed |
| §11-55-39 | Public interest |
| §11-55-40 | Field Citations; non-compliance with NPDES requirements |
| Appendix A | Department of Health Standard General Permit Conditions |
| Appendix B | NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities |
| Appendix C | NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity |
| Appendix D | NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities |
| Appendix E | NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day |
| Appendix F | NPDES General Permit Authorizing Discharges of Hydrotesting Waters |
| Appendix G | NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering |
| Appendix H | NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals |
| Appendix I | NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities |
| Appendix J | NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems |

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- Appendix K NPDES General Permit Authorizing
Discharges of Storm Water from Small
Municipal Separate Storm Sewer Systems
- Appendix L NPDES General Permit Authorizing
Discharges of Circulation Water from
Decorative Ponds or Tanks
- Appendix M NPDES General Permit Authorizing
Point Source Discharges from the
Application of Pesticides

Historical Note: Chapter 55 of Title 11 is based
substantially on Public Health
Regulations, Chapter 37, Water
Pollution Control, Department of
Health, State of Hawaii. [Eff
5/25/74, am 1/20/75, 8/19/75, 1/31/81;
R 11/27/81]

§11-55-01 Definitions

"13 CFR" means the Code of Federal Regulations,
Title 13, Business Credit and Assistance, revised as of
January 1, 2013 unless otherwise specified.

"40 CFR" means the Code of Federal Regulations,
Title 40, Protection of Environment, revised as of
July 1, 2012 unless otherwise specified.

"Act" means the Clean Water Act (formerly referred
to as the Federal Water Pollution Control Act or
Federal Water Pollution Control Act Amendments of 1972)
Public Law 92-500, as amended by Public Law 95-217,
Public Law 95-483 and Public Law 97-117, 33 U.S.C. 1251
et. seq.

"Action threshold" means the point at which pest
populations or environmental conditions necessitate
that pest control action be taken based on economic,
human health, aesthetic, or other effects. An action
threshold may be based on current and/or past
environmental factors that are or have been
demonstrated to be conducive to pest emergence and/or
growth, as well as past and/or current pest presence.
Action thresholds are those conditions that indicate

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applicant to respond in a timely manner. [Eff and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp](Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-55-40 Field citations; non-compliance with NPDES requirements. This section authorizes citations to effectively and quickly settle easily verifiable violations of chapter 342D, HRS, and this chapter. Settlements under this section are an additional remedy and do not supplant the director's authority to issue orders under section 342D-9, HRS.

(1) Offer to settle[; penalties].

(A) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director may, in the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to:

- (i) Any person who discharges or causes or allows a discharge of pollutants into [state]State waters or municipal separate storm sewer systems without coverage under an NPDES permit, or in excess of limitations established by an NPDES permit;
- (ii) Any person who begins an activity [and/or discharges pollutants] prior to obtaining the required individual NPDES permit, coverage under a general permit, and/or authorization from the director;
- (iii) Any person who fails to correctly install, implement, maintain, or repair site best management

practices as called for in their storm water pollution control plan or best management practices plan or other plan;

(iv) Any person who fails to monitor as required by the applicable NPDES permit, in whole or in part;

[(iv)](v) Any person who fails to retain on-site or at a nearby office or field office:

- a) a copy of the NPDES permit application or notice of intent or "no exposure" certification[;],
- b) storm water pollution control plan,[or] best management practices plan or other plan[,] and all subsequent revisions[;], or
- c) individual NPDES permit,[or] notice of general permit coverage, or conditional "no exposure" exclusion [on-site or at a nearby office or field office];

[(v)](vi) Any person who fails to submit documents, reports, and/or submittals as required by the applicable NPDES permit, in whole or in part, including but not limited to discharge monitoring reports, monthly compliance information, pollution prevention plans, notification to the director, and/or notices of cessation.

(B) A field citation shall [assess the following penalties for

violations:] indicate the following amounts:

- (i) [Any]\$500 for any person who violates [paragraph]paragraphs (1)(A)(i), (ii), (iii), or (iv) [shall be fined \$500] for the first violation, and [\$1,000]\$2,000 for a subsequent violation;
- [(ii) Any person who violates paragraph (1)(A)(ii) shall be fined \$500 for the first violation, and \$1,000 for a subsequent violation;]
- [(iii) Any person who violates paragraph (1)(A)(iii) shall be fined \$500 for first violation, and \$1,000 for a subsequent violation;]
- [(iv)](ii) [Any]\$100 for any person who violates paragraph [(1)(A)(iv)] (1)(A)(v) [shall be fined \$100] for the first violation, and \$200 for a subsequent violation;
- [(v)](iii) [Any]\$500 for any person who violates paragraph [(1)(A)(v)](1)(A)(vi) [shall be fined \$500] for the first violation, and \$1,000 for a subsequent violation.

(2) Resolution of field citation.

- (A) A person issued a field citation may accept the citation by:
 - (i) Signing the field citation;
 - (ii) Paying the full amount [assessed by] indicated on the field citation. Payment shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 11-55, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ and filed with the Office of the Lieutenant Governor.

LINDA ROSEN, M.D.
M.P.H.
Director of Health

APPROVED AS TO FORM:

Edward G. Bohlen
Deputy Attorney General

DEPARTMENT OF HEALTH
Amendment and Compilation of Chapter 11-55
Hawaii Administrative Rules

NOV 1 5 2014

SUMMARY

1. Title amended.
2. §11-55-01 is amended.
3. §11-55-02 is amended.
4. §11-55-04 is amended.
5. §11-55-06 is amended.
6. §11-55-10 is amended.
7. §11-55-11 is amended.
8. §11-55-15 is amended.
9. §11-55-19 is amended.
10. §11-55-24 is amended.
11. §11-55-28 is amended.
12. §11-55-32 is amended.
13. §11-55-34.05 is amended.
14. §11-55-40 is amended.

- already covered in the application and supporting materials;
- (2) Any adverse environmental effects which cannot be avoided should the action be implemented;
 - (3) The alternatives to the proposed action;
 - (4) The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity;
 - (5) Any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented; and
 - (6) The optimum balance between economic development and environmental quality.

(b) The person submitting an NPDES permit application may submit a document prepared for another permit, license, or approval, including an environmental assessment or environmental impact statement prepared under chapter 343, HRS, or other similar document. The person submitting the NPDES permit application may also submit supplementary documents to meet this section. In either case, the department shall review the document(s) submitted for compliance with this section. The department shall seek to avoid redundant work.

(c) The department may consider other information relevant to the public interest, including information in an environmental assessment; environmental impact statement; other document prepared for another permit, license, or approval; or elsewhere. If the department considers information unknown to the applicant, the department shall notify the applicant and allow the applicant to respond in a timely manner. [Eff and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp **NOV 15 2014**] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-55-40 Field citations; non-compliance with NPDES requirements. This section authorizes citations

§11-55-40

to effectively and quickly settle easily verifiable violations of chapter 342D, HRS, and this chapter. Settlements under this section are an additional remedy and do not supplant the director's authority to issue orders under section 342D-9, HRS.

(1) Offer to settle.

(A) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director may, in the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to:

- (i) Any person who discharges or causes or allows a discharge of pollutants into State waters or municipal separate storm sewer systems without coverage under an NPDES permit, or in excess of limitations established by an NPDES permit;
- (ii) Any person who begins an activity prior to obtaining the required individual NPDES permit, coverage under a general permit, and/or authorization from the director;
- (iii) Any person who fails to correctly install, implement, maintain, or repair site best management practices as called for in their storm water pollution control plan or best management practices plan or other plan;
- (iv) Any person who fails to monitor as required by the applicable NPDES permit, in whole or in part;

- (v) Any person who fails to retain on-site or at a nearby office or field office:
 - a) a copy of the NPDES permit application or notice of intent or "no exposure" certification,
 - b) storm water pollution control plan, best management practices plan or other plan and all subsequent revisions, or
 - c) individual NPDES permit, notice of general permit coverage, or conditional "no exposure" exclusion;
 - (vi) Any person who fails to submit documents, reports, and/or submittals as required by the applicable NPDES permit, in whole or in part, including but not limited to discharge monitoring reports, monthly compliance information, pollution prevention plans, notification to the director, and/or notices of cessation.
- (B) A field citation shall indicate the following amounts:
- (i) \$500 for any person who violates paragraphs (1)(A)(i), (ii), (iii), or (iv) for the first violation, and \$2,000 for a subsequent violation;

- (ii) \$100 for any person who violates paragraph (1)(A)(v) [shall be fined \$100] for the first violation, and \$200 for a subsequent violation;
 - (iii) \$500 for any person who violates paragraph (1)(A)(vi) for the first violation, and \$1,000 for a subsequent violation.
- (2) Resolution of field citation.
- (A) A person issued a field citation may accept the citation by:
 - (i) Signing the field citation;
 - (ii) Paying the full amount indicated on the field citation. Payment shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director;
 - (iii) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty days after the person receives the field citation; and
 - (iv) Correction within seven days, or unless otherwise specified on the field citation, of any violation of section 11-55-03;
 - (B) By signing the field citation, the person to whom it was issued agrees to:
 - (i) Give up the right to a contested case hearing under chapter 91 or

- 342D, HRS, or otherwise challenge the field citation;
 - (ii) Pay the amount indicated; and
 - (iii) Correct the violation;
- (C) If the field citation is not accepted in compliance with paragraph (2)(A), the director may seek for that cited violation any remedies available under this chapter; chapter 342D, HRS; or any other law. For all other violations the director retains authority to seek any available remedies.
- (3) Form of citation. The department shall prescribe a field citation form." [Eff and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; am and comp **NOV 15 2014**] (Auth: HRS §§321-11, 342D-1, 342D-4, 342D-5) (Imp: HRS §§321-11, 342D-2, 342D-4, 342D-5, 342D-9, 342D-18, 342D-30, 342D-31, 342D-50, 603-23)

Amendments and compilation of chapter 55, title 11, Hawaii Administrative Rules, on the Summary Page dated NOV 15 2014 were adopted on "NOV 15 2014" following a public hearing held on October 2, 2014, after public notice was given in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Isle on August 28, 2014.

The adoption of chapter 11-55 shall take effect ten days after filing with the Office of the Lieutenant Governor



LINDA ROSEN, M.D.
M.P.H.
Director of Health



NEIL ABERCROMBIE
Governor
State of Hawaii

Dated: 11-3-14

Filed

APPROVED AS TO FORM:



EDWARD G. BOHLEN
Deputy Attorney General

55-92

14 NOV -5 P12:04

LIEUTENANT GOVERNOR'S
OFFICE

Modified

- 25) HAR §§ 11-62-03, 11-62-05, 11-62-06, 11-62-07.1, 11-62-08, 11-62-09, 11-62-11, 11-62-24, 11-62-26, 11-62-27, 11-62-28, 11-62-31.1, 11-62-31.2, 11-62-32, 11-62-33.1, 11-62-34, 11-62-36, 11-62-37, 11-62-41, 11-62-42, 11-62-43, 11-62-44, 11-62-54.08, 11-62-55.03, 11-62-56, 11-62-57.02, 11-62-57.04, 11-62-82, and 11-62-83

Relating to: **Definitions; Critical wastewater disposal areas; General requirements; Requirements for non-domestic wastewater; Other requirements; Public access to information; Incorporation by reference; Treatment unit requirements; Wastewater effluent requirements; Recycled water systems; Additional monitoring, recordkeeping and reporting; General requirements for individual wastewater systems; Site evaluation; Spacing of individual wastewater systems; Specific requirements for new and proposed treatment units, for new and proposed disposal systems; Cesspools; Application for and review of building permits and individual wastewater systems; General requirements and prohibitions; Land application of exceptional quality wastewater sludge; Land application of other than exceptional quality wastewater sludge, to agricultural lands, forest, public contact site, or reclamation site; Land application of domestic septage to agricultural land, forest, or reclamation site; Issuance of individual permits, duration, conditions; Requiring an individual permit; Standard permit conditions; Modification or revocation and reissuance of permits; Renewal of permits; Offer to settle; and Resolution of field citation.**

Rules Amending Title 11
Hawaii Administrative Rules

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1. Chapter 62 of Title 11, Hawaii Administrative Rules, entitled "Wastewater Systems" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 62

WASTEWATER SYSTEMS

Subchapter 1 Prohibitions and General
Requirements

| | |
|-------------|-----------------------------------------------|
| §11-62-01 | Preamble |
| §11-62-02 | Purpose and applicability |
| §11-62-03 | Definitions |
| §11-62-04 | County wastewater advisory committee |
| §11-62-05 | Critical wastewater disposal areas (CWDA) |
| §11-62-06 | General requirements |
| §11-62-07 | Repealed |
| §11-62-07.1 | Requirements for non-domestic wastewater |
| §11-62-08 | Other requirements for wastewater systems |
| §11-62-09 | Public access to information |
| §11-62-10 | Public hearings and informational meetings |
| §11-62-11 | Incorporation by reference |
| §11-62-12 | Timely processing |

Subchapter 2 Wastewater Treatment Works

| | |
|-------------|----------------------------------------------------------------------------------------------------------------------------------------|
| §11-62-21 | Repealed |
| §11-62-22 | Repealed |
| §11-62-23 | Repealed |
| §11-62-23.1 | Specific requirements for wastewater treatment works |
| §11-62-24 | Treatment unit requirements |
| §11-62-25 | Wastewater effluent disposal systems |
| §11-62-26 | Wastewater effluent requirements, recycled water quality and monitoring requirements applicable to treatment works treating wastewater |
| §11-62-27 | Recycled water systems |
| §11-62-28 | Additional monitoring, recordkeeping, and reporting |
| §11-62-29 | (Reserved) |

Subchapter 3 Individual Wastewater Systems

| | |
|------------------------|----------------------------------------------------------------------------------|
| §11-62-31 | Repealed |
| §11-62-31.1 | General requirements for individual wastewater systems |
| §11-62-31.2 | Site evaluation |
| §11-62-32 | Spacing of individual wastewater systems |
| §11-62-33 | Repealed |
| §11-62-33.1 | Specific requirements for new and proposed treatment units |
| §11-62-34 | Specific requirements for new and proposed disposal systems |
| §11-62-35 | Other individual wastewater systems |
| §11-62-36 | Cesspools |
| §11-62-37 | Application for and review of building permits and individual wastewater systems |
| §§11-62-38 to 11-62-39 | (Reserved) |

Subchapter 4 Wastewater Sludge Use and Disposal

| | |
|-----------|--------------------------------------|
| §11-62-41 | General requirements and prohibition |
|-----------|--------------------------------------|

| | |
|-------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| §11-62-41.1 | Relation to federal law |
| §11-62-42 | Land application of exceptional quality wastewater sludge |
| §11-62-43 | Land application of other than exceptional quality wastewater sludge, to agricultural land, forest, public contact site, or reclamation site |
| §11-62-44 | Land application of domestic septage to agricultural land, forest, or reclamation site |
| §11-62-45 | Repealed |
| §11-62-46 | Pathogens |
| §11-62-47 | Vector attraction reduction |
| §11-62-48 | Sampling method |

Subchapter 5 Wastewater Management Permits and Registration

| | |
|--------------|----------------------------------------------------------------------------------|
| §11-62-50 | Registration and permits |
| §11-62-51 | Fees |
| §11-62-52 | Signatories and certification requirements |
| §11-62-53 | Wastewater management registration |
| §11-62-54.01 | Wastewater management individual permits |
| §11-62-54.02 | Draft individual permits |
| §11-62-54.03 | Fact sheets |
| §11-62-54.04 | Public notices of draft individual permits; public comments and hearing requests |
| §11-62-54.05 | Public meetings or hearings on individual permits |
| §11-62-54.06 | Public notice of public meetings or hearings on individual permits |
| §11-62-54.07 | Response to comments |
| §11-62-54.08 | Issuance of individual permits; duration, conditions |
| §11-62-54.09 | Schedules of compliance |
| §11-62-55.01 | Repealed |
| §11-62-55.02 | Repealed |
| §11-62-55.03 | Requiring an individual permit |
| §11-62-55.04 | Repealed |

§11-62-55.05 Repealed
§11-62-55.06 Repealed
§11-62-55.07 Repealed
§11-62-55.08 Repealed
§11-62-56 Standard permit conditions
§11-62-57.01 Transfer of permits
§11-62-57.02 Modification or revocation and
reissuance of permits
§11-62-57.03 Termination of permits
§11-62-57.04 Renewal of permits
§11-62-58 Conflict of interest

Subchapter 6 Wastewater and Wastewater Sludge
Pumpers and Haulers

§11-62-60 Applicability
§11-62-61 Registration requirements
§11-62-62 Recordkeeping and reporting

Subchapter 7 Variances, Penalties and
Severability

§11-62-71 Variances
§11-62-72 Penalties and remedies
§11-62-73 Severability
§11-62-74 Public participation in enforcement

Subchapter 8 Field Citations

§11-62-81 Purpose
§11-62-82 Offer to settle; settlement amounts
§11-62-83 Resolution of field citation
§11-62-84 Form of citation

SUBCHAPTER 1

PROHIBITIONS AND GENERAL REQUIREMENTS

§11-62-01 Preamble. The department of health seeks to ensure that the use and disposal of wastewater and wastewater sludge does not contaminate or pollute any valuable water resource, does not give rise to public nuisance, and does not become a hazard or potential hazard to the public health, safety, and welfare.

The department of health seeks to migrate towards an ultimate goal of regional sewage collection, treatment and disposal systems [which] that are consistent with state and county wastewater planning policies. Off-site treatment and disposal systems, followed in priority by on-site systems, meeting health and environmental standards will be allowed whenever they are consistent with state and county wastewater planning policies and on the premise that these systems will eventually connect to regional sewage systems. Individual wastewater systems may be utilized in remote areas and in areas of low population density. [A goal has been established such that the] Hawai'i is long overdue in eliminating construction of wastewater disposal systems depositing untreated sewage into the environment [will not be allowed], such as cesspools. Indeed, the department stated in its prior rules back in the 1990's, with the agreement of all counties' wastewater advisory committees, that installation of new cesspools should end after the year 2000. [As a means to this end, upon the adoption of these rules, new publicly owned buildings shall utilize a method of sewage disposal other than cesspools.]

The department of health seeks to work in close partnership with the counties [on] to manage wastewater [management matters, seeks to allow each county to participate in the implementation of these rules through the recommendations of a county wastewater advisory committee to the director, and seeks to encourage each county to assume complete administration of the wastewater treatment system program within their county] to prevent pollution and

§11-62-01

harm to public health, safety and welfare. Each county may participate in the implementation of these rules through the recommendations of a county wastewater advisory committee to the director.

The department of health seeks to advance the use of recycled water and wastewater sludge consistent with public health and safety and environmental quality. The state department of health acknowledges that when properly treated and used, all recycled water and wastewater sludge are valuable resources with environmental and economic benefits and can be used to conserve the State's precious resources. The director acknowledges that the most highly treated recycled water and exceptional quality wastewater sludge can be used for a wide variety of applications with the appropriate restrictions and when best management practices and other requirements of this chapter are met. [Eff 12/10/88; am and comp 12/09/2004; am and comp] (Auth: HRS §§321-11, 322-8(a), 342D-4, 342D-5, 342E-3)(Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50, 342E-3)

§11-62-02 Purpose and applicability. (a) [These rules seek] This chapter seeks to ensure that the use and disposal of wastewater and wastewater sludge from wastewater systems:

- (1) Do not contaminate or pollute any drinking water or potential drinking water supply, or the waters of any beaches, shores, ponds, lakes, streams, groundwater, or shellfish growing waters;
- (2) Do not encourage the harborage of insects, rodents, or other possible vectors;
- (3) Do not give rise to nuisances;
- (4) Do not become a hazard or a potential hazard to public health, safety and welfare;
- (5) Contribute to the achievement of wastewater management goals contained in approved county water quality management plans;
- (6) Reinforce state and county planning policies; and

(7) Are consistent with the State's administration of the National Pollutant Discharge Elimination System.

(b) [These rules] This chapter seeks to advance the appropriate uses of recycled water and wastewater sludge.

(c) This chapter allows and does not preempt[:] provisions in county codes, rules or ordinances that are not inconsistent with these rules, including, without limitation:

- (1) Plumbing requirements in county plumbing codes or rules, including county adoptions of all or parts of the Uniform Plumbing Code;
- (2) Sanitary sewer system and wastewater treatment works use permission and pretreatment requirements in county ordinances or rules regarding the introduction of fats, oils, grease, septage, sludge, or wastewater into sanitary sewers or wastewater treatment works, requirements on the use of grease traps, and requirements on wastewater and wastewater sludge pumping and hauling;
- (3) Storm sewer system use permission requirements in county ordinances or rules; or
- (4) Water recycling requirements in county ordinances or rules, including requirements for connection to or use of available recycled water. [Eff 12/10/88; am and comp 12/09/2004; am and comp]
(Auth: HRS §§321-11, 322-8(a), 342D-4, 342D-5, 342E-3) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50, 342E-3; HRS ch. 340E; 33 U.S.C. §§1311, 1342, 1345; 40 CFR Parts 122, 123, 501, 503)

§11-62-03 Definitions. As used in this chapter:

"Activated sludge process" means a biological wastewater treatment process in which a mixture of wastewater and microorganisms is agitated with induced

§11-62-03

aeration. Aeration supplies dissolved oxygen and wastewater supplies the organic substrate necessary for microorganism growth. This process includes sedimentation units which follow the aeration and where settled solids are withdrawn for disposal or returned to the aeration unit.

"Aerobic treatment unit system" shall have the same meaning as defined in Chapter 235, HRS.

"Aerosol" means a solid suspended in air with or without preceding evaporation.

"Bedrock" means a continuous horizontal layer of hardened mineral deposits that does not support the growth of common plant life.

"Bedroom" means any room within a dwelling that is or might reasonably be used as a sleeping room. A room is presumed to be a bedroom if it has a superficial floor area not less than seventy square feet and is provided with windows or skylights with an area of not less than one-tenth of the floor area or ten square feet, whichever is greater [and having at least one-half of the window or skylight area being operable to provide natural ventilation].

"Best management practices" or "BMPs" means the most effective, practical schedules of activities, prohibitions of conduct, maintenance procedures, and other specifications of conduct to prevent or reduce the pollution. BMPs also include treatment requirements, operating procedures, and practices to site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage.

"BOD₅" means five days biochemical oxygen demand as measured by a standard test indicating the quantity of oxygen utilized by wastewater under controlled conditions of temperature and time.

"Building" means a structure, permanent or temporary, built, erected, and framed of component structural parts used or designed for the housing, shelter, workplace, enclosure or support of persons, animals or property of any kind.

"Building modification" means any change to an existing building's configuration that may result in the increase in wastewater flows or change in the wastewater characteristics.

"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 discharging therein, but permits the liquid to seep through its bottom or sides to gain access to the underground formation.

"Collection system" means the conveyance system, which includes the building and street sewer laterals, interceptor sewer, sewage pump station, and force main, used to transport the sewage to the treatment unit.

"Composite sample" means sample(s) collected on regular intervals in proportion to the existing flow or volume and then combined to form a sample that represents the flow or volume over a period of time or space.

"Compost toilet" means a non-flush, waterless toilet that employs an aerobic composting process to treat toilet wastes.

"Confined work areas" means any area having a limited means of egress, which is subject to the accumulation of toxic or flammable contaminants or has an oxygen deficient atmosphere. Confined work areas include, but are not limited to, storage tanks, process vessels, bins, ventilation or exhaust ducts, sewers, underground utility vaults, tunnels, pipelines, and open top spaces more than four feet in depth such as pits, tubs, vaults and vessels.

"Construction" in the context of a wastewater system means the building of the system in the ground; construction is not completed until the system has been fully installed so that it is ready for hookup.

"Contractor" means the installer of a wastewater system or any part of a wastewater system.

"County" means any county of the state.

"Critical Wastewater Disposal Area (CWDA)" means an area where the disposal of wastewater has or may cause adverse effects on human health or the environment due to existing hydrogeological conditions.

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["CWDA maps" means the maps attached at the end of this chapter as appendix E, pages E-1 through E-6, indicating the boundaries of the critical wastewater disposal areas established pursuant to section 11-62-05(a) and dated March 16, 1990 and amended April 15, 1997.]

"Department" means the department of health.

"Director" means the director of health or the director's duly authorized agent, including a contractor of the director.

"Disinfection" means a process to destroy, neutralize, or inhibit the growth of pathogenic microbes.

"Disposal system" means any sewer, sewer outfall, sewer lateral, seepage pit, cesspool, injection well, soil absorption system, disposal trench, or other facility used in the disposal of wastewater or wastewater sludge, including any wastewater transmission lines, pumps, power, or other equipment associated with the ultimate disposal of wastewater or wastewater sludge.

"Distribution box" means a watertight chamber from which effluent from a treatment unit is distributed evenly to various portions of a disposal system.

"Drip irrigation" means application of water and wastewater, including recycled water, from emitters, either on the surface or subsurface, that are part of a piping system alongside the plants being irrigated and that discharges at a rate not to exceed two gallons per hour per emitter.

"Domestic sewage" is waste and wastewater from humans or household operations that[:] is:

- (1) [Is discharged] Discharged to or otherwise enters a treatment works; or
- (2) [Is of] Of a type that is usually discharged to or otherwise enters a treatment works or an individual wastewater system.

"Domestic wastewater" has the same meaning as "domestic sewage".

"Dwelling" means any building which is wholly or partly used or intended to be used for living or sleeping by human occupants and includes, but is not

limited to, apartment houses, single family houses, duplex houses, cluster houses, townhouses, and planned developments, but excludes hotels and lodging houses.

" Dwelling unit " means any habitable room or group of habitable rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, and eating.

" Engineer " means a professional engineer registered in the State of Hawaii.

" EPA " means the [U.S.] United States Environmental Protection Agency .

" EPA's methods for chemical analysis of water and wastes " means the 1979 edition of " Methods for Chemical Analysis of Water and Wastes " as published by the EPA.

" Evapotranspiration system " means a subsurface disposal system which relies on soil capillarity and plant uptake to dispose of treated effluent through surface evaporation and plant transpiration.

" Exceptional quality sludge " means wastewater sludge that has been treated to a level specified in [these rules] this chapter in which it may be used with little or no restrictions for land application.

" Existing " means constructed under a valid county permit or with written approval from the director before the effective date of this rule.

" Filter fabric " means a woven or spun-bonded sheet material used to impede or prevent the movement of sand, silt and clay through the filter material. This material shall be non-biodegradable, resistant to acids and alkalies within a pH range of 4 to 10, and resistant to common solvents.

[" General permit " means a rule or document that authorizes each of a class of people, facilities, or sources to generate, treat, use, dispose, or discharge of wastewater, including recycled water, and wastewater sludge within a specified geographic area. General permit refers to a type of permit that has fewer procedural requirements than an individual permit.]

" Grab sample " means a single discrete sample of wastewater collected at a particular time and place

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which represents the composition of the source at that time and place.

"Graywater" [means wastewater from a dwelling or other establishment produced by bathing, washdown, minor laundry and minor culinary operations, and specifically excluding toilet waste.] shall have the same meaning as defined in HRS section 342D-1.

"Haul" means the transport of an item by vehicle or boat.

"Holding tank" means a nonportable, watertight closed vault used or designed to temporarily hold domestic wastewater.

"Household aerobic unit" means an individual wastewater system which receives domestic wastewater from dwellings or from other sources generating wastewater of a similar volume and strength, and retains solids, aerobically digests organic matter over a period of time, and allows the clarified effluent to discharge outside the tank into a disposal system.

"Individual permit" means a document issued under this rule to a specific person for a specific facility, or practice to generate, treat, use, dispose, or discharge of wastewater and wastewater sludge at a specific location.

"Individual wastewater [system] systems" means [a facility which is used and designed to receive and dispose of no more than one thousand gallons per day of domestic wastewater. Each individual wastewater system includes all connected plumbing, treatment (if any), and disposal components that could, if not connected, serve as separate wastewater systems.] facilities, such as septic systems, aerobic treatment units, and cesspools, that are not connected to a sewer and are used and designed to receive and dispose of:

(1) No more than one thousand gallons per day of domestic wastewater; or

(2) Greater than one thousand gallons per day of domestic wastewater from buildings with highly variable flows.

"Injection well" has the same meaning as defined in chapter 11-23.

"Land application" means the spraying or spreading of wastewater sludge onto the land surface, the injection of wastewater sludge below the land surface, or the incorporation of wastewater sludge into the soil such that the wastewater sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

"Large capacity cesspool" means a cesspool that serves more than one residential dwelling or, for a non-residential cesspool, has the capacity to serve twenty or more persons per day.

"Living area" means the portion(s) of a dwelling unit including, but not limited to, the bedroom, kitchen, bathroom, living room, family room, covered lanai, den, and library, but excluding the garage, carport, open lanai, fence, and utility shed.

"Makai" means toward the sea or the area outside the Underground Injection Control (UIC) Line encircling the protected aquifer.

"Manual of Septic Tank Practice" means the United States Department of Health, Education and Welfare Publication No. (HSM) 72-10020, formerly known as "PHS Publication No. 526", revised in 1967.

"Modal time" means the amount of time elapsed between the time that a tracer, such as salt or dye, is injected into the influent at the entrance to a chamber and the time that the highest concentration of the tracer is observed in water where it is discharged from the chamber.

"Mound system" means a soil absorption system which is installed in or below an artificially created mound or earth.

"MPN" means most probable number.

"New" means constructed on or after the effective date of this chapter.

"Non-domestic wastewater" means all wastewater excluding domestic wastewater.

"Non-exceptional quality wastewater sludge" means wastewater sludge that is not exceptional quality wastewater sludge.

["Notice of intent" or "NOI" means a form or document used to notify the director that a person seeks coverage under a general permit.]

"Owner" means a person(s) who has legal title to a treatment works or individual wastewater system, or duly authorized representative of the owner.

"Pathogenic organisms" means disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

"Person" has the same meaning as defined in section 342D-1, HRS.

"Person who prepares wastewater sludge" means anyone who generates wastewater sludge during the treatment of wastewater in a wastewater treatment works, a person who derives a material from wastewater sludge, a person who provides treatment of wastewater sludge, or a person who changes the quality of wastewater sludge.

"pH" means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25 degrees Celsius or measured at another temperature and then converted to an equivalent value at 25 degrees Celsius.

"Private" means not owned or operated by a federal, state, or county authority.

"Proposed" means put forward for consideration or suggested to the director. For the purposes of this chapter, [it] "proposed" shall refer to the plans for a wastewater system or activity.

"Public" means, for issues of ownership, owned or operated by a federal, state, or county authority.

"Public water system" has the same meaning as defined in chapter 11-20.

"Qualified cesspool" shall have the same meaning as defined in Chapter 235, HRS.

"Qualified expenses" shall have the same meaning as defined in Chapter 235, HRS.

"R-1 water" means recycled water that has been oxidized, filtered, and disinfected to meet the corresponding standards set in this chapter.

"R-2 water" means recycled water that has been oxidized and disinfected to meet the corresponding standards set in this chapter.

"R-3 water" means recycled water that has been oxidized to meet secondary treatment standards as set forth by EPA.

"Recycled water" means treated wastewater that by design is intended or used for a beneficial purpose.

"Recycled water system" means a facility which conveys to users or uses recycled water. Recycled water systems are subdivided into distribution and use systems. Recycled water systems include all piping, storage, and repressurization facilities to deliver recycled water to users, but exclude treatment units.

"Residential large capacity cesspool" shall have the same meaning as defined in Chapter 235, HRS.

"Reuse guidelines" means the "Guidelines for the treatment and use of reclaimed water", Hawaii State Department of Health, Wastewater Branch, November 23, 1993, [and] revised [May 15, 2002] January 2016.

"Seepage pit" means an excavation in the ground whose depth is greater than its widest surface dimension and which receives the discharge from treatment units and permits the effluent to [seep]exit through its bottom or sides [to gain access to the underground formation.] for gradual seepage into the ground which does not result in contamination of water-bearing formations or surface water.

"Septage" means either a liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives wastewater.

"Septic system" shall have the same meaning as defined in Chapter 235, HRS.

"Septic tank" means a watertight receptacle [which] that receives the raw wastewater, retains after settling solid matter or sewage for treatment by bacteria, and discharges a [settled,] partially treated effluent.

"Sewage sludge" means any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, septage, portable toilet pumping, Type III Marine Sanitation device pumpings (33 Code of Federal Regulations Part 159), and sewage sludge products. Sewage sludge does not include grit, screenings, or ash generated during the incineration of sewage sludge.

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"Sewer" means a pipe or conduit or any other appurtenances that carry wastewater from a building or buildings to a specific point for treatment and disposal.

"Sewer system" shall have the same meaning as defined in Chapter 235, HRS.

"Soil absorption" means a process which uses the soil to treat and dispose of effluent from a treatment unit.

"Spray irrigation" means application of water and wastewater, including recycled water, to the land to maintain vegetation or support the growth of vegetation by spraying the water and wastewater above ground from sprinklers, micro-sprinklers, or orifices in piping.

"SS" means suspended solids and indicates the characteristic state of solids in wastewater.

"Standard methods" means the [17th] 22nd edition, [1989,] 2014, of "Standard Methods for the Examination of Water and Wastewater" as published by the American Water Works Association, American Public Health Association and the Water Pollution Control Federation, unless another edition is specified by the director.

"State waters" shall have the same meaning as defined in section 342D-1, HRS.

"Subsurface disposal system" means a disposal system [which permits effluent to reach the underground geologic formation] that allows the gradual seepage of effluent into the ground which does not result in contamination of water-bearing formations or surface water, such as a seepage pit, cesspool, [injection well,] soil absorption system, or other facility used in the disposal of wastewater, including any wastewater transmission lines, pumps, power, or other equipment associated with the disposal of wastewater.

"Subsurface drip irrigation" means the application of water and wastewater, including recycled water, to the land to maintain vegetation or to support the growth of vegetation by discharging or emitting the water and wastewater from orifices in piping below the surface or finished grade.

"Suitable soil" means a soil which acts as an effective filter in the removal of organisms and suspended solids before the effluent reaches any highly permeable earth formations, bedrock, or groundwater.

"Surface disposal" means the placing of wastewater sludge on the land for final disposal and includes storage on land for two or more years.

"Surface irrigation" means the application of water and wastewater, including recycled water, by means other than spraying.

"Ten States Standards" means the 1980 edition of the Recommended Standards for Individual Sewage Systems, a report by the committee of the Great Lakes-Upper Mississippi River Board of State Sanitary Engineers on the policies for review and approval of plans and specifications for individual wastewater systems.

"Theoretical detention time" means the value obtained by dividing the volume of a chamber, through which fluid flows, by the flow rate expressed in amount of fluid volume per unit of time.

"Treatment unit" means any plant, facility, or equipment used in the treatment of wastewater, including the necessary pumps, power equipment, blowers, motors, holding tanks, flow splitter, and other process equipment.

"Treatment works" means any treatment unit and its associated collection system and disposal system, excluding individual wastewater systems.

"Vector attraction" means the characteristic of wastewater sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

"Wastewater" means any liquid waste, whether treated or not, and whether animal, mineral, or vegetable, including agricultural, industrial, and thermal wastes.

"Wastewater sludge" has the same meaning as "sewage sludge".

"Wastewater sludge facility" means a facility which collects, handles, stores, treats, or disposes of wastewater sludge. Wastewater sludge facilities shall exclude individual wastewater systems.

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"Wastewater system" means the category of all wastewater and wastewater sludge treatment, use, and disposal systems, including all wastewater treatment works, collection systems, wastewater sludge facilities, recycled water systems, and individual wastewater systems.

"Water pollution" has the same meaning as defined in section 342D-1, HRS.

"Watertight" means constructed so that no water can enter and discharge except through the inlet and outlet pipe respectively. [Eff 12/10/88; am 8/30/91; am and comp 12/09/04; am and comp]
(Auth: HRS §§321-11, 328(a), 342D-1, 342D-4, 342D-5)
(Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-1, 342D-2, 342D-4, 342D-5, 342D-50, 342E-3; 40 CFR Parts 501, 503, 40 CFR §501.2)

§11-62-04 County wastewater advisory committee.

(a) The mayor of each county may request that the director form a county wastewater advisory committee ("committee"), and the mayor may nominate its members, who may include representatives of the county water supply, public works, planning, and land utilization departments, labor, industry, environmental groups, and other interested people. The chief of the environmental management division on Oahu and the district environmental health program chiefs on the neighbor islands shall serve as [ex-officio] ex officio members of their respective county committees. The department shall provide technical and support services for the committee.

(b) The primary role of the committee is to review and make recommendations to the director on the application of [these rules] this chapter on matters which are unique to each county, on the establishment of critical wastewater disposal areas, on proposals which are not specifically addressed in these rules, and upon the director's request, for applications for variances. The committee's recommendations shall seek to advance the purposes of this chapter. [Eff 12/10/88; am 8/30/91; am and comp 12/09/2004; am and comp] (Auth: HRS §§321-11,

342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50)

§11-62-05 Critical wastewater disposal areas (CWDA). (a) [The director may establish] All areas of the State are critical wastewater disposal areas [in each county based on one or more of the following concerns:

- (1) High water table;
- (2) Impermeable soil or rock formation;
- (3) Steep terrain;
- (4) Flood zone;
- (5) Protection of coastal waters and inland surface waters;
- (6) High rate of cesspool failures; and
- (7) Protection of groundwater resources].

(b) The director may impose more stringent requirements than those specified in [these rules] this chapter for wastewater systems located or proposed to be located within [any designated critical wastewater disposal area.] areas that require additional protection. Requirements that the director may impose include, but are not limited to, meeting higher effluent standards for wastewater systems, limiting the method of effluent disposal, and requiring flow restriction devices on water fixtures.

[(c) Proposed cesspools shall be severely restricted or prohibited in any designated critical wastewater disposal area.

(d) Areas designated as critical wastewater disposal areas pursuant to subsection (a) are indicated on the CWDA maps dated March 16, 1990 and revised April 15, 1997, which are attached to this chapter in appendix E, entitled CWDA Maps, dated April 15, 1997. Larger and more detailed copies of the maps are incorporated by reference and are available for examination at the department's environmental management division and district health offices. In case of a conflict between maps, the more detailed tax map key map designations shall control.] [Eff 12/10/88; am 8/30/91; am and comp 12/09/04; am and comp] (Auth: HRS §§321-11,

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342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50)

§11-62-06 General requirements. Owners shall comply with these requirements: (a) All buildings used or occupied as a dwelling, all public buildings, and all buildings and places of assembly[,and all buildings] generating wastewater or with toilets, sinks, drains, or other plumbing fixtures capable of conveying wastewater, shall be connected to a wastewater system. In addition, any new building capable of generating wastewater shall be connected to a wastewater system which meets the requirements of this rule.

(b) All [building(s)] buildings and places of assembly generating wastewater or with toilets, sinks, drains, or other plumbing fixtures capable of conveying wastewater and located within or near [proximity of] an available public sewer system as determined by the director, shall connect to the public sewer.

(c) All wastewater systems shall be designed, constructed, operated, and maintained in accordance with this chapter.

[(d) Buildings and operations, including farms, generating non-domestic wastewater shall meet the specific requirements of this chapter as determined to be applicable by the director.

(1) Wherever applicable, the director shall use the requirements for non-domestic wastewater as set forth by the EPA, the Reuse Guidelines, and wherever applicable the department's Guidelines for Livestock Waste Management (Animal Waste Guidelines) dated July 1996. The Reuse Guidelines and the Animal Waste Guidelines are available for inspection and purchase at the department's environmental management division and the district health offices. Construction plans and engineering reports for proposed non-domestic wastewater systems shall be sufficient in scope and depth for

- determining the adequacy of compliance with the provisions of section 11-62-02.
- (2) Any building or facility which is located within the state agricultural land use district, county agricultural zoned districts or conservation districts may be exempt from the provisions of subchapters 2 and 3, provided that such buildings or facilities are essential to the operation of an agricultural enterprise or consistent with the conservation district use intent. However, the owner shall submit for the director's approval plans or engineering reports or both for the wastewater systems proposed to accommodate the wastewater generated from any building or facility in this category. Such information submitted shall be sufficient in scope and depth for determining the adequacy of performance of the wastewater system in meeting the provisions of section 11-62-02.

(e)](d) Operation and maintenance. All wastewater systems and parts thereof that are installed or used by persons to achieve compliance with this [rule] chapter and the conditions of any [permit] department approval for use issued under this rule shall at all times be properly operated and maintained. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures as specified by the director. Effluent testing for private wastewater systems shall be performed by an independent laboratory. Proper operation and maintenance also includes operation of any required back-up or auxiliary facilities or similar systems as specified by the director to be installed to achieve compliance with this [rule] chapter and the conditions of any [permit] department approval for use issued under this [rule] chapter.

[(f)] (e) No holding tank, except for public facilities, and no privy shall be used. No portable

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toilets shall be used for any permanent structure unless approved by the director.

[(g)] (f) No person or the owner shall cause or allow any wastewater system to create or contribute to any of the following:

- (1) Human illness;
- (2) Public health hazard;
- (3) Nuisance;
- (4) Unsanitary condition;
- (5) Wastewater spill, overflow, or discharge into surface waters or the contamination or pollution of state waters, except in compliance with a permit or variance issued under chapter 11-55, or a water quality certification or waiver obtained under chapter 11-54;
- (6) A wastewater spill, overflow, or discharge (spill) onto the ground, except for R-1 water from a recycled water system that is implementing BMPs approved by the director. The burden of proof is on the recycled water system's owner or operator to demonstrate that the spill qualifies for this exception;
- (7) Harborage of vectors, including insects and rodents;
- (8) Foul or noxious odors;
- (9) Public safety hazard; or
- (10) Contamination, pollution, or endangerment of drinking waters, except in compliance with a permit issued under chapter 11-23.

[(h)](g) Notice. If any of the conditions in subsection [(g)](f) exist, the owner or the person responsible for the wastewater system shall notify the director immediately, unless for subsection [(g)(5)] (f)(5) and [(g)(6)] (f)(6), the owner or person responsible demonstrates compliance with the protocol attached to this chapter as [appendix C,] Appendix B, entitled Responses for Wastewater Spills, Overflows, and Discharges ("Spills") dated [April 15, 1997.] July 1, 2014.

[(i)](h) In case of a violation of this chapter, the director, at the director's discretion, shall initiate enforcement action against the owner(s) of the wastewater system and initiate enforcement action

against other persons to have the offending condition abated, corrected, or removed [, destroyed, or prevented]. In addition, once a violation of this chapter occurs, the director shall order the [owner of the wastewater system] owner to take immediate actions to protect public health and safety.

[(j)](i) Duty to mitigate. The owners of wastewater systems shall take steps to minimize or prevent the use and disposal of wastewater or wastewater sludge in violation of this chapter which has a reasonable likelihood of adversely affecting human health or the environment.

[(k)](j) Upon request by the director, proposed wastewater systems in critical wastewater disposal areas shall be approved in writing or by rule by the respective county board of water supply or department of water supply.

[(l)](k) If applicable, a wastewater system involving the subsurface disposal of wastewater shall be in compliance with chapter 11-23.

[(m)](l) Approvals to-construct the wastewater system shall be considered invalid if:

- (1) A county does not issue a building permit for a private building within one year after the director approves the wastewater system, or the construction of the wastewater system has not begun within one year of the approval; and
- (2) A county revokes or rescinds a building permit and the building is to be served by a wastewater system that was approved in conjunction with the building permit application.

Reapproval of any wastewater system for which the director's approval has been rescinded or determined invalid pursuant to this paragraph shall be based on the applicable rules in effect at the time the request for reapproval is made.

[(n) Whenever] (m) The director, at the director's discretion, may require that a wastewater system be upgraded to meet the applicable requirements of this chapter whenever a building modification is proposed that may change the nature or quantity of the wastewater flowing to the wastewater system. The

modifications may include but not be limited to adding additional bedrooms to a dwelling or adding a restaurant to a shopping complex. The director, at the director's discretion, may also require that a wastewater system be upgraded[, the wastewater system serving the building shall be required to be upgraded in order to meet the applicable requirements of this rule]if any of the following conditions exists:

- (1) The existing wastewater system has created or contributed to any of the conditions noted in subsection [(g);](f);
- (2) The existing wastewater disposal system has [been pumped more than twice] within the last twelve months [;] been pumped more than twice or has spilled wastewater more than once;
- (3) The existing wastewater system disposes untreated wastewater directly into the groundwater table; or
- (4) The owner of the existing wastewater system has not satisfactorily addressed [any] all of the deficiencies noted by the director.

[Upon the director's discretion and the engineer's recommendation, for a cesspool located below the Underground Injection Control Line, not disposing wastewater directly into the groundwater table, located in suitable soil, and meeting all distance requirements of Table II, the installation of a septic tank before the cesspool shall temporarily meet this upgrade requirement until such time that the director determines a new wastewater system is required.]

[(o)] (n) Modifications to wastewater systems that may affect the quality [and] or quantity of the wastewater and wastewater sludge shall meet the applicable provisions of this [rule] chapter.

[(p)] (o) Actions [of] taken by the director to evaluate and determine possible [engaged in the evaluation and determination of] measures [required]to [effect] achieve compliance with this chapter [shall in no way be taken as a] do not guarantee that [the] an approved wastewater [systems approved] system will function [in a satisfactory] satisfactorily [manner] for any [given] period of time, or mean that [the] department employees [assume any] are [liability]

liable for any damages, consequential or direct, that [which] are or may be caused[, or which may be caused,] by a malfunction of the wastewater systems. [(q)] (p) Duty to comply. The owners of any wastewater system shall comply with all applicable provisions of this chapter. In addition, all [permittees] owners shall comply with all conditions of any [permit] department approval for use issued under this chapter. Any noncompliance constitutes a violation and is grounds for: enforcement action; [for permit] department approval for use termination, revocation and reissuance, or modification; or denial of a [permit] department approval for use renewal application.

[(r)](q) In cases where the director is required to conduct an inspection at a location outside the State, the owner of the wastewater system shall be required to cover all costs related to the inspection. [Eff 12/10/88; am 8/30/91; am and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 322-8(a), 342D-4, 342D-5, 342D-15, 342E-3) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50, 342E-3; HRS chs. 340E; 33 U.S.C. §§1311, 1342, 1345; 40 CFR Parts 122, 123, 40 CFR §501.15(b)(6))

§11-62-07 REPEALED [R 8/30/91]

§11-62-07.1 Requirements for non-domestic wastewater. (a) The director will review the use and disposal of non-domestic wastewater on a case-by-case basis.

(b) Non-domestic wastewater includes, but is not limited to:

- (1) Wastewater from agricultural, commercial, or industrial activities or operations;
- (2) Solids, semi-solids, or liquids removed from the non-domestic wastewater;
- (3) Wastewater that contains a mix of both domestic and non-domestic wastewater; or

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(4) Solids, semi-solids, or liquids removed from wastewater that contains a mix of both domestic and non-domestic wastewater.

(c) Buildings and operations generating non-domestic wastewater, including farms, shall meet the specific requirements of this chapter as determined to be applicable by the director.

(1) Wherever applicable, the director shall use the requirements for non-domestic wastewater as set forth by the EPA, Chapter 11-23, the Department's Guidelines for the Treatment and Reuse of Recycled Water, and wherever applicable, Department's Guidelines for Livestock Waste Management. The Guidelines are available on-line at the Wastewater Branch section of the department's website. Construction plans and engineering reports for proposed non-domestic wastewater systems shall be sufficient in scope and depth for determining compliance with the provisions of this chapter.

(2) Any building or facility which is located within the state agricultural land use district, county agricultural zoned districts, or conservation districts may be exempt from the provisions of subchapters 2 and 3 for its non-domestic wastewater provided that the buildings or facilities are essential to the operation of an agricultural enterprise or consistent with the conservation district use intent. The owner shall submit for the director's approval plans or engineering reports, or both, for the wastewater systems proposed to accommodate the wastewater generated from any building or facility in this category. Information submitted shall be sufficient in scope and depth for determining the adequacy of performance of the wastewater system in meeting the provisions of this chapter.

[(e)](d) [The director in] In determining treatment requirements for the non-domestic wastewater, the director shall use requirements for

non-domestic wastewater as set forth by EPA, [40 CFR 257, subchapter 4,] Chapter 11-23, the [Reuse Guidelines] Department's Guidelines for the Treatment and Reuse of Recycled Water and the [Animal Waste Guidelines] Department's Guidelines for Livestock Waste Management. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 322-8(a), 342E-3) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342E-3)

§11-62-08 Other requirements for wastewater systems. (a) Purpose.

- (1) It is the purpose of this section and subchapters 2, 3, and 4 to set forth minimum requirements for the following purposes:
 - (A) To clarify responsibilities of owners, engineers, and the department;
 - (B) To set minimum distance requirements so that nuisances are avoided;
 - (C) To set minimum requirements to protect public health, safety, and welfare, and to protect the wastewater systems from malicious damage or unauthorized entry; and
 - (D) To emphasize the need for proper design, installation, operation, and maintenance.
- (2) This section and subchapters 2, 3, and 4 give the engineer designing the wastewater system flexibility and design responsibility. The design engineer is responsible for the choice of equipment, types of treatment processes used, structural integrity, electrical components, disposal system designs, adequate work space, accessibility for operation, maintenance and repair, redundancy of major equipment and processes, corrosion control, and all other major aspects of wastewater system design.
- (3) Nothing in this chapter shall be construed to prevent the engineer from exceeding the minimum requirements if the engineer

determines that specific conditions warrant such additional measures.

(b) No person shall construct [or], modify the construction of, or modify the use of a wastewater system without the approval of the director. The following documents shall be submitted to the director prior to such approval:

- (1) Construction plans prepared by or under the supervision of an engineer indicating the following:
 - (A) Acreage, address, and tax map key number(s) of the project site;
 - (B) Plot plan drawn to scale showing the location of the proposed and any existing wastewater system and its distances from existing and proposed buildings, structures, legal boundaries, property lines, adjacent surface bodies of water, drinking water sources, and existing public sewers within 2,000 feet of the nearest property line; and
 - (C) Sufficient details to show compliance with all applicable requirements of this chapter.
- (2) Construction plans for an individual wastewater system prepared by the engineer [shall show] showing sufficient details to enable the contractor to construct the individual wastewater system.
- (3) Wastewater sludge use and disposal plan indicating how the wastewater sludge facility will comply with subchapter 4.

(c) Whenever applicable, the design flow of any development to be served by a wastewater system shall be based on Appendix D, Table I, dated July 1, 2014, except as provided by section 11-62-24(b).

(d) Measures to control public accessibility to all treatment units shall be provided to prevent accidents, drownings, vandalism, and interference with the treatment process. At a minimum, the provisions shall include:

- (1) Fencing or other secured enclosures at least six feet in height with no more than three

and a half inch clear openings or spaces for treatment units with exposed water surfaces or equipment; or

- (2) Completely enclosed treatment units with unexposed water surfaces and equipment. Access openings to completely enclosed treatment unit(s) and equipment shall be secured and properly identified, and be large enough to allow removal of equipment from the facility.

(e) No person shall use the area adjacent to or directly above any wastewater system for purposes or activities which may hinder or interfere with the operation and maintenance, modification, or replacement of the wastewater system.

(f) No person shall operate a wastewater system unless that person or the owner of the wastewater system is authorized by the director in accordance with the applicable provisions of sections 11-62-23.1(e) and 11-62-31.1(f) and the applicable provisions of chapter 11-61. The director may inspect the wastewater system or its site at any time before authorizing the use of the system and may require advance notice of the engineer's inspection.

(g) All wastewater systems shall be constructed or modified by a person meeting the requirements of [section] chapter 444, HRS, and any pertinent rules [promulgated] adopted by the department of commerce and consumer affairs, State of Hawaii. [Eff 8/30/91; am and comp 12/09/04; am and comp]
(Auth: HRS §§321-11, 342D-4, 342D-5, 342E-3) (Imp: §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50, 342E-3)

§11-62-09 Public access to information. (a)
The following information is available for public inspection:

- (1) The name and address of any person seeking or obtaining registration, an individual permit, or [general permit coverage;] department approval for use of an individual wastewater system; and
- (2) Registration information and forms, registrations, individual permit

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applications and permits, [notices of intent to be covered by a general permit, general permit coverage notices,] department approval for use of an individual wastewater system, sludge and effluent data, and reports required to be submitted under this chapter. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

(b) This section is not intended to limit chapter 92F, HRS, or any other law requiring the disclosure of information.

(c) Applications for request for public information regarding wastewater system shall be made in writing on forms furnished by the director. At a minimum, the application shall identify where the wastewater system is, including when possible the applicable street address to and tax map key of the lot, and a mailing address which the information is to be sent. [Eff and comp 12/09/04; am and comp](Auth: HRS §§91-2, 92-21, 342D-4, 342D-5, 342D-14) (Imp: HRS §§91-2, 92-21, 342D-2, 342D-4, 342D-5, 342D-6, 342D-14, 342D-55)

§11-62-10 Public hearings and informational meetings. (a) The director may hold a public hearing in the director's discretion, when such a hearing may help the director's decision on a matter regulated by this chapter or for another reason which the director considers to be in the public interest.

(b) The director may hold a public informational meeting when the director considers it to be in the public interest. [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-57; 40 CFR Part 501, §501.15(d)(7))

§11-62-11 Incorporation by reference. Appendices A through [F] E, dated [April 15, 1997,] July 1, 2014, [and form A] located at the end of this chapter, [is] are made a part of this chapter. [Eff

and comp 12/09/04; am and comp]
(Auth: 342D-4, 342D-5) (Imp: 342D-4, 342D-5, 342D-6)

§11-62-12 Timely processing. (a) [The] This section applies to applications for a permit, license, certificate, or any form of approval required under this chapter.

(b) The director shall approve, approve with conditions, or deny a complete application and notify the applicant accordingly within one hundred eighty days of the receipt of the complete application. Otherwise, the application is deemed automatically approved on the one hundred eighty-first day.

(c) The director shall determine and notify an applicant of the completeness or deficiency of an application covered by this section, including payment of required fees, within forty-five days of receipt of the application. Failure by the applicant to provide additional information, pay the fees, or correct a deficiency for completeness of the application is sufficient ground to suspend or terminate a review of the application. The director shall determine and notify an applicant of the completeness of a revised application covered by this section, including payment of required fees, within thirty days of receipt of the revised completed application.

(d) Notice to the applicant shall be complete upon mailing, facsimile transmission, or electronic mail transmission.

(e) The period for the director's action includes all calendar days, but if the period ends on a Saturday, Sunday, or state holiday, the period extends to the next working day.

(f) The one hundred eighty day period for the director's action under subsection (b) applies to the director's initial decision and notice. The initial decision and notice do not become untimely if later there is a request for hearing, an actual hearing, a lawsuit, or other challenges to the initial decision which prevents it from becoming final.

(g) The time for the director's action and notice to the applicant shall be extended when allowed by section 91-13.5, HRS.

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(h) Any action taken and any wastewater system or sludge facility built, modified, or operated under an automatic approval shall comply with all applicable requirements of this chapter, and the automatic approval is effective for a period of one year. [Eff 10/21/00; comp 12/09/04; am and com]
(Auth: HRS §§91-13.5, 322-11, 322-8(a), 342D-4, 342D-5) (Imp: HRS §91-13.5)

SUBCHAPTER 2

WASTEWATER TREATMENT WORKS

§11-62-21 REPEALED [R 8/30/91]

§11-62-22 REPEALED [R 8/30/91]

§11-62-23 REPEALED [R 8/30/91]

§11-62-23.1 Specific requirements for wastewater treatment works. (a) In addition to the requirements of section 11-62-08(b), the following documents shall be submitted to the director prior to approval to construct the treatment works:

- (1) A written declaration signed and dated by the engineer that the proposed treatment works was designed to meet all applicable effluent requirements of sections 11-62-26 and 11-62-27; and
- (2) Certification by the owner of a proposed treatment works that the treatment works shall be operated and maintained in accordance with all of the provisions of the operation and maintenance manual developed pursuant to subsection (d)(2). The owner shall certify that the operation and maintenance manual shall be available to the operator of the treatment works and shall further certify that, upon sale or transfer

of ownership of the treatment works, the sale or transfer will include construction drawings, equipment manuals, operational data collected, and the appropriate transfer documents and provisions binding the new owner to the operation and maintenance manual.

(b) All treatment works shall be provided with a continuous effluent flow measuring device such that daily wastewater flow can be determined. For treatment works with design flows equal to or greater than 100,000 gallons per day, the continuous effluent flow measuring device shall include recording equipment to totalize or chart daily flows.

(c) Unless otherwise specified by the director, the following distance requirements apply to all treatment works:

- (1) Treatment units, except as provided in paragraph (3), shall not be less than twenty-five feet from any property lines nor less than ten feet from any building and swimming pools;
- (2) Disposal systems, excluding effluent irrigation systems, shall not be less than five feet from a property line nor less than five feet from any building; and
- (3) Completely enclosed, locked, and ventilated equipment rooms used to house items such as blowers, motors, pumps, electrical controls, and chemical feeders shall not be less than five feet from property lines or less than ten feet from dwelling unit(s).

(d) No person shall operate a treatment works unless the following documents are provided:

(1) A written declaration signed and dated by the engineer responsible for the preparation of the operation and maintenance manual for the treatment works, that the operation and maintenance manual meets paragraph (2) and that if the treatment works is operated in accordance with the manual, all applicable effluent requirements will be met; and

- (2) An operation and maintenance manual prepared by the engineer. The manual [shall], as a

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minimum, shall provide the details on the following:

- (A) Operation and maintenance instructions for each pump station and treatment unit or process under normal and emergency conditions such as power outage and equipment malfunction;
- (B) Operation and maintenance instructions for the disposal system including procedures for purging or chemical "shock loading" to prevent or eliminate biological growth in the subsurface disposal system;
- (C) List of required sampling frequencies and analyses to be conducted by the operator;
- (D) Troubleshooting, corrective, and preventive measures to be taken to maintain process control and treatment performance;
- (E) Start-up procedures;
- (F) Applicable state effluent requirements;
- (G) Instructions on wasting and disposal of wastewater sludge;
- (H) Manpower requirements needed to operate and maintain the treatment works;
- (I) List of critical parts of the treatment works;
- (J) "As-built" drawings of the treatment works;
- (K) List of required daily activities, checks, and observations;
- (L) Logs or report forms for all operation and maintenance activities performed;
- (M) Flow schematic diagrams with details of piping and valving;
- (N) Plot plan of the treatment works and project site including all collection lines and equipment;
- (O) Details on all safety equipment at the treatment works site, any applicable spare parts, maintenance, and operation instructions; and

- (P) Details on all monitoring equipment including spare parts, maintenance, and operating instructions.
- (e) No person shall operate a treatment works until it has been inspected to the director's satisfaction and the director has authorized in writing the use of the treatment works.
 - (1) The owner's engineer shall inspect the treatment works and submit to the director a final inspection report stating whether the wastewater treatment works has been constructed according to the submitted plans approved by the director and identifying any discrepancies and their resolutions. Any discrepancy between the constructed treatment works and the approved plans is sufficient reason to withhold approval to operate the treatment works.
 - (2) Before operation of the treatment works, the owner shall resolve all discrepancies.
 - (3) Any changes to the approved plan shall be resubmitted to the director for approval before the final inspection.
 - (4) The inspection shall not be considered final until the constructed treatment works conforms to the approved plans.
- (f) After the first year of operation, the [owner of the treatment works] owner's engineer shall submit to the director a written statement based on results of actual sampling and [the] professional judgment of [the owner's engineer] whether or not the treatment works is meeting and at the design flow will meet the applicable effluent requirements of sections 11-62-26 and 11-62-27. If the treatment works is not meeting the applicable effluent requirements, the [owner] owner's engineer shall submit to the director a corrective action report containing:
 - (1) An analysis of the cause of the treatment works' failure to meet the effluent requirements and an estimate of the scope of the corrective action necessary to enable the treatment works to be in compliance;
 - (2) A schedule for undertaking the corrective actions; and

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(3) A date by which the treatment works shall be in compliance with the applicable effluent requirements.

(g) Treatment works shall be designed with safety in mind and comply with appropriate provisions of the Occupational Safety and Health Standards of the State of Hawaii, Department of Labor and Industrial Relations.

(h) Upon abandoning, retiring, or permanently discontinuing use of a treatment works, the owner shall render it safe by removing it or filling it completely with earth, sand, gravel, or similar non-organic matter. All above ground portions of the treatment works shall be rendered safe and vector free. Electrical components shall be disconnected at the circuit breaker or source and all access openings sealed. Injection wells shall be abandoned in accordance with chapter 11-23.

(i) For public wastewater treatment works, a facility plan shall be initiated when the actual wastewater flow reaches 75 per cent of the design capacity of the wastewater treatment works. Implementation of the recommendation of the facility plan shall be initiated when the actual wastewater flow reaches 90 per cent of the design capacity of the wastewater treatment works.

(j) [Standby] The owner or operator shall provide standby power for all lift stations to prevent unauthorized discharges of wastewater during a primary power outage.

(k) For all treatment works which produce recycled water, the director shall be guided by the requirements of subchapter 1, other applicable sections of this subchapter, and the Reuse Guidelines for all decisions on production of recycled water.
[Eff 8/30/91; am and comp 12/09/04; am and comp
] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

§11-62-24 Treatment unit requirements. (a) For private wastewater treatment works of required design capacities of less than 100,000 gallons per day:

- (1) For sludge digesters or aerated sludge holding tanks constructed after December 10, 1988, the sludge digesters or aerated sludge holding tanks shall treat and store at least the amount of sludge generated over a twenty day period;
- (2) Except for subsurface disposal systems, continuous disinfection of the treated effluent shall be provided for treatment works unless otherwise approved or ordered by the director;
- (3) For aeration tanks constructed after December 10, 1988, the aeration tank loading shall not exceed 12.5 pounds of BOD₅ per 1,000 cubic feet. For the sequencing batch reactor process, food to microorganism (F/M) ratios shall be between 0.05 and 0.10;
- (4) For final settling tanks constructed after December 10, 1988, the detention time for final settling tanks shall not be less than four hours and the surface overflow rate shall not exceed 300 gallons per day per square foot based on the average daily flow;
- (5) For treatment works constructed after December 10, 1988, flow equalization shall be provided unless the engineer submits written justification that changes in normal daily flow rate or seasonal occupancy rates shall not affect the treatment unit's ability to meet continuous compliance with the effluent requirements of sections 11-62-25, 11-62-26, and 11-62-27;
- (6) For treatment works constructed after December 10, 1988, easy access shall be provided for operators to allow necessary operation, maintenance, and repair. Completely enclosed treatment units with unexposed water surfaces and equipment shall not be allowed unless the design engineer can satisfy the director that provisions have been included to eliminate confined space work areas and to allow accessibility for necessary operation, maintenance, and repair, and replacement; and

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- (7) For all treatment units utilizing gas chlorination for disinfection, the following equipment shall be provided: chlorine gas leak detector and alarm, self contained breathing apparatus, chlorine gas mask, warning signs, and an emergency eyewash and shower.

(b) New and proposed private wastewater treatment works of required design capacity greater than or equal to 100,000 gallons per day and new and proposed county wastewater treatment works shall comply with the design standards of their respective counties. If a county does not have wastewater treatment works design standards, then the design standards of the City and County of Honolulu shall be used.

(c) Private wastewater treatment works with design flows greater than or equal to 100,000 gallons shall have solids dewatering equipment included in the facility design. [Eff 12/10/88, am 8/30/91; am and comp 12/09/04; am and comp](Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

§11-62-25 Wastewater effluent disposal systems.

(a) New and proposed [subsurface] effluent disposal systems.

- (1) [Subsurface] Effluent disposal systems shall at least consist of a primary disposal component and a separate 100 per cent back-up disposal component.
- (2) The primary disposal component and the back-up disposal component shall each be designed to handle the peak flow. The peak flow shall be determined in accordance with the design standards of their respective county. If a county does not have design standards, the design standards of the City and County of Honolulu shall be used. Other means of determining the peak flow, as recommended by the design engineer, may be approved by the director.

(3) Each disposal component shall be tested to accommodate the wastewater flow as required in paragraph (2).

(b) For treatment works utilizing subsurface disposal systems, [other than subsurface disposal systems] design data and other pertinent data shall be submitted to and approved by the director on a case-by-case basis. Decisions by the director shall be guided by subchapter 1 and other applicable sections of this subchapter.

(c) All wastewater effluent disposal systems shall include provisions to facilitate operation, maintenance, and inspection.

(d) All wastewater subsurface effluent disposal systems and injection wells shall include provisions for purging and chemical "shock loading". [Eff 12/10/88, am 8/30/91; am and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

§11-62-26 Wastewater effluent requirements, recycled water quality, [and] monitoring, and reporting requirements applicable to treatment works treating domestic wastewater. (a) All treatment works shall meet the applicable requirements of this section. Nothing in this section shall be construed to prevent the engineer from applying more stringent requirements if the engineer determines that the particular design and circumstances for which the engineer is responsible warrants the more stringent requirements.

(b) Treatment works' effluent and other parameters shall be monitored as follows and shall not exceed the following limits:

(1) Biochemical oxygen demand (BOD₅).

(A) For wastewater treatment works excluding wastewater pond systems with [design] average daily flows greater than or equal to 100,000 gallons per day, the owner or operator shall perform composite sampling at least weekly.

- (B) For wastewater treatment works with [design] average daily flows less than 100,000 gallons per day, the owner or operator shall perform grab sampling at least monthly.
- (C) For wastewater pond systems with average daily flows greater than or equal to 100,000 gallons per day, the owner or operator shall perform grab sampling at least weekly.
- ~~[(C)]~~(D) The BOD₅ in the effluent from a treatment works shall not exceed 30 milligrams per liter based on the [arithmetic] monthly average of the results of the analyses of composite samples.
- ~~[(D)]~~(E) The BOD₅ in the effluent from a treatment works shall not exceed 60 milligrams per liter based on a grab sample.
- (2) Suspended solids.
 - (A) For wastewater treatment works, except for wastewater pond systems, with [design] average daily flows greater than or equal to 100,000 gallons per day, the owner or operator shall perform composite sampling at least weekly.
 - (B) For wastewater treatment works with [design] average daily flows less than 100,000 gallons per day, the owner or operator shall perform grab sampling at least monthly.
 - (C) For wastewater pond systems with average daily flows greater than or equal to 100,000 gallons per day, the owner or operator shall perform grab sampling at least weekly.
 - ~~[(C)]~~(D) The suspended solids in the effluent from a treatment works shall not exceed 30 milligrams per liter based on the [arithmetic] monthly average of the results of the analyses of composite samples.

- [(D)](E) The suspended solids in the effluent from a treatment works shall not exceed 60 milligrams per liter based on a grab sample.
- (3) Owners or authorized agents shall submit suspended solids and BOD₅ lab data to the director no later than thirty days after the last day of June and December, unless the data is already being submitted to the Department under an NPDES permit by a public agency.
- [(3)](4) The dissolved oxygen, pH, and 30 minutes settleability of the contents of the aeration tank shall be sampled and analyzed at least weekly.
- [(4)](5) Effluent chlorine residual, if any, shall be sampled and analyzed at least weekly.
- [(5)](6) Total daily flow shall be monitored at least weekly.
- [(6)](7) The volume of wastewater sludge wasted, the solids concentration of wastewater sludge wasted, the name of the wastewater sludge pumping and hauling firm, and the dates of pumping and hauling, if applicable, shall be recorded.
- (8) The operator shall maintain a log book or records which shall include but not be limited to: the date and time of operator entry, operating conditions, process control testing performed, and any servicing or preventative maintenance done while at the wastewater treatment works.
- [(7)](9) Alternative effluent limitations as permitted by EPA regulations, (40 CFR 125 and 40 CFR 133), relating to the definition of secondary treatment or other industrial categories, may be utilized by the director.
- [(8)](10) For the purposes of this section, the arithmetic average of the results of the analyses of composite samples shall be based upon one or more analyses made within a 30 consecutive calendar day period. The

arithmetic average shall be the sum of the results of all analyses divided by the number of analyses made during the 30 consecutive calendar day period.

[(9)](11) For the purposes of this section, composite samples shall consist of at least eight sample aliquots, collected at periodic intervals during the operating hours of the facility over a 24-hour period. The composite sample must be flow proportional; either the time interval between each aliquot or the volume of each aliquot must be proportional to either the stream flow at the time of sampling or the total stream flow since the collection of the previous aliquot. Aliquots may be collected manually or automatically.

(c) In addition to subsection (b), treatment works producing R-1 water or R-2 water for recycled water systems shall provide continuous disinfection of the effluent as specified below unless otherwise specified by the director.

- (1) R-1 water disinfection requirements.
 - (A) For chlorine disinfection process. The disinfection process shall [provides] provide a CT (the product of total chlorine residual and modal contact time measured at the same point) value of not less than 450 milligrams-minutes per liter at all times with a modal contact time of at least ninety minutes based on peak dry weather design flow; or
 - (B) For non-chlorine disinfection processes. The disinfection process shall demonstrate to the director's satisfaction [that] the inactivation and removal of 99.999 per cent of the plaque forming units of F-specific bacteriophage MS2 or polio virus in the wastewater.
- (2) R-2 water disinfection requirements.
 - (A) For chlorine disinfection processes.

- (i) A theoretical contact time of fifteen minutes or more and an actual modal time of ten minutes or more throughout which the chlorine residual is 0.5 milligrams per liter or greater; and
 - (ii) Automatic [control of chlorine dosage and automatic] continuous measuring and recording of chlorine residual shall be provided. The chlorine facilities shall have adequate capacity to maintain a residual of 2 milligrams per liter.
- (B) For non-chlorine disinfection processes.
- (i) The disinfection process shall demonstrate to the director's satisfaction the ability to meet the requirements of [paragraph] subsection (d)(2); and
 - (ii) Automatic controls shall be provided to continuously measure and record disinfection dosage and residuals, if any.
- (3) Monitoring shall be by grab samples that shall be taken at a point following disinfection.
- (d) In addition to [subsection] subsections (b) and (c), treatment works producing R-1 water or R-2 water for recycled water systems shall meet the following daily fecal coliform requirements unless other sampling frequencies are approved by the director. Monitoring shall be by grab samples that shall be taken at a point following disinfection.
- (1) R-1 water.
 - (A) The median density measured in the disinfected effluent shall not exceed 2.2/100 milliliters using the bacteriological results of the last seven days for which analyses have been completed;

- (B) The density shall not exceed 23/100 milliliters in more than one sample in any thirty day period; and
 - (C) The density in any one sample shall not exceed 200/100 milliliters.
- (2) R-2 water.
- (A) The median density as measured in the disinfected effluent shall not exceed 23/100 milliliters using the bacteriological results of the last seven days for which analyses have been completed; and
 - (B) The density of shall not exceed 200/100 milliliters in more than one sample in any thirty day period.

(e) In addition to subsections (b) through (d), treatment works producing R-1 water for recycled water systems shall provide continuous turbidity monitoring and recording prior to the filtration process and at a point after the filters and before application of the disinfectant. [For granular media filtration units, the effluent turbidity shall not exceed 2.0 nephelometric turbidity units (NTUs). For membrane filtration units, the effluent turbidity limitations shall be determined by the director on a case by case basis.] The R-1 water shall meet the following turbidity limits:

- (1) For filtration systems utilizing sand or granular media, cloth, or other synthetic media, the turbidity shall not exceed any of the following:
 - (A) An average of two nephelometric turbidity units (NTU) within a twenty-four hour period;
 - (B) 5 NTU more than five percent of the time within a twenty-four hour period; and
 - (C) 10 NTU at any time.
- (2) For filtration systems utilizing membrane filtration, the turbidity shall not exceed any of the following:
 - (A) 0.2 NTU more than five percent of the time within a twenty-four hour period; and

(B) 0.5 NTU at any time.

(f) When using media filtration for existing R-1 facilities the following performance criteria shall apply:

(1) The design UV dose shall be at least 100 mJ/cm² under maximum daily flow; and

(2) The filtered UV transmittance shall be 55 percent or greater at 254 nanometers (nm).

(g) When using membrane filtration for existing R-1 facilities, the following performance criteria shall apply:

(1) The design UV dose shall be at least 80 mJ/cm² under maximum daily flow; and

(2) The filtered effluent UV transmittance shall be 65 percent or greater at 254 nm.

(h) The minimum acceptable design requirements and commissioning of new UV disinfection systems shall comply with the Ultraviolet Disinfection Guidelines for Drinking Water and Water Reuse, Third Edition, 2003, published by the National Water Research Institute.

~~[(f)]~~(g) The analysis, including the handling and preservation of samples, to determine compliance with effluent requirements shall be performed in accordance with Standard Methods or EPA's Methods for Chemical Analysis of Water and Wastes. The director may approve alternative methods for analyzing the effluent limits of this section. The alternative test methods, when approved, may be used by the director to determine compliance with effluent limits as stated in this rule. [Eff 12/10/88, am 8/30/91; am and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

§11-62-27 Recycled water systems. (a) No recycled water system shall be constructed, used, or modified without written approval by the director.

(b) In reviewing recycled water systems and in addition to [the these rules] this chapter, the director shall be guided by the Reuse Guidelines.

(c) Before using recycled water, the owner of the recycled water system shall submit to the director the following information:

- (1) Name, address, and phone number of the owner and party responsible for the application of recycled water at the site (if different from the owner);
- (2) Clear identification of the people who will actually operate and maintain the system, if different from paragraph (1);
- (3) Detailed site information on the water recycling application site and its surroundings, including site name, address, and tax map key number(s), a map indicating specific areas of use, areas of public access, surrounding land use, location of all wells within a one-fourth mile radius, description of nearest housing or public area, setbacks, general location of existing and proposed water and sewer lines, the direction of drainage with a description of how the drainage will flow, and the depth to groundwater underlying the irrigated area with a description of the ground water quality; and
- (4) Information sufficient to show compliance with the requirements of subsection (h), and identification of best management practices.

(d) Before using recycled water, the owner of the recycled water system shall also submit to the director for approval an engineering report or recycled water application. The report or application form shall include the following information and shall clearly identify all best management practices to be implemented:

- (1) An irrigation use plan that includes information on application rates, intended uses, and schedules for recycled water use. The irrigation use plan shall also include information on types of vegetation, types and methods of irrigation, proposed irrigation schedules, vegetative consumption rates, water balance calculations, nutrient

- balance calculations, and the corresponding acreage to be used for irrigation;
- (2) An overflow control plan that includes detailed best management practices to control or minimize runoff or ponding or recycled water;
 - (3) A management plan that includes establishment and delineation of the responsibilities of operation and maintenance of the recycled water system;
 - (4) A public information and access plan, to minimize public contact with the recycled water, that includes methods to adequately inform the public that recycled water is being used[,] and that the recycled water is unfit for human consumption; and methods to control public access to the recycled water system and areas of recycled water use;
 - (5) A labeling plan to distinguish piping and appurtenances which carry or contain recycled water from those for potable water;
 - (6) An employee training plan (if applicable) that describes the training that the employees will receive to ensure compliance with [these rules] this chapter and any other features specified by the director;
 - (7) A vector control plan (if applicable); and
 - (8) A groundwater monitoring plan (if applicable), including formulation of a strategy for the observation and surveillance of groundwater for possible sources of pollution.

(e) For existing users of recycled water, the owner of the recycled water system shall submit the information and plans required in subsections (c) and (d), except for the information contained in subsection (d)(1) regarding the vegetative consumption rates and water balance, and subsection (d)(8) regarding groundwater monitoring. For users of non R-1 recycled water spray irrigation systems, the owner shall also describe the methods and controls used to ensure that public contact with aerosols are minimized.

(f) For new users of recycled water obtaining access to an existing recycle water system, the user shall submit the information and plans required in subsections (c) and (d), except for the information contained in (d)(1) regarding vegetative consumption rates and water balance, and subsection (d)(8) regarding groundwater monitoring. For users of non R-1 recycled water spray irrigations systems, the owner shall also describe the methods and controls used to ensure that public contact with aerosols are minimized.

~~[(f)]~~(g) For recycled distribution water systems, the owner of the recycled water distribution system shall submit an engineering report or recycled water application containing the following information:

- (1) Name, address, and phone number of the owner and party responsible for the recycled water distribution system (if different from the owner);
- (2) Information about the treatment works supplying the recycled water, including the name, address, tax map key number, and owner's name;
- (3) Maps showing the location of the distribution system layout. The maps shall also include the location of all water and sewer lines;
- (4) A labeling plan to distinguish piping and appurtenances which carry or contain recycled water from those for potable water; and
- (5) A description of how the distribution system complies with [these rules] this chapter and the Reuse Guidelines.

~~[(g)]~~ (h) The engineering report or application required in subsection (d), (e), [or] (f), or (g) plus any other submittals shall contain sufficient information to assure the director that the degree of treatment and reliability is commensurate with the proposed use, that the distribution and use of the recycled water will not create a health hazard or nuisance, and that the director is able to make

decisions in accordance with subsection (b).

[(h)](i) For recycled water systems that use recycled water, the owner of the recycled water system shall operate the system in accordance with the requirements of this chapter and to the maximum extent practicable shall:

- (1) Irrigate at a rate not greater than the plants use it;
- (2) Minimize recycled water runoff and ponding on the ground;
- (3) Post signs or other devices warning the public not to drink, swim, or otherwise come into contact with the recycled water;
- (4) Keep the public away from the areas being irrigated with recycled water;
- (5) Clearly mark pipes, tanks, valves, and equipment used in recycled water use systems such that they are easily differentiated from potable water systems;
- (6) Provide training to employees such that they are aware of [these rules] this chapter and any conditions the director imposed on the recycled water use system;
- (7) Provide control measures to minimize vector nuisances; and
- (8) Monitor groundwater as required by the director.

[(i)](j) The owners of new, proposed, or modified recycled water systems, where applicable, shall provide adequate storage basin(s) or a backup disposal system to prevent any overflows or discharges from the system when the irrigation system is not in operation or when recycled water quantities exceed the irrigation requirements.

[(j)](k) Spills, overflows, and discharges ("spills") of recycled water shall be responded to as required by section 11-62-06[(g) and (h)] (f) and (g) and [appendix C] Appendix B, entitled Responses for Wastewater Spills, Overflows, and Discharges ("Spills"), dated [April 15, 1997.] July 1, 2014.

[(k)](l) For recycled water systems, the owner or the owner's duly authorized agent [shall], unless

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otherwise directed, shall report the following information to the director:

- (1) The volume of recycled water used, the volume of recycled water stored, the volume and location of any recycled water spills, and details on the irrigated areas, including water budgets, precipitation, evaporation, application rates, and monitoring of best management practices; and
- (2) Reported information shall be submitted by February 19 of each year and shall be in a monthly summary format for the preceding calendar year unless otherwise specified or agreed to by the director. [Eff and comp 12/09/04; am and comp]
(Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1311, 1342; 40 CFR Parts 122, 123)

Historical note: §11-62-27 is based substantially upon §11-62-25(b)(1), (b)(2), and (c). [Eff 12/10/88; am and comp 8/30/91]

§11-62-28 Additional monitoring, recordkeeping, and reporting. (a) The owners of treatment works or the owners' duly authorized agents shall maintain complete records of operation and maintenance, repairs, replacements, and improvements performed or installed at the treatment works.

(b) The monitoring results, reports, and all records required in sections 11-62-26 and 11-26-27, this section, and [appendix C] Appendix B, entitled Responses for Wastewater Spills, Overflows, and Discharges ("Spills"), dated [April 15, 1997,] July 1, 2014, located at the end of this chapter shall be kept on site and available for the director's inspection for at least [five] two years and a copy made available to the director without charge upon the director's request. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-6, 342D-50)

§§11-62-29 (Reserved)

SUBCHAPTER 3

INDIVIDUAL WASTEWATER SYSTEMS

§11-62-31 REPEALED [R 8/30/91]

§11-62-31.1 General requirements for individual wastewater systems. (a) Individual wastewater systems may be used as a temporary on-site means of wastewater disposal in lieu of wastewater treatment works under the following conditions:

- (1) Developments involving dwellings.
 - (A) There shall be 10,000 square feet of land area for each individual wastewater system;
 - (B) Total development of an area shall not exceed fifty single family residential lots or exceed fifty dwelling units except for developments consisting of one dwelling unit per acre or greater;
 - (C) Area of the lot shall not be less than 10,000 square feet, except for lots created and recorded before August 30, 1991. For lots less than 10,000 square feet which were created and recorded before August 30, 1991, only one individual wastewater system shall be allowed.
 - (D) The total wastewater flow into one individual wastewater system shall not exceed one thousand gallons, and one individual wastewater system shall not serve more than five bedrooms, whether they are in one dwelling unit or two.
- (2) Developments involving buildings other than dwellings.

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- (A) There shall be 10,000 square feet of usable land area for each individual wastewater system. Usable land area shall not include the area under buildings;
 - (B) The total wastewater flow of the development shall not exceed 15,000 gallons per day;
 - (C) Area of the lot shall not be less than 10,000 square feet except for lots created and recorded before August 30, 1991. For lots less than 10,000 square feet which were created and recorded before August 30, 1991, only one individual wastewater system shall be allowed; and
 - (D) The total wastewater flow into each individual wastewater system shall not exceed one thousand gallons per day.
- (b) Whenever an individual wastewater system is allowed under subsection (a), the following shall apply:
- (1) The director may allow an individual wastewater system other than a cesspool to be used for two dwelling units which may or may not be located within the same building, provided that:
 - (A) Both of the dwelling units are located on the same single family residential lot; and
 - (B) The individual wastewater system used shall meet the current requirements of this chapter.
 - (2) A building may use more than one individual wastewater system where each individual wastewater system shall connect to a single dwelling unit.
 - (3) For buildings without any dwelling units:
 - (A) More than one individual wastewater system may be used provided that the building is owned by one person; or
 - (B) Upon the director's discretion, buildings may connect to one individual

wastewater system other than a cesspool provided the buildings are located on the same lot and the buildings generate wastewater of similar strength and character[;].

- (4) For buildings, other than dwellings with highly variable wastewater flow rates, such as but not limited to schools, parks, and churches, the individual wastewater system excluding cesspools may exceed a design flow rate of 1000 gallons per day; provided that the density does not exceed 1000 gallons per day per 10,000 square feet of useable land area and the development is owned by one person.

(c) The director may require the installation of dry sewers as a condition of approval of proposed individual wastewater systems where:

- (1) Public sewers exist but are at capacity such that connection is prohibited but remedial actions have been initiated to increase the public sewer capacity;
- (2) Public sewers exist, but the treatment and disposal system is not complete or operational;
- (3) Design of the public sewers has been completed and construction of the public sewers is imminent; or
- (4) Conditions warrant such requirements.

(d) No cesspool shall be used as the wastewater system by any new [public] building. No new cesspools shall be constructed after the effective date of this rule unless they have been approved for construction before the effective date of this rule.

(e) Before the approval of the operation of an individual wastewater system excluding cesspools, the following requirements shall be satisfied:

- (1) An operation and maintenance manual developed pursuant to section 11-62-23.1(d)(2) as applicable shall be submitted and approved by the director; and
- (2) The owner of the individual wastewater system shall certify that the individual

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wastewater system shall be operated and maintained in accordance with all of the provisions of the operation and maintenance manual developed pursuant to paragraph (1). The certification shall include a statement that upon sale or transfer of ownership of the individual wastewater system, the sale or transfer will include the appropriate transfer documents and provisions binding the new owner to the operation and maintenance manual.

(f) No person shall use an individual wastewater system until authorized in writing by the director.

(1) Written approval to use an individual wastewater system shall be issued if:

(A) The owner resolves all discrepancies recorded as a result of any inspections conducted.

(B) The engineer furnishes a final inspection report to the director within thirty days after the completion of the construction which provides the following information:

(i) A certification that the individual wastewater system was constructed and installed in accordance with the approved plans and specifications or that changes made to the approved plans and [specification] specifications are accepted by the engineer; and

(ii) An "as-built" plan of the individual wastewater system; and

(2) The director may inspect the individual wastewater system or its site at any time before approving the system and may require advance notice of the engineer's inspection.

(g) A graywater system shall be designed in accordance with [the following criteria:

(1) Design of graywater systems for dwelling units shall be based on a minimum graywater flow of 150 gallons per day per bedroom. The design flow of graywater systems for buildings other than dwellings or from

- specific graywater sources shall be determined on a case-by-case basis;
- (2) Graywater treatment units when required shall be sized with no less than a 600 gallon tank capacity and for graywater tanks shall conform to the requirements of section 11-62-33.1(a);
 - (3) Effluent from a graywater tank may be conveyed to a sand filter, absorption trenches and beds, mounds or seepage pits, or used for subsurface irrigation;
 - (4) Graywater from a residential washing machine may be used for subsurface irrigation; and
 - (5) Graywater use or disposal shall not interfere with the operation of the other parts of the wastewater system or any other individual wastewater systems.] Chapter 3-183.

(h) Each individual wastewater system shall be an independent system and shall have all of its plumbing, treatment (if any), and disposal components separate from any other wastewater system.

(i) Wastewater into an individual wastewater system from buildings other than dwellings shall meet the pretreatment standards and local pollutant limits as set by the respective county. If the county does not have any local pollutant limits, the local limits as set forth by the City and County of Honolulu shall be used.

(j) Certification of a qualified cesspool. A taxpayer seeking a cesspool upgrade, conversion, or connection income tax credit must obtain a certification by the director indicating: that the cesspool location makes it eligible to be a qualified cesspool; that the cesspool upgrade has been completed consistent with this rule and plans prepared by a licensed engineer; and the total dollar amount the taxpayer paid for the cesspool upgrade. The director may issue such certification only where the director has received:

(1) A certification from a licensed contractor or licensed engineer that the cesspool is located within 200 feet of a shoreline, perennial stream, or wetland. Certifications are not required for

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properties that are located in their entirety within 200 feet of a shoreline, perennial stream, or wetland. The director shall certify as qualified all cesspools that are located within a source water assessment area (two year time of travel from a cesspool to a public drinking water source);

(2) Design plans prepared by a licensed engineer for a sewer connection or individual wastewater system that complies with this chapter;

(3) Certification by a licensed contractor of closure and filling of the cesspool and completion of an upgrade, either sewer connection or installation of an individual wastewater system that complies with this chapter; and

(4) A licensed engineer's final construction inspection report with photos and as built plans and certifying that the system was constructed in accordance with design plans and this chapter. The director will review submitted documentation and provide certification to the taxpayer and the Department of Taxation of any qualified cesspool.

(k) Certification of qualified expenses. The director will determine all qualified expenses for the tax credit. The taxpayer seeking a tax credit shall submit to the director all receipts of payments made to engineers and installers for the design, completed installation and final construction inspection for the cesspool upgrade along with the appropriate form as directed by the Department of Taxation. The director will notify the taxpayer and the Department of Taxation of the amount of the tax credit allowed for the tax year by noting the same on the form and affixing the signature of the director or the director's designee thereto.

(1) If the annual amount of the certified credits reaches \$5,000,000 in the aggregate, the director shall immediately discontinue certifying credits for that year and notify the Department of Taxation. Any taxpayer who is not eligible to claim the credit in a taxable year due to the \$5,000,000 cap having been exceeded for that taxable year shall be eligible to claim the credit in the subsequent taxable year, except if the \$5,000,000 cap was exceeded in 2020 and no additional credits are available.

[Eff 8/30/91; am and comp 12/09/04; am and comp
] (Auth: HRS §§321-11, 342D-4,
342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8,
342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

§11-62-31.2 Site evaluation. (a) The site evaluation shall be performed by the engineer.

(b) The site shall be evaluated for depth of permeable soil over seasonal high groundwater, bedrock, or other limiting layer, soil factors, land slope, flooding hazard, and amount of suitable area available.

(c) The minimum depth of the soil profile observation shall be at least five feet. If the engineer performs a preliminary observation at three feet, the engineer shall confirm the soil profile to five feet at the time of construction.

(d) The following factors shall be evaluated and reported for a depth of at least three feet below the proposed absorption system:

- (1) Thickness of layers or horizons;
- (2) Texture of soil layers;
- (3) General color, and color variation (mottling);
- (4) Depth to water, if observed;
- (5) Depth to estimated seasonal high groundwater table;
- (6) Depth to and type of bedrock, if observed; and
- (7) Other prominent features such as structure, stoniness, and roots[, etc].

(e) Percolation tests.

- (1) Soil percolation tests shall be conducted at a minimum depth of three feet. If at the time of construction, the soil profile at five feet is different than at three feet, another percolation test shall be performed at the depth of the bottom of the absorption system;
- (2) Percolation tests shall follow the falling head test procedure in [appendix D,] Appendix C, entitled Falling Head Test Procedure, dated [April 15, 1997,] July 1,

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2014, located at the end of this chapter;
and

- (3) Additional percolation tests may be required to identify the existence of a limiting layer.

(f) The site evaluation information shall be reported on forms developed by the director.

(g) If, during construction the actual site conditions differ from the site conditions upon which the wastewater system was approved, the design engineer shall revise the wastewater plans to reflect the actual site conditions. The plans of the revised wastewater system shall be submitted to the director for approval pursuant to section 11-62-31.1(f). [Eff 8/30/91, am and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50)

§11-62-32 Spacing of individual wastewater systems. No individual wastewater system shall be located at any point having less than the minimum distances indicated in Table II attached to this chapter in [appendix F,] Appendix D, entitled Tables, dated [April 15, 1997] July 1, 2014, and located at the end of this chapter unless otherwise approved by the director. The minimum distances indicated in Table II shall be measured from the outer edge of each item. [Eff 12/10/88, am 8/30/91; am and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

§11-62-33.1 Specific requirements for new and proposed treatment units. (a) Septic tank.

- (1) All wastewater shall discharge into the septic tank. Roof, footing, garage, surface water drainage, cooling water, and graywater disposed of in accordance with section 11-62-31.1(g)(4) shall be excluded.
- (2) Septic tanks shall meet the International Association of Plumbing and Mechanical

Officials (IAPMO) material and property standards for prefabricated septic tanks, IAPMO [PS 1-93.] ANSI Z1000-2013. Septic tanks shall be approved and listed by IAPMO.

- [(3)] Septic tanks which currently meet the requirements of the Ten States Standards and are being distributed in the State shall comply with paragraph (2) within two years after the effective date of this rule.
- (4)](3) Plans for cast-in-place septic tanks shall be submitted with the application for the individual wastewater system. The plans for the septic tank shall be designed and stamped by a licensed structural engineer and shall meet the IAPMO design specifications.
- [(5)](4) The following schedule shall apply to septic tank sizing:

| No. of Bedrooms | Minimum Capacity (Gallons) |
|-----------------|-------------------------------|
| 4 or less | 1000 |
| 5 | 1250 |

- (5) For wastewater flows greater than 1,000 gallons per day or five bedrooms, the formula: Minimum capacity gallons = $1,000 + (Q-800) \times 1.25$, where Q=design flow, shall be used.
- (6) Concrete septic tanks shall be coated to protect the tank from leakage and corrosion by acceptable means. The coating shall cover the entire tank interior.
- (7) Manholes or removable covers to [the]septic tanks shall be [extended to within twelve inches of the finished grade. If the manhole or removable cover is brought to grade, it shall be secured from unwanted entry. If the manhole or removable cover does not extend to the finished grade, a permanent inspection port with a minimum diameter of six inches expanding through the cover shall be brought to the finished grade and fitted with a screw type cap. The inspection port shall be located such that

the downward projection of the inspection port clears the inlet and outlet devices by not less than two inches.] brought to grade. The cover shall be secured to prevent unauthorized entry or opening of the tank.

- (8) When septic tanks are installed in ground water or in clay soils with an expansive nature, the engineer shall design or provide adequate protection to prevent the tank from floating, moving, or crushing.
- (9) The excavation to receive the tank shall be large enough to permit the proper placement of the tank and backfill. Tanks shall be installed on a solid base that will not settle and shall be level. Where rock or other undesirable protruding obstructions are encountered, the bottom of the hole shall be excavated an additional six inches and backfilled with sand, crushed stone, or gravel to the proper grade. Backfill around and over the septic tank shall be placed in such a manner as to prevent undue strain or damage to the tank or connected pipes.
- (10) When a septic tank is installed under a driveway, parking lot, in a heavy saturated soil, or other areas subject to heavy loads, the tank shall be capable of withstanding an H-20 wheel load as defined by the American Association of State Highway Officials.
- (11) Effluent from a septic tank shall be discharged into a soil absorption system, sand filter, subsurface irrigation system as approved by the director, or other treatment unit [permitted] approved for use by the director.
 - (b) Household aerobic units.
 - (1) All wastewater shall discharge into the household aerobic unit. Roof, footing, garage, surface water drainage, and cooling water[, and graywater disposed of in accordance with section 11-62-31.1(g)(4)] shall be excluded.
 - (2) Household aerobic units shall be approved by the director based upon the "Standard No.

- 40" for Class I units as set forth by the National Sanitation Foundation. The performance data shall have been obtained by an agency such as a university or an independent research laboratory acceptable to the director or from the National Sanitation Foundation (NSF) Testing Laboratory, Ann Arbor, Michigan.
- (3) Owners of proposed and existing household aerobic units shall have an active service contract for the proper maintenance of the aerobic unit[.] and its disposal system with a certified operator or factory certified representative, and a copy of an active service contract shall be submitted annually to the department. The contract shall also include pumping service to maintain the household aerobic unit. For proposed household aerobic units, a copy of an executed service contract shall be submitted prior to the final approval of the individual wastewater system.
- (4) As a minimum, the aerobic treatment unit service contract shall include the term of contract period (start and end dates) and the following requirements:
- (A) Inspect all aerobic treatment unit equipment to ensure its proper operation at least every six (6) months;
 - (B) Provide regular maintenance of equipment as required by the manufacturer;
 - (C) Verify the aerobic treatment unit is providing adequate mixing and aeration of the microbes;
 - (D) Measure the depth or volume of sludge in the aerobic treatment unit every six months, and assess whether sludge removal by pumping is necessary. Provide sludge pumping, as needed. If pumping is necessary, record the depth of sludge or percentage of sludge volume in the ATU prior to pumping; and

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- (E) Maintain a log of all service provided.
- [(4)](5) Effluent from an aerobic unit shall be discharged into a soil absorption system, sand filter, subsurface irrigation system as approved by the director, or other treatment unit or disposal system [permitted] approved for use by the director.
- [(5)](6) In areas below (makai of) the Underground Injection Control Line established pursuant to chapter 11-23, where the vertical separation distance from the discharge to the seasonal high groundwater table is less than three feet, a new household aerobic unit may discharge its effluent [directly into the groundwater provided the effluent is disinfected.] into an elevated mound to achieve the vertical separation or drip irrigation system or, with a variance approved by the director and if the effluent is disinfected, to a seepage pit. Where water bearing formations are in danger of contamination, the director may require greater vertical separation.
- (c) Subsurface and recirculating sand filters shall be reviewed on a case-by-case basis by the director. [Eff 8/30/91; am and comp 12/09/04; am and comp]
(Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50)

§11-62-34 Specific requirements for new and proposed disposal systems. (a) Absorption trenches.

- (1) Location.
- (A) Absorption trenches shall be located in accordance with section 11-62-32.
- (B) Absorption trenches shall not be constructed in soils with a percolation rate slower than sixty minutes per inch or where rapid percolation may result in contamination of water-bearing formations or surface waters.

- (C) Absorption trenches shall be located on the property to maximize the vertical separation distance from the bottom of the absorption trench to the seasonal high groundwater level, bedrock, or other limiting layer, but under no circumstance shall the vertical separation be less than three feet. The director may require a greater vertical separation where water-bearing formations are in danger of contamination.
 - (D) Absorption trenches shall not be constructed in unstabilized fill.
- (2) Design.
- (A) The minimum absorption area for any absorption trench system shall be based upon a flow of 200 gallons per bedroom per day and in accordance with Table III located in Appendix [F,] D, entitled Tables, dated [April 15, 1997] July 1, 2014, and located at the end of this chapter.
 - (B) The absorption area shall be computed using the bottom area of the absorption trench.
 - (C) Each absorption trench system shall have a minimum of two trenches.
 - (D) Each distribution line shall be equal in length.
 - (E) The maximum length of any one trench shall be one hundred feet.
 - (F) Absorption trenches shall be at least eighteen inches wide but no more than thirty-six inches wide.
 - (G) The bottom of absorption trenches shall be at least eighteen inches below the finished grade.
 - (H) Gravity fed absorption lines and trenches shall have a slope at the rate of two to four inches per hundred feet.
 - (I) Absorption trenches shall not be installed on land with a slope gradient greater than twelve per cent.

- (J) On rolling or sloping land, each absorption trench shall approximate the land surface contour.
 - (K) A distribution box or header shall be installed between the treatment unit and the absorption trenches.
 - (L) Each distribution line shall connect individually to the distribution box.
 - (M) If a header is used, there shall be an equal number of distribution lines on each side of the influent junction. An inspection port shall be provided on the header and shall be brought to grade and fitted with a screw type cap or cover.
 - (N) If a distribution box is used, a permanent inspection port with a minimum interior diameter of six inches shall be secured to the box cover, brought to the finished grade, and fitted with a screw type cap or cover.
- (3) Materials.
- (A) The engineer shall be responsible for the choice of materials used in the soil absorption system.
 - (B) Pipe used for distribution lines shall meet the appropriate ASTM standard or those of an equivalent testing laboratory. Fittings used in the absorption system shall be compatible with the materials used in the distribution lines.
 - (C) Gravel or crushed stone shall be washed and shall range in size from three-fourths to two and one-half inches.
 - (D) The material used to cover the top of the stone shall be a filter fabric material or equal.
- (4) Construction.
- (A) A distribution box or header shall be set level and arranged so that effluent is evenly distributed to each distribution line. Adequate provisions shall be taken to assure stability and

provide access for inspection of the distribution lines.

- (B) The pipe connecting the distribution box to the distribution line shall be of a tight joint construction laid on undisturbed earth or properly bedded throughout its length.
- (C) If a header is used, it should be made of water-tight construction.
- (D) When the trenches have been excavated, the sides and bottom shall be raked to scarify any smeared soil surfaces. Construction equipment and other materials not needed to construct the system should be kept off the area to be used for the absorption system to prevent undesirable compaction of the soils. Construction shall not be initiated when the soil moisture is high.
- (E) At least six inches of gravel or crushed stone shall be placed in the bottom of the trench.
- (F) The distribution line shall be carefully placed on the bedding at a uniform slope and covered with at least two inches of gravel or stone.
- (G) The ends of the distribution lines shall be capped or plugged.

(b) Deep absorption trenches. Deep absorption trenches may be considered where the depth of suitable soil is insufficient to permit the installation of a conventional trench system due to the presence of a limiting layer more than two feet in depth which overlies suitable soils of sufficient thickness. Requirements for location, design, slope, material, construction, and dosing system design contained in subsection (a) shall apply to deep absorption trenches except for depth of construction. In addition, the following design considerations shall apply:

- (1) The site evaluation procedure shall include soil profile observations of at least three soil observation pits constructed to a minimum depth of three feet below the

- proposed trench bottom. Monitoring to establish depth to seasonal soil saturation or high groundwater may be considered;
- (2) Deep absorption trenches shall be constructed at least one foot into the suitable soil; and
 - (3) The distribution piping in deep absorption trenches shall be installed with the invert of the piping at a depth of not more than thirty inches. Gravel or crushed stone shall be placed from the bottom of the trench excavation to a point two inches above the top of the distribution piping.
- (c) Absorption beds.
- (1) Location.
 - (A) Absorption beds shall be located in accordance with section 11-62-32.
 - (B) Absorption beds shall not be constructed in soils with a percolation rate slower than sixty minutes per inch or where rapid percolation may result in contamination of water-bearing formations or surface waters.
 - (C) Absorption beds shall be located on the property to maximize the vertical separation distance from the bottom of the absorption bed to the seasonal high groundwater level, bedrock, or other limiting layer, but under no circumstance shall the vertical separation be less than three feet. The director may require a greater vertical separation where water-bearing formations are in danger of contamination.
 - (D) Absorption beds shall not be constructed in unstabilized fill.
 - (2) Design.
 - (A) The minimum area for any absorption bed system shall be based upon a flow of 200 gallons per bedroom per day and in accordance with Appendix D, Table III dated [April 15, 1997] July 1, 2014 and located at the end of this chapter.

- (B) The absorption area shall be computed using the bottom area of the absorption bed.
 - (C) Each soil absorption bed system shall have a minimum of two distribution lines.
 - (D) If more than one absorption bed is designed, each absorption bed shall be equal in area.
 - (E) The maximum length of any distribution line shall be one hundred feet.
 - (F) Distribution lines within an absorption bed shall be uniformly spaced no more than six nor less than four feet apart.
 - (G) Distribution lines within an absorption bed shall be placed no more than three feet nor less than eighteen inches from the sidewall of the bed.
 - (H) The bottom of absorption beds shall be at least eighteen inches below the finished grade.
 - (I) Absorption beds shall not be installed on land with a slope gradient greater than eight per cent.
 - (J) A distribution box or header shall be installed between the treatment unit and the absorption bed.
 - (K) Each distribution line shall connect individually to the distribution box.
 - (L) If a header is used, there shall be an equal number of distribution lines on each side of the influent junction. An inspection port shall be provided on the header and shall be brought to grade and fitted with a screw type cap.
 - (M) If a distribution box is used, a permanent inspection port with a minimum interior diameter of six inches shall be secured to the box cover, brought to the finished grade, and fitted with a screw type cap or cover.
- (3) Materials.

- (A) The engineer shall be responsible for the choice of materials used in the soil absorption system.
 - (B) Pipe used for distribution lines shall meet the appropriate ASTM standard or those of an equivalent testing laboratory. Fittings used in the absorption system shall be compatible with the materials used in the distribution lines.
 - (C) Gravel or crushed stone shall be washed and shall range in size from three-fourths to two and one-half inches.
 - (D) The material used to cover the top of the stone shall be a filter fabric material or equal.
- (4) Construction.
- (A) The floor of the absorption bed shall be level.
 - (B) A distribution box or header shall be set level and arranged so that effluent is evenly distributed to each distribution line. Adequate provisions shall be taken to [assure] ensure stability and provide access for inspection of the distribution lines.
 - (C) The pipe connecting the distribution box to the distribution line shall be of a tight joint construction laid on undisturbed earth or properly bedded throughout its length.
 - (D) If a header is used, it should be made of watertight construction.
 - (E) When the beds have been excavated, the sides and bottom shall be raked to scarify any smeared soil surfaces. Construction equipment and other materials not needed to construct the system should be kept off the area to be used for the absorption system to prevent undesirable compaction of the soils. Construction shall not be initiated when the soil moisture is high.

- (F) At least six inches of gravel or crushed stone shall be placed in the bottom of the bed.
 - (G) The distribution line shall be carefully placed on the bedding with no slope and covered with at least two inches of gravel or stone.
 - (H) The ends of the distribution lines shall be capped or plugged.
- (d) Seepage pits.
- (1) Location.
- (A) Seepage pits shall be located in accordance with section 11-62-32.
 - (B) Seepage pits shall not be constructed in soils having a percolation rate slower than ten minutes per inch (weighted average) or where rapid percolation through such soils may result in contamination of water-bearing formations or surface water.
 - (C) The seepage pit shall be located on the lot to maximize the vertical separation distance from the bottom of the seepage pit to the seasonal high groundwater table, bedrock, or other limiting layer. The vertical separation shall not be less than three feet unless otherwise approved by the director and the requirements of section 11-62-33.1(b)(5) are met. Where water-bearing formations are in danger of contamination, greater vertical separation may be required.
- (2) Design.
- (A) Seepage pits shall be used only when one of the following are met:
 - (i) Slope of the finished elevation of the lot is greater than twelve per cent and the use of absorption beds or trenches is not feasible.
 - (ii) The presence of a limiting layer more than seven feet in depth

which overlies suitable soils of sufficient thickness.

- (iii) Insufficient land area exists to install absorption trenches or beds.
- (B) The minimum area in any seepage pit shall be based upon a flow of 200 gallons per bedroom per day and in accordance with Appendix D, Table III dated [April 15, 1997] July 1, 2014 and located at the end of this chapter.
- (C) The surface dimension is measured as the mean distance of the clear opening below the inlet pipe.
- (D) The minimum surface dimension is six feet.
- (E) The effective depth of the seepage pit shall be measured from the bottom of the inlet pipe to the bottom of the pit, with the thickness of strata of soils having percolation rates slower than thirty minutes per inch deducted.
- (F) The minimum effective depth is ten feet and shall be greater than its widest surface dimension.
- (G) The effective area of the seepage pit shall be the vertical wall area of the areas corresponding to the effective depth of the pit excavation. No allowance shall be made for the bottom area.
- (H) When more than one seepage pit is used, a distribution box shall be installed between the treatment unit and all seepage pits. Each seepage pit shall individually connect to the distribution box.
- (I) When more than one seepage pit is used, each pit shall have an equal effective area.
- (J) If a distribution box is used, a permanent inspection port with a

minimum interior diameter of six inches shall be secured to the box cover, brought to the finished grade, and fitted with a screw type cap or cover.

- (3) Construction.
- (A) Seepage pits shall include a sidewall lining constructed of durable material that will permit free passage of wastewater without excessive plugging while still excluding the entry of surrounding soil.
 - (B) Seepage pits shall include a cover which extends at least twelve inches beyond the seepage pit excavation[.], unless a concrete ring is used.
 - (C) The lining and cover of any seepage pit shall be capable of supporting the normal loads imposed. The engineer shall submit written justification for the deletion of any sidewall lining.
 - (D) The distance between the outer diameter of the lining and the excavation diameter shall be at least six inches, but not more than twelve inches. The space between lining and the excavation diameter shall be filled with washed gravel or crushed stone ranging in size from three-fourths to two and one-half inches. The placement of the gravel or stone shall fill the annular space between the pit lining and excavation diameter. Gravel and stone shall not be placed within the seepage pit itself.
 - (E) The watertight cover shall be provided and at least one watertight manhole either round or square, tapered to a minimum of twelve inches in dimension shall be provided in the cover for inspection or for emptying the contents when required.

- (F) The top of the seepage pit shall be within twelve inches of the final grade.
 - (G) If the cover of the seepage pit does not extend to the finished grade, a permanent inspection port with a minimum diameter of [six] twelve inches expanding through and secured to the cover shall be brought to the finished grade and fitted with a screw type cap or cover.
 - (H) The distribution box shall be set level so that the effluent is evenly distributed to each seepage pit.
 - (I) The distribution box shall connect to each seepage pit with pipe of watertight construction at least six inches in diameter, and sloped at least one-eighth inch per foot.
 - (J) The material used to cover the top of the stone or gravel surrounding the lining shall be a filter fabric material or equal.
- (e) Elevated mound system. Elevated mound systems shall be reviewed on a case-by-case basis.
 - (f) Other disposal systems.
 - (1) Soil replacement system.
 - (A) Soil replacement systems shall be used for sites with the following soils layers in the upper soil horizons:
 - (i) Soils with percolation rates less than one minute per inch;
 - (ii) Soils with percolation rates greater than sixty minutes per inch that occur within the upper five feet of the soil and underlain by more permeable soils. Installation guidelines shall comply with the requirements of very high permeability soils of subparagraph (B); or
 - (iii) Fractured lava.

- (B) Trenches may be excavated up to thirty-six inches in width to depths not to exceed five feet below grade nor closer than three feet to seasonal high groundwater level, provided any groundwater mounding induced by wastewater does not rise closer than one foot from the bottom of the excavation and bedrock is at least three feet below the bottom of the excavation.
 - (C) Soil replacement absorption trenches and beds shall follow the applicable provisions of subsections (a), (b), and (c).
- (2) Evapotranspiration systems shall be reviewed on a case-by-case basis by the director. The director shall use the provisions of section 7.3.2 of the October 1980 edition of the EPA Design Manual on Onsite Wastewater Treatment and Disposal Systems as a guide for the review of evapotranspiration systems.
- (3) Gravelless systems.
- (A) Gravelless soil absorption systems may be used as an alternative to soil absorption systems as specified in subsections (a) and (b), except for sections 11-62-34(a)(3)(C), 11-62-34(a)(3)(D), 11-62-34(a)(4)(E), and 11-62-34(a)(4)(F), 11-62-34(c)(2)(F), 11-62-34(c)(2)(G), 11-62-34(c)(3)(C), 11-62-34(c)(3)(D), and 11-62-34(c)(4)(F).
 - (B) Design criteria, material specifications, and other pertinent data shall be submitted to the director.
 - (C) The total area of the soil absorption system for the gravelless system shall be the same as specified in subsections (a), (b), and (c), except for chambered system where the director may approve of a reduction factor as deemed appropriate.

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- (D) If chambered systems are used, the chamber units shall be [place] placed up against the sidewall of the excavation. In absorption beds, the adjacent chambers shall abut one another.
- (E) The use of filter fabric, unless specified by the director, shall follow the manufacturer's recommendation.
[Eff 8/30/91; am and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50)

§11-62-35 Other individual wastewater systems.

(a) The specific design requirements for composting toilets, incinerator toilets, natural systems, and other individual wastewater systems not specifically covered in this [rule] chapter shall be reviewed and approved by the director on a case-by-case basis. Solids generated from such products that are land applied must meet the requirements of subchapter 4. Such products, if sold in Hawaii, shall be approved by the director based on appropriate testing procedures and standards as set forth by the National Sanitation Foundation (NSF) Testing Laboratory, Ann Arbor, Michigan. The performance data shall be obtained by an agency such as [an] a university or an independent research laboratory acceptable to the director or from the NSF.

(b) The director may approve an innovative wastewater system based on the following conditions:

- (1) The innovative system provides or may provide a benefit to the people of the State;
- (2) The owner of the innovative system shall agree that for a period of up to twelve months after the initiation of the operation of the innovative system, operational data shall be gathered and submitted to the director; and

- (3) The owner shall submit a written agreement stating that should the director at any time find the operation of the innovative system unsatisfactory, the owner shall promptly repair or modify the system, or replace it with another acceptable system. [Eff 8/30/91; am and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

§11-62-36 Cesspools. (a) No new cesspools shall be [construction without the approval of the director. Approved cesspools shall be constructed in areas designated by the director after the effective date of this rule.] constructed after the effective date of this rule unless they have been approved for construction before the effective date of this rule.

[(b) Design.

- (1) The inlet pipe shall be at least ten feet above the bottom of the cesspool and there shall be at least three feet of suitable soil from the bottom of the cesspool to the highest known level of the groundwater table. The ultimate depth required shall be determined by the engineer based on actual soil materials encountered on the site or on the record of experience with the performance of cesspools in the area.
- (2) The inlet pipe shall be at least one and one-half feet below the finished ground surface.
- (3) Each cesspool shall have a clear opening of at least six feet in diameter.
- (4) Cesspools shall include a sidewall lining constructed of durable material that will permit free passage of wastewater without excessive plugging while still excluding the entry of surrounding soil. The sidewall lining of any cesspool shall be capable of supporting the normal loads imposed. The engineer shall submit justification for the

deletion of any sidewall lining. The distance between the outer diameter of the lining and the excavation diameter shall be at least six inches, but not more than twelve inches. The space between outer lining and the excavation diameter shall be filled with gravel or crushed stone ranging in size from three-fourths to two and one-half inches. The placement of the gravel or stone shall fill the annular space between the pit lining and the excavation diameter. Gravel and stone shall not be placed within the cesspool itself.

- (5) A structurally sound reinforced concrete cover shall be provided. The cover shall protrude at least twelve inches beyond the perimeter of the cesspool and resting on firm ground with substantially stable sidewalls. At least one watertight manhole with a minimum dimension of twelve inches shall be provided in the cover for inspection or for emptying of the contents when required. The top of each cover shall be at least twelve inches below the finished ground surface. If the cover does not extend to the finished grade, a permanent inspection port with a minimum diameter of six inches expanding through and secured to the cover shall be brought to the finished grade and be provided with a screw type cap or cover.

(c) Location. The cesspool shall be located in accordance with section 11-62-32.

(d) If the cesspool was approved to construct prior to the effective date of this chapter, the design engineer shall perform a final inspection and submit a new cesspool card to the director within thirty days after the completion of the construction certifying that the cesspool was constructed in accordance with the requirements in this section.

(e) (b) The director may require a cesspool card from an owner whose cesspool has no cesspool card on file with the department. An existing cesspool card shall

be completed and signed by a licensed engineer, contractor, plumber, or architect. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 342D-4, 342D-5, 342E-3)(Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50, 342E-3)

§11-62-37 Application for and review of building permits and individual wastewater systems. (a) The director shall review all individual wastewater systems before [signing] the director signs any related county building permit application.

(b) The application to construct a new individual wastewater system or to modify an existing individual wastewater system shall be made by the applicant on forms furnished by the director. The application at a minimum shall contain the following information:

- (1) Name of the owner of the individual wastewater system;
- (2) The location of the individual wastewater system, including a location map, plot plan, street address, and tax map key number; [and]
- (3) The type and size of treatment unit and disposal system[.];
- (4) Certification by the engineer that the individual wastewater system has been designed in accordance with sections 11-62-31.1 through 11-62-41; and
- (5) Certification by the engineer that a final inspection report will be submitted to the director in accordance with section 11-62-31.1(f)(1)(B).

(c) Every applicant for an individual wastewater system shall pay a filing fee in accordance with the schedule of this subsection. The filing fee shall be submitted with the individual wastewater system application and shall not be refunded nor applied to any subsequent individual wastewater system application. Fees shall be made payable to the State of Hawaii.

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- (1) New individual wastewater system, new treatment unit or new disposal system - \$100; and
- (2) Addition or modification to an approved or existing individual wastewater system or part thereof - \$25. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-13, 342D-50)

§§11-62-38 to 11-62-39 (Reserved)

SUBCHAPTER 4

WASTEWATER SLUDGE USE AND DISPOSAL

§11-62-41 General requirements and prohibition.

- (a) No person shall generate, treat, prepare, store, haul, apply, place, use, or dispose of wastewater sludge except:
 - (1) In compliance with:
 - (A) A permit or department approval for use of an individual wastewater system obtained under this chapter;
 - [(B) General permit coverage under this chapter;
 - (C)](B) A registration under this chapter;
or
 - [(D)](C) An exemption from permitting or registration provided by section 11-62-50.
 - (2) In a municipal solid waste landfill unit which is in compliance with the sludge related conditions in a permit issued under chapter 11-58.1:
 - (A) Where that permit was issued following public participation procedures at least as open to the public as those specified in subchapter 5; and

- (B) Incorporates the requirements of 40 CFR Part 258.
- (3) By incineration in a facility in compliance with the requirements of 40 CFR Part 503, Subpart E, Incineration, and 40 CFR §503.8, Sampling and analysis, and §503.9, General definitions;
- (4) In a facility in compliance with the sludge related conditions in a National Pollutant Discharge Elimination System (NPDES) permit issued under chapter 11-55 or issued by the U.S. EPA, where that permit includes or incorporates the requirements of 40 CFR Part 503, Subpart B, Land Application, [Subpart C, Surface Disposal,] Subpart D, Pathogens and Vector Attraction Reduction, and 40 CFR §503.8, Sampling and analysis, and §503.9, General definitions and any applicable requirements of this chapter;
- (5) For hauling, by a county, state, or federal agency, or by a person or an operation registered under [§] section 11-62-50(b)(4);
or
- (6) As otherwise authorized in writing by the director.

(b) Direct enforceability. No person shall generate, treat, prepare, store, haul, apply, place, use, or dispose of wastewater sludge except in compliance with the requirements of this chapter and all applicable federal rules, whether or not a permit has been issued, general permit coverage has been obtained, or registration has been made.

(c) Exclusion. This chapter does not apply to operations and facilities involved with the collection, handling, storage, treatment, use, disposal, or transportation of the following:

- (1) Wastewater sludge co-fired in an incinerator with other wastes or incinerators in which the wastewater sludge and other wastes are co-fired;
- (2) Wastewater sludge generated at an industrial facility during the treatment of industrial wastewater, including wastewater sludge generated during the treatment of industrial

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wastewater combined with domestic
wastewater;

- (3) Wastewater sludge determined to be hazardous under state rule or federal regulation;
- (4) Wastewater sludge containing polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry weight basis);
- (5) Incinerator ash generated during the firing of wastewater sludge in a wastewater sludge incinerator;
- (6) Grit and screenings;
- (7) Drinking water treatment sludge; and
- (8) Commercial and industrial septage that contains no domestic wastewater. [Eff and comp 12/09/04; am and comp] (Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Parts 258, 501, 503, 40 CFR 503 Subparts B, C, D, E, 40 CFR §§501.15, 503.1(b), 503.3, 503.4, 503.6, 503.7, 503.8, 503.9)

§11-62-41.1 Relation to federal law. (a) This chapter shall be interpreted and applied so that it is at least as stringent as 40 CFR Part 503 and so that the department's sludge management program complies with 40 CFR Part 501.

(b) No wastewater sludge generation, treatment, preparation, storage, hauling, application, placement, use, or disposal shall be conducted unless allowed by this chapter, even if allowed under 40 CFR Part 503.

(c) References to the Code of Federal Regulations (CFR) are to the July 1, 1999 version, and references to specific sections or subparts of the CFR incorporate those regulations and make them part of this chapter, whether or not the word incorporate is specifically used, unless otherwise specifically stated.

(d) Special definitions. For the purposes of this chapter, when used in 40 CFR Part 503:

"Municipal solid waste landfill unit" has the same meaning as defined in 40 CFR Part 258.

"Permitting authority" means the director.

"Sewage" means wastewater.

(e) No permit shall be issued when the [U.S.] United States Environmental Protection Agency Administrator for Region IX has objected in writing under 40 CFR §123.44. [Eff and comp 12/09/04; am and comp] (Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Parts 258, 501, 503, 40 CFR §§123.41, 123.42, 123.44, 501.2, 501.18, 501.19, 501.20, 503.1(b), 503.5, 503.21, 503.32)

§11-62-42 Land application of exceptional quality wastewater sludge. (a) Exceptional quality wastewater sludge shall meet the following criteria at a minimum:

- (1) Pollutant limits. No pollutant concentration shall exceed the ceiling limits in Appendix D, Table IV.
- (2) Pathogens. The Class A pathogen requirements in section 11-62-46(a) shall be met.
- (3) Vectors. One of the vector attraction reduction requirements in 40 CFR §503.33(b)(1) through (8) shall be met.

(b) Monitoring. Exceptional quality wastewater sludge shall be monitored by the preparer at least as often as required by 40 CFR § 503.16(a). References in §503.16(a) to federal pollutant limit tables are replaced with Appendix D, Table IV dated [April 15, 1997] July 1, 2014 and located at the end of this chapter. To determine compliance with section 11-62-42(a)(2), wastewater sludge shall be monitored not more than sixty days before land application or being bagged for distribution unless otherwise specified by the director. The director may also specify more monitoring, to better protect human health or the environment.

(c) Recordkeeping.

- (1) The preparer of exceptional quality wastewater sludge that is applied to the land shall meet the requirements of 40 CFR §503.17(a)(1), except the certification requirement there;

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- (2) The preparer shall sign complete certification form, form A, entitled Certification Form - Land Application, dated [April 15, 1997] July 1, 2014, and located at the end of this chapter, in Appendix E, items 1, 2.a, and 3.a, and retain the form for five years; and
- (3) The preparer shall develop and retain information for five years on the volume of wastewater sludge bagged, distributed, or land applied.
- (d) Reporting. The test results and records required in subsections (b) and (c) shall be kept on site and unless otherwise specified, copies shall be submitted to the director on February 19 of each year.
- (e) The exceptional quality sludge shall be applied to the land at a rate that is less than ten dry tons per acre and equal to or less than the agronomic rate.
 - (1) The preparer shall provide to each land applicer a fact sheet which contains the nitrogen, phosphorus, and potassium concentrations of the wastewater sludge; and
 - (2) When the wastewater sludge is applied in bulk to agricultural land, forest, a public contact site, or a reclamation site, the director may require a nutrient balance to be submitted prior to the application to the land. [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR §§503.1, 503.5, 503.10, 503.13, 503.15(a), 503.16(a), 503.17(a), 503.18, 503.32, 503.33(b))

§11-62-43 Land application of other than exceptional quality wastewater sludge, to agricultural land, forest, public contact site, or reclamation site. (a) No person shall apply non-exceptional quality wastewater sludge to land unless the land is agricultural land, forest, a public contact site, or a

reclamation site, and all the requirements of this section are met.

(b) Pollutant limits. Non-exceptional quality wastewater sludge shall not be land applied if the concentration of any pollutant in the wastewater sludge exceeds the ceiling limits in Appendix D, Table IV dated [April 15, 1997] July 1, 2014, and located at the end of this chapter.

(c) Pathogens. The Class A pathogen requirements in section 11-62-46(a) or the Class B pathogen requirements in 40 CFR §503.32(b) shall be met for non-exceptional quality wastewater sludge.

(d) Vectors. One of the vector attraction reduction requirements in 40 CFR §503.33(b)(1) through (10) shall be met for non-exceptional quality wastewater sludge.

(1) The preparer shall meet one of the requirements of 40 CFR §503.33(b)(1) through (8); or

(2) The applier shall meet one of the requirements of 40 CFR §503.33(b)(9) or (10).

(e) Notice. The preparer of the non-exceptional quality wastewater sludge shall inform in writing to the land applier and the owner of the land application site of:

(1) The vector attraction reduction requirements of 40 CFR §503.33(b)(9) and (10), if the preparer did not use or meet any of the requirements of 40 CFR §503.33(b)(1) through (8);

(2) The spacing and site restrictions in subsection (g);

(3) The management requirements of subsection (h); and

(4) The concentration of total nitrogen (as N on a dry weight basis).

(f) Monitoring. Non-exceptional quality wastewater sludge shall be monitored at least as often as required by 40 CFR § 503.16(a). References in §503.16(a) to federal pollutant limit tables are replaced with Appendix D, Table IV dated [April 15, 1997,] July 1, 2014, and located at the end of this chapter. To determine compliance with section

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11-62-43(c), wastewater sludge shall be monitored not more than sixty days before land application unless otherwise specified by the director. The director may also specify more monitoring, to better protect human health or the environment.

(g) Spacing and site restrictions for non-exceptional quality sludge.

- (1) Horizontal distances. The land application of wastewater sludge shall meet the minimum horizontal limits in Appendix D, Table VI.
- (2) Vertical separation. The land application of wastewater sludge shall be at least five feet above the seasonal high groundwater table.
- (3) If the class B pathogen requirements are met, the site restrictions in 40 CFR §503.32(b)(5) shall be met.

(h) Management practices. The management practices required by 40 CFR §503.14(a), (b), (d), (e)(1), and (e)(2) shall be met, and wastewater sludge shall not be applied to the land so that either the sludge or any pollutant from the sludge enters state waters.

(i) Recordkeeping, preparers of non-exceptional quality wastewater sludge.

- (1) The preparer of the wastewater sludge which meets the Class A pathogen requirements in section 11-62-48(a) shall develop and retain for five years information on:
 - (A) The concentration of pollutants listed in Appendix D, Table IV dated [April 15, 1997] July 1, 2014, and located at the end of this chapter; and
 - (B) A description of how the pathogen requirements in section 11-62-48(a) are met.
- (2) The preparer of wastewater sludge which meets the class B pathogen requirements in 40 CFR §503.32(b) shall develop and retain for five years information on:
 - (A) The concentration of pollutants listed in Appendix D, Table IV dated [April 15, 1997] July 1, 2014, and located at the end of this chapter;

- (B) A description of how the pathogen requirements in 40 CFR §503.32(b) are met; and
 - (C) A description of how one of the vector attraction reduction requirements of 40 CFR §503.33(b)(1) through (8) is met, when one is met.
- (3) The preparer shall sign and complete certification form, form A entitled Certification Form - Land Application dated [April 15, 1997,] July 1, 2014, and located at the end of this chapter, in Appendix E, items 1, 2, and 3, and retain the form for five years; and
 - (4) The preparer shall develop and retain for five years information on the volume of wastewater sludge prepared for land application, names of persons taking wastewater sludge from the facility, the date and time the wastewater sludge was taken, and the amount taken.
- (j) Recordkeeping, applicators of non-exceptional quality wastewater sludge to the land.
 - (1) The applicator shall meet the information requirements of 40 CFR §503.17(a)(3)(ii)(B) and (C); or §503.17(a)(4)(ii)(B), (C), (D), and (E);
 - (2) The applicator shall sign and complete the certification form, form A entitled Certification Form - Land Application, dated [April 15, 1997] July 1, 2014, and located at the end of this chapter, in Appendix E, items 4, 5, and 6, and retain the form for five years; and
 - (3) The applicator shall develop and retain for five years the following information:
 - (A) The location, including street address and tax map key number, of the site on which wastewater sludge is applied;
 - (B) The number of acres in each site on which wastewater sludge is applied;
 - (C) The date and time the wastewater sludge is applied to each site;

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- (D) The amount of wastewater sludge applied to each site; and
- (E) A nutrient balance.

(k) Reporting. The test results and records required in subsections (f), (i), and (j) shall be kept on site and unless otherwise specified copies shall be submitted to the director on February 19 of each year.

- (l) Notification to other states. Any person who prepares wastewater sludge that is land applied in another state shall provide written notice, prior to the initial land application, to the permitting authority for the state in which the bulk in which the wastewater sludge is to be applied to the land in accordance with 40 CFR §503.12(i).
[Eff and comp 12/09/04; am and comp
] (Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR §§503.12, 503.13(b), 503.14, 503.15(a), (c), 503.16(a), 503.17, 503.18, 503.32, 503.33(b))

§11-62-44 Land application of domestic septage to agricultural land, forest, or reclamation site.

(a) No person shall apply domestic septage to land unless the land is agricultural land, forest, or a reclamation site if the annual application rate (AAR) exceeds 1/0.0026 the amount of nitrogen (N) in pounds per acre per 365 day period needed by the crop or vegetation growth on the land.

$$\text{AAR} = \frac{\text{N}}{0.0026} \qquad \text{Equation (1)}$$

- (b) Pathogens. The pathogen requirements of
 - (1) 40 CFR §503.32(c)(1); or
 - (2) 40 CFR §503.32(c)(2), including the site restrictions of 40 CFR §503.32(b)(5)(i) through (iv), shall be met for domestic septage.

(c) Vectors. One of the vector attraction reduction requirements in 40 CFR §503.33(b)(9), (10), or (12) shall be met for domestic septage.

(d) Monitoring. If either the pathogen requirement in subsection (b)(2) or vector attraction reduction requirement in 40 CFR §503.33(b)(12) applies, each container of domestic septage shall be monitored for compliance with those requirements. The director may specify more monitoring, to better protect human health or the environment.

(e) Recordkeeping.

- (1) The applier shall meet the information requirements of 40 CFR §503.17(b)(2), (3), (4), (5), (7), and (8);
- (2) The applier shall develop and retain for five years the location, including street address and tax map key number, of the site on which septage is applied; and
- (3) The applier shall sign and complete the certification form, form A entitled Certification Form - Land Application dated [April 15, 1997] July 1, 2014, and located at the end of this chapter, in Appendix E, items 7, 8, 9, and 10, and retain the form for five years.

(f) Reporting. The test results and records required in subsection (e) shall be kept on site and unless otherwise specified copies shall be submitted to the director on February 19 of each year.

(g) Spacing and site restrictions.

- (1) Horizontal distances. The land application of domestic septage shall meet the minimum horizontal limits in Appendix D, Table VI dated [April 15, 1997] July 1, 2014, and located at the end of this chapter.
- (2) Vertical separation. The land application of domestic septage shall be at least five feet above the seasonal high groundwater table.
- (3) The site restrictions in:
 - (A) 40 CFR §503.32(b)(5); or
 - (B) The pathogen requirement of 40 CFR §503.32(c)(2) and the site restrictions of 40 CFR §503.32(b)(5)(i) through (iv)

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shall be met for domestic septage.

(h) Management practices. The management practices required by 40 CFR §503.14(a), (b), (d), (e)(1), and (e)(2) for wastewater sludge shall be met for domestic septage, and domestic septage shall not be applied to the land so that the septage or any pollutant from septage enters state waters. [Eff and comp 12/09/04; am and comp]

(Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR §§503.12(c), 503.13(c), 503.14, 503.15(b), (d), 503.16(b), 503.17, 503.18, 503.32, 503.33)

§11-62-45 REPEALED [R]

§11-62-46 Pathogens. (a) Wastewater sludge - class A. (1) The requirements of this subsection shall be met for a wastewater sludge to be classified exceptional quality sludge or class A with respect to pathogens.

(2) One of the class A requirements in paragraphs (3), (4), (6) or (7) shall be met, or with the prior approval of the director paragraph (5) shall met. The requirements in paragraphs (3) through (7) shall be met before or at the same time that the vector attraction reduction requirements in 40 CFR §503.33 are met, unless one of the vector attraction reduction requirements in 40 CFR §503.33(b)(6) through (8) is met.

- (3) Class A - alternative 1. The requirements of 40 CFR §503.32(a)(3) apply, except that the requirements of §503.32(a)(3)(i) are replaced with those of paragraph (8).
- (4) Class A - alternative 2. The requirements of 40 CFR §503.32(a)(4) apply, except that the requirements of §503.32(a)(4)(i) are replaced with those of paragraph (8).
- (5) Class A - alternative 3. The requirements of 40 CFR §503.32(a)(6) apply, except that the requirements of §503.32(a)(6)(i) are

- replaced with those of paragraph (8).
- (6) Class A - alternative 4. The requirements of paragraph (8), and subsection (d), Process to Further Reduce Pathogens (PFRP), apply.
 - (7) Class A - alternative 5. The requirements of paragraph (8) apply and, as determined by the director, a process equivalent to one in subsection (d), Process to Further Reduce Pathogens (PFRP), shall be used.
 - (8) Pathogen density at the time the wastewater sludge is used, disposed, or prepared for sale or give away in a bag or other container for land application, shall meet the following:
 - (i) Unless otherwise specified by the director, seven samples shall be analyzed; and
 - (ii) For each sample the fecal coliform shall be less than 1000 MPN per gram of total solids (dry weight basis) or for each sample the Salmonella sp. bacteria shall be less than three MPN per four grams of total solids (dry weight basis).
- (b) Wastewater sludge - class B. The requirements of 40 CFR §503.32(b) shall be met for a wastewater sludge to be classified class B with respect to pathogens.
- (c) Domestic septage. The requirements of 40 CFR §503.32(c) apply.
- (d) Processes to further reduce pathogens (PFRP). The requirements of 40 CFR Part 503, appendix B, Pathogen Treatment Processes, section B, Processes to Further Reduce Pathogens, apply, except for section B.1 which is replaced by paragraph (1).
- (1) Composting.
 - (A) Windrow. The temperature of the wastewater sludge is maintained at 55 degrees Celsius or higher for at least fifteen consecutive days during the composting period. In addition, during the high temperature period, the windrow must be turned at least five

- times and turned at least once every three days.
- (B) Static aerated pile. The wastewater sludge must be maintained at operating temperatures of 55 degrees Celsius or greater for three consecutive days.
 - (C) Within vessel method. The wastewater sludge must be maintained at operating temperatures of 55 degrees Celsius or greater for three consecutive days.
- (2) Heat Drying. See Part 503, appendix B, section B.2.
 - (3) Heat Treatment. See Part 503, appendix B, section B.3.
 - (4) Thermophilic Aerobic Digestion. See Part 503, appendix B, section B.4.
 - (5) Beta ray irradiation. See Part 503, appendix B, section B.5.
 - (6) Gamma ray irradiation. See Part 503, appendix B, section B.6.
 - (7) Pasteurization. See Part 503, appendix B, section B.7.
 - (e) Processes to significantly reduce pathogens (PSRP). The requirements of 40 CFR Part 503, appendix B, Pathogen Treatment Processes, section A, Processes to Significantly Reduce Pathogens, apply.
 - (1) Aerobic Digestion. See Part 503, appendix B, section A.1.
 - (2) Air Drying. See Part 503, appendix B, section A.2.
 - (3) Anaerobic Digestion. See Part 503, appendix B, section A.3.
 - (4) Composting. See Part 503, appendix B, section A.4.
 - (5) Lime Stabilization. See Part 503, appendix B, section A.5. [Eff and comp 12/09/04; comp] (Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 503, Subpart D, Appendix B, 40 CFR §503.32)

§11-62-47 Vector attraction reduction. (a) Requirements for land application [and surface disposal].

- (1) One of the vector attraction reduction requirements in 40 CFR §503.33(b)(1) through (8) shall be met before exceptional quality wastewater sludge is land applied.
- (2) The requirements of 40 CFR §503.33(a)(1), (4), and (5) apply.

(b) Vector attraction reduction requirements. The requirements of 40 CFR §503.33(b) apply. [Eff and comp 12/09/04; comp] (Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 503, Subpart D, 40 CFR §503.33)

§11-62-48 Sampling method. Samples of wastewater sludge that is applied to the land, [placed on a surface disposal site,] fired in a wastewater sludge incinerator, or disposed into a solid waste landfill or any other wastewater system shall be collected and analyzed using the methods specified in 40 CFR §503.8. [Eff and comp 12/09/04; comp] (Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR §503.8)

SUBCHAPTER 5

WASTEWATER MANAGEMENT PERMITS AND REGISTRATION

§11-62-50 Registration and permits. (a) Owners and operators are not required under this subchapter to register or obtain any permit coverage for their:

- (1) Individual wastewater systems (e.g., cesspools, septic tanks, and household aerobic units);
- (2) Land on which exceptional quality wastewater sludge is applied;
- (3) Land application or land placement operations involving only exceptional

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- (4) quality wastewater sludge; [or] Operations, such as businesses, that haul only exceptional quality wastewater sludge;
 - or
 - (5) Non-domestic wastewater treatment works, unless [the] deemed necessary by the director.
- (b) Owners or operators or both of the following shall register with the department:
- (1) Land on which non-exceptional quality sludge is applied or placed, with or without the landowner's permission;
 - (2) Land on which non-exceptional quality sludge is stored for less than two years, if the land is different from the treatment works which generated the sludge;
 - (3) Land application or land placement operations for non-exceptional quality wastewater sludge, whether or not the wastewater sludge is applied or placed on land with the landowner's permission;
 - (4) Operations, such as businesses, that haul wastewater or wastewater sludge, or both, including grease haulers and cesspool pumpers, except those operations that only haul exceptional quality sludge; and
 - (5) Other facilities, operations, or land, if directed by the director.
- [(c) Owners or operators or both shall obtain general permit coverage for their wastewater systems not covered by section 11-62-41(a)(2) through (4) or subsection (d).

- (d)](c) Owners or operators or both shall obtain an individual permit for their:
- (1) Treatment works that generate wastewater sludge that is directly land applied;
 - (2) If different from the generator, facilities or operations that treat or prepare wastewater sludge that is land applied or surface disposed;
 - (3) Treatment works not located in the State but generate wastewater sludge that is directly land applied in the State;
 - (4) Facilities or operations not located in the

State that treat or prepare wastewater sludge that is land applied or surface disposed in the State; and

[(5) Land used for the surface disposal of wastewater sludge; and]

[(6)](5) Other facilities, operations, or land, if directed by the director.

[(e)] (d) The department may accept and issue consolidated registrations[, general permit coverage notices,] and individual permits (collectively "authorizations"), and for the consolidated authorizations the department may charge the fee for only the most expensive authorization. The department may also charge the fees for all or some of the authorizations. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-13, 342D-50; 40 CFR §§501.15, 503.3(a))

§11-62-51 Fees. (a) Registration. Every registrant shall pay a filing fee according to this subsection. The filing fee shall be submitted with the registration and shall not be refunded nor applied to any later registration after filing or denial of a registration. Fees shall be made payable to the State of Hawaii.

- (1) For a new operation, facility, or land, the fee is \$30;
- (2) For major changes in the registration of an operation, facility, or land, the fee is \$30;
- (3) For renewal, the fee is \$10;
- (4) To change only ownership shown in a registration, the fee is \$5; and
- (5) To make other changes in a registration, the fee is \$10;

(b) Individual permits. Every person applying for an individual permit, its modification, or renewal shall pay a filing fee according to this subsection. This filing fee shall be submitted with the application for the permit or permit modification and shall not be refunded nor applied to any subsequent individual after final issuance or denial. Fees shall

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be made payable to the State of Hawaii.

- (1) To apply for an individual permit for a new or existing operation or facility, the fee is \$1000;
- (2) To apply to modify an individual permit to cover a substantial alteration or addition to an operation, facility, or land, the fee is \$1000;
- (3) To renew an individual permit for an existing operation or facility, the fee is \$1000;
- (4) To transfer ownership or to modify an individual permit to show only a change in ownership, the fee is \$25; and
- (5) To apply to modify an individual permit to cover a change other than those covered above, the fee is \$100.

[(c) General permit coverage. Every person submitting a notice of intent to be covered by a general permit, or seeking modification or renewal of such coverage shall pay a filing fee according to this subsection. This filing fee shall be submitted with the notice of intent and shall not be refunded nor applied to any subsequent general permit coverage after final issuance or denial of general permit coverage. The filing fee may be applied to any subsequent individual permit if the director requires or the person seeks an individual permit instead of general permit coverage. Fees shall be made payable to the State of Hawaii.

- (1) To submit a notice of intent for a new or existing operation, facility, or land, the fee is \$100;
- (2) To submit a notice of intent to modify general permit coverage to cover a substantial alteration or addition to an operation, facility, or land, the fee is \$100;
- (3) To submit a notice of intent to modify general permit coverage to cover a change in

- the location of the covered operation or facility the fee is \$100;
- (4) To transfer ownership or to modify general permit coverage to show only a change in ownership, the fee is \$25; and
 - (5) To submit a notice of intent to modify general permit coverage to cover a change other than those covered above, the fee is \$25.

(d)](c) Late fees. Every person who fails to submit complete forms for a new or renewed registration[,]or a complete application for a new or renewed individual permit[, or a complete notice of intent for new or renewed general permit coverage] when required by this chapter, shall pay a late fee. Fees shall be payable to the State of Hawaii. Late submission of required fees and registration forms, notice of intent, or individual permit application does not excuse a person from liabilities for any violations due to the lack of a required registration[,] or individual permit [or general permit coverage].

(1) The fee for submitting a registration form late is \$5;

[(2) The fee for submitting a notice of intent late is \$25;] and

[(3)] (2) The fee for submitting an application for an individual permit late is \$250.

[(e)](d) Relation to other fees. The foregoing fees are subject to section 11-62-50(e) and do not include any public participation costs (for notices, hearings, etc.) that the would-be registrant or permittee may be required to pay under other sections.

[Eff and comp 12/09/04; am and comp]
(Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-13, 342D-50)

§11-62-52 Signatories and certification requirements. (a) Unless otherwise specified, each registration, notice of intent, permit application, and any information required to be submitted to the director shall be signed and certified as required by 40 CFR §122.22.

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(b) Each person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other documentation submitted or required to be maintained under this chapter or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this chapter is subject to the penalties and remedies in section 11-62-72. [Eff and comp 12/09/04; comp]
(Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Parts 122, 501, 40 CFR §§122.22, §501.15(a)(4), (b)(11))

§11-62-53 Wastewater management registration.

(a) Timing. Completed registrations forms required under section 11-62-50 shall be submitted as follows.

- (1) For existing lands, facilities, and operations, not later than ninety days after the effective date of this rule; and
- (2) For new lands, facilities, and operations, no later than one hundred eighty days before such lands, facilities, or operations are used or begin activity.

(b) Registration information and forms. Registrants shall complete and submit one original and one copy of the form(s) furnished by the director. Registrants shall provide at least the following information:

- (1) Activities conducted by the applicant which require registration;
 - (2) Name, mailing address, and location of the wastewater or wastewater sludge collection, handling, storage, treatment, use, disposal, or transportation facility, operation, or land;
 - (3) Owner's name, mailing address, telephone number, ownership status, and status as federal, state, private, public, or other entity; and
 - (4) Operator's name and certification number under chapter 11-61, if applicable.
- (c) The director may require the submission of additional information after registration forms have

been submitted.

(d) Records. Registrants shall keep records of all data used to complete registrations and any supplemental information submitted under this section for at least five years from the date the registrant submits the registration form, unless otherwise specified by the director.

(e) Fees. Each registrant shall pay the filing fee specified in section 11-62-51 for each facility, operation, or land registered, except as the director may provide under section 11-62-50(e).

(f) Term. Registrations expire on November 15 of each even-numbered year.

(g) Renewals. Renewal registration forms shall be submitted by November 15. If a renewal registration form is not submitted on time, it may be submitted after payment of the current annual fee and a late payment fee. If a renewal registration form is submitted more than ninety days after it is due, then the registrant shall supply all the information required for a new registration regardless of whether there have been any changes to report.

(h) Automatic filing. Registrations shall be deemed filed automatically sixty days after submission, or on the next working day after sixty days expire, unless the director suspends registration.

(i) Filing suspension. If the director considers a registration form incomplete, lacking payment of all or part of the fee, otherwise deficient, or considers more information necessary, the director shall order that the land, operation, or facility shall not be registered until the registrant has supplied the missing information or otherwise corrected the deficiency. [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-6, 342D-13)

§11-62-54.01 Wastewater management individual permits. (a) Timing. Applications for individual permits required under section 11-62-50 shall be submitted as follows:

(1) For existing lands, facilities, operations,

and lands, not later than one year after the effective date of this section; and

- (2) New facilities, operations, and lands, not later than one hundred eighty days before the facilities, operations, or lands are used or begin activity. The director may waive this one hundred eighty day requirement by issuing the permit before the one hundred eighty days expire[;].

(b) Information and forms. Applicants for individual permits shall complete and submit one original and one copy of the form(s) furnished by the director. Applicants shall provide at least the type of information required by 40 CFR Part 501 and the following information:

- (1) The type of activities conducted by the applicant which requires a permit to be obtained;
- (2) The name, mailing address, and location of the wastewater or wastewater sludge collection, handling, storage, treatment, use, disposal, or transportation facility, operation, or land;
- (3) The owner's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity;
- (4) The operator's name, address, telephone number, ownership status, status as federal, state, private, public or other entity, and operator's certification number under chapter 11-61, if applicable;
- (5) A listing of all environmental permits received or applied, including all federal, state, or local permits;
- (6) A topographical map or other map if a topographical map is unavailable extending one mile beyond the property boundaries of the sludge management facility, depicting the treatment and disposal sites, the location of all water bodies, and the locations of potable water wells within one-quarter mile of the property boundaries;
- (7) Any sludge monitoring data and for land application [and surface disposal sites],

- any available groundwater monitoring data, with a description of the well locations and approximate depth to the groundwater;
- (8) A description of the applicant's sludge use and disposal practices, including where applicable, the location of any sites where the applicant transfers wastewater sludge for treatment, disposal, or both, as well as the name of the applier who applies the wastewater sludge to the land if different from the applicant, and the name of any distributors when the sludge will be distributed, if different from the applicant;
 - (9) For each land application site the applicant will use during the life of the permit, the applicant will supply information necessary to determine if the site is appropriate for land application and a description of how the site is, or will be managed. Applicants intending to apply wastewater sludge to land application sites not identified at the time of application must submit a land application plan which at a minimum:
 - (A) Describes the geographical area covered by the plan;
 - (B) Identifies the site selection criteria;
 - (C) Describes how the site will be managed;
 - (D) Provides for advanced notice to the director of specific land application sites; and
 - (E) Provides for advance public notice and notice to landowners and occupants adjacent to or abutting the proposed land application site;
 - (10) Annual sludge production volumes; and
 - (11) Any information required to determine the appropriate standards for permitting under 40 CFR Part 503.
- (c) The director may require the submission of additional information after an individual permit application has been submitted.
- (d) Records. Applicants shall keep records of all data used to complete permit applications and any

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supplemental information submitted under this section for a period of at least five years from the date the application is submitted, unless otherwise specified by the director.

(e) Fees. Every applicant for an individual permit shall pay the filing fee specified in section 11-62-51 for each facility, operation, or land to be permitted, except as the director may provide under section 11-62-50(e).

(f) Processing suspension. If the director considers permit application incomplete, lacking payment of the fee, otherwise deficient, or considers more information necessary, the director shall order that the permit application shall not be processed or a permit issued until the applicant supplies the missing information or otherwise corrects the deficiency. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-6, 342D-13, 342D-50; 40 CFR Part 501, 40 CFR §501.15(a),(d))

§11-62-54.02 Draft individual permits. After an application for a new, modified, or renewed permit is complete, the director shall tentatively decide to prepare a draft individual permit or deny the application. If the director tentatively proposes to revoke and reissue a permit, the director shall prepare a draft individual permit. A draft permit shall contain the necessary conditions to implement the requirements of this chapter, 33 U.S.C. §1345, and the incorporated sections of 40 CFR Parts 501 and 503. [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Part 501, 40 CFR §501.15(d)(3))

§11-62-54.03 Fact sheets. (a) The director shall prepare a fact sheet for every draft individual permit for a major facility, operation, or activity, and when required by 40 CFR §501.15(d)(4).

(b) The director shall send the fact sheet to the applicant and, upon request, to any other person.

(c) Fact sheets shall include at least the information required by 40 CFR §501.15(d)(4)(i). [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Part 501, 40 CFR §501.15(d)(4))

§11-62-54.04 Public notices of draft individual permits; public comments and hearing requests. (a)

The director shall notify the public that a draft individual permit has been prepared and that the public has thirty days to comment on it. The comment period may be extended at the discretion of the director. The director may require the permit applicant to have the notice published.

(b) Methods. The director shall notify the public by at least the methods specified in 40 CFR §501.15(d)(5)(ii).

(c) Content. The public notice shall include at least the information required by 40 CFR 501.15(d)(5)(iii)(A).

(d) Costs. All publication and mailing costs associated with notifying the public of a draft permit shall be paid by the permit applicant(s) to the appropriate publishing agency or agencies determined by the director. Failure to provide and pay for public notice as required by the director is a basis to deny issuance of a permit.

(e) Public comments and hearing requests. During the public comment period, any person may submit comments in writing and may ask in writing for a public hearing. A request for hearing shall state the nature of the issues that the hearing should cover. [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Part 501, 40 CFR §501.15(d)(5),(6))

§11-62-54.05 Public meetings or hearings on individual permits. (a) The director shall hold a public meeting or hearing if the director determines that there is a significant degree of public interest in a draft individual permit, based on hearing

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requests.

(b) The director may hold a meeting or hearing at the director's discretion, when such a meeting or hearing may help the director's decision on an individual permit application or for another reason which the director considers to be in the public interest. [Eff and comp 12/09/04; comp] (Auth: 342D-4, 342D-5, 342D-6) (Imp: 342D-2, 342D-4, 342D-5, 342D-6, 342D-57; 40 CFR Part 501, 40 CFR §501.15(d)(7))

§11-62-54.06 Public notice of public meetings or hearings on individual permits. (a) The director shall notify the public that a meeting or hearing on an individual permit matter has been scheduled. The notice shall be given at least thirty days before the hearing. The director may require the permit applicant to have the notice published.

(b) Methods. The director shall notify [to] the public by at least the methods specified in 40 CFR §501.15(d)(5)(ii).

(c) Content. The public notice shall include at least the information required by 40 CFR §501.15(d)(5)(iii).

(d) Costs. All publication and mailing costs associated with notifying the public of a public meeting or hearing shall be paid by the permit applicant(s) to the appropriate publishing agency or agencies determined by the director. Failure to provide and pay for public notice as required by the director is a basis to deny issuance of a permit. [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Part 501, 40 CFR §501.15(d)(5))

§11-62-54.07 Response to comments. When a final individual permit is issued, the director shall issue a written response to written comments as required by 40 CFR §501.15(d)(8). [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5,

342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Part 501, 40 CFR §501.15(d)(8))

§11-62-54.08 Issuance of individual permits; duration, conditions. (a) Duration. The director may issue an individual permit for any period not exceeding five years, may renew such permit for any additional periods not exceeding five years each, and shall not modify an individual permit to extend its maximum period.

(b) Each individual permit shall contain conditions and requirements at least as stringent as:

- (1) Those conditions contained in 40 CFR §501.15(b);
- (2) The wastewater sludge standards in subchapter 4;
- (3) The treatment requirements in subchapter 2;
- (4) The application rates in sections 11-62-27;
- (5) The standard permit conditions stated in [appendix] Appendix A entitled Wastewater Management Individual [and General] Permit Standard Conditions dated [April 15, 1997,] July 1, 2014, and located at the end of this chapter; and
- (6) Other requirements deemed necessary by the director. [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Parts 501, 503, 40 CFR §§501.15(a)(5), (b), 503.3(a), 503.10(b), (c), 503.13, 503.32, 503.33)

§11-62-54.09 Schedules of compliance. Individual permits may contain schedules of compliance that are at least as stringent as those allowed by 40 CFR §501.15(a). [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 501, 40 CFR §501.15(a)(6))

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§11-62-55.01 REPEALED [R]

§11-62-55.02 REPEALED [R]

§11-62-55.03 Requiring an individual permit.
[Notwithstanding the provisions of a general permit,
the director may require any person covered by a
general permit or seeking coverage under a general
permit to apply for and obtain an individual permit.]
Cases where an individual permit may be required
include, but are not limited to the following:

- [(1) The wastewater system is not in compliance
with the conditions of the general permit;
- (2) Circumstances have changed since the notice
of intent was submitted so that the
wastewater system is no longer covered by
the general permit;
- (3)](1) The wastewater system generates
wastewater sludge that is land applied [or
placed into a surface disposal site]; and
- [(4)](2) Other relevant factors. [Eff and comp
12/09/04; am and comp]
(Auth: HRS §§342D-4, 342D-5) (Imp: HRS
§§342D-2, 342D-4, 342D-5, 342D-6, 342D-50;
40 CFR Part 122, 40 CFR §122.28(b)(3)(i))

§11-62-55.04 REPEALED [R]

§11-62-55.05 REPEALED [R]

§11-62-55.06 REPEALED [R]

§11-62-55.07 REPEALED [R]

§11-62-55.08 REPEALED [R]

§11-62-56 Standard permit conditions. Standard permit conditions for individual [and general] permits are contained in [appendix] Appendix A entitled Wastewater Management Individual [and General] Permit Standard Conditions dated [April 15, 1997,] July 1, 2014, and located at the end of this chapter. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 501, 40 CFR §501.15(b))

§11-62-57.01 Transfer of permits. An individual permit [and general permit] coverage may be transferred for the reasons and under the procedures specified in 40 CFR §501.15(c)(1), which allows for transfers by modification or automatically. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Part 501, §501.15(c)(1))

§11-62-57.02 Modification or revocation and reissuance of permits. (a) Each permit [and general permit] coverage shall be subject to modification or revocation and reissuance by the director after notice and opportunity for a contested case hearing, except for minor modifications.

(b) Individual permits [and general permit coverage] may be modified, or revoked and reissued, for the reasons specified in 40 CFR §501.15(c)(2) and section 342D-6(e), HRS, and the director shall follow the procedures in 40 CFR §501.15(c)(2) and (d)(2) and section 342D-6(e), HRS, except for minor modifications, which shall follow the procedures specified in [appendix] Appendix A.

(c) All applications under section 342D-7, HRS, for a variance from the requirements of subchapter 4 shall be treated as an application for a modification under this section. Any variances, if granted, shall be for a period not to exceed five years and may be renewed upon application. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§342D-4,

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342D-5, 342D-6, 342D-7) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-7, 342D-50; 40 CFR Part 501, §501.15(c)(2),(d)(2))

§11-62-57.03 Termination of permits. (a) On the expiration date specified in the individual permit, the permit shall automatically terminate and the permittee shall be divested of all rights therein.

(b) Each individual permit [and general permit] coverage shall be subject to termination by the director after notice and opportunity for a contested case hearing.

(c) Individual permits [and general permit coverage] may be terminated [may be] or denied for [the] any of the reasons specified in 40 CFR §501.15(c)(3) and section 342D-6(e), HRS, and under the procedures specified in 40 CFR §501.15(d)(2) and section 342D-6(e), HRS. [Eff and comp 12/09/04; am and am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 501, 40 CFR §§501.15(c)(3), (d)(2))

§11-62-57.04 Renewal of permits. (a) Permittees seeking individual permit [or general permit coverage] renewal shall submit a renewal application [or notice of intent] at least one hundred eighty days before the individual permit [or general permit coverage] expires.

(b) An application for individual permit renewal is subject to all of the requirements for an application for a new permit, including a draft permit and fact sheet, public notice, and a possible public hearing, but excepting deadlines and fees specific to new permits.

[(c) An application for general permit coverage renewal is subject to all of the requirements for new general permit coverage, excepting deadlines and fees specific to new general permit coverage.

(d)] (c) The director may administratively extend the existing permit [or general permit coverage] pending the renewal of a wastewater management permit.

[(e)](d) Individual permits [and general permit coverage] may be renewed for the reasons and under the procedures specified in section 342D-6(c), HRS, and renewal may be denied for noncompliance with the permit. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 501, 40 CFR §501.15(b)(14))

§11-62-58 Conflict of interest. (a) Any board or body who reviews or approves applications [or notices of intent] for new, modified, or renewed individual permits [or general permit coverage] shall not include as a member any person who receives, or has during the previous two years received, a significant portion of that person's income directly or indirectly from permit holders or applicants for a permit.

(b) For this section the definitions of 40 CFR §501.15(f)(1) shall apply. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§342D-3, 342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-3, 342D-4, 342D-5; 40 CFR Part 501, 40 CFR §501.15(f))

SUBCHAPTER 6

WASTEWATER AND WASTEWATER SLUDGE PUMPERS AND HAULERS

§11-62-60 Applicability. This subchapter applies to all persons who own or conduct operations that haul or pump wastewater or wastewater sludge, including septage and grease, and including cesspool pumping firms (collectively "pumpers"). [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50)

§11-62-61 Registration requirements. In addition to meeting the registration requirements of

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sections 11-62-50(b)(4) and 11-62-53, each pumper shall submit with its registration:

- (1) A statement signed by the owner of the wastewater and wastewater sludge pumping and hauling firm attesting that:
 - (A) The owner has read, understands, and shall follow all applicable rules regarding the collection, disposal, monitoring, recordkeeping, and reporting of pumping and hauling wastewater and wastewater sludge, including septage from individual wastewater systems and other wastewater systems; and
 - (B) The owner has and will continue to provide employees of the pumping and hauling firm with adequate training in the proper pumping, collection, hauling, and disposal of wastewater and wastewater sludge;
- (2) Copies of authorization to dispose of wastewater and wastewater sludge into any state, county, federal, or private facility or site; and
- (3) A statement signed by the owner of the wastewater and wastewater sludge pumping and hauling firm describing the firm's prior and current involvement in the activity of cesspool pumping. [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50)

§11-62-62 Recordkeeping and reporting. [(a)] In addition to meeting the requirements of section 11-62-53(c) and (d), each pumper shall maintain the following types of records and information. Such information shall be made available upon request to any state, county, or federal wastewater agency regulating or managing wastewater:

- (1) Number of wastewater systems, including individual wastewater systems and grease traps pumped;

- (2) Names of the owner of each wastewater system and grease trap pumped;
- (3) Location (street address or tax map key or both) of each wastewater system and grease trap pumped;
- (4) Date of pumping;
- (5) Type of wastewater or wastewater sludge pumped;
- (6) Volume of wastewater or wastewater sludge pumped;
- (7) Results of any test analyses performed on the wastewater or wastewater sludge;
- (8) Disposal site of the pumped wastewater or wastewater sludge; and
- (9) Date of such disposal.

[(b) Reports or copies of forms containing the tabulated information required in subsection (a) shall be submitted to the director no later than thirty daysafter the last day of the following months - March, June, September, and December.

- (1) Each report shall tabulate information for the preceding three months;
- (2) Special reports covering shorter periods than three months shall be submitted on request by the director or a county, state, or federal agency responsible for wastewater or wastewater sludge management or control;
- (3) The "wastewater pumping and hauling report form" as furnished by the director shall be the format used by the wastewater sludge pumping and hauling firms to report information to the director; and
- (4) The owner or operator of wastewater sludge pumping and hauling firm shall sign and certify the reports in accordance with section 11-62-52.] [Eff and comp 12/09/04; am and comp] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50, 342D-55)

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SUBCHAPTER 7

VARIANCES, PENALTIES, AND SEVERABILITY

§11-62-71 Variances. (a) Variances and variance applications shall comply with section 342D-7, HRS.

(b) Variance application forms shall be provided by the department. All applications for variances shall be submitted with a filing fee of \$300 for each application. Additionally, the applicant shall pay all fees assessed for publishing the legal notice(s) for each variance application. If a public hearing is required, the applicant shall pay all fees assessed for publishing the public hearing notice(s).

(c) Applications for renewal of variances shall be submitted one hundred eighty days before the expiration of the variance on forms provided by the department. A filing fee of \$150 shall be submitted with each application for renewal. Additionally, the applicant shall pay all fees assessed for publishing the legal notice(s) and public hearing notice(s). Failure to renew a variance within the specified time will result in the termination of the variance and require the applicant to apply for a new variance. [Eff 12/10/88, am 8/30/91; §11-62-41; ren, am and comp 12/09/04; comp] (Auth: HRS §§321-11, 342D-4, 342D-5, 342D-7, 342D-13) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-7, 342D-50)

§11-62-72 Penalties and remedies. Any person who violates any provision of this chapter shall be subject to the penalties and remedies for violations provided for in chapters 321, 322-part I, 342D, and 342H, HRS. [Eff 12/10/88; §11-62-42; ren, am and comp 12/09/04; comp] (Auth: HRS §§321-11, 322-8(a), 342D-1, 342D-4, 342D-5, 342D-9, 342D-11, 342D-30, 342D-31, 342D-50) (Imp: HRS §§321-

11, 322-1 to 322-4, 322-8, 322-9, 342D-2, 342D-4, 342D-5, 342D-9, 342D-11, 342D-18, 342D-30, 342D-31, 342D-50, 603-23)

§11-62-73 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby. [Eff 12/10/88; §11-62-43; ren and comp 12/09/04; comp] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-19, 342D-50)

§11-62-74 Public participation in enforcement. The department shall provide for public participation in enforcement relating to violations of subchapters 4 and 5 at least to the extent specified in 40 CFR §501.17(d)(2). [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 40 CFR Part 501, 40 CFR §501.17(d)(2))

SUBCHAPTER 8

FIELD CITATIONS

§11-62-81 Purpose. This subchapter authorizes field citations to effectively and quickly settle easily verifiable violations of chapters 322 and 342D, HRS, and this chapter. Settlements under this section are an additional remedy and do not supplant the director's authority to issue orders under section 342D-9, HRS. [Eff and comp 12/09/04; comp] (Auth: HRS §§321-11, 322-8(a), 342D-1, 342D-4, 342D-5, and 342D-31) (Imp: HRS §§321-11, 322-1 to 4, 322-8, 342D-2, 342D-4, 342D-5, 342D-9, 342D-18, 342D-31, 342D-50)

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§11-62-82 Offer to settle;[penalties.]settlement amounts. (a) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director [may], in the director's sole discretion, through any authorized employee, may issue a field citation by personal service or certified mail to:

- (1) Any person or owner who causes or allows a wastewater system to create or contribute to a wastewater spill, overflow, or discharge onto the ground or into surface waters, in violation of section [11-62-06(g)(6);] 11-62-06(f)(5) or (6);
- (2) Any person or owner who uses or occupies a building not connected to a wastewater system in violation of section 11-62-06(a); [or]
- (3) Any person or owner who constructs, modifies, or uses any individual wastewater system without approval by the director or a county authorized by the director to approve and regulate individual wastewater systems, in violation of section 11-62-08(b) or 11-62-31.1(f)[.]; or
- (4) Any person or owner who does not respond within thirty days to an operation and maintenance inspection report issued by the Department.

(b) A field citation shall [assess] indicate the following [penalties for violations:] settlement amounts:

- (1) [Any person who violates section 11-62-06(g)(6) shall be fined \$100 for a first violation, and \$250 for a subsequent violation;] \$200 for a first violation, and \$500 for a subsequent violation for:
 - (A) Violating sections 11-62-06(a),(f)(1)-(4) and (f)(6)-(9), 11-62-08(b) or 11-62-31.1(f);
 - (B) Failing properly to operate or maintain an aerobic treatment unit;
 - (C) Failing to provide an effective contract for an aerobic treatment unit;

- (D) Failing to respond to department inspection reports, if the report states a response is required;
 - (E) Having a cesspool without a concrete cover;
 - (F) Not having a secured manhole cover for the cesspool; or
 - (G) A collapsed cesspool.
- [(2) Any person who violates section 11-62-06(a) shall be fined \$100 for a first violation, and \$250 for a subsequent violation; and
- (3) Any person who violates section 11-62-08(b) or 11-62-31.1(f) shall be fined \$100 for a first violation, and \$250 for a subsequent violation.]
- (2) \$500 for a first violation, and \$2,000 for a subsequent violation for violating section 11-62-06(f)(5) or (10); and
- (3) \$1,000 for a first violation, and \$2,500 for a subsequent violation for constructing an individual wastewater system without department approval to construct.
- [Eff and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 322-8(a), 342D-1, 342D-4, 342D-5, 342D-9, 342D-11, 342D-30, 342D-31, 342D-50) (Imp: HRS §§321-11, 322-1 to 4, 322-8, 342D-2, 342D-4, 342D-5, 342D-9, 342D-11, 342D-18, 342D-30, 342D-31, 342D-50)

§11-62-83 Resolution of field citation. (a) A person issued a field citation may accept the citation by[,]:

- (1) Signing the field citation;
- (2) Paying the full amount [assessed] indicated by the field citation. Payment shall be made payable to the "State of Hawaii" by check, cashier's check, [or] money order [made payable to the State of Hawaii;] or as otherwise specified by the director;
- (3) Mailing or delivering the signed citation and full payment to the wastewater branch in

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Honolulu, or the district health office for the county where the violation occurred. The department must receive the signed filed citation and full payment within twenty days after the person receives the field citation; and

- (4) Correction within seven days or unless otherwise specified on the field citation any violation of section [11-62-06(g)(6)] 11-62-06(f)(6).
- (b) By signing the field citation, the person to whom it was issued agrees to:
 - (1) Give up the person's right to a contested case hearing under chapter 91 or 342D, HRS, or otherwise challenge the field citation;
 - (2) Pay the [penalty assessed;] amount indicated; and
 - (3) Correct the violation.
- (c) If the field citation is not accepted in compliance with subsection (a), the director may seek for that cited violation any remedies available under this chapter, chapters 321, 322, 342D, HRS, or any other applicable law. For all other violations the director retains authority to seek any available remedies. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 322-8(a), 342D-1, 342D-4, 342D-5, 342D-9, 342D-11, 342D-30, 342D-31, 342D-50) (Imp: HRS §§321-11, 322-1 to 4, 322-8, 322-9, 342D-2, 342D-4, 342D-5, 342D-9, 342D-11, 342D-18, 342D-30, 342D-31, 342D-50, 603-23)

§11-62-84 Form of citation. The department shall prescribe a field citation form." [Eff and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 322-8(a), 342D-1, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 4, 322-8, 342D-2, 342D-4, 342D-5, 342D-9, 342D-18, 342D-31, 342D-50)

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.
4. These amendments to and compilation of chapter 11-62, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ and filed with the Office of the Lieutenant Governor.

VIRGINA PRESSLER, M.D.
Director of Health

APPROVED AS TO FORM:

EDWARD G. BOHLEN
Deputy Attorney General

Rules Amending Title 11
Hawaii Administrative Rules

(MAR 21 2016)

1. Chapter 62 of Title 11, Hawaii Administrative Rules, entitled "Wastewater Systems" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 62

WASTEWATER SYSTEMS

Subchapter 1 Prohibitions and General
Requirements

| | |
|-------------|-----------------------------------------------|
| §11-62-01 | Preamble |
| §11-62-02 | Purpose and applicability |
| §11-62-03 | Definitions |
| §11-62-04 | County wastewater advisory committee |
| §11-62-05 | Critical wastewater disposal areas (CWDA) |
| §11-62-06 | General requirements |
| §11-62-07 | Repealed |
| §11-62-07.1 | Requirements for non-domestic wastewater |
| §11-62-08 | Other requirements for wastewater systems |
| §11-62-09 | Public access to information |
| §11-62-10 | Public hearings and informational meetings |
| §11-62-11 | Incorporation by reference |
| §11-62-12 | Timely processing |

Subchapter 2 Wastewater Treatment Works

| | |
|-------------|----------------------------------------------------------------------------------------------------------------------------------------|
| §11-62-21 | Repealed |
| §11-62-22 | Repealed |
| §11-62-23 | Repealed |
| §11-62-23.1 | Specific requirements for wastewater treatment works |
| §11-62-24 | Treatment unit requirements |
| §11-62-25 | Wastewater effluent disposal systems |
| §11-62-26 | Wastewater effluent requirements, recycled water quality and monitoring requirements applicable to treatment works treating wastewater |
| §11-62-27 | Recycled water systems |
| §11-62-28 | Additional monitoring, recordkeeping, and reporting |
| §11-62-29 | (Reserved) |

Subchapter 3 Individual Wastewater Systems

| | |
|------------------------|----------------------------------------------------------------------------------|
| §11-62-31 | Repealed |
| §11-62-31.1 | General requirements for individual wastewater systems |
| §11-62-31.2 | Site evaluation |
| §11-62-32 | Spacing of individual wastewater systems |
| §11-62-33 | Repealed |
| §11-62-33.1 | Specific requirements for new and proposed treatment units |
| §11-62-34 | Specific requirements for new and proposed disposal systems |
| §11-62-35 | Other individual wastewater systems |
| §11-62-36 | Cesspools |
| §11-62-37 | Application for and review of building permits and individual wastewater systems |
| §§11-62-38 to 11-62-39 | (Reserved) |

Subchapter 4 Wastewater Sludge Use and Disposal

| | |
|-----------|--------------------------------------|
| §11-62-41 | General requirements and prohibition |
|-----------|--------------------------------------|

§11-62-41.1 Relation to federal law
 §11-62-42 Land application of exceptional quality
 wastewater sludge
 §11-62-43 Land application of other than
 exceptional quality wastewater
 sludge, to agricultural land, forest,
 public contact site, or reclamation
 site
 §11-62-44 Land application of domestic septage to
 agricultural land, forest, or
 reclamation site
 §11-62-45 Repealed
 §11-62-46 Pathogens
 §11-62-47 Vector attraction reduction
 §11-62-48 Sampling method

Subchapter 5 Wastewater Management Permits and
 Registration

§11-62-50 Registration and permits
 §11-62-51 Fees
 §11-62-52 Signatories and certification
 requirements
 §11-62-53 Wastewater management registration
 §11-62-54.01 Wastewater management individual
 permits
 §11-62-54.02 Draft individual permits
 §11-62-54.03 Fact sheets
 §11-62-54.04 Public notices of draft individual
 permits; public comments and hearing
 requests
 §11-62-54.05 Public meetings or hearings on
 individual permits
 §11-62-54.06 Public notice of public meetings or
 hearings on individual permits
 §11-62-54.07 Response to comments
 §11-62-54.08 Issuance of individual permits;
 duration, conditions
 §11-62-54.09 Schedules of compliance
 §11-62-55.01 Repealed
 §11-62-55.02 Repealed
 §11-62-55.03 Requiring an individual permit
 §11-62-55.04 Repealed

§11-62-55.05 Repealed
§11-62-55.06 Repealed
§11-62-55.07 Repealed
§11-62-55.08 Repealed
§11-62-56 Standard permit conditions
§11-62-57.01 Transfer of permits
§11-62-57.02 Modification or revocation and
reissuance of permits
§11-62-57.03 Termination of permits
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Subchapter 6 Wastewater and Wastewater Sludge
Pumpers and Haulers

§11-62-60 Applicability
§11-62-61 Registration requirements
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Subchapter 7 Variances, Penalties and
Severability

§11-62-71 Variances
§11-62-72 Penalties and remedies
§11-62-73 Severability
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Subchapter 8 Field Citations

§11-62-81 Purpose
§11-62-82 Offer to settle; settlement amounts
§11-62-83 Resolution of field citation
§11-62-84 Form of citation

SUBCHAPTER 1

PROHIBITIONS AND GENERAL REQUIREMENTS

§11-62-01 Preamble. The department of health seeks to ensure that the use and disposal of wastewater and wastewater sludge does not contaminate or pollute any valuable water resource, does not give rise to public nuisance, and does not become a hazard or potential hazard to the public health, safety, and welfare.

The department of health seeks to migrate towards an ultimate goal of regional sewage collection, treatment and disposal systems that are consistent with state and county wastewater planning policies. Off-site treatment and disposal systems, followed in priority by on-site systems, meeting health and environmental standards will be allowed whenever they are consistent with state and county wastewater planning policies and on the premise that these systems will eventually connect to regional sewage systems. Individual wastewater systems may be utilized in remote areas and in areas of low population density. Hawai'i is long overdue in eliminating construction of wastewater disposal systems depositing untreated sewage into the environment, such as cesspools. Indeed, the department stated in its prior rules back in the 1990's, with the agreement of all counties' wastewater advisory committees, that installation of new cesspools should end after the year 2000.

The department of health seeks to work in close partnership with the counties to manage wastewater to prevent pollution and harm to public health, safety and welfare. Each county may participate in the implementation of these rules through the recommendations of a county wastewater advisory committee to the director.

The department of health seeks to advance the use of recycled water and wastewater sludge consistent with public health and safety and environmental quality. The state department of health acknowledges that when properly treated and used, all recycled

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water and wastewater sludge are valuable resources with environmental and economic benefits and can be used to conserve the State's precious resources. The director acknowledges that the most highly treated recycled water and exceptional quality wastewater sludge can be used for a wide variety of applications with the appropriate restrictions and when best management practices and other requirements of this chapter are met. [Eff 12/10/88; am and comp 12/09/2004; am and comp MAR 21 2016] (Auth: HRS §§321-11, 322-8(a), 342D-4, 342D-5, 342E-3) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50, 342E-3)

§11-62-02 Purpose and applicability. (a) This chapter seeks to ensure that the use and disposal of wastewater and wastewater sludge from wastewater systems:

- (1) Do not contaminate or pollute any drinking water or potential drinking water supply, or the waters of any beaches, shores, ponds, lakes, streams, groundwater, or shellfish growing waters;
- (2) Do not encourage the harborage of insects, rodents, or other possible vectors;
- (3) Do not give rise to nuisances;
- (4) Do not become a hazard or a potential hazard to public health, safety and welfare;
- (5) Contribute to the achievement of wastewater management goals contained in approved county water quality management plans;
- (6) Reinforce state and county planning policies; and
- (7) Are consistent with the State's administration of the National Pollutant Discharge Elimination System.

(b) This chapter seeks to advance the appropriate uses of recycled water and wastewater sludge.

(c) This chapter allows and does not preempt provisions in county codes, rules or ordinances that are not inconsistent with these rules, including,

without limitation:

- (1) Plumbing requirements in county plumbing codes or rules, including county adoptions of all or parts of the Uniform Plumbing Code;
- (2) Sanitary sewer system and wastewater treatment works use permission and pretreatment requirements in county ordinances or rules regarding the introduction of fats, oils, grease, septage, sludge, or wastewater into sanitary sewers or wastewater treatment works, requirements on the use of grease traps, and requirements on wastewater and wastewater sludge pumping and hauling;
- (3) Storm sewer system use permission requirements in county ordinances or rules; or
- (4) Water recycling requirements in county ordinances or rules, including requirements for connection to or use of available recycled water. [Eff 12/10/88; am and comp 12/09/2004; am and comp **MAR 21 2016**]
 (Auth: HRS §§321-11, 322-8(a), 342D-4, 342D-5, 342E-3) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50, 342E-3; HRS ch. 340E; 33 U.S.C. §§1311, 1342, 1345; 40 CFR Parts 122, 123, 501, 503)

§11-62-03 Definitions. As used in this chapter:

"Activated sludge process" means a biological wastewater treatment process in which a mixture of wastewater and microorganisms is agitated with induced aeration. Aeration supplies dissolved oxygen and wastewater supplies the organic substrate necessary for microorganism growth. This process includes sedimentation units which follow the aeration and where settled solids are withdrawn for disposal or returned to the aeration unit.

"Aerobic treatment unit system" shall have the same meaning as defined in Chapter 235, HRS.

"Aerosol" means a solid suspended in air with or

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without preceding evaporation.

"Bedrock" means a continuous horizontal layer of hardened mineral deposits that does not support the growth of common plant life.

"Bedroom" means any room within a dwelling that is or might reasonably be used as a sleeping room. A room is presumed to be a bedroom if it has a superficial floor area not less than seventy square feet and is provided with windows or skylights with an area of not less than one-tenth of the floor area or ten square feet, whichever is greater.

"Best management practices" or "BMPs" means the most effective, practical schedules of activities, prohibitions of conduct, maintenance procedures, and other specifications of conduct to prevent or reduce the pollution. BMPs also include treatment requirements, operating procedures, and practices to site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage.

"BOD₅" means five days biochemical oxygen demand as measured by a standard test indicating the quantity of oxygen utilized by wastewater under controlled conditions of temperature and time.

"Building" means a structure, permanent or temporary, built, erected, and framed of component structural parts used or designed for the housing, shelter, workplace, enclosure or support of persons, animals or property of any kind.

"Building modification" means any change to an existing building's configuration that may result in the increase in wastewater flows or change in the wastewater characteristics.

"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 discharging therein, but permits the liquid to seep through its bottom or sides to gain access to the underground formation.

"Collection system" means the conveyance system, which includes the building and street sewer laterals, Interceptor sewer, sewage pump station, and force

main, used to transport the sewage to the treatment unit.

"Composite sample" means sample(s) collected on regular intervals in proportion to the existing flow or volume and then combined to form a sample that represents the flow or volume over a period of time or space.

"Compost toilet" means a non-flush, waterless toilet that employs an aerobic composting process to treat toilet wastes.

"Confined work areas" means any area having a limited means of egress, which is subject to the accumulation of toxic or flammable contaminants or has an oxygen deficient atmosphere. Confined work areas include, but are not limited to, storage tanks, process vessels, bins, ventilation or exhaust ducts, sewers, underground utility vaults, tunnels, pipelines, and open top spaces more than four feet in depth such as pits, tubs, vaults and vessels.

"Construction" in the context of a wastewater system means the building of the system in the ground; construction is not completed until the system has been fully installed so that it is ready for hookup.

"Contractor" means the installer of a wastewater system or any part of a wastewater system.

"County" means any county of the state.

"Critical Wastewater Disposal Area (CWDA)" means an area where the disposal of wastewater has or may cause adverse effects on human health or the environment due to existing hydrogeological conditions.

"Department" means the department of health.

"Director" means the director of health or the director's duly authorized agent, including a contractor of the director.

"Disinfection" means a process to destroy, neutralize, or inhibit the growth of pathogenic microbes.

"Disposal system" means any sewer, sewer outfall, sewer lateral, seepage pit, cesspool, injection well, soil absorption system, disposal trench, or other facility used in the disposal of wastewater or wastewater sludge, including any wastewater

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transmission lines, pumps, power, or other equipment associated with the ultimate disposal of wastewater or wastewater sludge.

"Distribution box" means a watertight chamber from which effluent from a treatment unit is distributed evenly to various portions of a disposal system.

"Drip irrigation" means application of water and wastewater, including recycled water, from emitters, either on the surface or subsurface, that are part of a piping system alongside the plants being irrigated and that discharges at a rate not to exceed two gallons per hour per emitter.

"Domestic sewage" is waste and wastewater from humans or household operations that is:

- (1) Discharged to or otherwise enters a treatment works; or
- (2) Of a type that is usually discharged to or otherwise enters a treatment works or an individual wastewater system.

"Domestic wastewater" has the same meaning as "domestic sewage".

"Dwelling" means any building which is wholly or partly used or intended to be used for living or sleeping by human occupants and includes, but is not limited to, apartment houses, single family houses, duplex houses, cluster houses, townhouses, and planned developments, but excludes hotels and lodging houses.

"Dwelling unit" means any habitable room or group of habitable rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, and eating.

"Engineer" means a professional engineer registered in the State of Hawaii.

"EPA" means the United States Environmental Protection Agency.

"EPA's methods for chemical analysis of water and wastes" means the 1979 edition of "Methods for Chemical Analysis of Water and Wastes" as published by the EPA.

"Evapotranspiration system" means a subsurface disposal system which relies on soil capillarity and

plant uptake to dispose of treated effluent through surface evaporation and plant transpiration.

"Exceptional quality sludge" means wastewater sludge that has been treated to a level specified in this chapter in which it may be used with little or no restrictions for land application.

"Existing" means constructed under a valid county permit or with written approval from the director before the effective date of this rule.

"Filter fabric" means a woven or spun-bonded sheet material used to impede or prevent the movement of sand, silt and clay through the filter material. This material shall be non-biodegradable, resistant to acids and alkalis within a pH range of 4 to 10, and resistant to common solvents.

"Grab sample" means a single discrete sample of wastewater collected at a particular time and place which represents the composition of the source at that time and place.

"Graywater" shall have the same meaning as defined in HRS section 342D-1.

"Haul" means the transport of an item by vehicle or boat.

"Holding tank" means a nonportable, watertight closed vault used or designed to temporarily hold domestic wastewater.

"Household aerobic unit" means an individual wastewater system which receives domestic wastewater from dwellings or from other sources generating wastewater of a similar volume and strength, and retains solids, aerobically digests organic matter over a period of time, and allows the clarified effluent to discharge outside the tank into a disposal system.

"Individual permit" means a document issued under this rule to a specific person for a specific facility, or practice to generate, treat, use, dispose, or discharge of wastewater and wastewater sludge at a specific location.

"Individual wastewater systems" means facilities, such as septic systems, aerobic treatment units, and cesspools, that are not connected to a sewer and are used and designed to receive and dispose of:

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(1) No more than one thousand gallons per day of domestic wastewater; or

(2) Greater than one thousand gallons per day of domestic wastewater from buildings with highly variable flows.

"Injection well" has the same meaning as defined in chapter 11-23.

"Land application" means the spraying or spreading of wastewater sludge onto the land surface, the injection of wastewater sludge below the land surface, or the incorporation of wastewater sludge into the soil such that the wastewater sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

"Large capacity cesspool" means a cesspool that serves more than one residential dwelling or, for a non-residential cesspool, has the capacity to serve twenty or more persons per day.

"Living area" means the portion(s) of a dwelling unit including, but not limited to, the bedroom, kitchen, bathroom, living room, family room, covered lanai, den, and library, but excluding the garage, carport, open lanai, fence, and utility shed.

"Makai" means toward the sea or the area outside the Underground Injection Control (UIC) Line encircling the protected aquifer.

"Manual of Septic Tank Practice" means the United States Department of Health, Education and Welfare Publication No. (HSM) 72-10020, formerly known as "PHS Publication No. 526", revised in 1967.

"Modal time" means the amount of time elapsed between the time that a tracer, such as salt or dye, is injected into the influent at the entrance to a chamber and the time that the highest concentration of the tracer is observed in water where it is discharged from the chamber.

"Mound system" means a soil absorption system which is installed in or below an artificially created mound or earth.

"MPN" means most probable number.

"New" means constructed on or after the effective date of this chapter.

"Non-domestic wastewater" means all wastewater

excluding domestic wastewater.

"Non-exceptional quality wastewater sludge" means wastewater sludge that is not exceptional quality wastewater sludge.

"Owner" means a person(s) who has legal title to a treatment works or individual wastewater system, or duly authorized representative of the owner.

"Pathogenic organisms" means disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

"Person" has the same meaning as defined in section 342D-1, HRS.

"Person who prepares wastewater sludge" means anyone who generates wastewater sludge during the treatment of wastewater in a wastewater treatment works, a person who derives a material from wastewater sludge, a person who provides treatment of wastewater sludge, or a person who changes the quality of wastewater sludge.

"pH" means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25 degrees Celsius or measured at another temperature and then converted to an equivalent value at 25 degrees Celsius.

"Private" means not owned or operated by a federal, state, or county authority.

"Proposed" means put forward for consideration or suggested to the director. For the purposes of this chapter, "proposed" shall refer to the plans for a wastewater system or activity.

"Public" means, for issues of ownership, owned or operated by a federal, state, or county authority.

"Public water system" has the same meaning as defined in chapter 11-20.

"Qualified cesspool" shall have the same meaning as defined in Chapter 235, HRS.

"Qualified expenses" shall have the same meaning as defined in Chapter 235, HRS.

"R-1 water" means recycled water that has been oxidized, filtered, and disinfected to meet the corresponding standards set in this chapter.

"R-2 water" means recycled water that has been

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oxidized and disinfected to meet the corresponding standards set in this chapter.

"R-3 water" means recycled water that has been oxidized to meet secondary treatment standards as set forth by EPA.

"Recycled water" means treated wastewater that by design is intended or used for a beneficial purpose.

"Recycled water system" means a facility which conveys to users or uses recycled water. Recycled water systems are subdivided into distribution and use systems. Recycled water systems include all piping, storage, and repressurization facilities to deliver recycled water to users, but exclude treatment units.

"Residential large capacity cesspool" shall have the same meaning as defined in HRS section 342D-1.

"Reuse guidelines" means the "Guidelines for the treatment and use of reclaimed water", Hawaii State Department of Health, Wastewater Branch, November 23, 1993, revised January 2016.

"Seepage pit" means an excavation in the ground whose depth is greater than its widest surface dimension and which receives the discharge from treatment units and permits the effluent to exit through its bottom or sides for gradual seepage into the ground which does not result in contamination of water-bearing formations or surface water.

"Septage" means either a liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives wastewater.

"Septic system" shall have the same meaning as defined in Chapter 235, HRS.

"Septic tank" means a watertight receptacle that receives the raw wastewater, retains after settling solid matter or sewage for treatment by bacteria, and discharges a partially treated effluent.

"Sewage sludge" means any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, septage, portable toilet pumping, Type III Marine Sanitation device pumpings (33 Code of

Federal Regulations Part 159), and sewage sludge products. Sewage sludge does not include grit, screenings, or ash generated during the incineration of sewage sludge.

"Sewer" means a pipe or conduit or any other appurtenances that carry wastewater from a building or buildings to a specific point for treatment and disposal.

"Sewer system" shall have the same meaning as defined in Chapter 235, HRS.

"Soil absorption" means a process which uses the soil to treat and dispose of effluent from a treatment unit.

"Spray irrigation" means application of water and wastewater, including recycled water, to the land to maintain vegetation or support the growth of vegetation by spraying the water and wastewater above ground from sprinklers, micro-sprinklers, or orifices in piping.

"SS" means suspended solids and indicates the characteristic state of solids in wastewater.

"Standard methods" means the 22nd edition, 2014, of "Standard Methods for the Examination of Water and Wastewater" as published by the American Water Works Association, American Public Health Association and the Water Pollution Control Federation, unless another edition is specified by the director.

"State waters" shall have the same meaning as defined in section 342D-1, HRS.

"Subsurface disposal system" means a disposal system that allows the gradual seepage of effluent into the ground which does not result in contamination of water-bearing formations or surface water, such as a seepage pit, cesspool, soil absorption system, or other facility used in the disposal of wastewater, including any wastewater transmission lines, pumps, power, or other equipment associated with the disposal of wastewater.

"Subsurface drip irrigation" means the application of water and wastewater, including recycled water, to the land to maintain vegetation or to support the growth of vegetation by discharging or emitting the water and wastewater from orifices in

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pipng below the surface or finished grade.

"Suitable soil" means a soil which acts as an effective filter in the removal of organisms and suspended solids before the effluent reaches any highly permeable earth formations, bedrock, or groundwater.

"Surface disposal" means the placing of wastewater sludge on the land for final disposal and includes storage on land for two or more years.

"Surface irrigation" means the application of water and wastewater, including recycled water, by means other than spraying.

"Ten States Standards" means the 1980 edition of the Recommended Standards for Individual Sewage Systems, a report by the committee of the Great Lakes-Upper Mississippi River Board of State Sanitary Engineers on the policies for review and approval of plans and specifications for individual wastewater systems.

"Theoretical detention time" means the value obtained by dividing the volume of a chamber, through which fluid flows, by the flow rate expressed in amount of fluid volume per unit of time.

"Treatment unit" means any plant, facility, or equipment used in the treatment of wastewater, including the necessary pumps, power equipment, blowers, motors, holding tanks, flow splitter, and other process equipment.

"Treatment works" means any treatment unit and its associated collection system and disposal system, excluding individual wastewater systems.

"Vector attraction" means the characteristic of wastewater sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

"Wastewater" means any liquid waste, whether treated or not, and whether animal, mineral, or vegetable, including agricultural, industrial, and thermal wastes.

"Wastewater sludge" has the same meaning as "sewage sludge".

"Wastewater sludge facility" means a facility which collects, handles, stores, treats, or disposes

of wastewater sludge. Wastewater sludge facilities shall exclude individual wastewater systems.

"Wastewater system" means the category of all wastewater and wastewater sludge treatment, use, and disposal systems, including all wastewater treatment works, collection systems, wastewater sludge facilities, recycled water systems, and individual wastewater systems.

"Water pollution" has the same meaning as defined in section 342D-1, HRS.

"Watertight" means constructed so that no water can enter and discharge except through the inlet and outlet pipe respectively. [Eff 12/10/88; am 8/30/91; am and comp 12/09/04; am and comp MAR 21 2016]
(Auth: HRS §§321-11, 328(a), 342D-1, 342D-4, 342D-5)
(Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-1, 342D-2, 342D-4, 342D-5, 342D-50, 342E-3; 40 CFR Parts 501, 503, 40 CFR §501.2)

§11-62-04 County wastewater advisory committee.

(a) The mayor of each county may request that the director form a county wastewater advisory committee ("committee"), and the mayor may nominate its members, who may include representatives of the county water supply, public works, planning, and land utilization departments, labor, industry, environmental groups, and other interested people. The chief of the environmental management division on Oahu and the district environmental health program chiefs on the neighbor islands shall serve as ex officio members of their respective county committees. The department shall provide technical and support services for the committee.

(b) The primary role of the committee is to review and make recommendations to the director on the application of this chapter on matters which are unique to each county, on the establishment of critical wastewater disposal areas, on proposals which are not specifically addressed in these rules, and upon the director's request, for applications for variances. The committee's recommendations shall seek to advance the purposes of this chapter.

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[Eff 12/10/88; am 8/30/91; am and comp 12/09/2004; am and comp MAR 21 2016] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50)

§11-62-05 Critical wastewater disposal areas (CWDA). (a) All areas of the State are critical wastewater disposal areas.

(b) The director may impose more stringent requirements than those specified in this chapter for wastewater systems located or proposed to be located within areas that require additional protection. Requirements that the director may impose include, but are not limited to, meeting higher effluent standards for wastewater systems, limiting the method of effluent disposal, and requiring flow restriction devices on water fixtures. [Eff 12/10/88; am 8/30/91; am and comp 12/09/04; am and comp MAR 21 2016] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50)

§11-62-06 General requirements. Owners shall comply with these requirements: (a) All buildings used or occupied as a dwelling, all public buildings, and all buildings and places of assembly generating wastewater or with toilets, sinks, drains, or other plumbing fixtures capable of conveying wastewater, shall be connected to a wastewater system. In addition, any new building capable of generating wastewater shall be connected to a wastewater system which meets the requirements of this rule.

(b) All buildings and places of assembly generating wastewater or with toilets, sinks, drains, or other plumbing fixtures capable of conveying wastewater and located within or near an available public sewer system as determined by the director, shall connect to the public sewer.

(c) All wastewater systems shall be designed, constructed, operated, and maintained in accordance with this chapter.

(d) Operation and maintenance. All wastewater systems and parts thereof that are installed or used by persons to achieve compliance with this chapter and the conditions of any department approval for use issued under this rule shall at all times be properly operated and maintained. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures as specified by the director. Effluent testing for private wastewater systems shall be performed by an independent laboratory. Proper operation and maintenance also includes operation of any required back-up or auxiliary facilities or similar systems as specified by the director to be installed to achieve compliance with this chapter and the conditions of any department approval for use issued under this chapter.

(e) No holding tank, except for public facilities, and no privy shall be used. No portable toilets shall be used for any permanent structure unless approved by the director.

(f) No person or the owner shall cause or allow any wastewater system to create or contribute to any of the following:

- (1) Human illness;
- (2) Public health hazard;
- (3) Nuisance;
- (4) Unsanitary condition;
- (5) Wastewater spill, overflow, or discharge into surface waters or the contamination or pollution of state waters, except in compliance with a permit or variance issued under chapter 11-55, or a water quality certification or waiver obtained under chapter 11-54;
- (6) A wastewater spill, overflow, or discharge (spill) onto the ground, except for R-1 water from a recycled water system that is implementing BMPs approved by the director. The burden of proof is on the recycled water system's owner or operator to demonstrate that the spill qualifies for this exception;

- (7) Harborage of vectors, including insects and rodents;
- (8) Foul or noxious odors;
- (9) Public safety hazard; or
- (10) Contamination, pollution, or endangerment of drinking waters, except in compliance with a permit issued under chapter 11-23.

(g) Notice. If any of the conditions in subsection (f) exist, the owner or the person responsible for the wastewater system shall notify the director immediately, unless for subsection (f)(5) and (f)(6), the owner or person responsible demonstrates compliance with the protocol attached to this chapter as Appendix B, entitled Responses for Wastewater Spills, Overflows, and Discharges ("Spills") dated July 1, 2014.

(h) In case of a violation of this chapter, the director, at the director's discretion, shall initiate enforcement action against the owner(s) of the wastewater system and initiate enforcement action against other persons to have the offending condition abated, corrected, or removed. In addition, once a violation of this chapter occurs, the director shall order the owner to take immediate actions to protect public health and safety.

(i) Duty to mitigate. The owners of wastewater systems shall take steps to minimize or prevent the use and disposal of wastewater or wastewater sludge in violation of this chapter which has a reasonable likelihood of adversely affecting human health or the environment.

(j) Upon request by the director, proposed wastewater systems in critical wastewater disposal areas shall be approved in writing or by rule by the respective county board of water supply or department of water supply.

(k) If applicable, a wastewater system involving the subsurface disposal of wastewater shall be in compliance with chapter 11-23.

(l) Approvals to-construct the wastewater system shall be considered invalid if:

- (1) A county does not issue a building permit for a private building within one year after

the director approves the wastewater system, or the construction of the wastewater system has not begun within one year of the approval; and

- (2) A county revokes or rescinds a building permit and the building is to be served by a wastewater system that was approved in conjunction with the building permit application. Reapproval of any wastewater system for which the director's approval has been rescinded or determined invalid pursuant to this paragraph shall be based on the applicable rules in effect at the time the request for reapproval is made.

(m) The director, at the director's discretion, may require that a wastewater system be upgraded to meet the applicable requirements of this chapter whenever a building modification is proposed that may change the nature or quantity of the wastewater flowing to the wastewater system. The modifications may include but not be limited to adding additional bedrooms to a dwelling or adding a restaurant to a shopping complex. The director, at the director's discretion, may also require that a wastewater system be upgraded if any of the following conditions exists:

- (1) The existing wastewater system has created or contributed to any of the conditions noted in subsection (f);
- (2) The existing wastewater disposal system has within the last twelve months been pumped more than twice or has spilled wastewater more than once;
- (3) The existing wastewater system disposes untreated wastewater directly into the groundwater table; or
- (4) The owner of the existing wastewater system has not satisfactorily addressed all of the deficiencies noted by the director.

(n) Modifications to wastewater systems that may affect the quality or quantity of the wastewater and wastewater sludge shall meet the applicable provisions of this chapter.

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(o) Actions taken by the director to evaluate and determine possible measures to achieve compliance with this chapter do not guarantee that an approved wastewater system will function satisfactorily for any period of time, or mean that department employees are liable for any damages, consequential or direct, that are or may be caused by a malfunction of the wastewater systems.

(p) Duty to comply. The owners of any wastewater system shall comply with all applicable provisions of this chapter. In addition, all owners shall comply with all conditions of any department approval for use issued under this chapter. Any noncompliance constitutes a violation and is grounds for: enforcement action; department approval for use termination, revocation and reissuance, or modification; or denial of a department approval for use renewal application.

(q) In cases where the director is required to conduct an inspection at a location outside the State, the owner of the wastewater system shall be required to cover all costs related to the inspection. [Eff 12/10/88; am 8/30/91; am and comp 12/09/04; am and comp MAR 21 2016] (Auth: HRS §§321-11, 322-8(a), 342D-4, 342D-5, 342D-15, 342E-3) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50, 342E-3; HRS chs. 340E; 33 U.S.C. §§1311, 1342, 1345; 40 CFR Parts 122, 123, 40 CFR §501.15(b)(6))

§11-62-07 REPEALED [R 8/30/91]

§11-62-07.1 Requirements for non-domestic wastewater. (a) The director will review the use and disposal of non-domestic wastewater on a case-by-case basis.

(b) Non-domestic wastewater includes, but is not limited to:

(1) Wastewater from agricultural, commercial, or industrial activities or operations;

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- (2) Solids, semi-solids, or liquids removed from the non-domestic wastewater;
 - (3) Wastewater that contains a mix of both domestic and non-domestic wastewater; or
 - (4) Solids, semi-solids, or liquids removed from wastewater that contains a mix of both domestic and non-domestic wastewater.
- (c) Buildings and operations generating non-domestic wastewater, including farms, shall meet the specific requirements of this chapter as determined to be applicable by the director.
- (1) Wherever applicable, the director shall use the requirements for non-domestic wastewater as set forth by the EPA, Chapter 11-23, the Department's Guidelines for the Treatment and Reuse of Recycled Water, and wherever applicable, Department's Guidelines for Livestock Waste Management. The Guidelines are available on-line at the Wastewater Branch section of the department's website. Construction plans and engineering reports for proposed non-domestic wastewater systems shall be sufficient in scope and depth for determining compliance with the provisions of this chapter.
 - (2) Any building or facility which is located within the state agricultural land use district, county agricultural zoned districts, or conservation districts may be exempt from the provisions of subchapters 2 and 3 for its non-domestic wastewater provided that the buildings or facilities are essential to the operation of an agricultural enterprise or consistent with the conservation district use intent. The owner shall submit for the director's approval plans or engineering reports, or both, for the wastewater systems proposed to accommodate the wastewater generated from any building or facility in this category. Information submitted shall be sufficient in scope and depth for determining the adequacy

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of performance of the wastewater system in meeting the provisions of this chapter.

(d) In determining treatment requirements for the non-domestic wastewater, the director shall use requirements for non-domestic wastewater as set forth by EPA, Chapter 11-23, the Department's Guidelines for the Treatment and Reuse of Recycled Water and the Department's Guidelines for Livestock Waste Management. [Eff and comp 12/09/04; am and comp MAR 21 2016] (Auth: HRS §§321-11, 322-8(a), 342E-3) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342E-3)

§11-62-08 Other requirements for wastewater systems.

- (a) Purpose.
- (1) It is the purpose of this section and subchapters 2, 3, and 4 to set forth minimum requirements for the following purposes:
 - (A) To clarify responsibilities of owners, engineers, and the department;
 - (B) To set minimum distance requirements so that nuisances are avoided;
 - (C) To set minimum requirements to protect public health, safety, and welfare, and to protect the wastewater systems from malicious damage or unauthorized entry; and
 - (D) To emphasize the need for proper design, installation, operation, and maintenance.
 - (2) This section and subchapters 2, 3, and 4 give the engineer designing the wastewater system flexibility and design responsibility. The design engineer is responsible for the choice of equipment, types of treatment processes used, structural integrity, electrical components, disposal system designs, adequate work space, accessibility for operation, maintenance and repair, redundancy of major equipment and processes, corrosion control,

and all other major aspects of wastewater system design.

- (3) Nothing in this chapter shall be construed to prevent the engineer from exceeding the minimum requirements if the engineer determines that specific conditions warrant such additional measures.

(b) No person shall construct, modify the construction of, or modify the use of a wastewater system without the approval of the director. The following documents shall be submitted to the director prior to such approval:

- (1) Construction plans prepared by or under the supervision of an engineer indicating the following:

- (A) Acreage, address, and tax map key number(s) of the project site;
- (B) Plot plan drawn to scale showing the location of the proposed and any existing wastewater system and its distances from existing and proposed buildings, structures, legal boundaries, property lines, adjacent surface bodies of water, drinking water sources, and existing public sewers within 2,000 feet of the nearest property line; and
- (C) Sufficient details to show compliance with all applicable requirements of this chapter.

- (2) Construction plans for an individual wastewater system prepared by the engineer showing sufficient details to enable the contractor to construct the individual wastewater system.

- (3) Wastewater sludge use and disposal plan indicating how the wastewater sludge facility will comply with subchapter 4.

(c) Whenever applicable, the design flow of any development to be served by a wastewater system shall be based on Appendix D, Table I, dated July 1, 2014, except as provided by section 11-62-24(b).

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(d) Measures to control public accessibility to all treatment units shall be provided to prevent accidents, drownings, vandalism, and interference with the treatment process. At a minimum, the provisions shall include:

- (1) Fencing or other secured enclosures at least six feet in height with no more than three and a half inch clear openings or spaces for treatment units with exposed water surfaces or equipment; or
- (2) Completely enclosed treatment units with unexposed water surfaces and equipment. Access openings to completely enclosed treatment unit(s) and equipment shall be secured and properly identified, and be large enough to allow removal of equipment from the facility.

(e) No person shall use the area adjacent to or directly above any wastewater system for purposes or activities which may hinder or interfere with the operation and maintenance, modification, or replacement of the wastewater system.

(f) No person shall operate a wastewater system unless that person or the owner of the wastewater system is authorized by the director in accordance with the applicable provisions of sections 11-62-23.1(e) and 11-62-31.1(f) and the applicable provisions of chapter 11-61. The director may inspect the wastewater system or its site at any time before authorizing the use of the system and may require advance notice of the engineer's inspection.

(g) All wastewater systems shall be constructed or modified by a person meeting the requirements of chapter 444, HRS, and any pertinent rules adopted by the department of commerce and consumer affairs, State of Hawaii. [Eff 8/30/91; am and comp 12/09/04; am and comp MAR 21 2016] (Auth: HRS §§321-11, 342D-4, 342D-5, 342E-3) (Imp: §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50, 342E-3)

§11-62-09 Public access to information. (a)

The following information is available for public inspection:

- (1) The name and address of any person seeking or obtaining registration, an individual permit, or department approval for use of an individual wastewater system; and
- (2) Registration information and forms, registrations, individual permit applications and permits, department approval for use of an individual wastewater system, sludge and effluent data, and reports required to be submitted under this chapter. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

(b) This section is not intended to limit chapter 92F, HRS, or any other law requiring the disclosure of information.

(c) Applications for request for public information regarding wastewater system shall be made in writing on forms furnished by the director. At a minimum, the application shall identify where the wastewater system is, including when possible the applicable street address to and tax map key of the lot, and a mailing address which the information is to be sent. [Eff and comp 12/09/04; am and comp

MAR 21 2016] (Auth: HRS §§91-2, 92-21, 342D-4, 342D-5, 342D-14) (Imp: HRS §§91-2, 92-21, 342D-2, 342D-4, 342D-5, 342D-6, 342D-14, 342D-55)

§11-62-10 Public hearings and informational meetings. (a) The director may hold a public hearing in the director's discretion, when such a hearing may help the director's decision on a matter regulated by this chapter or for another reason which the director considers to be in the public interest.

(b) The director may hold a public informational meeting when the director considers it to be in the public interest. [Eff and comp 12/09/04; comp

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MAR 21 2016] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-57; 40 CFR Part 501, §501.15(d)(7))

§11-62-11 Incorporation by reference.
Appendices A through E, dated July 1, 2014, located at the end of this chapter, are made a part of this chapter. [Eff and comp 12/09/04; am and comp
MAR 21 2016] (Auth: 342D-4, 342D-5) (Imp: 342D-4, 342D-5, 342D-6)

§11-62-12 Timely processing. (a) This section applies to applications for a permit, license, certificate, or any form of approval required under this chapter.

(b) The director shall approve, approve with conditions, or deny a complete application and notify the applicant accordingly within one hundred eighty days of the receipt of the complete application. Otherwise, the application is deemed automatically approved on the one hundred eighty-first day.

(c) The director shall determine and notify an applicant of the completeness or deficiency of an application covered by this section, including payment of required fees, within forty-five days of receipt of the application. Failure by the applicant to provide additional information, pay the fees, or correct a deficiency for completeness of the application is sufficient ground to suspend or terminate a review of the application. The director shall determine and notify an applicant of the completeness of a revised application covered by this section, including payment of required fees, within thirty days of receipt of the revised completed application.

(d) Notice to the applicant shall be complete upon mailing, facsimile transmission, or electronic mail transmission.

(e) The period for the director's action includes all calendar days, but if the period ends on a Saturday, Sunday, or state holiday, the period extends to the next working day.

(f) The one hundred eighty day period for the director's action under subsection (b) applies to the director's initial decision and notice. The initial decision and notice do not become untimely if later there is a request for hearing, an actual hearing, a lawsuit, or other challenges to the initial decision which prevents it from becoming final.

(g) The time for the director's action and notice to the applicant shall be extended when allowed by section 91-13.5, HRS.

(h) Any action taken and any wastewater system or sludge facility built, modified, or operated under an automatic approval shall comply with all applicable requirements of this chapter, and the automatic approval is effective for a period of one year. [Eff 10/21/00; comp 12/09/04; am and com MAR 21 2016]
(Auth: HRS §§91-13.5, 322-11, 322-8(a), 342D-4, 342D-5) (Imp: HRS §91-13.5)

SUBCHAPTER 2

WASTEWATER TREATMENT WORKS

§11-62-21 REPEALED [R 8/30/91]

§11-62-22 REPEALED [R 8/30/91]

§11-62-23 REPEALED [R 8/30/91]

§11-62-23.1 Specific requirements for wastewater treatment works. (a) In addition to the requirements of section 11-62-08(b), the following documents shall be submitted to the director prior to approval to construct the treatment works:

- (1) A written declaration signed and dated by the engineer that the proposed treatment works was designed to meet all applicable

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effluent requirements of sections 11-62-26 and 11-62-27; and

- (2) Certification by the owner of a proposed treatment works that the treatment works shall be operated and maintained in accordance with all of the provisions of the operation and maintenance manual developed pursuant to subsection (d)(2). The owner shall certify that the operation and maintenance manual shall be available to the operator of the treatment works and shall further certify that, upon sale or transfer of ownership of the treatment works, the sale or transfer will include construction drawings, equipment manuals, operational data collected, and the appropriate transfer documents and provisions binding the new owner to the operation and maintenance manual.

(b) All treatment works shall be provided with a continuous effluent flow measuring device such that daily wastewater flow can be determined. For treatment works with design flows equal to or greater than 100,000 gallons per day, the continuous effluent flow measuring device shall include recording equipment to totalize or chart daily flows.

(c) Unless otherwise specified by the director, the following distance requirements apply to all treatment works:

- (1) Treatment units, except as provided in paragraph (3), shall not be less than twenty-five feet from any property lines nor less than ten feet from any building and swimming pools;
- (2) Disposal systems, excluding effluent irrigation systems, shall not be less than five feet from a property line nor less than five feet from any building; and
- (3) Completely enclosed, locked, and ventilated equipment rooms used to house items such as blowers, motors, pumps, electrical controls, and chemical feeders shall not be less than

five feet from property lines or less than ten feet from dwelling unit(s).

(d) No person shall operate a treatment works unless the following documents are provided:

(1) A written declaration signed and dated by the engineer responsible for the preparation of the operation and maintenance manual for the treatment works, that the operation and maintenance manual meets paragraph (2) and that if the treatment works is operated in accordance with the manual, all applicable effluent requirements will be met; and

(2) An operation and maintenance manual prepared by the engineer. The manual as a minimum, shall provide the details on the following:

- (A) Operation and maintenance instructions for each pump station and treatment unit or process under normal and emergency conditions such as power outage and equipment malfunction;
- (B) Operation and maintenance instructions for the disposal system including procedures for purging or chemical "shock loading" to prevent or eliminate biological growth in the subsurface disposal system;
- (C) List of required sampling frequencies and analyses to be conducted by the operator;
- (D) Troubleshooting, corrective, and preventive measures to be taken to maintain process control and treatment performance;
- (E) Start-up procedures;
- (F) Applicable state effluent requirements;
- (G) Instructions on wasting and disposal of wastewater sludge;
- (H) Manpower requirements needed to operate and maintain the treatment works;
- (I) List of critical parts of the treatment works;
- (J) "As-built" drawings of the treatment works;

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- (K) List of required daily activities, checks, and observations;
 - (L) Logs or report forms for all operation and maintenance activities performed;
 - (M) Flow schematic diagrams with details of piping and valving;
 - (N) Plot plan of the treatment works and Project site including all collection lines and equipment;
 - (O) Details on all safety equipment at the treatment works site, any applicable spare parts, maintenance, and operation instructions; and
 - (P) Details on all monitoring equipment including spare parts, maintenance, and operating instructions.
- (e) No person shall operate a treatment works until it has been inspected to the director's satisfaction and the director has authorized in writing the use of the treatment works.
- (1) The owner's engineer shall inspect the treatment works and submit to the director a final inspection report stating whether the wastewater treatment works has been constructed according to the submitted plans approved by the director and identifying any discrepancies and their resolutions. Any discrepancy between the constructed treatment works and the approved plans is sufficient reason to withhold approval to operate the treatment works.
 - (2) Before operation of the treatment works, the owner shall resolve all discrepancies.
 - (3) Any changes to the approved plan shall be resubmitted to the director for approval before the final inspection.
 - (4) The inspection shall not be considered final until the constructed treatment works conforms to the approved plans.
- (f) After the first year of operation, the owner's engineer shall submit to the director a written statement based on results of actual sampling and professional judgment of whether or not the

treatment works is meeting and at the design flow will meet the applicable effluent requirements of sections 11-62-26 and 11-62-27. If the treatment works is not meeting the applicable effluent requirements, the owner's engineer shall submit to the director a corrective action report containing:

- (1) An analysis of the cause of the treatment works' failure to meet the effluent requirements and an estimate of the scope of the corrective action necessary to enable the treatment works to be in compliance;
- (2) A schedule for undertaking the corrective actions; and
- (3) A date by which the treatment works shall be in compliance with the applicable effluent requirements.

(g) Treatment works shall be designed with safety in mind and comply with appropriate provisions of the Occupational Safety and Health Standards of the State of Hawaii, Department of Labor and Industrial Relations.

(h) Upon abandoning, retiring, or permanently discontinuing use of a treatment works, the owner shall render it safe by removing it or filling it completely with earth, sand, gravel, or similar non-organic matter. All above ground portions of the treatment works shall be rendered safe and vector free. Electrical components shall be disconnected at the circuit breaker or source and all access openings sealed. Injection wells shall be abandoned in accordance with chapter 11-23.

(i) For public wastewater treatment works, a facility plan shall be initiated when the actual wastewater flow reaches 75 per cent of the design capacity of the wastewater treatment works. Implementation of the recommendation of the facility plan shall be initiated when the actual wastewater flow reaches 90 per cent of the design capacity of the wastewater treatment works.

(j) The owner or operator shall provide standby power for all lift stations to prevent unauthorized discharges of wastewater during a primary power outage.

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(k) For all treatment works which produce recycled water, the director shall be guided by the requirements of subchapter 1, other applicable sections of this subchapter, and the Reuse Guidelines for all decisions on production of recycled water.

[Eff 8/30/91; am and comp 12/09/04; am and comp

MAR 21 2016] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

§11-62-24 Treatment unit requirements. (a) For private wastewater treatment works of required design capacities of less than 100,000 gallons per day:

- (1) For sludge digesters or aerated sludge holding tanks constructed after December 10, 1988, the sludge digesters or aerated sludge holding tanks shall treat and store at least the amount of sludge generated over a twenty day period;
- (2) Except for subsurface disposal systems, continuous disinfection of the treated effluent shall be provided for treatment works unless otherwise approved or ordered by the director;
- (3) For aeration tanks constructed after December 10, 1988, the aeration tank loading shall not exceed 12.5 pounds of BOD₅ per 1,000 cubic feet. For the sequencing batch reactor process, food to microorganism (F/M) ratios shall be between 0.05 and 0.10;
- (4) For final settling tanks constructed after December 10, 1988, the detention time for final settling tanks shall not be less than four hours and the surface overflow rate shall not exceed 300 gallons per day per square foot based on the average daily flow;
- (5) For treatment works constructed after December 10, 1988, flow equalization shall be provided unless the engineer submits written justification that changes in normal daily flow rate or seasonal occupancy rates

shall not affect the treatment unit's ability to meet continuous compliance with the effluent requirements of sections 11-62-25, 11-62-26, and 11-62-27;

- (6) For treatment works constructed after December 10, 1988, easy access shall be provided for operators to allow necessary operation, maintenance, and repair. Completely enclosed treatment units with unexposed water surfaces and equipment shall not be allowed unless the design engineer can satisfy the director that provisions have been included to eliminate confined space work areas and to allow accessibility for necessary operation, maintenance, and repair, and replacement; and
- (7) For all treatment units utilizing gas chlorination for disinfection, the following equipment shall be provided: chlorine gas leak detector and alarm, self contained breathing apparatus, chlorine gas mask, warning signs, and an emergency eyewash and shower.

(b) New and proposed private wastewater treatment works of required design capacity greater than or equal to 100,000 gallons per day and new and proposed county wastewater treatment works shall comply with the design standards of their respective counties. If a county does not have wastewater treatment works design standards, then the design standards of the City and County of Honolulu shall be used.

(c) Private wastewater treatment works with design flows greater than or equal to 100,000 gallons shall have solids dewatering equipment included in the facility design. [Eff 12/10/88, am 8/30/91; am and comp 12/09/04; am and comp MAR 21 2016] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

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§11-62-25 Wastewater effluent disposal systems.

- (a) New and proposed effluent disposal systems.
- (1) Effluent disposal systems shall at least consist of a primary disposal component and a separate 100 per cent back-up disposal component.
 - (2) The primary disposal component and the back-up disposal component shall each be designed to handle the peak flow. The peak flow shall be determined in accordance with the design standards of their respective county. If a county does not have design standards, the design standards of the City and County of Honolulu shall be used. Other means of determining the peak flow, as recommended by the design engineer, may be approved by the director.
 - (3) Each disposal component shall be tested to accommodate the wastewater flow as required in paragraph (2).
- (b) For treatment works utilizing subsurface disposal systems, design data and other pertinent data shall be submitted to and approved by the director on a case-by-case basis. Decisions by the director shall be guided by subchapter 1 and other applicable sections of this subchapter.
- (c) All wastewater effluent disposal systems shall include provisions to facilitate operation, maintenance, and inspection.
- (d) All wastewater subsurface effluent disposal systems and injection wells shall include provisions for purging and chemical "shock loading". [Eff 12/10/88, am 8/30/91; am and comp 12/09/04; am and comp **MAR 21 2016**] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

§11-62-26 Wastewater effluent requirements, recycled water quality, monitoring, and reporting requirements applicable to treatment works treating domestic wastewater. (a) All treatment works shall meet the applicable requirements of this section.

Nothing in this section shall be construed to prevent the engineer from applying more stringent requirements if the engineer determines that the particular design and circumstances for which the engineer is responsible warrants the more stringent requirements.

(b) Treatment works' effluent and other parameters shall be monitored as follows and shall not exceed the following limits:

- (1) Biochemical oxygen demand (BOD₅).
 - (A) For wastewater treatment works excluding wastewater pond systems with average daily flows greater than or equal to 100,000 gallons per day, the owner or operator shall perform composite sampling at least weekly.
 - (B) For wastewater treatment works with average daily flows less than 100,000 gallons per day, the owner or operator shall perform grab sampling at least monthly.
 - (C) For wastewater pond systems with average daily flows greater than or equal to 100,000 gallons per day, the owner or operator shall perform grab sampling at least weekly.
 - (D) The BOD₅ in the effluent from a treatment works shall not exceed 30 milligrams per liter based on the monthly average of the results of the analyses of composite samples.
 - (E) The BOD₅ in the effluent from a treatment works shall not exceed 60 milligrams per liter based on a grab sample.
- (2) Suspended solids.
 - (A) For wastewater treatment works, except for wastewater pond systems, with average daily flows greater than or equal to 100,000 gallons per day, the owner or operator shall perform composite sampling at least weekly.

- (B) For wastewater treatment works with average daily flows less than 100,000 gallons per day, the owner or operator shall perform grab sampling at least monthly.
 - (C) For wastewater pond systems with average daily flows greater than or equal to 100,000 gallons per day, the owner or operator shall perform grab sampling at least weekly.
 - (D) The suspended solids in the effluent from a treatment works shall not exceed 30 milligrams per liter based on the monthly average of the results of the analyses of composite samples.
 - (E) The suspended solids in the effluent from a treatment works shall not exceed 60 milligrams per liter based on a grab sample.
- (3) Owners or authorized agents shall submit suspended solids and BOD₅ lab data to the director no later than thirty days after the last day of June and December, unless the data is already being submitted to the Department under an NPDES permit by a public agency.
 - (4) The dissolved oxygen, pH, and 30 minutes settleability of the contents of the aeration tank shall be sampled and analyzed at least weekly.
 - (5) Effluent chlorine residual, if any, shall be sampled and analyzed at least weekly.
 - (6) Total daily flow shall be monitored at least weekly.
 - (7) The volume of wastewater sludge wasted, the solids concentration of wastewater sludge wasted, the name of the wastewater sludge pumping and hauling firm, and the dates of pumping and hauling, if applicable, shall be recorded.
 - (8) The operator shall maintain a log book or records which shall include but not be limited to: the date and time of operator

- entry, operating conditions, process control testing performed, and any servicing or preventative maintenance done while at the wastewater treatment works.
- (9) Alternative effluent limitations as permitted by EPA regulations, (40 CFR 125 and 40 CFR 133), relating to the definition of secondary treatment or other industrial categories, may be utilized by the director.
 - (10) For the purposes of this section, the arithmetic average of the results of the analyses of composite samples shall be based upon one or more analyses made within a 30 consecutive calendar day period. The arithmetic average shall be the sum of the results of all analyses divided by the number of analyses made during the 30 consecutive calendar day period.
 - (11) For the purposes of this section, composite samples shall consist of at least eight sample aliquots, collected at periodic intervals during the operating hours of the facility over a 24-hour period. The composite sample must be flow proportional; either the time interval between each aliquot or the volume of each aliquot must be proportional to either the stream flow at the time of sampling or the total stream flow since the collection of the previous aliquot. Aliquots may be collected manually or automatically.
- (c) In addition to subsection (b), treatment works producing R-1 water or R-2 water for recycled water systems shall provide continuous disinfection of the effluent as specified below unless otherwise specified by the director.
- (1) R-1 water disinfection requirements.
 - (A) For chlorine disinfection process. The disinfection process shall provide a CT (the product of total chlorine residual and modal contact time measured at the same point) value of not less than 450 milligrams-minutes per liter at all

- times with a modal contact time of at least ninety minutes based on peak dry weather design flow; or
- (B) For non-chlorine disinfection processes. The disinfection process shall demonstrate to the director's satisfaction the inactivation and removal of 99.999 per cent of the plaque forming units of F-specific bacteriophage MS2 or polio virus in the wastewater.
- (2) R-2 water disinfection requirements.
- (A) For chlorine disinfection processes.
 - (i) A theoretical contact time of fifteen minutes or more and an actual modal time of ten minutes or more throughout which the chlorine residual is 0.5 milligrams per liter or greater; and
 - (ii) Automatic continuous measuring and recording of chlorine residual shall be provided. The chlorine facilities shall have adequate capacity to maintain a residual of 2 milligrams per liter.
 - (B) For non-chlorine disinfection processes.
 - (i) The disinfection process shall demonstrate to the director's satisfaction the ability to meet the requirements of subsection (d)(2); and
 - (ii) Automatic controls shall be provided to continuously measure and record disinfection dosage and residuals, if any.
- (3) Monitoring shall be by grab samples that shall be taken at a point following disinfection.
- (d) In addition to subsections (b) and (c), treatment works producing R-1 water or R-2 water for recycled water systems shall meet the following daily

fecal coliform requirements unless other sampling frequencies are approved by the director. Monitoring shall be by grab samples that shall be taken at a point following disinfection.

- (1) R-1 water.
 - (A) The median density measured in the disinfected effluent shall not exceed 2.2/100 milliliters using the bacteriological results of the last seven days for which analyses have been completed;
 - (B) The density shall not exceed 23/100 milliliters in more than one sample in any thirty day period; and
 - (C) The density in any one sample shall not exceed 200/100 milliliters.
- (2) R-2 water.
 - (A) The median density as measured in the disinfected effluent shall not exceed 23/100 milliliters using the bacteriological results of the last seven days for which analyses have been completed; and
 - (B) The density of shall not exceed 200/100 milliliters in more than one sample in any thirty day period.

(e) In addition to subsections (b) through (d), treatment works producing R-1 water for recycled water systems shall provide continuous turbidity monitoring and recording prior to the filtration process and at a point after the filters and before application of the disinfectant. The R-1 water shall meet the following turbidity limits:

- (1) For filtration systems utilizing sand or granular media, cloth, or other synthetic media, the turbidity shall not exceed any of the following:
 - (A) An average of two nephelometric turbidity units (NTU) within a twenty-four hour period;
 - (B) 5 NTU more than five percent of the time within a twenty-four hour period; and

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- (C) 10 NTU at any time.
- (2) For filtration systems utilizing membrane filtration, the turbidity shall not exceed any of the following:
 - (A) 0.2 NTU more than five percent of the time within a twenty-four hour period; and
 - (B) 0.5 NTU at any time.
- (f) When using media filtration for existing R-1 facilities the following performance criteria shall apply:
 - (1) The design UV dose shall be at least 100 mJ/cm² under maximum daily flow; and
 - (2) The filtered UV transmittance shall be 55 percent or greater at 254 nanometers (nm).
- (g) When using membrane filtration for existing R-1 facilities, the following performance criteria shall apply:
 - (1) The design UV dose shall be at least 80 mJ/cm² under maximum daily flow; and
 - (2) The filtered effluent UV transmittance shall be 65 percent or greater at 254 nm.
 - (h) The minimum acceptable design requirements and commissioning of new UV disinfection systems shall comply with the Ultraviolet Disinfection Guidelines for Drinking Water and Water Reuse, Third Edition, 2003, published by the National Water Research Institute.
- (g) The analysis, including the handling and preservation of samples, to determine compliance with effluent requirements shall be performed in accordance with Standard Methods or EPA's Methods for Chemical Analysis of Water and Wastes. The director may approve alternative methods for analyzing the effluent limits of this section. The alternative test methods, when approved, may be used by the director to determine compliance with effluent limits as stated in this rule. [Eff 12/10/88, am 8/30/91; am and comp 12/09/04; am and comp MAR 21 2016] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

§11-62-27 Recycled water systems. (a) No recycled water system shall be constructed, used, or modified without written approval by the director.

(b) In reviewing recycled water systems and in addition to this chapter, the director shall be guided by the Reuse Guidelines.

(c) Before using recycled water, the owner of the recycled water system shall submit to the director the following information:

- (1) Name, address, and phone number of the owner and party responsible for the application of recycled water at the site (if different from the owner);
- (2) Clear identification of the people who will actually operate and maintain the system, if different from paragraph (1);
- (3) Detailed site information on the water recycling application site and its surroundings, including site name, address, and tax map key number(s), a map indicating specific areas of use, areas of public access, surrounding land use, location of all wells within a one-fourth mile radius, description of nearest housing or public area, setbacks, general location of existing and proposed water and sewer lines, the direction of drainage with a description of how the drainage will flow, and the depth to groundwater underlying the irrigated area with a description of the ground water quality; and
- (4) Information sufficient to show compliance with the requirements of subsection (h), and identification of best management practices.

(d) Before using recycled water, the owner of the recycled water system shall also submit to the director for approval an engineering report or recycled water application. The report or application form shall include the following information and shall clearly identify all best management practices to be implemented:

- (1) An irrigation use plan that includes information on application rates, intended

- uses, and schedules for recycled water use. The irrigation use plan shall also include information on types of vegetation, types and methods of irrigation, proposed irrigation schedules, vegetative consumption rates, water balance calculations, nutrient balance calculations, and the corresponding acreage to be used for irrigation;
- (2) An overflow control plan that includes detailed best management practices to control or minimize runoff or ponding or recycled water;
 - (3) A management plan that includes establishment and delineation of the responsibilities of operation and maintenance of the recycled water system;
 - (4) A public information and access plan, to minimize public contact with the recycled water, that includes methods to adequately inform the public that recycled water is being used and that the recycled water is unfit for human consumption; and methods to control public access to the recycled water system and areas of recycled water use;
 - (5) A labeling plan to distinguish piping and appurtenances which carry or contain recycled water from those for potable water;
 - (6) An employee training plan that describes the training that the employees will receive to ensure compliance with this chapter and any other features specified by the director;
 - (7) A vector control plan (if applicable); and
 - (8) A groundwater monitoring plan (if applicable), including formulation of a strategy for the observation and surveillance of groundwater for possible sources of pollution.
- (e) For existing users of recycled water, the owner of the recycled water system shall submit the information and plans required in subsections (c) and (d), except for the information contained in subsection (d)(1) regarding the vegetative consumption

rates and water balance, and subsection (d)(8) regarding groundwater monitoring. For users of non R-1 recycled water spray irrigation systems, the owner shall also describe the methods and controls used to ensure that public contact with aerosols are minimized.

(f) For new users of recycled water obtaining access to an existing recycle water system, the user shall submit the information and plans required in subsections (c) and (d), except for the information contained in (d)(1) regarding vegetative consumption rates and water balance, and subsection (d)(8) regarding groundwater monitoring. For users of non R-1 recycled water spray irrigations systems, the owner shall also describe the methods and controls used to ensure that public contact with aerosols are minimized.

(g) For recycled distribution water systems, the owner of the recycled water distribution system shall submit an engineering report or recycled water application containing the following information:

- (1) Name, address, and phone number of the owner and party responsible for the recycled water distribution system (if different from the owner);
- (2) Information about the treatment works supplying the recycled water, including the name, address, tax map key number, and owner's name;
- (3) Maps showing the location of the distribution system layout. The maps shall also include the location of all water and sewer lines;
- (4) A labeling plan to distinguish piping and appurtenances which carry or contain recycled water from those for potable water; and
- (5) A description of how the distribution system complies with this chapter and the Reuse Guidelines.

(h) The engineering report or application required in subsection (d), (e), (f), or (g) plus any other submittals shall contain sufficient information

to assure the director that the degree of treatment and reliability is commensurate with the proposed use, that the distribution and use of the recycled water will not create a health hazard or nuisance, and that the director is able to make decisions in accordance with subsection (b).

(i) For recycled water systems that use recycled water, the owner of the recycled water system shall operate the system in accordance with the requirements of this chapter and to the maximum extent practicable shall:

- (1) Irrigate at a rate not greater than the plants use it;
- (2) Minimize recycled water runoff and ponding on the ground;
- (3) Post signs or other devices warning the public not to drink, swim, or otherwise come into contact with the recycled water;
- (4) Keep the public away from the areas being irrigated with recycled water;
- (5) Clearly mark pipes, tanks, valves, and equipment used in recycled water use systems such that they are easily differentiated from potable water systems;
- (6) Provide training to employees such that they are aware of this chapter and any conditions the director imposed on the recycled water use system;
- (7) Provide control measures to minimize vector nuisances; and
- (8) Monitor groundwater as required by the director.

(j) The owners of new, proposed, or modified recycled water systems, where applicable, shall provide adequate storage basin(s) or a backup disposal system to prevent any overflows or discharges from the system when the irrigation system is not in operation or when recycled water quantities exceed the irrigation requirements.

(k) Spills, overflows, and discharges ("spills") of recycled water shall be responded to as required by section 11-62-06(f) and (g) and Appendix B, entitled

Responses for Wastewater Spills, Overflows, and Discharges ("Spills"), dated July 1, 2014.

(1) For recycled water systems, the owner or the owner's duly authorized agent, unless otherwise directed, shall report the following information to the director:

- (1) The volume of recycled water used, the volume of recycled water stored, the volume and location of any recycled water spills, and details on the irrigated areas, including water budgets, precipitation, evaporation, application rates, and monitoring of best management practices; and
- (2) Reported information shall be submitted by February 19 of each year and shall be in a monthly summary format for the preceding calendar year unless otherwise specified or agreed to by the director. [Eff and comp 12/09/04; am and comp MAR 21 2016]
(Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1311, 1342; 40 CFR Parts 122, 123)

Historical note: §11-62-27 is based substantially upon §11-62-25(b)(1), (b)(2), and (c). [Eff 12/10/88; am and comp 8/30/91]

§11-62-28 Additional monitoring, recordkeeping, and reporting. (a) The owners of treatment works or the owners' duly authorized agents shall maintain complete records of operation and maintenance, repairs, replacements, and improvements performed or installed at the treatment works.

(b) The monitoring results, reports, and all records required in sections 11-62-26 and 11-26-27, this section, and Appendix B, entitled Responses for Wastewater Spills, Overflows, and Discharges ("Spills"), dated July 1, 2014, located at the end of this chapter shall be kept on site and available for the director's inspection for at least two years and a copy made available to the director without charge

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upon the director's request. [Eff and comp 12/09/04;
am and comp MAR 21 2016] (Auth: HRS
§§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1
to 322-4, 322-8, 342D-2, 342D-4, 342D-6, 342D-50)

§§11-62-29 (Reserved)

SUBCHAPTER 3

INDIVIDUAL WASTEWATER SYSTEMS

§11-62-31 REPEALED [R 8/30/91]

§11-62-31.1 General requirements for individual wastewater systems. (a) Individual wastewater systems may be used as a temporary on-site means of wastewater disposal in lieu of wastewater treatment works under the following conditions:

- (1) Developments involving dwellings.
 - (A) There shall be 10,000 square feet of land area for each individual wastewater system;
 - (B) Total development of an area shall not exceed fifty single family residential lots or exceed fifty dwelling units except for developments consisting of one dwelling unit per acre or greater;
 - (C) Area of the lot shall not be less than 10,000 square feet, except for lots created and recorded before August 30, 1991. For lots less than 10,000 square feet which were created and recorded before August 30, 1991, only one individual wastewater system shall be allowed.
 - (D) The total wastewater flow into one individual wastewater system shall not exceed one thousand gallons, and one

- individual wastewater system shall not serve more than five bedrooms, whether they are in one dwelling unit or two.
- (2) Developments involving buildings other than dwellings.
- (A) There shall be 10,000 square feet of usable land area for each individual wastewater system. Usable land area shall not include the area under buildings;
- (B) The total wastewater flow of the development shall not exceed 15,000 gallons per day;
- (C) Area of the lot shall not be less than 10,000 square feet except for lots created and recorded before August 30, 1991. For lots less than 10,000 square feet which were created and recorded before August 30, 1991, only one individual wastewater system shall be allowed; and
- (D) The total wastewater flow into each individual wastewater system shall not exceed one thousand gallons per day.
- (b) Whenever an individual wastewater system is allowed under subsection (a), the following shall apply:
- (1) The director may allow an individual wastewater system other than a cesspool to be used for two dwelling units which may or may not be located within the same building, provided that:
- (A) Both of the dwelling units are located on the same single family residential lot; and
- (B) The individual wastewater system used shall meet the current requirements of this chapter.
- (2) A building may use more than one individual wastewater system where each individual wastewater system shall connect to a single dwelling unit.

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- (3) For buildings without any dwelling units:
 - (A) More than one individual wastewater system may be used provided that the building is owned by one person; or
 - (B) Upon the director's discretion, buildings may connect to one individual wastewater system other than a cesspool provided the buildings are located on the same lot and the buildings generate wastewater of similar strength and character.
 - (4) For buildings, other than dwellings with highly variable wastewater flow rates, such as but not limited to schools, parks, and churches, the individual wastewater system excluding cesspools may exceed a design flow rate of 1000 gallons per day; provided that the density does not exceed 1000 gallons per day per 10,000 square feet of useable land area and the development is owned by one person.
- (c) The director may require the installation of dry sewers as a condition of approval of proposed individual wastewater systems where:
- (1) Public sewers exist but are at capacity such that connection is prohibited but remedial actions have been initiated to increase the public sewer capacity;
 - (2) Public sewers exist, but the treatment and disposal system is not complete or operational;
 - (3) Design of the public sewers has been completed and construction of the public sewers is imminent; or
 - (4) Conditions warrant such requirements.
- (d) No cesspool shall be used as the wastewater system by any new building. No new cesspools shall be constructed after the effective date of this rule unless they have been approved for construction before the effective date of this rule.

(e) Before the approval of the operation of an individual wastewater system excluding cesspools, the following requirements shall be satisfied:

- (1) An operation and maintenance manual developed pursuant to section 11-62-23.1(d)(2) as applicable shall be submitted and approved by the director; and
- (2) The owner of the individual wastewater system shall certify that the individual wastewater system shall be operated and maintained in accordance with all of the provisions of the operation and maintenance manual developed pursuant to paragraph (1). The certification shall include a statement that upon sale or transfer of ownership of the individual wastewater system, the sale or transfer will include the appropriate transfer documents and provisions binding the new owner to the operation and maintenance manual.

(f) No person shall use an individual wastewater system until authorized in writing by the director.

- (1) Written approval to use an individual wastewater system shall be issued if:
 - (A) The owner resolves all discrepancies recorded as a result of any inspections conducted.
 - (B) The engineer furnishes a final inspection report to the director within thirty days after the completion of the construction which provides the following information:
 - (i) A certification that the individual wastewater system was constructed and installed in accordance with the approved plans and specifications or that changes made to the approved plans and specifications are accepted by the engineer; and
 - (ii) An "as-built" plan of the individual wastewater system; and

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(2) The director may inspect the individual wastewater system or its site at any time before approving the system and may require advance notice of the engineer's inspection.

(g) A graywater system shall be designed in accordance with Chapter 3-183.

(h) Each individual wastewater system shall be an independent system and shall have all of its plumbing, treatment (if any), and disposal components separate from any other wastewater system.

(i) Wastewater into an individual wastewater system from buildings other than dwellings shall meet the pretreatment standards and local pollutant limits as set by the respective county. If the county does not have any local pollutant limits, the local limits as set forth by the City and County of Honolulu shall be used.

(j) Certification of a qualified cesspool. A taxpayer seeking a cesspool upgrade, conversion, or connection income tax credit must obtain a certification by the director indicating: that the cesspool location makes it eligible to be a qualified cesspool; that the cesspool upgrade has been completed consistent with this rule and plans prepared by a licensed engineer; and the total dollar amount the taxpayer paid for the cesspool upgrade. The director may issue such certification only where the director has received:

(1) A certification from a licensed contractor or licensed engineer that the cesspool is located within 200 feet of a shoreline, perennial stream, or wetland. Certifications are not required for properties that are located in their entirety within 200 feet of a shoreline, perennial stream, or wetland. The director shall certify as qualified all cesspools that are located within a source water assessment area (two year time of travel from a cesspool to a public drinking water source);

(2) Design plans prepared by a licensed engineer for a sewer connection or individual wastewater system that complies with this chapter;

(3) Certification by a licensed contractor of closure and filling of the cesspool and completion of

an upgrade, either sewer connection or installation of an individual wastewater system that complies with this chapter; and

(4) A licensed engineer's final construction inspection report with photos and as built plans and certifying that the system was constructed in accordance with design plans and this chapter. The director will review submitted documentation and provide certification to the taxpayer and the Department of Taxation of any qualified cesspool.

(k) Certification of qualified expenses. The director will determine all qualified expenses for the tax credit. The taxpayer seeking a tax credit shall submit to the director all receipts of payments made to engineers and installers for the design, completed installation and final construction inspection for the cesspool upgrade along with the appropriate form as directed by the Department of Taxation. The director will notify the taxpayer and the Department of Taxation of the amount of the tax credit allowed for the tax year by noting the same on the form and affixing the signature of the director or the director's designee thereto.

(l) If the annual amount of the certified credits reaches \$5,000,000 in the aggregate, the director shall immediately discontinue certifying credits for that year and notify the Department of Taxation. Any taxpayer who is not eligible to claim the credit in a taxable year due to the \$5,000,000 cap having been exceeded for that taxable year shall be eligible to claim the credit in the subsequent taxable year, except if the \$5,000,000 cap was exceeded in 2020 and no additional credits are available. [Eff 8/30/91; am and comp 12/09/04; am and comp

MAR 21 2016] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

§11-62-31.2 Site evaluation. (a) The site evaluation shall be performed by the engineer.

(b) The site shall be evaluated for depth of permeable soil over seasonal high groundwater,

§11-62-31.2

bedrock, or other limiting layer, soil factors, land slope, flooding hazard, and amount of suitable area available.

(c) The minimum depth of the soil profile observation shall be at least five feet. If the engineer performs a preliminary observation at three feet, the engineer shall confirm the soil profile to five feet at the time of construction.

(d) The following factors shall be evaluated and reported for a depth of at least three feet below the proposed absorption system:

- (1) Thickness of layers or horizons;
- (2) Texture of soil layers;
- (3) General color, and color variation (mottling);
- (4) Depth to water, if observed;
- (5) Depth to estimated seasonal high groundwater table;
- (6) Depth to and type of bedrock, if observed; and
- (7) Other prominent features such as structure, stoniness, and roots.

(e) Percolation tests.

- (1) Soil percolation tests shall be conducted at a minimum depth of three feet. If at the time of construction, the soil profile at five feet is different than at three feet, another percolation test shall be performed at the depth of the bottom of the absorption system;
- (2) Percolation tests shall follow the falling head test procedure in Appendix C, entitled Falling Head Test Procedure, dated July 1, 2014, located at the end of this chapter; and
- (3) Additional percolation tests may be required to identify the existence of a limiting layer.

(f) The site evaluation information shall be reported on forms developed by the director.

(g) If, during construction the actual site conditions differ from the site conditions upon which the wastewater system was approved, the design

engineer shall revise the wastewater plans to reflect the actual site conditions. The plans of the revised wastewater system shall be submitted to the director for approval pursuant to section 11-62-31.1(f). [Eff 8/30/91, am and comp 12/09/04; am and comp

MAR 21 2016] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50)

§11-62-32 Spacing of individual wastewater systems. No individual wastewater system shall be located at any point having less than the minimum distances indicated in Table II attached to this chapter in Appendix D, entitled Tables, dated July 1, 2014, and located at the end of this chapter unless otherwise approved by the director. The minimum distances indicated in Table II shall be measured from the outer edge of each item. [Eff 12/10/88, am 8/30/91; am and comp 12/09/04; am and comp

MAR 21 2016] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

§11-62-33.1 Specific requirements for new and proposed treatment units. (a) Septic tank.

- (1) All wastewater shall discharge into the septic tank. Roof, footing, garage, surface water drainage, cooling water, and graywater disposed of in accordance with section 11-62-31.1(g)(4) shall be excluded.
- (2) Septic tanks shall meet the International Association of Plumbing and Mechanical Officials (IAPMO) material and property standards for prefabricated septic tanks, IAPMO ANSI Z1000-2013. Septic tanks shall be approved and listed by IAPMO.
- (3) Plans for cast-in-place septic tanks shall be submitted with the application for the individual wastewater system. The plans for the septic tank shall be designed and stamped by a licensed structural engineer

§11-62-33.1

and shall meet the IAPMO design specifications.

- (4) The following schedule shall apply to septic tank sizing:

| No. of Bedrooms | Minimum Capacity (Gallons) |
|-----------------|-------------------------------|
| 4 or less | 1000 |
| 5 | 1250 |

- (5) For wastewater flows greater than 1,000 gallons per day or five bedrooms, the formula: Minimum capacity gallons = $1,000 + (Q-800) \times 1.25$, where Q=design flow, shall be used.
- (6) Concrete septic tanks shall be coated to protect the tank from leakage and corrosion by acceptable means. The coating shall cover the entire tank interior.
- (7) Manholes or removable covers to septic tanks shall be brought to grade. The cover shall be secured to prevent unauthorized entry or opening of the tank.
- (8) When septic tanks are installed in ground water or in clay soils with an expansive nature, the engineer shall design or provide adequate protection to prevent the tank from floating, moving, or crushing.
- (9) The excavation to receive the tank shall be large enough to permit the proper placement of the tank and backfill. Tanks shall be installed on a solid base that will not settle and shall be level. Where rock or other undesirable protruding obstructions are encountered, the bottom of the hole shall be excavated an additional six inches and backfilled with sand, crushed stone, or gravel to the proper grade. Backfill around and over the septic tank shall be placed in such a manner as to prevent undue strain or damage to the tank or connected pipes.
- (10) When a septic tank is installed under a driveway, parking lot, in a heavy saturated

- soil, or other areas subject to heavy loads, the tank shall be capable of withstanding an H-20 wheel load as defined by the American Association of State Highway Officials.
- (11) Effluent from a septic tank shall be discharged into a soil absorption system, sand filter, subsurface irrigation system as approved by the director, or other treatment unit approved for use by the director.
 - (b) Household aerobic units.
 - (1) All wastewater shall discharge into the household aerobic unit. Roof, footing, garage, surface water drainage, and cooling water shall be excluded.
 - (2) Household aerobic units shall be approved by the director based upon the "Standard No. 40" for Class I units as set forth by the National Sanitation Foundation. The performance data shall have been obtained by an agency such as a university or an independent research laboratory acceptable to the director or from the National Sanitation Foundation (NSF) Testing Laboratory, Ann Arbor, Michigan.
 - (3) Owners of proposed and existing household aerobic units shall have an active service contract for the proper maintenance of the aerobic unit and its disposal system with a certified operator or factory certified representative, and a copy of an active service contract shall be submitted annually to the department. The contract shall also include pumping service to maintain the household aerobic unit. For proposed household aerobic units, a copy of an executed service contract shall be submitted prior to the final approval of the individual wastewater system.
 - (4) As a minimum, the aerobic treatment unit service contract shall include the term of contract period (start and end dates) and the following requirements:

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- (A) Inspect all aerobic treatment unit equipment to ensure its proper operation at least every six (6) months;
 - (B) Provide regular maintenance of equipment as required by the manufacturer;
 - (C) Verify the aerobic treatment unit is providing adequate mixing and aeration of the microbes;
 - (D) Measure the depth or volume of sludge in the aerobic treatment unit every six months, and assess whether sludge removal by pumping is necessary. Provide sludge pumping, as needed. If pumping is necessary, record the depth of sludge or percentage of sludge volume in the ATU prior to pumping; and
 - (E) Maintain a log of all service provided.
- (5) Effluent from an aerobic unit shall be discharged into a soil absorption system, sand filter, subsurface irrigation system as approved by the director, or other treatment unit or disposal system approved for use by the director.
- (6) In areas below (makai of) the Underground Injection Control Line established pursuant to chapter 11-23, where the vertical separation distance from the discharge to the seasonal high groundwater table is less than three feet, a new household aerobic unit may discharge its effluent into an elevated mound to achieve the vertical separation or drip irrigation system or, with a variance approved by the director and if the effluent is disinfected, to a seepage pit. Where water bearing formations are in danger of contamination, the director may require greater vertical separation.
- (c) Subsurface and recirculating sand filters shall be reviewed on a case-by-case basis by the director. [Eff 8/30/91; am and comp

12/09/04; am and comp]
MAR 21 2016
(Auth: HRS §§321-11, 342D-4, 342D-5) (Imp:
HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2,
342D-4, 342D-5, 342D-50)

§11-62-34 Specific requirements for new and proposed disposal systems. (a) Absorption trenches.

- (1) Location.
 - (A) Absorption trenches shall be located in accordance with section 11-62-32.
 - (B) Absorption trenches shall not be constructed in soils with a percolation rate slower than sixty minutes per inch or where rapid percolation may result in contamination of water-bearing formations or surface waters.
 - (C) Absorption trenches shall be located on the property to maximize the vertical separation distance from the bottom of the absorption trench to the seasonal high groundwater level, bedrock, or other limiting layer, but under no circumstance shall the vertical separation be less than three feet. The director may require a greater vertical separation where water-bearing formations are in danger of contamination.
 - (D) Absorption trenches shall not be constructed in unstabilized fill.
- (2) Design.
 - (A) The minimum absorption area for any absorption trench system shall be based upon a flow of 200 gallons per bedroom per day and in accordance with Table III located in Appendix D, entitled Tables, dated July 1, 2014, and located at the end of this chapter.
 - (B) The absorption area shall be computed using the bottom area of the absorption trench.

- (C) Each absorption trench system shall have a minimum of two trenches.
 - (D) Each distribution line shall be equal in length.
 - (E) The maximum length of any one trench shall be one hundred feet.
 - (F) Absorption trenches shall be at least eighteen inches wide but no more than thirty-six inches wide.
 - (G) The bottom of absorption trenches shall be at least eighteen inches below the finished grade.
 - (H) Gravity fed absorption lines and trenches shall have a slope at the rate of two to four inches per hundred feet.
 - (I) Absorption trenches shall not be installed on land with a slope gradient greater than twelve per cent.
 - (J) On rolling or sloping land, each absorption trench shall approximate the land surface contour.
 - (K) A distribution box or header shall be installed between the treatment unit and the absorption trenches.
 - (L) Each distribution line shall connect individually to the distribution box.
 - (M) If a header is used, there shall be an equal number of distribution lines on each side of the influent junction. An inspection port shall be provided on the header and shall be brought to grade and fitted with a screw type cap or cover.
 - (N) If a distribution box is used, a permanent inspection port with a minimum interior diameter of six inches shall be secured to the box cover, brought to the finished grade, and fitted with a screw type cap or cover.
- (3) Materials.
- (A) The engineer shall be responsible for the choice of materials used in the soil absorption system.

- (B) Pipe used for distribution lines shall meet the appropriate ASTM standard or those of an equivalent testing laboratory. Fittings used in the absorption system shall be compatible with the materials used in the distribution lines.
 - (C) Gravel or crushed stone shall be washed and shall range in size from three-fourths to two and one-half inches.
 - (D) The material used to cover the top of the stone shall be a filter fabric material or equal.
- (4) Construction.
- (A) A distribution box or header shall be set level and arranged so that effluent is evenly distributed to each distribution line. Adequate provisions shall be taken to assure stability and provide access for inspection of the distribution lines.
 - (B) The pipe connecting the distribution box to the distribution line shall be of a tight joint construction laid on undisturbed earth or properly bedded throughout its length.
 - (C) If a header is used, it should be made of water-tight construction.
 - (D) When the trenches have been excavated, the sides and bottom shall be raked to scarify any smeared soil surfaces. Construction equipment and other materials not needed to construct the system should be kept off the area to be used for the absorption system to prevent undesirable compaction of the soils. Construction shall not be initiated when the soil moisture is high.
 - (E) At least six inches of gravel or crushed stone shall be placed in the bottom of the trench.

- (F) The distribution line shall be carefully placed on the bedding at a uniform slope and covered with at least two inches of gravel or stone.
- (G) The ends of the distribution lines shall be capped or plugged.

(b) Deep absorption trenches. Deep absorption trenches may be considered where the depth of suitable soil is insufficient to permit the installation of a conventional trench system due to the presence of a limiting layer more than two feet in depth which overlies suitable soils of sufficient thickness. Requirements for location, design, slope, material, construction, and dosing system design contained in subsection (a) shall apply to deep absorption trenches except for depth of construction. In addition, the following design considerations shall apply:

- (1) The site evaluation procedure shall include soil profile observations of at least three soil observation pits constructed to a minimum depth of three feet below the proposed trench bottom. Monitoring to establish depth to seasonal soil saturation or high groundwater may be considered;
 - (2) Deep absorption trenches shall be constructed at least one foot into the suitable soil; and
 - (3) The distribution piping in deep absorption trenches shall be installed with the invert of the piping at a depth of not more than thirty inches. Gravel or crushed stone shall be placed from the bottom of the trench excavation to a point two inches above the top of the distribution piping.
- (c) Absorption beds.
- (1) Location.
 - (A) Absorption beds shall be located in accordance with section 11-62-32.
 - (B) Absorption beds shall not be constructed in soils with a percolation rate slower than sixty minutes per inch or where rapid percolation may result

- in contamination of water-bearing formations or surface waters.
- (C) Absorption beds shall be located on the property to maximize the vertical separation distance from the bottom of the absorption bed to the seasonal high groundwater level, bedrock, or other Limiting layer, but under no circumstance shall the vertical separation be less than three feet. The director may require a greater vertical separation where water-bearing formations are in danger of contamination.
 - (D) Absorption beds shall not be constructed in unstabilized fill.
- (2) Design.
- (A) The minimum area for any absorption bed system shall be based upon a flow of 200 gallons per bedroom per day and in accordance with Appendix D, Table III dated July 1, 2014 and located at the end of this chapter.
 - (B) The absorption area shall be computed using the bottom area of the absorption bed.
 - (C) Each soil absorption bed system shall have a minimum of two distribution lines.
 - (D) If more than one absorption bed is designed, each absorption bed shall be equal in area.
 - (E) The maximum length of any distribution line shall be one hundred feet.
 - (F) Distribution lines within an absorption bed shall be uniformly spaced no more than six nor less than four feet apart.
 - (G) Distribution lines within an absorption bed shall be placed no more than three feet nor less than eighteen inches from the sidewall of the bed.

- (H) The bottom of absorption beds shall be at least eighteen inches below the finished grade.
 - (I) Absorption beds shall not be installed on land with a slope gradient greater than eight per cent.
 - (J) A distribution box or header shall be installed between the treatment unit and the absorption bed.
 - (K) Each distribution line shall connect individually to the distribution box.
 - (L) If a header is used, there shall be an equal number of distribution lines on each side of the influent junction. An inspection port shall be provided on the header and shall be brought to grade and fitted with a screw type cap.
 - (M) If a distribution box is used, a permanent inspection port with a minimum interior diameter of six inches shall be secured to the box cover, brought to the finished grade, and fitted with a screw type cap or cover.
- (3) Materials.
- (A) The engineer shall be responsible for the choice of materials used in the soil absorption system.
 - (B) Pipe used for distribution lines shall meet the appropriate ASTM standard or those of an equivalent testing laboratory. Fittings used in the absorption system shall be compatible with the materials used in the distribution lines.
 - (C) Gravel or crushed stone shall be washed and shall range in size from three-fourths to two and one-half inches.
 - (D) The material used to cover the top of the stone shall be a filter fabric material or equal.
- (4) Construction.
- (A) The floor of the absorption bed shall be level.

- (B) A distribution box or header shall be set level and arranged so that effluent is evenly distributed to each distribution line. Adequate provisions shall be taken to ensure stability and provide access for inspection of the distribution lines.
 - (C) The pipe connecting the distribution box to the distribution line shall be of a tight joint construction laid on undisturbed earth or properly bedded throughout its length.
 - (D) If a header is used, it should be made of watertight construction.
 - (E) When the beds have been excavated, the sides and bottom shall be raked to scarify any smeared soil surfaces. Construction equipment and other materials not needed to construct the system should be kept off the area to be used for the absorption system to prevent undesirable compaction of the soils. Construction shall not be initiated when the soil moisture is high.
 - (F) At least six inches of gravel or crushed stone shall be placed in the bottom of the bed.
 - (G) The distribution line shall be carefully placed on the bedding with no slope and covered with at least two inches of gravel or stone.
 - (H) The ends of the distribution lines shall be capped or plugged.
- (d) Seepage pits.
 - (1) Location.
 - (A) Seepage pits shall be located in accordance with section 11-62-32.
 - (B) Seepage pits shall not be constructed in soils having a percolation rate slower than ten minutes per inch (weighted average) or where rapid percolation through such soils may

- result in contamination of water-bearing formations or surface water.
- (C) The seepage pit shall be located on the lot to maximize the vertical separation distance from the bottom of the seepage pit to the seasonal high groundwater table, bedrock, or other limiting layer. The vertical separation shall not be less than three feet unless otherwise approved by the director and the requirements of section 11-62-33.1(b)(5) are met. Where water-bearing formations are in danger of contamination, greater vertical separation may be required.
- (2) Design.
- (A) Seepage pits shall be used only when one of the following are met:
- (i) Slope of the finished elevation of the lot is greater than twelve per cent and the use of absorption beds or trenches is not feasible.
 - (ii) The presence of a limiting layer more than seven feet in depth which overlies suitable soils of sufficient thickness.
 - (iii) Insufficient land area exists to install absorption trenches or beds.
- (B) The minimum area in any seepage pit shall be based upon a flow of 200 gallons per bedroom per day and in accordance with Appendix D, Table III dated July 1, 2014 and located at the end of this chapter.
- (C) The surface dimension is measured as the mean distance of the clear opening below the inlet pipe.
- (D) The minimum surface dimension is six feet.
- (E) The effective depth of the seepage pit shall be measured from the bottom of

- the inlet pipe to the bottom of the pit, with the thickness of strata of soils having percolation rates slower than thirty minutes per inch deducted.
- (F) The minimum effective depth is ten feet and shall be greater than its widest surface dimension.
 - (G) The effective area of the seepage pit shall be the vertical wall area of the areas corresponding to the effective depth of the pit excavation. No allowance shall be made for the bottom area.
 - (H) When more than one seepage pit is used, a distribution box shall be installed between the treatment unit and all seepage pits. Each seepage pit shall individually connect to the distribution box.
 - (I) When more than one seepage pit is used, each pit shall have an equal effective area.
 - (J) If a distribution box is used, a permanent inspection port with a minimum interior diameter of six inches shall be secured to the box cover, brought to the finished grade, and fitted with a screw type cap or cover.
- (3) Construction.
- (A) Seepage pits shall include a sidewall lining constructed of durable material that will permit free passage of wastewater without excessive plugging while still excluding the entry of surrounding soil.
 - (B) Seepage pits shall include a cover which extends at least twelve inches beyond the seepage pit excavation, unless a concrete ring is used.
 - (C) The lining and cover of any seepage pit shall be capable of supporting the normal loads imposed. The engineer

- shall submit written justification for the deletion of any sidewall lining.
- (D) The distance between the outer diameter of the lining and the excavation diameter shall be at least six inches, but not more than twelve inches. The space between lining and the excavation diameter shall be filled with washed gravel or crushed stone ranging in size from three-fourths to two and one-half inches. The placement of the gravel or stone shall fill the annular space between the pit lining and excavation diameter. Gravel and stone shall not be placed within the seepage pit itself.
 - (E) The watertight cover shall be provided and at least one watertight manhole either round or square, tapered to a minimum of twelve inches in dimension shall be provided in the cover for inspection or for emptying the contents when required.
 - (F) The top of the seepage pit shall be within twelve inches of the final grade.
 - (G) If the cover of the seepage pit does not extend to the finished grade, a permanent inspection port with a minimum diameter of twelve inches expanding through and secured to the cover shall be brought to the finished grade and fitted with a screw type cap or cover.
 - (H) The distribution box shall be set level so that the effluent is evenly distributed to each seepage pit.
 - (I) The distribution box shall connect to each seepage pit with pipe of watertight construction at least six inches in diameter, and sloped at least one-eighth inch per foot.

- (J) The material used to cover the top of the stone or gravel surrounding the lining shall be a filter fabric material or equal.
- (e) Elevated mound system. Elevated mound systems shall be reviewed on a case-by-case basis.
- (f) Other disposal systems.
- (1) Soil replacement system.
 - (A) Soil replacement systems shall be used for sites with the following soils layers in the upper soil horizons:
 - (i) Soils with percolation rates less than one minute per inch;
 - (ii) Soils with percolation rates greater than sixty minutes per inch that occur within the upper five feet of the soil and underlain by more permeable soils. Installation guidelines shall comply with the requirements of very high permeability soils of subparagraph (B); or
 - (iii) Fractured lava.
 - (B) Trenches may be excavated up to thirty-six inches in width to depths not to exceed five feet below grade nor closer than three feet to seasonal high groundwater level, provided any groundwater mounding induced by wastewater does not rise closer than one foot from the bottom of the excavation and bedrock is at least three feet below the bottom of the excavation.
 - (C) Soil replacement absorption trenches and beds shall follow the applicable provisions of subsections (a), (b), and (c).
- (2) Evapotranspiration systems shall be reviewed on a case-by-case basis by the director. The director shall use the provisions of section 7.3.2 of the October 1980 edition of

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the EPA Design Manual on Onsite Wastewater Treatment and Disposal Systems as a guide for the review of evapotranspiration systems.

(3) Gravelless systems.

- (A) Gravelless soil absorption systems may be used as an alternative to soil absorption systems as specified in subsections (a) and (b), except for sections 11-62-34(a)(3)(C), 11-62-34(a)(3)(D), 11-62-34(a)(4)(E), and 11-62-34(a)(4)(F), 11-62-34(c)(2)(F), 11-62-34(c)(2)(G), 11-62-34(c)(3)(C), 11-62-34(c)(3)(D), and 11-62-34(c)(4)(F).
- (B) Design criteria, material specifications, and other pertinent data shall be submitted to the director.
- (C) The total area of the soil absorption system for the gravelless system shall be the same as specified in subsections (a), (b), and (c), except for chambered system where the director may approve of a reduction factor as deemed appropriate.
- (D) If chambered systems are used, the chamber units shall be placed up against the sidewall of the excavation. In absorption beds, the adjacent chambers shall abut one another.
- (E) The use of filter fabric, unless specified by the director, shall follow the manufacturer's recommendation.
[Eff 8/30/91; am and comp 12/09/04; am and comp MAR 21 2016] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50)

§11-62-35 Other individual wastewater systems.

- (a) The specific design requirements for composting toilets, incinerator toilets, natural systems, and

other individual wastewater systems not specifically covered in this chapter shall be reviewed and approved by the director on a case-by-case basis. Solids generated from such products that are land applied must meet the requirements of subchapter 4. Such products, if sold in Hawaii, shall be approved by the director based on appropriate testing procedures and standards as set forth by the National Sanitation Foundation (NSF) Testing Laboratory, Ann Arbor, Michigan. The performance data shall be obtained by an agency such as a university or an independent research laboratory acceptable to the director or from the NSF.

(b) The director may approve an innovative wastewater system based on the following conditions:

- (1) The innovative system provides or may provide a benefit to the people of the State;
- (2) The owner of the innovative system shall agree that for a period of up to twelve months after the initiation of the operation of the innovative system, operational data shall be gathered and submitted to the director; and
- (3) The owner shall submit a written agreement stating that should the director at any time find the operation of the innovative system unsatisfactory, the owner shall promptly repair or modify the system, or replace it with another acceptable system. [Eff 8/30/91; am and comp 12/09/04; am and comp MAR 21 2016] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

§11-62-36 Cesspools. (a) No new cesspools shall be constructed after the effective date of this rule unless they have been approved for construction before the effective date of this rule.

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(b) The director may require a cesspool card from an owner whose cesspool has no cesspool card on file with the department. An existing cesspool card shall be completed and signed by a licensed engineer, contractor, plumber, or architect. [Eff and comp 12/09/04; am and comp MAR 21 2016] (Auth: HRS §§321-11, 342D-4, 342D-5, 342E-3) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50, 342E-3)

§11-62-37 Application for and review of building permits and individual wastewater systems. (a) The director shall review all individual wastewater systems before the director signs any related county building permit application.

(b) The application to construct a new individual wastewater system or to modify an existing individual wastewater system shall be made by the applicant on forms furnished by the director. The application at a minimum shall contain the following information:

- (1) Name of the owner of the individual wastewater system;
- (2) The location of the individual wastewater system, including a location map, plot plan, street address, and tax map key number;
- (3) The type and size of treatment unit and disposal system;
- (4) Certification by the engineer that the individual wastewater system has been designed in accordance with sections 11-62-31.1 through 11-62-41; and
- (5) Certification by the engineer that a final inspection report will be submitted to the director in accordance with section 11-62-31.1(f)(1)(B).

(c) Every applicant for an individual wastewater system shall pay a filing fee in accordance with the schedule of this subsection. The filing fee shall be submitted with the individual wastewater system application and shall not be refunded nor applied to any subsequent individual wastewater system

application. Fees shall be made payable to the State of Hawaii.

- (1) New individual wastewater system, new treatment unit or new disposal system - \$100; and
- (2) Addition or modification to an approved or existing individual wastewater system or part thereof - \$25. [Eff and comp 12/09/04; am and comp **MAR 21 2016**] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-13, 342D-50)

§§11-62-38 to 11-62-39 (Reserved)

SUBCHAPTER 4

WASTEWATER SLUDGE USE AND DISPOSAL

§11-62-41 General requirements and prohibition.

- (a) No person shall generate, treat, prepare, store, haul, apply, place, use, or dispose of wastewater sludge except:
 - (1) In compliance with:
 - (A) A permit or department approval for use of an individual wastewater system obtained under this chapter;
 - (B) A registration under this chapter; or
 - (C) An exemption from permitting or registration provided by section 11-62-50.
 - (2) In a municipal solid waste landfill unit which is in compliance with the sludge related conditions in a permit issued under chapter 11-58.1:
 - (A) Where that permit was issued following public participation procedures at least as open to the public as those specified in subchapter 5; and

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- (B) Incorporates the requirements of 40 CFR Part 258.
 - (3) By incineration in a facility in compliance with the requirements of 40 CFR Part 503, Subpart E, Incineration, and 40 CFR §503.8, Sampling and analysis, and §503.9, General definitions;
 - (4) In a facility in compliance with the sludge related conditions in a National Pollutant Discharge Elimination System (NPDES) permit issued under chapter 11-55 or issued by the U.S. EPA, where that permit includes or incorporates the requirements of 40 CFR Part 503, Subpart B, Land Application, Subpart D, Pathogens and Vector Attraction Reduction, and 40 CFR §503.8, Sampling and analysis, and §503.9, General definitions and any applicable requirements of this chapter;
 - (5) For hauling, by a county, state, or federal agency, or by a person or an operation registered under section 11-62-50(b)(4); or
 - (6) As otherwise authorized in writing by the director.
- (b) Direct enforceability. No person shall generate, treat, prepare, store, haul, apply, place, use, or dispose of wastewater sludge except in compliance with the requirements of this chapter and all applicable federal rules, whether or not a permit has been issued or registration has been made.
- (c) Exclusion. This chapter does not apply to operations and facilities involved with the collection, handling, storage, treatment, use, disposal, or transportation of the following:
- (1) Wastewater sludge co-fired in an incinerator with other wastes or incinerators in which the wastewater sludge and other wastes are co-fired;
 - (2) Wastewater sludge generated at an industrial facility during the treatment of industrial wastewater, including wastewater sludge generated during the treatment of industrial

- wastewater combined with domestic wastewater;
- (3) Wastewater sludge determined to be hazardous under state rule or federal regulation;
 - (4) Wastewater sludge containing polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry weight basis);
 - (5) Incinerator ash generated during the firing of wastewater sludge in a wastewater sludge incinerator;
 - (6) Grit and screenings;
 - (7) Drinking water treatment sludge; and
 - (8) Commercial and industrial septage that contains no domestic wastewater. [Eff and comp 12/09/04; am and comp MAR 21 2016] (Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Parts 258, 501, 503, 40 CFR 503 Subparts B, C, D, E, 40 CFR §§501.15, 503.1(b), 503.3, 503.4, 503.6, 503.7, 503.8, 503.9)

§11-62-41.1 Relation to federal law. (a) This chapter shall be interpreted and applied so that it is at least as stringent as 40 CFR Part 503 and so that the department's sludge management program complies with 40 CFR Part 501.

(b) No wastewater sludge generation, treatment, preparation, storage, hauling, application, placement, use, or disposal shall be conducted unless allowed by this chapter, even if allowed under 40 CFR Part 503.

(c) References to the Code of Federal Regulations (CFR) are to the July 1, 1999 version, and references to specific sections or subparts of the CFR incorporate those regulations and make them part of this chapter, whether or not the word incorporate is specifically used, unless otherwise specifically stated.

(d) Special definitions. For the purposes of this chapter, when used in 40 CFR Part 503:

"Municipal solid waste landfill unit" has the same meaning as defined in 40 CFR Part 258.

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"Permitting authority" means the director.

"Sewage" means wastewater.

(e) No permit shall be issued when the United States Environmental Protection Agency Administrator for Region IX has objected in writing under 40 CFR §123.44. [Eff and comp 12/09/04; am and comp
MAR 21 2016] (Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Parts 258, 501, 503, 40 CFR §§123.41, 123.42, 123.44, 501.2, 501.18, 501.19, 501.20, 503.1(b), 503.5, 503.21, 503.32)

§11-62-42 Land application of exceptional quality wastewater sludge. (a) Exceptional quality wastewater sludge shall meet the following criteria at a minimum:

- (1) Pollutant limits. No pollutant concentration shall exceed the ceiling limits in Appendix D, Table IV.
- (2) Pathogens. The Class A pathogen requirements in section 11-62-46(a) shall be met.
- (3) Vectors. One of the vector attraction reduction requirements in 40 CFR §503.33(b)(1) through (8) shall be met.

(b) Monitoring. Exceptional quality wastewater sludge shall be monitored by the preparer at least as often as required by 40 CFR § 503.16(a). References in §503.16(a) to federal pollutant limit tables are replaced with Appendix D, Table IV dated July 1, 2014 and located at the end of this chapter. To determine compliance with section 11-62-42(a)(2), wastewater sludge shall be monitored not more than sixty days before land application or being bagged for distribution unless otherwise specified by the director. The director may also specify more monitoring, to better protect human health or the environment.

(c) Recordkeeping.

- (1) The preparer of exceptional quality wastewater sludge that is applied to the land shall meet the requirements of 40 CFR

- §503.17(a)(1), except the certification requirement there;
- (2) The preparer shall sign complete certification form, form A, entitled Certification Form - Land Application, dated July 1, 2014, and located at the end of this chapter, in Appendix E, items 1, 2.a, and 3.a, and retain the form for five years; and
 - (3) The preparer shall develop and retain information for five years on the volume of wastewater sludge bagged, distributed, or land applied.
 - (d) Reporting. The test results and records required in subsections (b) and (c) shall be kept on site and unless otherwise specified, copies shall be submitted to the director on February 19 of each year.
 - (e) The exceptional quality sludge shall be applied to the land at a rate that is less than ten dry tons per acre and equal to or less than the agronomic rate.
 - (1) The preparer shall provide to each land applier a fact sheet which contains the nitrogen, phosphorus, and potassium concentrations of the wastewater sludge; and
 - (2) When the wastewater sludge is applied in bulk to agricultural land, forest, a public contact site, or a reclamation site, the director may require a nutrient balance to be submitted prior to the application to the land. [Eff and comp 12/09/04; comp MAR 21 2016] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR §§503.1, 503.5, 503.10, 503.13, 503.15(a), 503.16(a), 503.17(a), 503.18, 503.32, 503.33(b))

§11-62-43 Land application of other than exceptional quality wastewater sludge, to agricultural land, forest, public contact site, or reclamation site. (a) No person shall apply non-exceptional quality wastewater sludge to land unless the land is

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agricultural land, forest, a public contact site, or a reclamation site, and all the requirements of this section are met.

(b) Pollutant limits. Non-exceptional quality wastewater sludge shall not be land applied if the concentration of any pollutant in the wastewater sludge exceeds the ceiling limits in Appendix D, Table IV dated July 1, 2014, and located at the end of this chapter.

(c) Pathogens. The Class A pathogen requirements in section 11-62-46(a) or the Class B pathogen requirements in 40 CFR §503.32(b) shall be met for non-exceptional quality wastewater sludge.

(d) Vectors. One of the vector attraction reduction requirements in 40 CFR §503.33(b)(1) through (10) shall be met for non-exceptional quality wastewater sludge.

(1) The preparer shall meet one of the requirements of 40 CFR §503.33(b)(1) through (8); or

(2) The applier shall meet one of the requirements of 40 CFR §503.33(b)(9) or (10).

(e) Notice. The preparer of the non-exceptional quality wastewater sludge shall inform in writing to the land applier and the owner of the land application site of:

(1) The vector attraction reduction requirements of 40 CFR §503.33(b)(9) and (10), if the preparer did not use or meet any of the requirements of 40 CFR §503.33(b)(1) through (8);

(2) The spacing and site restrictions in subsection (g);

(3) The management requirements of subsection (h); and

(4) The concentration of total nitrogen (as N on a dry weight basis).

(f) Monitoring. Non-exceptional quality wastewater sludge shall be monitored at least as often as required by 40 CFR § 503.16(a). References in §503.16(a) to federal pollutant limit tables are replaced with Appendix D, Table IV dated July 1, 2014,

and located at the end of this chapter. To determine compliance with section 11-62-43(c), wastewater sludge shall be monitored not more than sixty days before land application unless otherwise specified by the director. The director may also specify more monitoring, to better protect human health or the environment.

(g) Spacing and site restrictions for non-exceptional quality sludge.

- (1) Horizontal distances. The land application of wastewater sludge shall meet the minimum horizontal limits in Appendix D, Table VI.
- (2) Vertical separation. The land application of wastewater sludge shall be at least five feet above the seasonal high groundwater table.
- (3) If the class B pathogen requirements are met, the site restrictions in 40 CFR §503.32(b)(5) shall be met.

(h) Management practices. The management practices required by 40 CFR §503.14(a), (b), (d), (e)(1), and (e)(2) shall be met, and wastewater sludge shall not be applied to the land so that either the sludge or any pollutant from the sludge enters state waters.

(i) Recordkeeping, preparers of non-exceptional quality wastewater sludge.

- (1) The preparer of the wastewater sludge which meets the Class A pathogen requirements in section 11-62-48(a) shall develop and retain for five years information on:
 - (A) The concentration of pollutants listed in Appendix D, Table IV dated July 1, 2014, and located at the end of this chapter; and
 - (B) A description of how the pathogen requirements in section 11-62-48(a) are met.
- (2) The preparer of wastewater sludge which meets the class B pathogen requirements in 40 CFR §503.32(b) shall develop and retain for five years information on:

- (A) The concentration of pollutants listed in Appendix D, Table IV dated July 1, 2014, and located at the end of this chapter;
 - (B) A description of how the pathogen requirements in 40 CFR §503.32(b) are met; and
 - (C) A description of how one of the vector attraction reduction requirements of 40 CFR §503.33(b)(1) through (8) is met, when one is met.
- (3) The preparer shall sign and complete certification form, form A entitled Certification Form - Land Application dated July 1, 2014, and located at the end of this chapter, in Appendix E, items 1, 2, and 3, and retain the form for five years; and
 - (4) The preparer shall develop and retain for five years information on the volume of wastewater sludge prepared for land application, names of persons taking wastewater sludge from the facility, the date and time the wastewater sludge was taken, and the amount taken.
- (j) Recordkeeping, applicers of non-exceptional quality wastewater sludge to the land.
 - (1) The applicer shall meet the information requirements of 40 CFR §503.17(a)(3)(ii)(B) and (C); or §503.17(a)(4)(ii)(B), (C), (D), and (E);
 - (2) The applicer shall sign and complete the certification form, form A entitled Certification Form - Land Application, July 1, 2014, and located at the end of this chapter, in Appendix E, items 4, 5, and 6, and retain the form for five years; and
 - (3) The applicer shall develop and retain for five years the following information:
 - (A) The location, including street address and tax map key number, of the site on which wastewater sludge is applied;
 - (B) The number of acres in each site on which wastewater sludge is applied;

- (C) The date and time the wastewater sludge is applied to each site;
 - (D) The amount of wastewater sludge applied to each site; and
 - (E) A nutrient balance.
- (k) Reporting. The test results and records required in subsections (f), (i), and (j) shall be kept on site and unless otherwise specified copies shall be submitted to the director on February 19 of each year.
- (l) Notification to other states. Any person who prepares wastewater sludge that is land applied in another state shall provide written notice, prior to the initial land application, to the permitting authority for the state in which the bulk in which the wastewater sludge is to be applied to the land in accordance with 40 CFR §503.12(i).
 [Eff and comp 12/09/04; am and comp
 MAR 21 2016] (Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR §§503.12, 503.13(b), 503.14, 503.15(a), (c), 503.16(a), 503.17, 503.18, 503.32, 503.33(b))

§11-62-44 Land application of domestic septage to agricultural land, forest, or reclamation site.

(a) No person shall apply domestic septage to land unless the land is agricultural land, forest, or a reclamation site if the annual application rate (AAR) exceeds 1/0.0026 the amount of nitrogen (N) in pounds per acre per 365 day period needed by the crop or vegetation growth on the land.

$$\text{AAR} = \frac{\text{N}}{0.0026} \qquad \text{Equation (1)}$$

- (b) Pathogens. The pathogen requirements of
- (1) 40 CFR §503.32(c)(1); or

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- (2) 40 CFR §503.32(c)(2), including the site restrictions of 40 CFR §503.32(b)(5)(i) through (iv), shall be met for domestic septage.
- (c) Vectors. One of the vector attraction reduction requirements in 40 CFR §503.33(b)(9), (10), or (12) shall be met for domestic septage.
- (d) Monitoring. If either the pathogen requirement in subsection (b)(2) or vector attraction reduction requirement in 40 CFR §503.33(b)(12) applies, each container of domestic septage shall be monitored for compliance with those requirements. The director may specify more monitoring, to better protect human health or the environment.
- (e) Recordkeeping.
 - (1) The applier shall meet the information requirements of 40 CFR §503.17(b)(2), (3), (4), (5), (7), and (8);
 - (2) The applier shall develop and retain for five years the location, including street address and tax map key number, of the site on which septage is applied; and
 - (3) The applier shall sign and complete the certification form, form A entitled Certification Form - Land Application dated July 1, 2014, and located at the end of this chapter, in Appendix E, items 7, 8, 9, and 10, and retain the form for five years.
- (f) Reporting. The test results and records required in subsection (e) shall be kept on site and unless otherwise specified copies shall be submitted to the director on February 19 of each year.
- (g) Spacing and site restrictions.
 - (1) Horizontal distances. The land application of domestic septage shall meet the minimum horizontal limits in Appendix D, Table VI dated July 1, 2014, and located at the end of this chapter.
 - (2) Vertical separation. The land application of domestic septage shall be at least five feet above the seasonal high groundwater table.

- (3) The site restrictions in:
- (A) 40 CFR §503.32(b)(5); or
 - (B) The pathogen requirement of 40 CFR §503.32(c)(2) and the site restrictions of 40 CFR §503.32(b)(5)(i) through (iv) shall be met for domestic septage.

(h) Management practices. The management practices required by 40 CFR §503.14(a), (b), (d), (e)(1), and (e)(2) for wastewater sludge shall be met for domestic septage, and domestic septage shall not be applied to the land so that the septage or any pollutant from septage enters state waters. [Eff and comp 12/09/04; am and comp MAR 21 2016]
(Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR §§503.12(c), 503.13(c), 503.14, 503.15(b), (d), 503.16(b), 503.17, 503.18, 503.32, 503.33)

§11-62-45 REPEALED [R MAR 21 2016]

§11-62-46 Pathogens. (a) Wastewater sludge - class A. (1) The requirements of this subsection shall be met for a wastewater sludge to be classified exceptional quality sludge or class A with respect to pathogens.

(2) One of the class A requirements in paragraphs (3), (4), (6) or (7) shall be met, or with the prior approval of the director paragraph (5) shall met. The requirements in paragraphs (3) through (7) shall be met before or at the same time that the vector attraction reduction requirements in 40 CFR §503.33 are met, unless one of the vector attraction reduction requirements in 40 CFR §503.33(b)(6) through (8) is met.

- (3) Class A - alternative 1. The requirements of 40 CFR §503.32(a)(3) apply, except that the requirements of §503.32(a)(3)(i) are replaced with those of paragraph (8).
- (4) Class A - alternative 2. The requirements

- of 40 CFR §503.32(a)(4) apply, except that the requirements of §503.32(a)(4)(i) are replaced with those of paragraph (8).
- (5) Class A - alternative 3. The requirements of 40 CFR §503.32(a)(6) apply, except that the requirements of §503.32(a)(6)(i) are replaced with those of paragraph (8).
 - (6) Class A - alternative 4. The requirements of paragraph (8), and subsection (d), Process to Further Reduce Pathogens (PFRP), apply.
 - (7) Class A - alternative 5. The requirements of paragraph (8) apply and, as determined by the director, a process equivalent to one in subsection (d), Process to Further Reduce Pathogens (PFRP), shall be used.
 - (8) Pathogen density at the time the wastewater sludge is used, disposed, or prepared for sale or give away in a bag or other container for land application, shall meet the following:
 - (i) Unless otherwise specified by the director, seven samples shall be analyzed; and
 - (ii) For each sample the fecal coliform shall be less than 1000 MPN per gram of total solids (dry weight basis) or for each sample the Salmonella sp. bacteria shall be less than three MPN per four grams of total solids (dry weight basis).
- (b) Wastewater sludge - class B. The requirements of 40 CFR §503.32(b) shall be met for a wastewater sludge to be classified class B with respect to pathogens.
- (c) Domestic septage. The requirements of 40 CFR §503.32(c) apply.
- (d) Processes to further reduce pathogens (PFRP). The requirements of 40 CFR Part 503, appendix B, Pathogen Treatment Processes, section B, Processes to Further Reduce Pathogens, apply, except for section B.1 which is replaced by paragraph (1).
- (1) Composting.

- (A) Windrow. The temperature of the wastewater sludge is maintained at 55 degrees Celsius or higher for at least fifteen consecutive days during the composting period. In addition, during the high temperature period, the windrow must be turned at least five times and turned at least once every three days.
 - (B) Static aerated pile. The wastewater sludge must be maintained at operating temperatures of 55 degrees Celsius or greater for three consecutive days.
 - (C) Within vessel method. The wastewater sludge must be maintained at operating temperatures of 55 degrees Celsius or greater for three consecutive days.
- (2) Heat Drying. See Part 503, appendix B, section B.2.
 - (3) Heat Treatment. See Part 503, appendix B, section B.3.
 - (4) Thermophilic Aerobic Digestion. See Part 503, appendix B, section B.4.
 - (5) Beta ray irradiation. See Part 503, appendix B, section B.5.
 - (6) Gamma ray irradiation. See Part 503, appendix B, section B.6.
 - (7) Pasteurization. See Part 503, appendix B, section B.7.
- (e) Processes to significantly reduce pathogens (PSRP). The requirements of 40 CFR Part 503, appendix B, Pathogen Treatment Processes, section A, Processes to Significantly Reduce Pathogens, apply.
- (1) Aerobic Digestion. See Part 503, appendix B, section A.1.
 - (2) Air Drying. See Part 503, appendix B, section A.2.
 - (3) Anaerobic Digestion. See Part 503, appendix B, section A.3.
 - (4) Composting. See Part 503, appendix B, section A.4.
 - (5) Lime Stabilization. See Part 503, appendix

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B, section A.5. [Eff and comp 12/09/04; comp MAR 21 2016] (Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 503, Subpart D, Appendix B, 40 CFR §503.32)

§11-62-47 Vector attraction reduction. (a) Requirements for land application.

- (1) One of the vector attraction reduction requirements in 40 CFR §503.33(b)(1) through (8) shall be met before exceptional quality wastewater sludge is land applied.
- (2) The requirements of 40 CFR §503.33(a)(1), (4), and (5) apply.

(b) Vector attraction reduction requirements. The requirements of 40 CFR §503.33(b) apply. [Eff and comp 12/09/04; comp MAR 21 2016] (Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 503, Subpart D, 40 CFR §503.33)

§11-62-48 Sampling method. Samples of wastewater sludge that is applied to the land, [placed on a surface disposal site,] fired in a wastewater sludge incinerator, or disposed into a solid waste landfill or any other wastewater system shall be collected and analyzed using the methods specified in 40 CFR §503.8. [Eff and comp 12/09/04; comp MAR 21 2016] (Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR §503.8)

SUBCHAPTER 5

WASTEWATER MANAGEMENT PERMITS AND REGISTRATION

§11-62-50 Registration and permits. (a) Owners and operators are not required under this subchapter to register or obtain any permit coverage for their:

- (1) Individual wastewater systems (e.g., cesspools, septic tanks, and household aerobic units);
 - (2) Land on which exceptional quality wastewater sludge is applied;
 - (3) Land application or land placement operations involving only exceptional quality wastewater sludge;
 - (4) Operations, such as businesses, that haul only exceptional quality wastewater sludge; or
 - (5) Non-domestic wastewater treatment works, unless deemed necessary by the director.
- (b) Owners or operators or both of the following shall register with the department:
- (1) Land on which non-exceptional quality sludge is applied or placed, with or without the landowner's permission;
 - (2) Land on which non-exceptional quality sludge is stored for less than two years, if the land is different from the treatment works which generated the sludge;
 - (3) Land application or land placement operations for non-exceptional quality wastewater sludge, whether or not the wastewater sludge is applied or placed on land with the landowner's permission;
 - (4) Operations, such as businesses, that haul wastewater or wastewater sludge, or both, including grease haulers and cesspool pumpers, except those operations that only haul exceptional quality sludge; and
 - (5) Other facilities, operations, or land, if directed by the director.
- (c) Owners or operators or both shall obtain an individual permit for their:
- (1) Treatment works that generate wastewater sludge that is directly land applied;
 - (2) If different from the generator, facilities or operations that treat or prepare wastewater sludge that is land applied or surface disposed;
 - (3) Treatment works not located in the State but

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- generate wastewater sludge that is directly land applied in the State;
- (4) Facilities or operations not located in the State that treat or prepare wastewater sludge that is land applied or surface disposed in the State; and
 - (5) Other facilities, operations, or land, if directed by the director.
- (d) The department may accept and issue consolidated registrations and individual permits (collectively "authorizations"), and for the consolidated authorizations the department may charge the fee for only the most expensive authorization. The department may also charge the fees for all or some of the authorizations. [Eff and comp 12/09/04; am and comp MAR 21 2016] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-13, 342D-50; 40 CFR §§501.15, 503.3(a))

§11-62-51 Fees. (a) Registration. Every registrant shall pay a filing fee according to this subsection. The filing fee shall be submitted with the registration and shall not be refunded nor applied to any later registration after filing or denial of a registration. Fees shall be made payable to the State of Hawaii.

- (1) For a new operation, facility, or land, the fee is \$30;
 - (2) For major changes in the registration of an operation, facility, or land, the fee is \$30;
 - (3) For renewal, the fee is \$10;
 - (4) To change only ownership shown in a registration, the fee is \$5; and
 - (5) To make other changes in a registration, the fee is \$10;
- (b) Individual permits. Every person applying for an individual permit, its modification, or renewal shall pay a filing fee according to this subsection. This filing fee shall be submitted with the application for the permit or permit modification and shall not be refunded nor applied to any subsequent

individual after final issuance or denial. Fees shall be made payable to the State of Hawaii.

- (1) To apply for an individual permit for a new or existing operation or facility, the fee is \$1000;
- (2) To apply to modify an individual permit to cover a substantial alteration or addition to an operation, facility, or land, the fee is \$1000;
- (3) To renew an individual permit for an existing operation or facility, the fee is \$1000;
- (4) To transfer ownership or to modify an individual permit to show only a change in ownership, the fee is \$25; and
- (5) To apply to modify an individual permit to cover a change other than those covered above, the fee is \$100.

(c) Late fees. Every person who fails to submit complete forms for a new or renewed registration or a complete application for a new or renewed individual permit when required by this chapter, shall pay a late fee. Fees shall be payable to the State of Hawaii. Late submission of required fees and registration forms, notice of intent, or individual permit application does not excuse a person from liabilities for any violations due to the lack of a required registration or individual permit.

- (1) The fee for submitting a registration form late is \$5;
- (2) The fee for submitting an application for an individual permit late is \$250.

(d) Relation to other fees. The foregoing fees are subject to section 11-62-50(e) and do not include any public participation costs (for notices, hearings, etc.) that the would-be registrant or permittee may be required to pay under other sections. [Eff and comp 12/09/04; am and comp MAR 21 2016] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-13, 342D-50)

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§11-62-52 Signatories and certification requirements. (a) Unless otherwise specified, each registration, notice of intent, permit application, and any information required to be submitted to the director shall be signed and certified as required by 40 CFR §122.22.

(b) Each person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other documentation submitted or required to be maintained under this chapter or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this chapter is subject to the penalties and remedies in section 11-62-72. [Eff and comp 12/09/04; comp MAR 21 2016] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Parts 122, 501, 40 CFR §§122.22, §501.15(a)(4), (b)(11))

§11-62-53 Wastewater management registration.

(a) Timing. Completed registrations forms required under section 11-62-50 shall be submitted as follows.

- (1) For existing lands, facilities, and operations, not later than ninety days after the effective date of this rule; and
- (2) For new lands, facilities, and operations, no later than one hundred eighty days before such lands, facilities, or operations are used or begin activity.

(b) Registration information and forms. Registrants shall complete and submit one original and one copy of the form(s) furnished by the director. Registrants shall provide at least the following information:

- (1) Activities conducted by the applicant which require registration;
- (2) Name, mailing address, and location of the wastewater or wastewater sludge collection, handling, storage, treatment, use, disposal, or transportation facility, operation, or land;
- (3) Owner's name, mailing address, telephone

number, ownership status, and status as federal, state, private, public, or other entity; and

(4) Operator's name and certification number under chapter 11-61, if applicable.

(c) The director may require the submission of additional information after registration forms have been submitted.

(d) Records. Registrants shall keep records of all data used to complete registrations and any supplemental information submitted under this section for at least five years from the date the registrant submits the registration form, unless otherwise specified by the director.

(e) Fees. Each registrant shall pay the filing fee specified in section 11-62-51 for each facility, operation, or land registered, except as the director may provide under section 11-62-50(e).

(f) Term. Registrations expire on November 15 of each even-numbered year.

(g) Renewals. Renewal registration forms shall be submitted by November 15. If a renewal registration form is not submitted on time, it may be submitted after payment of the current annual fee and a late payment fee. If a renewal registration form is submitted more than ninety days after it is due, then the registrant shall supply all the information required for a new registration regardless of whether there have been any changes to report.

(h) Automatic filing. Registrations shall be deemed filed automatically sixty days after submission, or on the next working day after sixty days expire, unless the director suspends registration.

(i) Filing suspension. If the director considers a registration form incomplete, lacking payment of all or part of the fee, otherwise deficient, or considers more information necessary, the director shall order that the land, operation, or facility shall not be registered until the registrant has supplied the missing information or otherwise corrected the deficiency. [Eff and comp 12/09/04; comp MAR 21 2016] (Auth: HRS §§342D-4, 342D-5,

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342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-6, 342D-13)

§11-62-54.01 Wastewater management individual permits. (a) Timing. Applications for individual permits required under section 11-62-50 shall be submitted as follows:

- (1) For existing lands, facilities, operations, and lands, not later than one year after the effective date of this section; and
- (2) New facilities, operations, and lands, not later than one hundred eighty days before the facilities, operations, or lands are used or begin activity. The director may waive this one hundred eighty day requirement by issuing the permit before the one hundred eighty days expire.

(b) Information and forms. Applicants for individual permits shall complete and submit one original and one copy of the form(s) furnished by the director. Applicants shall provide at least the type of information required by 40 CFR Part 501 and the following information:

- (1) The type of activities conducted by the applicant which requires a permit to be obtained;
- (2) The name, mailing address, and location of the wastewater or wastewater sludge collection, handling, storage, treatment, use, disposal, or transportation facility, operation, or land;
- (3) The owner's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity;
- (4) The operator's name, address, telephone number, ownership status, status as federal, state, private, public or other entity, and operator's certification number under chapter 11-61, if applicable;
- (5) A listing of all environmental permits received or applied, including all federal, state, or local permits;
- (6) A topographical map or other map if a

- topographical map is unavailable extending one mile beyond the property boundaries of the sludge management facility, depicting the treatment and disposal sites, the location of all water bodies, and the locations of potable water wells within one-quarter mile of the property boundaries;
- (7) Any sludge monitoring data and for land application, any available groundwater monitoring data, with a description of the well locations and approximate depth to the groundwater;
 - (8) A description of the applicant's sludge use and disposal practices, including where applicable, the location of any sites where the applicant transfers wastewater sludge for treatment, disposal, or both, as well as the name of the applier who applies the wastewater sludge to the land if different from the applicant, and the name of any distributors when the sludge will be distributed, if different from the applicant;
 - (9) For each land application site the applicant will use during the life of the permit, the applicant will supply information necessary to determine if the site is appropriate for land application and a description of how the site is, or will be managed. Applicants intending to apply wastewater sludge to land application sites not identified at the time of application must submit a land application plan which at a minimum:
 - (A) Describes the geographical area covered by the plan;
 - (B) Identifies the site selection criteria;
 - (C) Describes how the site will be managed;
 - (D) Provides for advanced notice to the director of specific land application sites; and
 - (E) Provides for advance public notice and notice to landowners and occupants adjacent to or abutting the proposed

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- land application site;
- (10) Annual sludge production volumes; and
 - (11) Any information required to determine the appropriate standards for permitting under 40 CFR Part 503.

(c) The director may require the submission of additional information after an individual permit application has been submitted.

(d) Records. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least five years from the date the application is submitted, unless otherwise specified by the director.

(e) Fees. Every applicant for an individual permit shall pay the filing fee specified in section 11-62-51 for each facility, operation, or land to be permitted, except as the director may provide under section 11-62-50(e).

(f) Processing suspension. If the director considers permit application incomplete, lacking payment of the fee, otherwise deficient, or considers more information necessary, the director shall order that the permit application shall not be processed or a permit issued until the applicant supplies the missing information or otherwise corrects the deficiency. [Eff and comp 12/09/04; am and comp
MAR 21 2016] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-6, 342D-13, 342D-50; 40 CFR Part 501, 40 CFR §501.15(a), (d))

§11-62-54.02 Draft individual permits. After an application for a new, modified, or renewed permit is complete, the director shall tentatively decide to prepare a draft individual permit or deny the application. If the director tentatively proposes to revoke and reissue a permit, the director shall prepare a draft individual permit. A draft permit shall contain the necessary conditions to implement the requirements of this chapter, 33 U.S.C. §1345, and the incorporated sections of 40 CFR Parts 501 and 503.

[Eff and comp 12/09/04; comp MAR 21 2016] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Part 501, 40 CFR §501.15(d)(3))

§11-62-54.03 Fact sheets. (a) The director shall prepare a fact sheet for every draft individual permit for a major facility, operation, or activity, and when required by 40 CFR §501.15(d)(4).

(b) The director shall send the fact sheet to the applicant and, upon request, to any other person.

(c) Fact sheets shall include at least the information required by 40 CFR §501.15(d)(4)(i). [Eff and comp 12/09/04; comp MAR 21 2016] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Part 501, 40 CFR §501.15(d)(4))

§11-62-54.04 Public notices of draft individual permits; public comments and hearing requests. (a) The director shall notify the public that a draft individual permit has been prepared and that the public has thirty days to comment on it. The comment period may be extended at the discretion of the director. The director may require the permit applicant to have the notice published.

(b) Methods. The director shall notify the public by at least the methods specified in 40 CFR §501.15(d)(5)(ii).

(c) Content. The public notice shall include at least the information required by 40 CFR 501.15(d)(5)(iii)(A).

(d) Costs. All publication and mailing costs associated with notifying the public of a draft permit shall be paid by the permit applicant(s) to the appropriate publishing agency or agencies determined by the director. Failure to provide and pay for public notice as required by the director is a basis to deny issuance of a permit.

(e) Public comments and hearing requests. During the public comment period, any person may submit comments in writing and may ask in writing for

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a public hearing. A request for hearing shall state the nature of the issues that the hearing should cover. [Eff and comp 12/09/04; comp

MAR 21 2016] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Part 501, 40 CFR §501.15(d)(5),(6))

§11-62-54.05 Public meetings or hearings on individual permits. (a) The director shall hold a public meeting or hearing if the director determines that there is a significant degree of public interest in a draft individual permit, based on hearing requests.

(b) The director may hold a meeting or hearing at the director's discretion, when such a meeting or hearing may help the director's decision on an individual permit application or for another reason which the director considers to be in the public interest. [Eff and comp 12/09/04; comp

MAR 21 2016] (Auth: 342D-4, 342D-5, 342D-6) (Imp: 342D-2, 342D-4, 342D-5, 342D-6, 342D-57; 40 CFR Part 501, 40 CFR §501.15(d)(7))

§11-62-54.06 Public notice of public meetings or hearings on individual permits. (a) The director shall notify the public that a meeting or hearing on an individual permit matter has been scheduled. The notice shall be given at least thirty days before the hearing. The director may require the permit applicant to have the notice published.

(b) Methods. The director shall notify [to] the public by at least the methods specified in 40 CFR §501.15(d)(5)(ii).

(c) Content. The public notice shall include at least the information required by 40 CFR §501.15(d)(5)(iii).

(d) Costs. All publication and mailing costs associated with notifying the public of a public meeting or hearing shall be paid by the permit applicant(s) to the appropriate publishing agency or agencies determined by the director. Failure to

provide and pay for public notice as required by the director is a basis to deny issuance of a permit.

[Eff and comp 12/09/04; comp MAR 21 2016] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Part 501, 40 CFR §501.15(d)(5))

§11-62-54.07 Response to comments. When a final individual permit is issued, the director shall issue a written response to written comments as required by 40 CFR §501.15(d)(8). [Eff and comp 12/09/04; comp MAR 21 2016] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Part 501, 40 CFR §501.15(d)(8))

§11-62-54.08 Issuance of individual permits; duration, conditions. (a) Duration. The director may issue an individual permit for any period not exceeding five years, may renew such permit for any additional periods not exceeding five years each, and shall not modify an individual permit to extend its maximum period.

(b) Each individual permit shall contain conditions and requirements at least as stringent as:

- (1) Those conditions contained in 40 CFR §501.15(b);
- (2) The wastewater sludge standards in subchapter 4;
- (3) The treatment requirements in subchapter 2;
- (4) The application rates in sections 11-62-27;
- (5) The standard permit conditions stated in Appendix A entitled Wastewater Management Individual Permit Standard Conditions dated July 1, 2014, and located at the end of this chapter; and

(6) Other requirements deemed necessary by the director. [Eff and comp 12/09/04; comp MAR 21 2016] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Parts 501, 503, 40 CFR §§501.15(a)(5), (b),

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503.3(a), 503.10(b), (c), 503.13, 503.32,
503.33)

§11-62-54.09 Schedules of compliance.

Individual permits may contain schedules of compliance that are at least as stringent as those allowed by 40 CFR §501.15(a). [Eff and comp 12/09/04; comp MAR 21 2016] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 501, 40 CFR §501.15(a)(6))

§11-62-55.01 REPEALED [R MAR 21 2016]

§11-62-55.02 REPEALED [R MAR 21 2016]

§11-62-55.03 Requiring an individual permit.

Cases where an individual permit may be required include, but are not limited to the following:

- (1) The wastewater system generates wastewater sludge that is land applied; and
- (2) Other relevant factors. [Eff and comp 12/09/04; am and comp MAR 21 2016] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 122, 40 CFR §122.28(b)(3)(i))

§11-62-55.04 REPEALED [R MAR 21 2016]

§11-62-55.05 REPEALED [R MAR 21 2016]

§11-62-55.06 REPEALED [R MAR 21 2016]

§11-62-55.07 REPEALED [R MAR 21 2016]

§11-62-55.08 REPEALED [R MAR 21 2016]

§11-62-56 Standard permit conditions. Standard permit conditions for individual permits are contained in Appendix A entitled Wastewater Management Individual Permit Standard Conditions dated July 1, 2014, and located at the end of this chapter. [Eff and comp 12/09/04; am and comp MAR 21 2016] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 501, 40 CFR §501.15(b))

§11-62-57.01 Transfer of permits. An individual permit coverage may be transferred for the reasons and under the procedures specified in 40 CFR §501.15(c)(1), which allows for transfers by modification or automatically. [Eff and comp 12/09/04; am and comp MAR 21 2016] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Part 501, §501.15(c)(1))

§11-62-57.02 Modification or revocation and reissuance of permits. (a) Each permit coverage shall be subject to modification or revocation and reissuance by the director after notice and opportunity for a contested case hearing, except for minor modifications.

(b) Individual permits may be modified, or revoked and reissued, for the reasons specified in 40 CFR §501.15(c)(2) and section 342D-6(e), HRS, and the director shall follow the procedures in 40 CFR §501.15(c)(2) and (d)(2) and section 342D-6(e), HRS, except for minor modifications, which shall follow the procedures specified in Appendix A.

(c) All applications under section 342D-7, HRS, for a variance from the requirements of subchapter 4 shall be treated as an application for a modification under this section. Any variances, if granted, shall be for a period not to exceed five years and may be renewed upon application. [Eff and comp 12/09/04; am

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and comp MAR 21 2016] (Auth: HRS §§342D-4,
342D-5, 342D-6, 342D-7) (Imp: HRS §§342D-2, 342D-4,
342D-5, 342D-6, 342D-7, 342D-50; 40 CFR Part 501,
§501.15(c)(2), (d)(2))

§11-62-57.03 Termination of permits. (a) On the expiration date specified in the individual permit, the permit shall automatically terminate and the permittee shall be divested of all rights therein.

(b) Each individual permit coverage shall be subject to termination by the director after notice and opportunity for a contested case hearing.

(c) Individual permits may be terminated or denied for any of the reasons specified in 40 CFR §501.15(c)(3) and section 342D-6(e), HRS, and under the procedures specified in 40 CFR §501.15(d)(2) and section 342D-6(e), HRS. [Eff and comp 12/09/04; am and am and comp MAR 21 2016] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 501, 40 CFR §501.15(c)(3), (d)(2))

§11-62-57.04 Renewal of permits. (a) Permittees seeking individual permit renewal shall submit a renewal application at least one hundred eighty days before the individual permit expires.

(b) An application for individual permit renewal is subject to all of the requirements for an application for a new permit, including a draft permit and fact sheet, public notice, and a possible public hearing, but excepting deadlines and fees specific to new permits.

(c) The director may administratively extend the existing permit pending the renewal of a wastewater management permit.

(d) Individual permits may be renewed for the reasons and under the procedures specified in section 342D-6(c), HRS, and renewal may be denied for noncompliance with the permit. [Eff and comp 12/09/04; am and comp MAR 21 2016] (Auth: HRS

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§§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 501, 40 CFR §501.15(b)(14))

§11-62-58 Conflict of interest. (a) Any board or body who reviews or approves applications for new, modified, or renewed individual permits shall not include as a member any person who receives, or has during the previous two years received, a significant portion of that person's income directly or indirectly from permit holders or applicants for a permit.

(b) For this section the definitions of 40 CFR §501.15(f)(1) shall apply. [Eff and comp 12/09/04; am and comp MAR 21 2016] (Auth: HRS §§342D-3, 342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-3, 342D-4, 342D-5; 40 CFR Part 501, 40 CFR §501.15(f))

SUBCHAPTER 6

WASTEWATER AND WASTEWATER SLUDGE PUMPERS AND HAULERS

§11-62-60 Applicability. This subchapter applies to all persons who own or conduct operations that haul or pump wastewater or wastewater sludge, including septage and grease, and including cesspool pumping firms (collectively "pumpers"). [Eff and comp 12/09/04; comp MAR 21 2016] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50)

§11-62-61 Registration requirements. In addition to meeting the registration requirements of sections 11-62-50(b)(4) and 11-62-53, each pumper shall submit with its registration:

- (1) A statement signed by the owner of the wastewater and wastewater sludge pumping and hauling firm attesting that:
 - (A) The owner has read, understands, and

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shall follow all applicable rules regarding the collection, disposal, monitoring, recordkeeping, and reporting of pumping and hauling wastewater and wastewater sludge, including septage from individual wastewater systems and other wastewater systems; and

- (B) The owner has and will continue to provide employees of the pumping and hauling firm with adequate training in the proper pumping, collection, hauling, and disposal of wastewater and wastewater sludge;
- (2) Copies of authorization to dispose of wastewater and wastewater sludge into any state, county, federal, or private facility or site; and
- (3) A statement signed by the owner of the wastewater and wastewater sludge pumping and hauling firm describing the firm's prior and current involvement in the activity of cesspool pumping. [Eff and comp 12/09/04; comp **MAR 21 2016**] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50)

§11-62-62 Recordkeeping and reporting. In addition to meeting the requirements of section 11-62-53(c) and (d), each pumper shall maintain the following types of records and information. Such information shall be made available upon request to any state, county, or federal wastewater agency regulating or managing wastewater:

- (1) Number of wastewater systems, including individual wastewater systems and grease traps pumped;
- (2) Names of the owner of each wastewater system and grease trap pumped;
- (3) Location (street address or tax map key or both) of each wastewater system and grease trap pumped;

- (4) Date of pumping;
- (5) Type of wastewater or wastewater sludge pumped;
- (6) Volume of wastewater or wastewater sludge pumped;
- (7) Results of any test analyses performed on the wastewater or wastewater sludge;
- (8) Disposal site of the pumped wastewater or wastewater sludge; and
- (9) Date of such disposal. [Eff and comp 12/09/04; am and comp MAR 21 2016]
(Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50, 342D-55)

SUBCHAPTER 7

VARIANCES, PENALTIES, AND SEVERABILITY

§11-62-71 Variances. (a) Variances and variance applications shall comply with section 342D-7, HRS.

(b) Variance application forms shall be provided by the department. All applications for variances shall be submitted with a filing fee of \$300 for each application. Additionally, the applicant shall pay all fees assessed for publishing the legal notice(s) for each variance application. If a public hearing is required, the applicant shall pay all fees assessed for publishing the public hearing notice(s).

(c) Applications for renewal of variances shall be submitted one hundred eighty days before the expiration of the variance on forms provided by the department. A filing fee of \$150 shall be submitted with each application for renewal. Additionally, the applicant shall pay all fees assessed for publishing the legal notice(s) and public hearing notice(s). Failure to renew a variance within the specified time will result in the termination of the variance and

§11-62-71

require the applicant to apply for a new variance.
[Eff 12/10/88, am 8/30/91; §11-62-41; ren, am and comp
12/09/04; comp **MAR 21 2016**] (Auth: HRS §§321-
11, 342D-4, 342D-5, 342D-7, 342D-13) (Imp: HRS §§321-

11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-
5, 342D-7, 342D-50)

§11-62-72 Penalties and remedies. Any person
who violates any provision of this chapter shall be
subject to the penalties and remedies for violations
provided for in chapters 321, 322-part I, 342D, and
342H, HRS. [Eff 12/10/88; §11-62-42; ren, am and
comp 12/09/04; comp **MAR 21 2016**] (Auth: HRS
§§321-11, 322-8(a), 342D-1, 342D-4, 342D-5, 342D-9,
342D-11, 342D-30, 342D-31, 342D-50) (Imp: HRS §§321-
11, 322-1 to 322-4, 322-8, 322-9, 342D-2, 342D-4,
342D-5, 342D-9, 342D-11, 342D-18, 342D-30, 342D-31,
342D-50, 603-23)

§11-62-73 Severability. If any provision of
this chapter or its application to any person or
circumstance is held invalid, the application of such
provision to other persons or circumstances, and the
remainder of this chapter, shall not be affected
thereby. [Eff 12/10/88; §11-62-43; ren and comp
12/09/04; comp **MAR 21 2016**] (Auth: HRS §§321-
11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-
4, 322-8, 342D-2, 342D-4, 342D-19, 342D-50)

§11-62-74 Public participation in enforcement.
The department shall provide for public participation
in enforcement relating to violations of subchapters 4
and 5 at least to the extent specified in 40 CFR
§501.17(d)(2). [Eff and comp 12/09/04; comp
MAR 21 2016] (Auth: HRS §§342D-4, 342D-5)
(Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 40 CFR
Part 501, 40 CFR §501.17(d)(2))

SUBCHAPTER 8

FIELD CITATIONS

§11-62-81 Purpose. This subchapter authorizes field citations to effectively and quickly settle easily verifiable violations of chapters 322 and 342D, HRS, and this chapter. Settlements under this section are an additional remedy and do not supplant the director's authority to issue orders under section 342D-9, HRS. [Eff and comp 12/09/04; comp MAR 21 2016] (Auth: HRS §§321-11, 322-8(a), 342D-1, 342D-4, 342D-5, and 342D-31) (Imp: HRS §§321-11, 322-1 to 4, 322-8, 342D-2, 342D-4, 342D-5, 342D-9, 342D-18, 342D-31, 342D-50)

§11-62-82 Offer to settle; settlement amounts.

(a) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director, in the director's sole discretion, through any authorized employee, may issue a field citation by personal service or certified mail to:

- (1) Any person or owner who causes or allows a wastewater system to create or contribute to a wastewater spill, overflow, or discharge onto the ground or into surface waters, in violation of section 11-62-06(f)(5) or (6);
- (2) Any person or owner who uses or occupies a building not connected to a wastewater system in violation of section 11-62-06(a);
- (3) Any person or owner who constructs, modifies, or uses any individual wastewater system without approval by the director or a county authorized by the director to approve and regulate individual wastewater systems, in violation of section 11-62-08(b) or 11-62-31.1(f); or

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- (4) Any person or owner who does not respond within thirty days to an operation and maintenance inspection report issued by the Department.
- (b) A field citation shall indicate the following settlement amounts:
 - (1) \$200 for a first violation, and \$500 for a subsequent violation for:
 - (A) Violating sections 11-62-06(a), (f) (1)-(4) and (f) (6)-(9), 11-62-08(b) or 11-62-31.1(f);
 - (B) Failing properly to operate or maintain an aerobic treatment unit;
 - (C) Failing to provide an effective contract for an aerobic treatment unit;
 - (D) Failing to respond to department inspection reports, if the report states a response is required;
 - (E) Having a cesspool without a concrete cover;
 - (F) Not having a secured manhole cover for the cesspool; or
 - (G) A collapsed cesspool.
 - (2) \$500 for a first violation, and \$2,000 for a subsequent violation for violating section 11-62-06(f) (5) or (10); and
 - (3) \$1,000 for a first violation, and \$2,500 for a subsequent violation for constructing an individual wastewater system without department approval to construct. [Eff and comp 12/09/04; am and comp MAR 21 2016]
(Auth: HRS §§321-11, 322-8(a), 342D-1, 342D-4, 342D-5, 342D-9, 342D-11, 342D-30, 342D-31, 342D-50) (Imp: HRS §§321-11, 322-1 to 4, 322-8, 342D-2, 342D-4, 342D-5, 342D-9, 342D-11, 342D-18, 342D-30, 342D-31, 342D-50)

§11-62-83 Resolution of field citation. (a) A person issued a field citation may accept the citation by:

- (1) Signing the field citation;
- (2) Paying the full amount indicated by the field citation. Payment shall be made payable to the "State of Hawaii" by check, cashier's check, money order or as otherwise specified by the director;
- (3) Mailing or delivering the signed citation and full payment to the wastewater branch in Honolulu, or the district health office for the county where the violation occurred. The department must receive the signed filed citation and full payment within twenty days after the person receives the field citation; and
- (4) Correction within seven days or unless otherwise specified on the field citation any violation of section 11-62-06(f)(6).

(b) By signing the field citation, the person to whom it was issued agrees to:

- (1) Give up the person's right to a contested case hearing under chapter 91 or 342D, HRS, or otherwise challenge the field citation;
- (2) Pay the amount indicated; and
- (3) Correct the violation.

(c) If the field citation is not accepted in compliance with subsection (a), the director may seek for that cited violation any remedies available under this chapter, chapters 321, 322, 342D, HRS, or any other applicable law. For all other violations the director retains authority to seek any available remedies. [Eff and comp 12/09/04; am and comp

MAR 21 2016] (Auth: HRS §§321-11, 322-8(a), 342D-1, 342D-4, 342D-5, 342D-9, 342D-11, 342D-30, 342D-31, 342D-50) (Imp: HRS §§321-11, 322-1 to 4, 322-8, 322-9, 342D-2, 342D-4, 342D-5, 342D-9, 342D-11, 342D-18, 342D-30, 342D-31, 342D-50, 603-23)

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§11-62-84 Form of citation. The department shall prescribe a field citation form." [Eff and comp 12/09/04; am and comp MAR 21 2016] (Auth: HRS §§321-11, 322-8(a), 342D-1, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 4, 322-8, 342D-2, 342D-4, 342D-5, 342D-9, 342D-18, 342D-31, 342D-50)

Amendments and compilation of chapter 62, title 11, Hawaii Administrative Rules, on the Summary Page dated MAR 21 2016 were adopted on MAR 21 2016 following public hearings held on December 11, 14, 15, 17, 18 and 21, 2015, after public notice was given in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Isle on November 23, 2015.

The adoption of chapter 11-62 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: 2-1-2016

Filed

APPROVED AS TO FORM:



EDWARD G. BOHLEN
Deputy Attorney General

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LIEUTENANT GOVERNOR'S
OFFICE

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CHAPTER 11-62 APPENDIX A

INDIVIDUAL PERMIT
STANDARD CONDITIONS

July 1, 2014

Appendix A, Individual standard conditions

1. Duty to comply
2. Compliance with sludge standards
3. Compliance with wastewater effluent standards
4. Compliance with water quality standards
5. Clean Water Act (CWA) penalties
6. Signatory and certification requirement
7. Duty to reapply
8. Need to halt or reduce activity not a defense
9. Duty to mitigate
10. Proper operation and maintenance
11. Permit actions
12. Property rights
13. Duty to provide information
14. Inspection and entry
15. Sampling requirements and definitions
16. Monitoring and recordkeeping
17. Notice requirements
18. Reopener clause
19. Transfers by modification
20. Automatic transfers
21. Minor modification of permits
22. Modification or revocation and reissuance of permits
23. Termination of permits
24. Availability of reports
25. Civil and criminal liability
26. State law
27. Severability

The following conditions apply to individual permits unless otherwise specified. "Permittee" refers to a person to whom an individual permit has been issued.

CHAPTER 11-62 APPENDIX A

1. **Duty to comply.** Permittees shall comply with and are subject to §11-62-06(q).
2. **Compliance with sludge standards.** Permittees shall comply with HAR chapter 11-62, subchapter 4.
3. **Compliance with wastewater effluent standards.** Permittees treating wastewater shall comply with §11-62-26 and, if applicable, §11-26-27.
4. **Compliance with water quality standards.** Permittees shall not cause or contribute to any violation of applicable sections of HAR chapter 11-54.
5. **Clean Water Act (CWA) penalties.** The monetary fines and imprisonment terms referred to in 40 CFR §§501.15(b)(3), on CWA §309; 501.15(b)(11)(ii), on false statement, representation, or certification; and §501.15(b)(10), on falsification, tampering with, or rendering inaccurate any monitoring device or method; all apply, in addition to any state penalties.
6. **Signatory and certification requirements.** Each permit application, report, notice, and any information submitted to the director shall be signed and certified as required by §11-62-52.
7. **Duty to reapply.** Permittees shall comply with §11-62-57.04.
8. **Need to halt or reduce activity not a defense.** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

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9. **Duty to mitigate.** Permittees shall comply with §11-62-06(j).
10. **Proper operation and maintenance.** Permittees shall comply with §11-62-06(e).
11. **Permit actions.** This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.
12. **Property rights.** This permit does not convey any property rights of any sort, or any exclusive privilege.
13. **Duty to provide information.** The permittee shall furnish to the director, within a reasonable time, any information which the director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the director, upon request, copies of records required to be kept by this permit.
14. **Inspection and entry.** The permittee shall allow the director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:
 - a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
 - b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

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- c. Inspect at reasonable times any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances, parameters, or practices at any location.

15. Sampling requirements.

- a. Sampling points. All samples shall be taken at the monitoring points specified in this permit and, unless otherwise specified, before final use, disposal, or discharge. Monitoring points shall not be changed without notification to and the approval of the director. No use, disposal, or discharge is authorized which does not totally pass through the final monitoring point.
- b. Calibration. The permittee shall periodically calibrate and perform maintenance on all monitoring and analytical equipment used to monitor the pollutants, sludge, and other items specified by the director under this permit, at intervals which will ensure the accuracy of measurements, but no less than the manufacturer's recommended intervals or one year intervals (whichever comes first). [Records of calibration shall be kept pursuant to section 13(b) of this general permit.]

16. Monitoring and recordkeeping.

- a. Monitoring results shall be reported at a frequency specified here or elsewhere in the

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permit, whichever is greater. The frequency of sampling shall be dependent on the size of the wastewater system, nature and effect of the wastewater, reclaimed water, and wastewater sludge use and disposal practices. At a minimum, the frequency shall be as required by §§11-62-26(a), 11-62-26(c), 11-62-28(a), and subchapter 4.

- b. Representative sampling. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activities listed in §§11-62-26(a), 11-62-26(c), 11-62-28(a), and subchapter 4.

As used in this section, a representative sample means that the content of the sample shall (1) be identical to the content of the substance sampled at the time of the sampling; (2) accurately represent the monitored item (for example, sampling to monitor final effluent quality shall accurately represent that quality, even though the sampling is done upstream of the discharge point); and (3) accurately represent the monitored item for the monitored time period (for example, sampling to represent monthly average effluent flows shall be taken at times and on days that cover significant variations).

Representative sampling may mean including weekends and storms and may mean taking more samples than the minimum number specified elsewhere in the permit. The burden of proving that sampling or monitoring is representative shall be on the permittee.

- c. Record retention. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip

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chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least five (5) years from the date of the sample, measurement, report or application. This period may be extended by request of the director of health at any time.

- d. Records' content. Records of monitoring information shall include:
 - (1) The date, exact place, and time of sampling or measurements;
 - (2) The name of individual(s) who performed the sampling or measurements;
 - (3) The date(s) analyses were performed;
 - (4) The name of individual(s) who performed the analyses;
 - (5) The analytical techniques or methods used and if available, references and written procedures for these techniques or methods; and
 - (6) The results of such analyses, including bench sheets, instrument readouts, etc., used to determine these results.

- e. Monitoring procedures. Unless other procedures have been specified in this permit, monitoring shall be conducted according to test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 503.

17. Notice requirements.

- a. Planned changes. The permittee shall give notice to the director as soon as possible of any planned physical alterations or additions to the permitted facility, or significant changes planned in the

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permittee's sludge use or disposal practice, where such alterations, additions, or changes may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

- b. Anticipated noncompliance. The permittee shall give advance notice to the director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- c. Transfers. This permit is not transferable to any person except after notice to the director. The director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the CWA.
- d. Other noncompliance reporting. The permittee shall report all instances of noncompliance. Reports of noncompliance shall if applicable follow the spill protocol of appendix C otherwise shall be submitted with the permittee's next self monitoring report or earlier if requested by the director or if required by an applicable standard for wastewater sludge use or disposal or condition of this permit.
- e. Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the

CHAPTER 11-62 APPENDIX A

director, it shall promptly submit such facts or information.

18. Reopener clause.

- a. If the standards for wastewater and wastewater sludge applicable to the permittee's use, disposal, or discharge method are promulgated under the Clean Water Act, the Hawaii Revised Statutes, or the Hawaii Administrative Rules before the expiration date of this permit, and those standards are more stringent than the wastewater or wastewater sludge pollutant limits or acceptable management practices authorized in this permit, or controls a pollutant or practice not limited in this permit, this permit may be promptly modified or revoked and reissued to conform to the standards for wastewater or wastewater sludge use, disposal, or discharge by no later than the compliance deadline specified in the regulations establishing those standards, whether or not this permit has been modified or revoked and reissued.
- b. This permit shall be modified or revoked and reissued at any time if, on the basis of any new data, the director determines that continued wastewater or wastewater sludge use, disposal, or discharge may cause unreasonable degradation of the environment.
- c. The permittee shall comply with new standards for wastewater sludge use or disposal adopted in 40 CFR 503 during the term of the permit, if they are more stringent than the terms of the permit and chapter 11-62, even if this permit has not yet been modified to incorporate the standards.

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19. **Transfers by modification.** Except as provided in condition 20 of these standard conditions, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued to identify the new permittee and incorporate such other requirements as may be necessary to assure compliance with the CWA.
20. **Automatic transfers.** As an alternative to transfers under condition 19 of these standard conditions, the director may authorize automatic transfer of any permit issued under this rule to a new permittee if:
- a. The current permittee notifies the director at least 30 days in advance of the proposed transfer date in condition 20.c. of these standard conditions;
 - b. The notice includes a written agreement between the existing and new permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
 - c. The director does not notify the existing permittee and the proposed new permittee of the director's intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement of condition 20.b of these standard conditions.
21. **Minor modification of permits.** Upon the consent of the permittee, the director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section without following the procedures of §11-62-57.02. Any permit modification not processed as a minor modification under this section must be made for cause and with draft permit and

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public notice as required. Minor modifications may only:

- a. Correct typographical errors;
- b. Require more frequent monitoring or reporting by the permittee;
- c. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; and
- d. Allow for a change in ownership or operational control of a facility where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the director.

22. Modification or revocation and reissuance of permits. Permittees shall comply with and are subject to §11-62-57.02, except for minor modifications.

23. Termination of permits. Permittees are subject to §11-62-57.03 and general permittees are also subject to §11-62-55.03.

24. Availability of reports. Except for data determined to be confidential under HRS §342D-14, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the director. As required by this rule, permit applications, permits, and effluent and wastewater sludge data shall not be considered confidential.

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25. **Civil and criminal liability.** Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.
26. **State law.** Nothing in this permit shall be constructed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation.
27. **Severability.** The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, if held invalid, the application of such provision to other circumstances, and remainder of this permit, shall not be affected thereby.

CHAPTER 11-62 APPENDIX B

**RESPONSES FOR WASTEWATER
SPILLS, OVERFLOWS, AND DISCHARGES
("SPILLS")**

July 1, 2014

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1. Points of contact

| Agency | Phone | Fax |
|--------------------------------------------|----------|----------|
| Clean Water Branch (CWB) | 586-4309 | 586-4352 |
| Wastewater Branch (WWB) | 586-4294 | 586-4352 |
| <u>Environmental Health Programs (EHP)</u> | | |
| Hawaii District Health Office | 933-4371 | 933-4669 |
| Kauai District Health Office | 241-3323 | 241-3480 |
| Maui District Health Office | 984-8234 | 984-8237 |
| State Hospital Operator (SHO) | 247-2191 | |
| Communications Office | | 586-4444 |

2. Spills from any facility into state waters, excluding R-1 water from recycled water systems

- a. Applicability. Any wastewater spill which enters into state waters from a public or private wastewater system.
- (1) "State waters" has the meaning defined in HRS section 341-D, and includes drainage ditches, whether or not water is always flowing in them.
 - (2) Exclusion. Spill of R-1 water covered by Appendix J to HAR chapter 11-5, "NPDES General Permit Authorizing Discharges of R-1 Water from Recycled Water Systems". That general permit does not cover spills from treatment works.
- b. Immediate notice to DOH. If a spill occurs during working hours:
- (1) The wastewater system owner or its agent (owner/agent) shall immediately notify the CWB of any spill into state waters; and
 - (2) If a spill occurs on the neighbor islands, the owner/agent shall also immediately notify their respective

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district environmental health program chief.

If a spill occurs during non-working hours:

- (1) Contact the state hospital operator;
and
- (2) The next working day notify the CWB and the respective district EHP chief with a follow-up call.

- c. Press Release. The owner/agent shall immediately send out a press release for spills of a thousand gallons or more and for lesser spills if they present a substantial threat to public health. A press release shall comply with section 7. A press release is not required if the owner/agent demonstrates that the spill was of R-1 water and that BMPs as approved by the director were implemented.
- d. Disinfection. The owner/agent shall disinfect wastewater which is continuously being spilled into nearshore waters if sufficient disinfection contact time is available. Best judgment should be used in determining the amount of chlorine added to the discharge if chlorine is used as a disinfectant. Disinfection is not required if the owner/agent demonstrates that the spill was either R-1 or R-2 water and that BMPs as approved by the director were implemented.
- e. Warning signs. The owner/agent shall immediately post warning signs in the area(s) likely to be affected by the spill and where public access is possible. Posting of warning signs is not required if the owner/agent demonstrates that the spill was of R-1 water and that BMPs as approved by the director were implemented.

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The director shall also assure that a sufficient number of warning signs have been posted and the locations are adequate. Authorization to remove the signs shall also come from the director.

- f. Monitoring. The owner/agent shall conduct bacterial monitoring for any spill greater than 100 gallons or when public health may be threatened in accordance with section 8. Monitoring is not required if the owner/agent demonstrates that the spill was R-1 water and that BMPs as approved by the director were implemented.
- g. Reporting. The owner/agent shall report to the CWB under section 9.a.

3. Spills into state waters of R-1 water from recycled water systems

- a. Applicability. Any spills of R-1 water covered by Appendix J to HAR chapter 11-55, "NPDES General Permit Authorizing Discharges of R-1 Water from Recycled Water Systems."
 - (1) "State waters" has the same meaning defined in HRS section 342D-1, and includes drainage ditches, whether or not water is always flowing in them.
 - (2) Exclusion. The general permit does not cover spills from treatment works.
- b. Requirements. Among other things, the general permit requires filing a Notice of Intent before any discharge, compliance with standard conditions in appendix A of chapter 11-55, implementation of best management practices (BMPs), monitoring of discharges, avoiding violations of water quality criteria, and specified reporting. The full

CHAPTER 11-62 APPENDIX B

statement of requirements appears in the general permit.

4. Spills to ground only - with public access

- a. Applicability. Any wastewater spill from a wastewater system onto the ground and that does not enter state waters but is in an area which is or may be accessible to the public.
 - (1) In this appendix, the public includes hotel, apartment, and condominium residents and guests, or condominium apartment owners at their own condominium, and management personnel and building or facility staff, unless the person is specifically an operator of the wastewater system or a manager of the property.
 - (2) In this appendix, areas inaccessible to the public include areas:
 - (a) Confined within a fenced or walled (six foot high with locked gate or door) area; and
 - (b) Contact with the spill is limited to wastewater system operating personnel and management personnel for the property owner or lessee.
 - (3) Exclusion. Spills of R-1 water provided the owner/agent demonstrates that the spill was of R-1 water and that BMPs as approved by the director were implemented.
- b. Immediate notice to DOH. If a spill of a thousand gallons or more occurs during working hours:

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- (1) On Oahu, the wastewater system owner/agent shall immediately notify the WWB; or
- (2) On the neighbor islands, the owner/agent shall immediately notify their respective district EHP chief.

If a spill of a thousand gallons or more occurs during non-working hours:

- (1) Contact the state hospital operator; and
- (2) The next working day notify the WWB or on the neighbor islands, the respective district EHP chief with a follow-up call.

- c. Press release. The owner/agent shall immediately send out a press release for spills of a thousand gallons or more, and for lesser spills if they present a substantial threat to public health. A press release shall comply with section 7.
- d. Disinfection. The owner/agent shall disinfect the wastewater that is spilled onto the ground if the wastewater remains ponded on the ground for any sufficient length of time or if the discharge continues for any significant duration. Disinfection is not required if the owner/agent demonstrates that the spill was R-2 water and that BMPs as approved by the director were implemented.
- e. Warning signs. The owner/agent shall immediately post warning signs in the vicinity of the spill area.
- f. Clean up. All spill sites shall be cleared of all debris and standing wastewater, and disinfected pursuant to section 4.d.

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In areas containing standing wastewater which cannot be removed, the owner/agent shall limit public access by having barricades or other means.

- g. Reporting. The owner/agent of a public or private wastewater system shall report to the WWB as follows:
 - (1) For spills of a thousand gallons or more, the owner/agent shall report to the WWB under section 9.a.
 - (2) For spills less than a thousand gallons, immediate notice and reporting are not required. A tabulated summary of all spills less than a thousand gallons each shall be submitted to the WWB on a quarterly basis in accordance with section 9.b.
 - (3) Exfiltration. Reporting of leaks or breaks in pipelines discovered during inflow/infiltration repair work is not required. These situations are considered exfiltration.

5. Spills to ground only - with no public access

- a. Applicability. All wastewater spills from any public or private wastewater system that does not enter state waters and are in areas inaccessible to the public.
 - (1) The public and inaccessibility are described in section 4.a.
 - (2) Exclusion. Spills of R-1 water provided the owner/agent demonstrates the spill was of R-1 water and that BMPs as approved by the director were implemented.
- b. Immediate notice to DOH. If a spill of a thousand gallons or more, and for spills over 50 gallons occurring more than twice

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within a 12 month, from the same cause and/or location, period within the confines or fence line of a wastewater system, the owner/agent shall notify the WWB within 24 hours.

- c. Reporting. For spills of a thousand gallons or more, and for spills over 50 gallons occurring more than twice within a 12 month period, from the same cause and/or location, within the confines or fence line of a wastewater system, the owner/agent shall report to the WWB under section 9.a.
- d. Recording. The owner/agent shall record and tabulate the date and time of the spill, the amount released, the cause(s) for the spill, clean up efforts, and remedial actions taken to prevent future spills for all spills greater than 50 gallons as they happen. The owner/agent shall keep the records and tabulations on site and make the records and tabulation available to the director for inspection and copying.

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6. Spills to ground only - R-1 and RO water only

- a. Applicability. Spills of R-1 or RO water provided the owner/agent demonstrates the spill was of R-1 or RO water and that BMPs as approved by the director were implemented.
- b. Notice to DOH.
 - (1) For spills of a thousand gallons or more occurs, the wastewater system owner/agent shall notify the WWB at least by phone by the end of the next working day. The notice shall provide the information required by section 6.d(1), below.
 - (2) For spills of less than a thousand gallons, but more than fifty gallons, next day notice is not required, but the wastewater system owner/agent shall record the information and report as required by section 6.d.
- c. Warning signs. For spills greater than fifty gallons, the owner/agent shall immediately post warning signs in the vicinity of the spill area.
- d. Reporting. The owner/agent of a wastewater system shall report in writing to the WWB as follows:
 - (1) Information of each spill shall include at least the spill's date, time, location, quantity, the reason for the spill, and any corrective action.
 - (2) For spills more than fifty gallons, a tabulated summary shall be submitted to the WWB each year with the summary report required by section 11-62-28.

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7. Press release

The press release shall describe the location of the spill, the amount of wastewater released, what caused the spill, and what is being done to correct the situation. Also, include a contact person and telephone number (including an after hours/weekend contact). At a minimum, the press release shall be faxed, emailed or telephoned to the following:

- a. Associated Press (for radio dissemination);
- b. Major statewide and island newspapers;
- c. Major television news stations;
- d. Department of Health, Communications Office, Oahu
- e. CWB if into state waters, otherwise WWB; and
- f. For neighbor island spills, also include faxing the press release to the respective island DHOs.

8. Monitoring of state waters

Monitoring shall begin as soon as possible and be conducted in the receiving water area affected by the spill. Bacterial monitoring is not required if the owner/agent demonstrates that the spill was of R-1 water and that BMPs as approved by the director were implemented.

For spills entering fresh or brackish waters, the bacterial monitoring shall consist of sampling for the following indicator organisms:

- a. Enterococci; and
- b. Clostridium perfringens.

For spills entering marine waters, the bacterial monitoring shall consist of sampling for the following indicator organisms:

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- a. Enterococci; and
- b. Clostridium perfringens.

Results of the bacterial monitoring shall be submitted to the director in care of the CWB immediately. Monitoring shall continue until notification to stop is received from the director. With the approval of the director, on a case by case situation, some protocol requirements such as sampling or sign posting may be waived.

The director shall also be informed of the sampling stations and may modify the number of stations and site selection.

The director may require additional bacterial monitoring by the owner/agent to supplement their existing monitoring program, as may be necessary or appropriate.

9. Reporting

- a. When required above, the owner/agent shall submit a written report of the details of the spill within five (5) working days of the incident to the director in care of the CWB or WWB as applicable. The director may waive the five day written reporting requirement on a case by case basis provided that the director receives a request for waiver prior to the due date of the report.

The report shall include the date and time of the spill, the amount released, the cause(s) of the spill, location where the spill entered state waters (storm drains, ditches, streams, etc.), clean up efforts, remedial actions to prevent future spills, a summary of the monitoring data, a map of the

CHAPTER 11-62 APPENDIX B

sampling locations and public notification procedures if applicable.

- b. For spills not reported under section 9.a. and when required above, the owner/agent shall tabulate the following information: the date and time of the spill, the amount released, the cause(s) for the spill, clean up efforts, and remedial actions taken to prevent future spills. The owner/agent shall submit each quarter's tabulation to the WWB within 30 days after the quarter.

10. Modifications by the director

With the approval or under the direction of the director, response requirements may be increased, changed, reduced, or eliminated. For example, the director may require the owner/agent to post additional Warning Signs as needed or may assist in the removal of warning signs.

CHAPTER 11-62 APPENDIX C

FALLING HEAD TEST PROCEDURE

July 1, 2014

- A. Preparing Percolation Test Hole(s)
 - 1. Dig or bore a hole, four to twelve inches in diameter with vertical walls to the approximate depth of the soil absorption system (bottom of trench or bed).
 - 2. Scratch the side wall and bottom to remove any smeared soil and remove loose material.
 - 3. Place one inch of coarse sand or gravel on bottom to protect bottom from scouring action when the water is added.

- B. Determine Percolation Rate
 - 1. If soil is mostly clay, go to step D.
 - 2. Place twelve inches of water in hole and determine time to seep away. Record this time on the site evaluation form.
 - 3. Repeat step B.2. above. Also record this time on the site evaluation form.
 - 4. If the time of the second test is less than ten minutes go to step C, if not skip to step D.

- C. Sandy (granular) Soils
 - 1. Establish a fixed reference point, add water to six inches above gravel and measure water level drops every ten minutes for 1 hour.
 - 2. Use a shorter time interval if first six inches seeps away in ten minutes or less.
 - 3. After each measurement, the water level is readjusted to the six inch level. At no time during the test is the water level allowed to rise more than the six inches above the gravel.
 - 4. Record time intervals and water drops on site evaluation form.
 - 5. Use final water level drop interval to calculate percolation rate. (step F)

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- D. Other soils (non-granular, e.g. silt, loams and clays)
1. Maintain at least twelve inches of water in the hole for at least four hours to presoak soil.
 2. Do not remove water remaining after four hours.
 3. Permit soil to swell at least twelve hours. (Dry clayey soils should be soaked and permitted to swell for longer periods to obtain stabilized percolation rates).
 4. After swelling, remove loose material on top of gravel.
 5. Use fixed reference point, adjust water level to six inches above gravel and measure water level drop.
 6. If the first six inches of water seeps away in less than thirty minutes, measure water level drops every ten-minutes and run for one hour.
 7. If the first six inches of water takes longer than thirty minutes to seeps away, use thirty minute time intervals for four hours or until two successive drops do not vary by more than one-sixteenth inch (stabilized rate).
 8. After each measurement, the water level is readjusted to the six inch level. At no time during the test is the water level allowed to rise more than the six inches above the gravel.
 9. Record time intervals and water drops on site evaluation form.
 10. Use final water level drop interval to calculate percolation rate. (step F)
- F. Use final drop interval to calculate percolation rate and record on site evaluation form:

$$\frac{\text{Time Interval}}{\text{Water Level Drop}} = \text{Perc rate}$$

CHAPTER 11-62 APPENDIX D - TABLES

TABLE I
July 1, 2014

| Type of Establishment | Gallons Per Person Per Day (Unless Otherwise Noted) |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------|
| Airports (per passenger) | 5 |
| Camps: | |
| Campground with central comfort stations | 32 |
| With flush toilets, no showers | 25 |
| Construction camps (semi-permanent) | 50 |
| Day camps (no meals served) | 15 |
| Resort camps (night and day) with limited plumbing | 50 |
| Luxury camps | 100 |
| Church | |
| With kitchen | 10 |
| Without kitchen | 5 |
| Cottages and small dwellings with seasonal occupancy (2 persons per bedroom minimum) | 100 |
| Country clubs (per resident member) | 100 |
| Country clubs (per non-resident member present) | 25 |
| Dentist per chair | 200 |
| Doctor per patient | 5 |
| Dwelling (2 persons per bedroom minimum) | 100 |
| Factories (gallons per person, per shift, exclusive of industrial waste) | 35 |
| Hair salons and barber shops, | |
| Barber shops (per chair) | 50 |
| Beauty salons (per chair) | 125 |
| Hospitals (per bed space) | 250 |
| Hotels with private baths (2 person per bedroom minimum) | 100 |
| Institutions other than hospitals (per bed space) | 125 |
| Laundries, self-service (per machine) | 300 |
| Mobile home parks (per space) | 250 |
| Motels with bath, toilet, and kitchen waste (per bed space) | 60 |
| Picnic parks (toilets wastes only) (per picnicker) | 5 |
| Picnic parks with bathhouses, showers, and flush toilets | 50 |
| Restaurants | |
| Per day per seat | 50 |
| Per meal without public restrooms | 5 |
| Per meal served with toilets | 10 |
| Additional kitchen wastes per take out meals | 3 |
| Additional for bars and cocktail lounges, per seat | 15 |
| Schools: | |
| Boarding | 100 |
| Day, without gyms, cafeteria, or showers | 15 |
| Day, with gyms, cafeteria, and showers | 25 |
| Day, with cafeteria, but without gyms or showers | 20 |
| Service station (per vehicle served) | 10 |
| Swimming pools and bathhouses | 10 |
| Theaters: | |
| Movie (per auditorium seat) | 5 |
| Drive-in (per car space) | 5 |
| Workers (in addition to above): | |
| Construction (at semi-permanent camps) | 50 |
| Day, at schools and offices (per shift) | 20 |
| Employee (per shift) | 20 |

CHAPTER 11-62 APPENDIX D - TABLES

TABLE II
July 1, 2014

| Minimum Horizontal Distance From | Cesspool (ft) | Treatment Unit (ft) | Seepage Pit (ft) | Soil Absorption System (ft) |
|-------------------------------------------------------------------------------------------------------------|------------------|------------------------|---------------------|--------------------------------------|
| Wall line of any structure or building | 5 | 5 | 5 | 5 |
| Property line | 9 | 5 | 9 | 5 |
| Stream, the ocean at the shoreline certification, pond, lake, or other surface water body | 50 | 50 | 50 | 50 |
| Large trees | 10 | 5 | 10 | 10 |
| Treatment unit | 5 | 5 | 5 | 5 |
| Seepage pit | 18 | 5 | 12 | 5 |
| Cesspool | 18 | 5 | 18 | 5 |
| Soil absorption system | 5 | 5 | 5 | 5 |
| Potable water sources serving public water systems | 1000 | 500 | 1000 | 1000 |

CHAPTER 11-62 APPENDIX D - TABLES

TABLE III
July 1, 2014

| Percolation Rate (min/inch) Less than or equal to | Required Absorption Area (ft ² /bedroom or 200 gallons) | Percolation Rate (min/inch) Less than or equal to | Required Absorption Area (ft ² /bedroom or 200 gallons) |
|---------------------------------------------------------|-----------------------------------------------------------------------------|---------------------------------------------------------|-----------------------------------------------------------------------------|
| 1 | 70 | 31 | 253 |
| 2 | 85 | 32 | 257 |
| 3 | 100 | 33 | 260 |
| 4 | 115 | 34 | 263 |
| 5 | 125 | 35 | 267 |
| 6 | 133 | 36 | 270 |
| 7 | 141 | 37 | 273 |
| 8 | 149 | 38 | 277 |
| 9 | 157 | 39 | 280 |
| 10 | 165 | 40 | 283 |
| 11 | 170 | 41 | 287 |
| 12 | 175 | 42 | 290 |
| 13 | 180 | 43 | 293 |
| 14 | 185 | 44 | 297 |
| 15 | 190 | 45 | 300 |
| 16 | 194 | 46 | 302 |
| 17 | 198 | 47 | 304 |
| 18 | 202 | 48 | 306 |
| 19 | 206 | 49 | 308 |
| 20 | 210 | 50 | 310 |
| 21 | 214 | 51 | 312 |
| 22 | 218 | 52 | 314 |
| 23 | 222 | 53 | 316 |
| 24 | 226 | 54 | 318 |
| 25 | 230 | 55 | 320 |
| 26 | 234 | 56 | 322 |
| 27 | 238 | 57 | 324 |
| 28 | 242 | 58 | 326 |
| 29 | 246 | 59 | 328 |
| 30 | 250 | 60 | 330 |

CHAPTER 11-62 APPENDIX D - TABLES

TABLE IV
July 1, 2014

| Pollutant | Pollutant Ceiling Concentration Limit (dry weight basis, mg/kg) |
|------------|-----------------------------------------------------------------|
| Arsenic | 20 |
| Cadmium | 15 |
| Chromium | 200 |
| Copper | 1500 |
| Lead | 300 |
| Mercury | 10 |
| Molybdenum | 25 |
| Nickel | 420 |
| Selenium | 25 |
| Zinc | 2000 |

TABLE V
July 1, 2014

| | |
|--------------------------------------------------------------------------------|------------------|
| Amount of Wastewater Sludge (Metric Ton per 365 day period, dry weight basis) | Frequency |
| Greater than zero but less than 290 | Once per year |
| Equal to or greater than 290 but less than 1500 | Once per quarter |
| Equal to or greater than 1500 but less than 15,000 | Once per 60 days |
| Equal to or greater than 15,000 | Once per month |
| Amount of Wastewater Sludge (English Ton per 365 day period, dry weight basis) | Frequency |
| Greater than zero but less than 320 | Once per year |
| Equal to or greater than 320 but less than 1650 | Once per quarter |
| Equal to or greater than 1650 but less than 16,500 | Once per 60 days |
| Equal to or greater than 16,500 | Once per month |

CHAPTER 11-62 APPENDIX D - TABLES

TABLE VI
July 1, 2014

| Horizontal Distance From | Feet |
|--------------------------------------------------------------------------------------------------------------|------|
| Waters of the United States, state waters, the ocean at the vegetation line, or any other surface water body | 50 |
| Property line | 50 |
| Occupied building or dwelling | 500 |
| Potable water source serving public water systems | 1000 |

TABLE VII
July 1, 2014

| Pollutant | Pollutant Ceiling Concentration Limit (dry weight basis, mg/kg) |
|-----------|-----------------------------------------------------------------|
| Arsenic | 20 |
| Chromium | 200 |
| Nickel | 420 |

CHAPTER 11-62 APPENDIX E

CHAPTER 11-62 FORM A
CERTIFICATION FORM - LAND APPLICATION
July 1, 2014

Instructions:

1. Each form must be signed and dated to be valid.
2. The certifier shall print or type his name below the signature line and print or type the certifier's title, if any, where indicated.
3. When the certifier checks a box or fills in a line other than the signature or date lines, the certifier shall initial below the check or the line, unless the certifier uses preprinted versions of the form which delete the boxes and lines which must be initialed.

For preparers only, I certify, under penalty of law, that:

1. The pollutant concentration ceiling limits in Table IV of chapter 11-62, HAR have been met.
2. The following pathogen requirements have been met:
- a. The Class A pathogen requirements of §11-62-46(a), HAR, specifically §11-62-46(a) (____); or
 - b. The Class B pathogen requirements of 40 CFR §503.32 (b), specifically §503.32(b) (____) and notification each land owner and land applier of wastewater sludge which I have prepared, of the spacing and site restrictions in §11-62-43(g), HAR; and the

CHAPTER 11-62 APPENDIX E

management requirements
in §11-62-43(h), HAR.

3. Vector attraction reduction:
 a. One of the vector attraction reduction requirements in 40 CFR §503.33(b) (1) through (8), has been met, specifically §503.33(b) (____); or
 b. I have not met the one of the requirements of 40 CFR §503.33(b) (1) through (b) (8), and I informed the land applier and the owner of the land application site that one of the vector attraction reduction requirements in 40 CFR §503.33(b) (9) or (b) (10) must be met;

For appliers of wastewater sludge only, I certify, under penalty of law, that:

4. One of the vector attraction reduction requirements in 40 CFR §503.33(b) (9) or (b) (10) has been met, specifically §503.33(b) (____);

5. The spacing and site restrictions in §11-62-43(g) have been met; and

6. The management requirements in §11-62-43(h), HAR have been met.

For appliers of septage only, I certify, under penalty of law, that:

7. One of the pathogen requirements in 40 CFR §503.32(c) (1) or (c) (2) has been met, specifically §503.32(c) (____);

CHAPTER 11-62 APPENDIX E

- 8. One of the vector attraction reduction requirements in 40 CFR §503.33(b) (9), (b) (10), or (b) (12) has been met, specifically §503.33(b) (____);
- 9. The spacing and site restrictions in §11-62-44(g), HAR have been met; and
- 10. The management requirements in §11-62-44(h), HAR have been met.

I certify, under penalty of law, that the information that will be used to determine compliance with the foregoing requirements was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.

Date

Name

Title: _____

Modified

- 26) HAR §§ 13-124-2, 13-124-3, 13-124-4, 13-124-7, 13-124-8, and Exhibits 1-5**

Relating to Indigenous, Injurious, Introduced Wild Birds, and Introduced Wildlife -- Prohibited activities; Scientific, propagation and educational permits; Crop damage, nuisance and threat to human health and safety permits; Penalty; Updated Exhibits 1-5

Rules Amending Title 13
Hawaii Administrative Rules

December 12, 2014

1. Chapter 124 of Title 13, Hawaii Administrative Rules, entitled "Indigenous Wildlife, Endangered and Threatened Wildlife, and Introduced Wild Birds" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 5

FORESTRY AND WILDLIFE

PART 2

WILDLIFE

CHAPTER 124

INDIGENOUS WILDLIFE, ENDANGERED AND THREATENED
WILDLIFE, INJURIOUS WILDLIFE, [AND] INTRODUCED WILD
BIRDS, AND INTRODUCED WILDLIFE

Subchapter 1 General Provisions

| | |
|--------------|-----------------------|
| \$13-124-1 | Purpose |
| \$13-124-2 | Definitions |
| \$13-124-2.1 | Revocation of permits |
| \$13-124-2.2 | Compliance with laws |
| \$13-124-2.3 | Exemption |
| \$13-124-2.4 | Severability |

Subchapter 2 Indigenous, Injurious, Introduced
Wild Birds, and Introduced Wildlife

- §13-124-3 Prohibited activities
- §13-124-4 Scientific, propagation, and
educational permits
- §13-124-5 Repealed
- §13-124-6 Permits for keeping indigenous wildlife,
introduced wild birds, game birds, and
game mammals
- §13-124-7 Crop damage, nuisance, and threat to
human health and safety permits
- §13-124-8 Penalty

Subchapter 3 Endangered and Threatened
Wildlife

- §13-124-11 Prohibited activities
- §13-124-12 Scientific, propagation, and
educational permits
- §13-124-13 Penalty

Historical Note: Chapter 13-124, Hawaii
Administrative Rules, is based substantially upon
Regulation 18 of the Division of Fish and Game,
Department of Land and Natural Resources. [Eff 8/10/53;
am 10/10/55; am 3/28/58 and ren Regulation 6; am
9/8/73; R 3/22/82]

SUBCHAPTER 1

GENERAL PROVISIONS

§13-124-1 Purpose. The purpose of this
chapter is to conserve, manage, protect, and enhance
indigenous wildlife; and manage introduced wild
birds. [Eff 3/22/82; am and comp 8/28/86; am and comp
3/2/98; comp] (Auth: HRSS§ 183D-2,
183D-3, 183D-61, 195D-3, 195D-4, 195D-6) (Imp: HRSS§

183D-2, 183D-3, 195D-3, 195D-4, 195D-6)

§13-124-2 Definitions. As used in this chapter unless the context requires otherwise:

"Agriculture" means the production of crops which are planted, cultivated, and harvested for food, ornamental, grazing, cultural, medicinal or forest purposes.

"Aquaculture" means the farming or ranching of aquatic life in a controlled salt, brackish, or fresh water environment; provided that the farm or ranch is on or directly adjacent to land.

"Board" means the board of land and natural resources.

"Crops" means a plant or animal or product thereof that can be grown and harvested for profit or subsistence.

"Cultural use" means use for traditional native Hawaiian practices.

"Department" means the department of land and natural resources.

"Domestic animal" means any of various animals which have been domesticated by humans in a condition mainly dependent on humans.

"Endangered wildlife" means any species, subspecies, or population of wildlife that has been officially listed by the federal government as endangered and any species, subspecies, or population of indigenous wildlife listed in, but not limited to the exhibit entitled "Exhibit 2, Chapter 13-124, List of Species of Endangered Wildlife in Hawaii, [6/13/96] [10/28/11] 11/1/14" and as updated, which is located at the end of this chapter and incorporated by reference.

"Export" means shipment to any point outside the State.

"Feral" means having escaped or been released from domestication and reverted to a wild state [~~over several generations~~].

"Game birds" means those birds designated by [law] statute or rule for hunting.

"Game mammals" means those mammals designated by ~~[law]~~ statute or rule for hunting.

"Indigenous wildlife" means any species or subspecies of animal, including migratory forms, occurring or living naturally in Hawaii without having been brought to Hawaii by humans and listed in, but not limited to, the exhibit entitled "Exhibit 1, Chapter 13-124, Indigenous Wildlife of Hawaii, [2/1/97] 11/1/14" and as updated, which is located at the end of this chapter and incorporated by reference.

"Injurious wildlife" means any species or subspecies of animal ~~[except game birds and game mammals]~~ which is known to be harmful to agriculture, aquaculture, indigenous wildlife or plants, or constitute a nuisance or health hazard and is listed in the exhibit entitled "Exhibit 5, Chapter 13-124, List of Species of Injurious Wildlife in Hawaii, [2/1/97] ~~[10/28/11]~~ 11/1/14" and as updated, which is located at the end of this chapter and incorporated by reference; and as established and designated by the board as injurious wildlife.

"Introduce" means an act of releasing wildlife into a habitat to which it is not indigenous.

"Introduced wild birds" means any non-domesticated species of birds introduced or imported to Hawaii by humans and living in a wild state other than game birds, including, but not limited to, species listed in the exhibit entitled "Exhibit 4, Chapter 13-124, Introduced Wild Birds Other Than Game Birds Which Have Become Established in the Wild, [2/1/97] ~~[10/28/11]~~ 11/1/14" and as updated, which is located at the end of this chapter and incorporated by reference.

"Introduced wildlife" means any wildlife introduced or imported to Hawaii by humans ~~[and living in a wild and undomesticated state].~~

"Non-domesticated animal" means any of various animals that have not been domesticated by humans and that are in a condition mainly independent of humans.

"Plant" means any member of the plant kingdom, including seeds, roots, and other parts thereof.

"Release" means to free an animal from confinement or restraint.

"Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, possess, or collect endangered or threatened species of wildlife, or to attempt to engage in any such conduct.

"Threatened wildlife" means any species, subspecies, or population of wildlife that has been officially listed by the federal government as threatened and any species, subspecies, or population of indigenous wildlife listed in, but not limited to, the exhibit entitled "Exhibit 3, Chapter 13-124, List of Species of Threatened Wildlife in Hawaii, [2/1/97] [~~10/28/11~~] 11/1/14" and as updated, which is located at the end of this chapter and incorporated by reference.

"Wildlife" means any member of any non-domesticated species of the animal kingdom, and game mammals and game birds living in a wild and non-domesticated state, whether reared in captivity or not, including any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof. [Eff 3/22/82; am and comp 8/28/86; am and comp 3/2/98; am and comp] (Auth: HRS §§ 183D-2, 183D-3, 183D-31, 183D-51, 183D-61, 195D-3, 195D-4, 195D-6) (Imp: HRS §§ 183D-2, 183D-3, 183D-31, 183D-51, 183D-61, 195D-3, 195D-4, 195D-6)

§13-124-2.1 Revocation of permits. Any permit issued pursuant to this chapter shall be revocable for good cause and shall be nonassignable unless otherwise provided by law. Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of two years from the date of revocation. [Eff and comp] (Auth: HRS §§183D-2, 183D-3, 183D-6, 183D-61, 195D-3, 195D-4, 195D-5, 195D-6) (Imp: HRS §§183D-2, 183D-3, 183D-6, 183D-61, 195D-3, 195D-4, 195D-5, 195D-6, 195D-8, 195D-9)

Historical note: §13-124-2.1 is based

substantially upon §13-124-7.1. [Eff 3/2/98; R
]

§13-124-2.2 Compliance with laws. All
persons applying for and receiving permits under this
chapter shall comply with all federal, state, and
county laws, rules, and required permits or licenses.
[Eff and comp] (Auth: HRS §§183D-
3, 183D-6, 183D-61, 195D-3, 195D-4, 195D-5, 195D-
6) (Imp: HRS §§183D-3, 183D-6, 183D-61, 195D-3,
195D-4, 195D-5, 195D-8, 195D-9)

Historical note: §13-124-2.2 is based
substantially upon §13-124-7.2. [Eff 3/2/98; R
]

§13-124-2.3 Exemption. This chapter shall
not apply to any activity involving indigenous,
endangered, or threatened wildlife which was held in
captivity, or in a controlled environment on May 10,
1975; provided that the purposes of the holding were
not contrary to the purposes of chapter 195D, HRS,
and that the wildlife were not held for sale or
resale. [Eff and comp] (Auth:
HRS §§183D-61, 195D-3, 195D-4, 195D-6) (Imp: HRS
§§183D-61, 195D-3, 195D-4, 195D-6)

Historical note: §13-124-2.3 is based
substantially upon §13-124-9. [Eff and comp
8/28/86; am and comp 3/2/98; R]

§13-124-2.4 Severability. These rules are
declared to be severable and if any portion or the
application thereof to any person or property is held
invalid for any reason, the validity of the remainder
of these rules or the application of the remainder to
other persons or property shall not be affected. [Eff
and comp] (Auth: HRS §§183D-2, 183D-3,
195D-6, 195D-10) (Imp: HRS §§183D-2, 183D-3, 195D-6,

195D-10)

Historical note: §13-124-2.4 is based substantially upon §13-124-10. [Eff 3/2/98; R]

SUBCHAPTER 2

INDIGENOUS, INJURIOUS, INTRODUCED WILD BIRDS, AND
INTRODUCED WILDLIFE

§13-124-3 Prohibited activities. (a) With respect to indigenous wildlife and introduced wild birds, and except as provided in [~~subsections (d) and (e),~~] subsection (e) or as permitted by the department, no person shall, or attempt to:

- (1) Catch, possess, injure, kill, destroy, sell, offer for sale, or transport any such species, or any young or egg, or the dead body or skin thereof; or
- (2) Export any such species, or any young or egg, or the dead body or skin thereof from the State.

The prohibitions against the destruction of wild birds shall not apply to those introduced wild birds listed as injurious wildlife.

(b) [~~With respect to endangered and threatened species of wildlife except as provided in subsection (e), no person shall or attempt to:~~

- ~~(1) Take, possess, process, sell, offer for sale, or transport any such species, any young or egg, or the dead body or skin thereof within the State;~~
- ~~(2) Export any such species, or any young or egg, or the dead body or parts thereof, from the State.]~~

~~[(e)]~~ No person shall remove, damage, or disturb the nest of any indigenous~~[, endangered, or threatened species]~~ wildlife except as provided in subsection (e) or as permitted by the department.

~~[(d)]~~ (c) With respect to injurious wildlife, except as provided in subsection (e) or as permitted by the department, no person shall, or attempt to:

- (1) Release injurious wildlife into the wild;
- (2) Transport ~~[them]~~ live injurious wildlife to islands or locations within the State where they are not already established and living in a wild state; or
- (3) Export any such species, or the dead body or parts thereof, from the State.

~~[(4) The prohibitions against the destruction of wild birds shall not apply to those introduced wild birds listed as injurious wildlife.]~~

(d) With respect to introduced wildlife, except as provided in subsection (e) or as permitted by the department, no person shall, or attempt to, release introduced wildlife.

(e) The prohibited activities in this section shall not apply to: ~~[authorized employees of the department, or enforcement agents and inspectors of the department of agriculture and United States Fish and Wildlife Service when acting in the course of their official duties, or persons authorized by the board or its authorized representative and as provided elsewhere in this chapter.]~~

- (1) Authorized employees of the department;
- (2) Enforcement agents, researchers, and inspectors of the department of agriculture and United States Fish and Wildlife Service when acting in the course of their official duties; or
- (3) Persons authorized by the board or its authorized representative and as provided elsewhere in this chapter. [Eff 3/22/82; am and comp 8/28/86; am and comp 3/2/98; am and comp] (Auth: HRS §§183D-8, 183D-61, 183D-62, 183D-63, 183D-64, 195D-3, 195D-4, 195D-5, 195D-6) (Imp: HRS §§183D-8, 183D-61, 183D-62, 183D-63, 183D-64, 195D-3, 195D-4, 195D-6)

§13-124-4 Scientific, propagation, and educational permits. [~~(a)~~] Permits for collecting, possessing, killing, selling or offering for sale, and transporting [~~threatened wildlife,~~] indigenous wildlife, introduced wild birds, game birds, or game mammals may be issued by the board or its authorized representative for scientific or educational purposes including cultural activities, or for activities which will enhance the survival of the wildlife species.

~~[(b) Permits to take, possess, process, sell or offer for sale, transport, or export any endangered species of wildlife may be issued only for scientific purposes or to enhance the propagation or survival of the wildlife species, except permits to possess legally obtained endangered species may be issued for educational purposes which enhance the survival of that species.]~~ [Eff 3/22/82; am and comp 8/28/86; am and comp 3/2/98; am and comp] (Auth: HRS §§183D-6, 183D-61, 195D-3, 195D-4, 195D-6) (Imp: HRS §§183D-6, 183D-61, 195D-3, 195D-4, 195D-5, 195D-6)

§13-124-5 REPEALED. [R 3/2/98]

§13-124-6 Permits for keeping indigenous wildlife, introduced wild birds, game birds, and game mammals. [~~(a)~~] Permits may be issued by the board or its authorized representative to qualified persons who apply in writing to maintain indigenous wildlife, introduced wild birds, game birds, or game mammals in captivity for the protection, treatment for injury or disease, propagation, and other purposes consistent with the preservation, protection, and conservation of the animals. [Eff 3/22/82; am and comp 8/28/86; am and comp 3/2/98; am and comp] (Auth: HRS §§183D-6, 183D-61, 195D-3, 195D-4, 195D-6) (Imp: HRS §§183D-6, 183D-61, 195D-3, 195D-4, 195D-6)

§13-124-7 Crop damage, nuisance, and threat to human health and safety permits. (a) [The] Provided that no such permit shall be required on private land for game mammals when otherwise in compliance with chapter 123, the board or its authorized representative may issue permits to destroy or otherwise control game birds, game mammals, introduced wildlife, or introduced wild birds causing substantial damage to agricultural or aquacultural crops, indigenous plants or wildlife, or pose a threat to human health and safety under the following conditions:

- (1) An authorized agent of the department has investigated the complaint and is satisfied that substantial damage has occurred or is likely to occur;
- ~~{(2) Permits to control game mammals and game birds on parcels larger than 300 acres, may be issued only when it has been determined that public hunting is not a reasonable and appropriate method of control;~~
- 3}{(2) Permits shall state the species and may specify the number to be destroyed and the method of control to be used. The permit may include other terms and conditions as may seem proper and applicable;
- ~~{4}{(3) Permits for restricted use pesticides may be issued only after an integrated animal damage control plan has been submitted to and approved by an authorized agent of the department[-]; or~~
- (4) When species of introduced wildlife are found to be generally harmful or destructive to agriculture or aquaculture, native plants or wildlife, or constituting a threat to human health or safety, the board or its authorized representative may authorize the destruction or control of the species in any area for a specified time period without requiring permits or reports.

(b) The board or its authorized representative may issue permits to destroy or otherwise control

indigenous wildlife other than threatened and endangered species, causing substantial damage to agricultural or aquacultural crops, indigenous plants or wildlife, or pose a threat to human health and safety under the following conditions:

- (1) An authorized agent of the department has investigated the complaint and is satisfied that substantial damage has occurred or is likely to occur;
 - (2) Permits shall state the species to be destroyed or taken; the method of control to be used; the maximum number of individuals of each species to be destroyed or taken; and the disposition of individuals destroyed or taken. The permit shall include other terms and conditions as may seem proper and applicable [-]; and
 - (3) Permits to destroy indigenous wildlife shall be issued only after significant efforts to haze or non-lethally deter the pest animals have been attempted and proved ineffective.
- (c) Permittees shall submit monthly summary reports to the department on forms provided or facsimiles that include:
- (1) The common name of the target and non-target wildlife taken;
 - (2) The number of each wildlife species;
 - (3) The disposition of the wildlife; and
 - (4) Any other information required by the permit.
- (d) Failure to submit monthly reports is grounds for cancellation of permits by the board or its authorized representative.
- (e) No permit shall be issued or used for the destruction of any endangered or threatened species of wildlife.
- (f) Permits may only be amended or otherwise altered by the board or its authorized representative. A copy of the amendment and written approval must be attached to the permit.

~~(g) [When species of introduced wildlife are found to be generally harmful or destructive to agriculture or aquaculture, native plants or wildlife, or constituting a threat to human health or safety, the board or its authorized representative may authorize the destruction or control of the species in any area for a specified time period without requiring permits or reports.]~~

~~(h)] No permit is required merely to scare or herd depredating wildlife other than endangered or threatened species of wildlife. [Eff 3/22/82; am and comp 8/28/86; am and comp 3/2/98; am and comp~~

~~] (Auth: HRS §§183D-61, 195D-3, 195D-4, 195D-5, 195D-6) (Imp: HRS §§183D-61, 195D-3, 195D-4, 195D-5, 195D-6)~~

~~[\$13-124-7.1 Revocation of permits. Any permit issued pursuant to this Chapter shall be revocable for due cause and shall be nonassignable unless otherwise provided by law. Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of two years from the date of revocation.] [Eff 3/2/98; R]~~
~~(Auth: HRS §§195D-3, 195D-4, 195D-6) Imp: HRS §§195D-8, 195D-9)~~

~~[\$13-124-7.2 Compliance with laws. All persons receiving permits under this chapter shall comply with all federal, state, and county laws, rules, and required permits or licenses.] [Eff 3/2/98; R~~

~~](Auth: HRS §§195D-3, 195D-4, 195D-6) Imp: HRS §§195D-8, 195D-9)~~

§13-124-8 Penalty. (a) Any person violating any part of this subchapter shall be ~~[penalized as provided by law.]~~ guilty of a petty misdemeanor, and upon conviction thereof, shall be punished as follows:

- (1) For a first conviction, by a mandatory fine of not less than \$100, or imprisonment of not more than thirty days, or both;
- (2) For a second conviction within five years of a previous conviction, by a mandatory fine of not less than \$500, or by imprisonment of not more than thirty days, or both, and all firearms used in the commission of such violations shall be considered contraband to be forfeited to and disposed of by the State; and
- (3) For a third or subsequent conviction within five years of the first two or more convictions, by a mandatory fine of not less than \$1,000, or by imprisonment of not more than thirty days, or both, and all firearms used in the commission of such violations shall be considered contraband to be forfeited to and disposed of by the State.

(b) In addition to any other penalty imposed under this section, a mandatory fine of \$100 shall be levied for each bird illegally taken under this chapter and a mandatory fine of \$500 shall be levied for each mammal illegally taken under this chapter.

(c) The disposition of fines collected for violations of the provisions concerning wildlife conservation shall be subject to HRS section 183D-10.5.

(d) Except as otherwise provided by law, the board is authorized to set, charge, and collect administrative fines or bring legal action to recover administrative costs of the department or payment for damages or for the cost to correct damages resulting from a violation of HRS subtitle 4 of title 12 or any rule adopted thereunder. The administrative fines shall be as follows:

- (1) For a first violation, by a fine of not more than \$10,000;
- (2) For a second violation within five years of a previous violation, by a fine of not more than \$15,000; and

(3) For a third or subsequent violation within five years of the last violation, by a fine of not more than \$25,000.

(e) In addition, an administrative fine of up to \$5,000 may be levied for each specimen of wildlife taken, killed, injured, or damaged in violation of HRS subtitle 4 of title 12 or any rule adopted thereunder.

(f) Any criminal action against a person for any violation of HRS subtitle 4 of title 12 or any rule adopted thereunder shall not be deemed to preclude the State from pursuing civil legal action to recover administrative fines and costs against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of HRS subtitle 4 of title 12 or any rule adopted thereunder shall not be deemed to preclude the State from pursuing any criminal action against that person.

(g) Any equipment, article, instrument, aircraft, vehicle, vessel, business record or natural resource used or taken in violation of the provisions of this chapter may be seized and subject to forfeiture as provided by HRS section 199-7 and chapter 712A. [Eff 3/22/82; am and comp 8/28/86; comp 3/2/98; am and comp] (Auth: HRS §§183D-3, 183D-5, 183D-10.5, 183D-12, 199-7, 712A-4, 712A-6) (Imp: HRS §§183D-3, 183D-5, 183D-10.5, 183D-12, 199-7, 712A-4, 712A-6)

~~[\$13-124-9 Exemption. This chapter shall not apply to any activity involving indigenous, endangered, or threatened wildlife which was held in captivity, or in a controlled environment on May 10, 1975; provided that the purposes of the holding were not contrary to the purposes of chapter 195D, HRS, and that the wildlife were not held for sale or resale.]~~

~~[Eff and comp 8/28/86; am and comp 3/2/98; R~~

~~] (Auth: HRS §§183D-61, 195D-3, 195D-4, 195D-6)~~

~~(Imp: HRS §§183D-61, 195D-3, 195D-4, 195D-6)~~

~~§13-124-10 Severability. These rules are declared to be severable and if any portion or the application thereof to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of the remainder to other persons or property shall not be affected.~~ [Eff 3/2/98; R] (Auth: HRS §§183D-2, 183D-3)
(Imp: HRS §§183D-2, 183D-3)

SUBCHAPTER 3

ENDANGERED AND THREATENED WILDLIFE

§13-124-11 Prohibited activities. (a)
With respect to endangered and threatened species of wildlife except as provided in subsection (c) or as permitted by the department, no person shall or attempt to:

- (1) Take, possess, process, sell, offer for sale, or transport any such species, any young or egg, or the dead body or skin thereof within the State; or
- (2) Export any such species, or any young or egg, or the dead body or parts thereof, from the State.

(b) No person shall remove, damage, or disturb the nest of any endangered or threatened species except as provided in subsection (c) or as permitted by the department.

(c) The prohibited activities in this section shall not apply to:

- (1) Authorized employees of the department;
- (2) Enforcement agents, researchers, and inspectors of the department of agriculture and United States Fish and Wildlife Service when acting in the course of their official duties; or
- (3) Persons authorized by the board or its authorized representative and as provided elsewhere in this chapter. [Eff and comp

] (Auth: HRS

§§183D-8, 183D-61, 183D-64, 195D-3, 195D-4, 195D-5, 195D-6) (Imp: HRS §§183D-8, 183D-61, 183D-64, 195D-3, 195D-4, 195D-5, 195D-6)

§13-124-12 Scientific, propagation, and educational permits. (a) Permits for collecting, possessing, killing, selling or offering for sale, and transporting threatened wildlife may be issued by the board or its authorized representative for scientific or educational purposes including cultural activities, or for activities which will enhance the survival of the wildlife species.

(b) Permits to take, possess, process, sell or offer for sale, transport, or export any endangered species of wildlife may be issued only for scientific purposes or to enhance the propagation or survival of the wildlife species, except permits to possess legally obtained endangered species may be issued for educational purposes which enhance the survival of that species. [Eff and comp] (Auth: HRS §§183D-6, 183D-61, 195D-3, 195D-4, 195D-5, 195D-6) (Imp: HRS §§183D-6, 183D-6, 183D-61, 195D-3, 195D-4, 195D-5, 195D-6)

§13-124-13 Penalty. (a) Any person who violates any of the provisions of this subchapter shall be guilty of a misdemeanor and shall be punished as follows:

- (1) For a first offense by a fine of not less than \$250 or by imprisonment of not more than one year, or both; and
- (2) For a second or subsequent offense within five years of a previous conviction by a fine of not less than \$500 or by imprisonment of not more than one year, or both.

(b) In addition to the above penalties, except for violations under approved habitat conservation plans under section HRS 195D-21 or approved safe harbor agreements under section HRS 195D-22 as

determined by the board, a fine of \$5,000 for each specimen of a threatened species and \$10,000 for each specimen of an endangered species intentionally, knowingly, or recklessly killed or removed from its original growing location, shall be levied against the convicted person.

(c) The disposition of fines collected for violations of the provisions concerning wildlife conservation shall be subject to HRS 183D-10.5.

(d) Except as otherwise provided by law, the board or its authorized representative by proper delegation is authorized to set, charge, and collect administrative fines or bring legal action to recover administrative fees and costs as documented by receipts or affidavit, including attorneys' fees and costs, or bring legal action to recover administrative fines, fees, and costs, including attorneys' fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of this chapter. The administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$2,500;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$5,000; and
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$10,000.

(e) In addition, an administrative fine of up to \$5,000 may be levied for each specimen of wildlife or plant taken, killed, injured, or damaged in violation of this chapter.

(f) Any criminal action against a person for any violation of this chapter shall not be deemed to preclude the State from pursuing civil legal action to recover administrative fines and costs against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter shall not be deemed to preclude the State from pursuing any criminal action against that person.

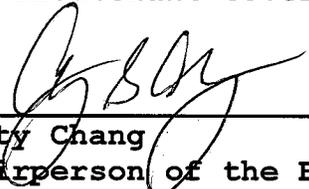
(g) Any equipment, article, instrument, aircraft, vehicle, vessel, business record or natural resource used or taken in violation of the provisions of this chapter may be seized and subject to forfeiture as provided by HRS section 199-7 and chapter 712A." [Eff and comp] (Auth: HRS §§195D-3, 195D-4, 195D-6, 195D-7, 195D-8, 195D-9, 199-7, 712A-4, 712A-6) (Imp: HRS §§195D-3, 195D-4, 195D-6, 195D-7, 195D-8, 195D-9, 199-7, 712A-4, 712A-6)

2. Material, except source notes, to be repealed is bracketed and struck through. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

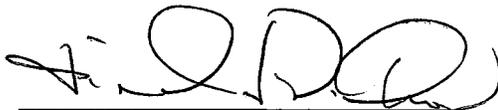
4. These amendments to and compilation of chapter 124, Hawaii Administrative Rules shall take effects ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on December 12, 2014 and filed with the Office of the Lieutenant Governor.



Carty Chang
Chairperson of the Board of
Land and Natural Resources

APPROVED AS TO FORM



Deputy Attorney General

EXHIBIT 1 - Chapter 13-124
[2/1/97] 11/1/14

List of Species of Indigenous Wildlife in Hawaii

Note: This list is demonstrative of this category but shall not be construed as exhaustive.

| | |
|-----------------|--------|
| SCIENTIFIC NAME | STATUS |
| COMMON NAME | |
| HAWAIIAN NAME | |

- * Endemic to Hawaiian Islands
- X Breeding population
- R Regular migrant
- R+ Uncommon but regular sightings
- M Regular winter migrant
- O Considered extinct

Indigenous Reptiles

| | |
|-------------------------------------------------------------------|----|
| Caretta caretta Loggerhead Sea Turtle | R+ |
| Chelonia mydas agassizi Pacific Green Sea Turtle Honu | X |
| Dermochelys coriacea schlegelii Pacific Leatherback Sea Turtle | X |
| Eretmochelys imbricate bissa Pacific Hawksbill Turtle Ea | R+ |
| Lepidochelys olivacea Olive (Pacific) Ridley Sea Turtle | R+ |
| Pelamis platurus Yellow-bellied Sea Snake | R+ |

Indigenous Invertebrates

| | |
|--------------------------------------|-----|
| Achatinella spp. Oahu Tree Snails | * X |
|--------------------------------------|-----|

Indigenous Birds

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Acrocephalus familiaris familiaris Laysan Millerbird | * O |
| Acrocephalus familiaris kingi Nihoa Millerbird | * X |
| Anas acuta Northern Pintail Koloa māpu | M |
| Anas americana American Wigeon | M |
| Anas clypeata Northern Shoveler Koloa mohā | M |
| Anas laysanensis Laysan Duck | * X |
| Anas platyrhynchos Mallard Duck * Note that mallards are both migratory and introduced. Status of an individual will be determined as the need arises. | M |
| Anas wyvilliana Hawaiian Duck Koloa maoli | * X |
| Anous minutus melanogenys Black (Hawaiian, White-capped) Noddy Noio | X |
| Anous stolidus pileatus Brown (Common) Noddy Noio-kōhā | X |
| Arenaria interpres Ruddy Turnstone 'Akekeke | M |
| Asio flammeus sandwichensis Short-eared (Hawaiian) Owl Pueo | * X |
| Aythya affinis Lesser Scaup | M |
| Branta sandvicensis Hawaiian Goose Nēnē | * X |
| Bulweria bulwerii Bulwer Petrel | X |

| | |
|-------------------------------------------------------------------------|-----|
| 'Ou | |
| Buteo solitarius Hawaiian Hawk | * X |
| 'Io | |
| Calidris alba Sanderling | M |
| Huna kai | |
| Chaetoptila angustipluma Kioea | * O |
| Chasiempis ibidis Oahu 'Elepaio | * X |
| 'Elepaio | |
| Chasiempis sandwichensis Hawaii 'Elepaio | * X |
| 'Elepaio | |
| Chasiempis sclateri Kauai 'Elepaio | * X |
| 'Elepaio | |
| Chloridops kona Kona (Grosbeak) Finch | * O |
| Ciridops anna 'Ula-'ai-hāwane | * O |
| Corvus hawaiiensis Hawaiian Crow | * X |
| 'Alalā | |
| Diomedea immutabilis Laysan Albatross | X |
| Mōli | |
| Diomedea nigripes Black footed Albatross | X |
| Ka'upu | |
| Drepanis funerea Black Mamo | * O |
| Hoa or Oo-nuku-umu | |
| Drepanis pacifica Hawaii Mamo | * O |
| Mamo | |
| Fregata minor palmerstoni Great Frigatebird | X |
| 'Iwa | |
| Fulica alai American (Hawaiian). Coot | * X |
| 'Alae ke'oke'o | |
| Gallinula chloropus sandvicensis Common Moorhen (Hawaiian Gallinule) | * X |

| | |
|----------------------------------------------------------------|-----|
| 'Alae 'ula | |
| Gygis alba rothschildi White (Fairy) Tern Manu o ku | X |
| Hemignathus lanaiensis Lanai Akialoa 'Akialoa | * O |
| Hemignathus ellisianus Oahu 'Akialoa 'Akialoa | * O |
| Hemignathus flavus Oahu 'Amakihi 'Amakihi | * X |
| Hemignathus kauaiensis Kauai 'Amakihi 'Amakihi | * X |
| Hemignathus lucidus affinus Maui Nuku pu'u Nuku pu'u | * X |
| Hemignathus lucidus hanapepe Kauai Nuku pu'u Nuku pu'u | * X |
| Hemignathus lucidus lucidus Oahu Nuku pu'u Nuku pu'u | * O |
| Hemignathus munroi 'Akiapōlā'au | * X |
| Hemignathus obscurus Hawaii 'Akialoa 'Akialoa | * O |
| Hemignathus parvus 'Anianiau (Lesser 'Amakihi) 'Anianiau | * X |
| Hemignathus sagittirostris Greater 'Amakihi | * O |
| Hemignathus stejnegeri Kauai 'Akialoa 'Akialoa | * X |
| Hemignathus virens virens Hawaii 'Amakihi 'Amakihi | * X |
| Hemignathus virens wilsoni Maui 'Amakihi 'Amakihi | * X |
| Heteroscelus incanus | M |

| | |
|------------------------------------------------------------------------|-----|
| Wandering Tattler 'Ūlili | |
| Himantopus mexicanus knudseni Black-necked (Hawaiian) Stilt Āe'o | * X |
| Himatione sanguinea 'Apapane | * X |
| Himatione sanguinea freethii Laysan Honeycreeper | * O |
| Loxioides bailleui Palila | * X |
| Loxops caeruleirostris Kauai 'Ākepa 'Akeke'e | * X |
| Loxops coccineus coccineus Hawaii 'Ākepa 'Akepeu'ie | * X |
| Loxops coccineus ochraceus Maui 'Ākepa 'Akepeu'ie | * X |
| Loxops coccineus rufus Oahu 'Ākepa 'Akepeu'ie | * O |
| Loxops mana Hawaii Creeper | * X |
| Melamprosops phaeosoma Po'ouli | * X |
| Moho apicalis Oahu 'Ō'ō 'Ō'ō | * O |
| Moho bishopi Molokai 'Ō'ō 'Ō'ō | * O |
| Moho braccatus Kauai 'Ō'ō 'Ō'ō'a'a | * X |
| Moho nobilis Hawaii 'Ō'ō 'Ō'ō | * O |
| Myadestes lanaiensis lanaiensis Lanai Thrush Oloma'o | * O |
| Myadestes lanaiensis rutha Molokai Thrush Oloma'o | * X |

| | |
|---------------------------------------------------------------------------------------------|-----|
| Myadestes myadestinus Kauai Thrush Kāma'o | * X |
| Myadestes oahuensis Oahu Thrush 'Amaui | * O |
| Myadestes obscurus Hawaii Thrush 'Oma'o | * X |
| Myadestes palmeri Small Kauai Thrush Puaiohi | * X |
| Numenius tahitiensis Bristle-thighed Curlew Kioea | M |
| Nycticorax nycticorax hoactli Black-crowned Night-heron 'Auku'u | X |
| Oceadroma castro cryptoleucura Band-rumped (Hawaiian, Harcourt) Storm-petrel 'Ake'ake | * X |
| Oceandroma tristrami Sooty (Tristram's) Storm-petrel | X |
| Oreomystis bairdi Kauai Creeper 'Akikiki | * X |
| Palmeria dolei Crested Honeycreeper 'Ākohekohe | * X |
| Paroreomyza flammea Molokai Creeper Kakawahie | * X |
| Paroreomyza maculata Oahu Creeper 'Alauwahio | * X |
| Paroreomyza montana montana Lanai Creeper 'Alauwahio | * O |
| Paroreomyza montana newtoni Maui Creeper 'Alauwahio | * X |
| Phaethon lepturus dorotheae White-tailed Tropicbird Koa'e kea | X |
| Phaethon rubricuada rothschildi | X |

| | |
|----------------------------------------------------------------------------|-----|
| Red-tailed Tropicbird Koa'e 'ula | |
| Pluvialis dominica Lesser (Pacific, American) Golden Plover Kōlea | M |
| Pluvialis squatarola Black-bellied Plover | M |
| Porzana palmeri Laysan Rail | * O |
| Porzana sandwichensis Hawaiian Rail Moho | * O |
| Procelsterna cerulea saxatilis Blue-gray Noddy | X |
| Pseudonestor xanthophrys Maui Parrotbill | * X |
| Psittirostra psittacea 'Ō'ū | * X |
| Pterodroma hypoleuca hypoleuca Bonin Petrel | X |
| Pterodroma sandwichensis Hawaiian Petrel 'Ua'u | * X |
| Puffinus nativitatis Christmas Shearwater | X |
| Puffinus newelli Newell's Shearwater 'A'o | * X |
| Puffinus pacificus chlororhynchus Wedge-tailed Shearwater 'Ua'u kani | X |
| Rhodacanthis flaviceps Lesser Koa Finch | * O |
| Rhodacanthis palmeri Greater Koa Finch Hopue | * O |
| Sterna fuscata oahuensis Sooty tern 'Ewa 'ewa | X |
| Sterna lunata Gray-backed Tern Pakalakala | X |
| Sula dactylatra personata Masked (Blue-faced) Booby 'Ā | X |

| | |
|----------------------------------------------|-----|
| Sula leucogaster plotus Brown Booby 'Ā | X |
| Sula sula rubripes Red-footed Booby 'Ā | X |
| Telespiza cantans Laysan Finch | * X |
| Telespiza ultima Nihoa Finch | * X |
| Vestiaria coccinea 'I'iwi | * X |

SCIENTIFIC NAME
 COMMON NAME
 HAWAIIAN NAME

STATUS

* Endemic to Hawaiian Islands
 X Breeding population
 R Regular migrant
 R+ Uncommon but regular sightings
 M Regular winter migrant
 O Considered extinct

Indigenous Mammals

| | |
|---------------------------------------------------------------------|-----|
| Balaenoptera acutorostrata Minke Whale | M |
| Balaenoptera physalus Fin Whale | R+ |
| Feresa attenuata Pygmy Killer Whale | R |
| Globicephala macrorhynchus Pilot Whale | R |
| Kogia breviceps Pygmy Sperm Whale | R+ |
| Lasiurus cinereus semotus Hawaiian (Hoary) Bat 'Ope'ape'a | * X |
| Megaptera novaengliae Humpback Whale Koholā | M |
| Mesoplodon densirostris Densebeaked Whale | R+ |
| Monachus schauinslandi Hawaiian Monk Seal 'Īlio-holo-i-kauaua | * X |
| Orcinus orca Killer Whale | R+ |
| Peponocephala electra Melon-headed Whale | R |
| Physeter catodon Sperm Whale Palaoa, Koholā kepama | M |
| Pseudorca crassidens False Killer Whale | R |

| | |
|-------------------------------------------------------|----|
| Stenella attenuate Spotted Dolphin Nai'a | X |
| Stenella coeruleoalba Striped Dolphin | R+ |
| Stenella longirostris Spinner Dolphin Nai'a | X |
| Steno bredanensis Rough-toothed Dolphin Nai'a | X |
| Tursiops gilli Pacific Bottlenose Dolphin Nai'a | X |

EXHIBIT 2 - Chapter 13-124
[10/29/11] 11/1/14

List of Species of Endangered Wildlife in Hawaii

| | |
|-----------------|------------------|
| SCIENTIFIC NAME | PORTION OF RANGE |
| COMMON NAME | WHERE ENDANGERED |
| HAWAIIAN NAME | |

Endangered Birds

| | |
|--------------------------------------------------------------------------------------------|--------|
| Acrocephalus familiaris kingi Nihoa Millerbird | Entire |
| Anas laysanensis Laysan Duck | Entire |
| Anas wyvilliana Hawaiian Duck Kóloa-maoli | Entire |
| Asio flammeus sandwichensis Short-eared (Hawaiian) Owl Pueo | Oahu |
| Branta sandvicensis Hawaiian Goose Nēnē | Entire |
| Buteo solitarius Hawaiian Hawk 'Io | Entire |
| Chasiempis ibidis Oahu Elepaio | Entire |
| Corvus hawaiiensis Hawaiian Crow 'Alalā | Entire |
| Fulica alai Hawaiian Coot 'Alae ke'oke'o | Entire |
| Gallinula chloropus sandvicensis Common Moorhen (Hawaiian Gallinule) 'Alae'ula | Entire |
| Hemignathus lucidus affinis Maui Nuku pu'u Nuku pu'u | Entire |

| | |
|------------------------------------------------------------------------|--------|
| Hemignathus lucidus hanapepe Kauai Nuku pu'u Nuku pu'u | Entire |
| Hemignathus munroi 'Akiapōlā'au 'Akiapōlā'au | Entire |
| Hemignathus stejnegeri Kauai 'Akialoa 'Akialoa | Entire |
| Hemignathus virens wilsoni Maui 'Amakihi 'Amakihi | Lanai |
| Himantopus mexicanus knudseni Black-necked (Hawaiian) Stilt Āe'o | Entire |
| Loxioides bailleui Palila Palila | Entire |
| Loxops caeruleirostris Kauai Akepa Akekee | Entire |
| Loxops coccineus coccineus Hawaii 'Akēpa 'Akepeu'ie | Entire |
| Loxops coccineus ochraceus Maui 'Akēpa 'Akepeu'ie | Entire |
| Melamprosops phaeosoma Po'ouli Po'ouli | Entire |
| Moho braccatus Kauai 'Ō'ō 'Ō'ō 'a'a | Entire |
| Myadestes lanaiensis rutha Molokai Thrush Oloma'o | Entire |
| Myadestes myadestinus Kauai Thrush Kāma'o | Entire |
| Myadestes palmeri Small Kauai Thrush Puaiohi | Entire |
| Oceanodroma castro Band-rumped Storm-petrel 'Ake'ake | Entire |

| | |
|------------------------------------------------------|----------------------|
| Oreomystis bairdi Kauai Creeper Akikiki | Entire |
| Loxops mana Hawaii Creeper | Entire |
| Palmeria dolei Crested Honeycreeper 'Ākohekohe | Entire |
| Paroreomyza flammea Molokai Creeper Kakawahie | Entire |
| Paroreomyza maculata Oahu Creeper 'Alauahio | Entire |
| Phoebastria albatrus Short-tailed Albatross | Entire |
| Pseudonestor xanthophrys Maui Parrotbill | Entire |
| Psittirostra psittacea 'Ō'ū 'Ō'ū | Entire |
| | |
| Pterodroma sandwichensis Hawaiian Petrel 'Ua'u | Entire |
| Telespiza cantans Laysan Finch | Entire |
| Telespiza ultima Nihoa Finch | Entire |
| Vestiaria coccinea 'I'iwi 'I'iwi | Oahu, Lanai, Molokai |

Endangered Mammals

| | |
|-----------------------------------------------------------------|--------|
| Balaenoptera physalus Fin Whale | Entire |
| Lasiurus cinereus semotus Hawaiian (Hoary) Bat 'Ōpe'ape'a | Entire |
| Megaptera novaeangliae Humpback Whale Koholā | Entire |
| Monachus schauinslandi Hawaiian Seal | Entire |

| | |
|----------------------------------------------------------|--------|
| 'Īlio holo I kauaua | |
| Physeter catodon Sperm Whale Palaoa, Koholā kepama | Entire |
| Pseudorca crassidens False Killer Whale | Entire |

Endangered Reptiles

| | |
|--------------------------------------------------------------------|--------|
| Dermochelys coriacea schlegelii Pacific Leatherback Sea Turtle | Entire |
| Eretmochelys imbricata bissa Pacific Hawksbill Sea Turtle Ea | Entire |

Endangered Invertebrates

| | |
|------------------------------------------------------------|--------|
| Achatinella spp. Oahu (Achatinella) Tree Snails | Entire |
| Adelocosa anops Kauai cave spider Pe'e pe'e maka'ole | Entire |
| Drosophila aglaia | Entire |
| Drosophila differens | Entire |
| Drosophila digressa Hawaiian picture-wing fly | Entire |
| Drosophila hemipeza | Entire |
| Drosophila heteroneura | Entire |
| Drosophila montgomeryi | Entire |
| Drosophila musaphilia | Entire |
| Drosophila neoclavisetae | Entire |
| Drosophila obatai | Entire |
| Drosophila ochrobasis | Entire |
| Drosophila sharpi Hawaiian picture-wing fly | Entire |
| Drosophila substenoptera | Entire |
| Drosophila tarphytrichia | Entire |
| Manduca blackburni Blackburn's sphinx moth | Entire |
| Megalagrion leptodemas Crimson Hawaiian Damselfly | Entire |
| Megalagrion nesiotetes Flying Earwig Hawaiian Damselfly | Entire |
| Megalagrion nigrohamatum | Entire |

| | |
|-----------------------------------------------------|--------|
| nigrolineatum Blackline Hawaiian Damselfly | |
| Megalagrion oceanicum Oceanic Hawaiian Damselfly | Entire |
| Megalagrion pacificum Pacific Hawaiian Damselfly | Entire |
| Newcombia cumingi Newcomb's tree snail | Entire |
| Partulina semicarinata Lanai tree snail | Entire |
| Partulina variabilis Lanai tree snail | Entire |
| Spelaeorchestia koloana Kauai Cave Amphipod | Entire |
| Vetericaris chaceorum Anchialine pool shrimp | Entire |

EXHIBIT 3 - Chapter 13-124
[10/28/11] 11/1/14

List of Species of Threatened Wildlife in Hawaii

Note: This list is demonstrative of this category but shall not be construed as exhaustive.

| | |
|-----------------|------------------|
| SCIENTIFIC NAME | PORTION OF RANGE |
| COMMON NAME | WHERE THREATENED |
| HAWAIIAN NAME | |

Threatened Birds

| | |
|-------------------------------------------------|--------|
| Gygis alba White Tern Manu o ku | Oahu |
| Puffinus newelli Newell's Shearwater 'A'o | Entire |

Threatened Reptiles

| | |
|---------------------------------------------------------------|--------|
| Chelonia mydas agassizi Pacific Green Sea Turtle Honu | Entire |
| Lepidochelys olivacea Olive (Pacific) Ridley Sea Turtle | Entire |
| Threatened Reptiles Careta careta Loggerhead Sea Turtle | Entire |

Threatened Invertebrates

| | |
|------------------------------------|--------|
| Erinna newcombi Newcomb's snail | Entire |
| Drosophila mulli | Entire |

EXHIBIT 4 - Chapter 13-124
[10/28/11] 11/1/14

**Introduced Wild Birds Other than Game Birds Which Have
 Become Established in the Wild**

Note: This list is demonstrative of this category but shall not be construed as exhaustive.

| SCIENTIFIC NAME | COMMON NAME |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|
| ALAUDIDAE | LARKS |
| <i>Alauda arvensis</i> | Eurasian Skylark |
| ANATIDAE | GEESE, DUCKS |
| <i>Anas platyrhynchos</i> * Note that mallards are both migratory and introduced. Status of an individual will be determined as the need arises. | Mallard |
| ARDEIDAE | HERONS |
| <i>Bubulcus ibis</i> | Cattle egret |
| CARDINALIDAE | TANAGERS, GROSBEAKS, ETC. |
| <i>Cardinalis cardinalis</i> | Northern Cardinal, North American or Kentucky Cardinal |
| COLUMBIDAE | DOVES |
| <i>Columba livia</i> | Rock Dove, Common Pigeon, Domestic Pigeon |
| CETTIDAE, MUSCICAPIDAE & TIMALIIDAE | BUSH-WARBLERS, THRUSHES, ETC |
| <i>Cettia diphone</i> | Japanese Bush-Warbler, Uguisu |
| <i>Copsychus malabaricus</i> | White-rumped Shama, Shama Thrush |

| | |
|---------------------|--------------------------------------------------------------|
| Garrulax pectoralis | Greater Necklaced Laughing-thrush |
| Garrulax caerulatus | Gray-sided Laughing-thrush |
| Garrulax canorus | Melodius Laughing-thrush, Chinese Thrush, Hwamei |
| Leiothrix lutea | Red-billed Leiothrix, Pekin Nightingale, Japanese Hill-robin |

| | |
|----------------------|------------------------------------------------------------|
| ESTRILDIDAE | WAXBILLS, MANNIKINS |
| Uraeginthus bengalus | Red-cheeked Cordonbleu |
| Etrilda caerulescens | Lavender Waxbill |
| Estrilda melpoda | Orange-cheeked Waxbill |
| Estrilda troglodytes | Black-rumped Waxbill, Red-eared Waxbill |
| Estrilda astrild | Common Waxbill |
| Amandava amandava | Red Avadavat, Strawberry Finch, Red Munia |
| Lonchura cantans | African Silverbill |
| Lonchura punctulata | Nutmeg Mannikin, Ricebird, Spotted Munia |
| Lonchura malacca | Chestnut Munia or Mannikin, Black-headed Mannikin or Munia |
| Padda oryzivora | Java Sparrow |

| | |
|------------------|------------------------|
| EMBERIZIDAE | SPARROWS, ETC. |
| Tiaris olivaceus | Yellow-faced Grassquit |
| Sicalis flaveola | Saffron Finch |

| | |
|----------------------|--------------------------------------------|
| FRINGILLIDAE | FINCHES |
| Haemorhous mexicanus | House Finch, Linnet |
| Serinus mozambicus | Yellow-fronted Canary, Green Singing-Finch |
| Serinus canaria | Island Canary, Common Canary |

| | |
|------------------------------|------------------------------------------|
| ICTERIDAE | MEADOWLARKS, ETC. |
| <i>Sternella neglecta</i> | Western Meadowlark |
| MIMIDAE | MOCKINGBIRDS |
| <i>Mimus polyglottos</i> | Northern Mockingbird |
| PASSERIDAE | OLD WORLD SPARROWS |
| <i>Passer domesticus</i> | House Sparrow, English Sparrow |
| PSITTACIDAE | PARAKEETS |
| <i>Psittacula krameri</i> | Rose-ringed Parakeet |
| <i>Amazona viridigenalis</i> | Red-crowned Amazon |
| <i>Aratinga mitrata</i> | Mitred Conure |
| <i>Aratinga erythrogenys</i> | Red-masked Conure |
| PYCNONOTIDAE | BULBULS |
| <i>Pycnonotus cafer</i> | Red-vented Bulbul |
| <i>Pycnonotus jocosus</i> | Red-whiskered Bulbul |
| STURNIDAE | STARLINGS, MYNAS |
| <i>Acridotheres tristis</i> | Common myna |
| THRAUPIDAE | CARDINALS, ETC. |
| <i>Paroaria coronata</i> | Red-crested Cardinal, Brazilian Cardinal |
| <i>Paroaria capitata</i> | Yellow-billed Cardinal |
| TYTONIDAE | BARN OWLS |
| <i>Tyto alba</i> | Barn Owl |
| ZOSTEROPIDAE | WHITE-EYES |
| <i>Zosterops japonicus</i> | Japanese White-eye, Mejiro |

EXHIBIT 5 - Chapter 13-124
[10/28/11] 11/1/14

List of Species of Injurious Wildlife in Hawaii

SCIENTIFIC NAME

COMMON NAME

BIRDS

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|
| Bubulcus ibis | Cattle egret |
| All species in the family CETTIIDAE and associated allies | Warblers |
| All species in the family COLUMBIDAE. Except the domesticated races of pigeons listed in HAR section 4-71-2, Columba domestica and Columba livia | Doves and pigeons |
| Lonchura malacca | Mannikin or Munia, Black-headed (Chestnut Mannikin) |
| All species in the family MUSCICAPIDAE | Old World Flycatchers |
| Padda oryzivora | Sparrow, Java (Java Rice Finch) |
| All species in the family PSITTACIDAE | Parrots |
| All species in the family PYCNONOTIDAE | Bulbuls |
| All species in the family STURNIDAE | Starlings |
| All species in the family TIMALIIDAE | Old World Babblers |
| Tyto alba | Barn Owl |
| All species in the family ZOSTEROPIDAE | White eyes |

AMPHIBIANS/REPTILES

| | |
|--------------------------------|----------------|
| All species in Family Agamidae | Agamid Lizards |
|--------------------------------|----------------|

| | |
|--------------------------------------------------------------------------------------------|--------------------------------------|
| All species in Family Anguidae | Anguid Lizards |
| All species in the genus Anolis | Lizards, Anole |
| All species in the Order Anura | Frogs |
| All species in the Family Chamaeleonidae | Chameleons |
| Gekko gekko | Gecko, Tokay |
| All species in the Family Iguanidae | Iguana, Green |
| All species in the genus Phelsuma | Gecko, Day |
| All Species in Family Scincidae | Skinks |
| All species in the suborder Serpentes, except Ramphotyphlops braminus and Pelamis platurus | All snakes |
| All species in Family Teiidae | Whiptails and Tegus |
| All species in the Order Testudines | All freshwater turtles and tortoises |
| All species in the subfamily VARANOIDEA | Monitor lizards and Gila monsters |

INVERTEBRATES

| | |
|---------------------------|----------------------|
| Achatina fulica | Snail, Giant African |
| Aethina tumida | Small hive beetle |
| Apis cerana | Asian honeybee |
| Apis mellifera scutellata | Africanized honeybee |
| Corbicula fluminea | Clam, Asiatic |
| Darna pallivitta | Nettle caterpillar |

| | |
|------------------------------------------------------------------|---------------------------|
| Euglandina rosea | Snail, Cannibal |
| Gonaxis kibweziensis | (no common name) |
| Helix aspersa | Snail, European brown |
| Hypothenemus hampei | Coffee berry borer |
| Oryctes rhinoceros | Coconut Rhinoceros Beetle |
| All species in the genera: Pomacea, Pila, and Cipangopaludina | Snails, Apple |
| Solenopsis invicta | Red imported fire ant |
| Wasmannia auropunctata | Little fire ant |
| Varroa destructor | Varroa mite |

MAMMALS

| | |
|---------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| Small Indian Mongoose | Herpestes javanicus |
| Even-toed ungulates, except for game mammals identified pursuant to chapter 123 | All species in the order ARTIODACTYLA (with paraxonic feet) |

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808-587-0166

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 5

FORESTRY AND WILDLIFE

PART 2

WILDLIFE

CHAPTER 124

INDIGENOUS WILDLIFE, ENDANGERED AND THREATENED
WILDLIFE, INJURIOUS WILDLIFE, INTRODUCED WILD BIRDS,
AND INTRODUCED WILDLIFE

Subchapter 1 General Provisions

| | |
|-------------|-----------------------|
| §13-124-1 | Purpose |
| §13-124-2 | Definitions |
| §13-124-2.1 | Revocation of permits |
| §13-124-2.2 | Compliance with laws |
| §13-124-2.3 | Exemption |
| §13-124-2.4 | Severability |

Subchapter 2 Indigenous, Injurious, Introduced
Wild Birds, and Introduced Wildlife

| | |
|-----------|----------------------------------------------------------------------------------------------------|
| §13-124-3 | Prohibited activities |
| §13-124-4 | Scientific, propagation, and educational permits |
| §13-124-5 | Repealed |
| §13-124-6 | Permits for keeping indigenous wildlife, introduced wild birds, game birds, and game mammals |

§13-124-7 Crop damage, nuisance, and threat to
human health and safety permits
§13-124-8 Penalty

Subchapter 3 Endangered and Threatened
Wildlife

§13-124-11 Prohibited activities
§13-124-12 Scientific, propagation, and
educational permits
§13-124-13 Penalty

Historical Note: Chapter 13-124, Hawaii
Administrative Rules, is based substantially upon
Regulation 18 of the Division of Fish and Game,
Department of Land and Natural Resources. [Eff 8/10/53;
am 10/10/55; am 3/28/58 and ren Regulation 6; am
9/8/73; R 3/22/82]

SUBCHAPTER 1

GENERAL PROVISIONS

§13-124-1 Purpose. The purpose of this
chapter is to conserve, manage, protect, and enhance
indigenous wildlife; and manage introduced wild
birds. [Eff 3/22/82; am and comp 8/28/86; am and comp
3/2/98; comp **FEB272015**] (Auth: HRSS§ 183D-2, 183D-
3, 183D-61, 195D-3, 195D-4, 195D-6) (Imp: HRSS§ 183D-
2, 183D-3, 195D-3, 195D-4, 195D-6)

§13-124-2 Definitions. As used in this chapter
unless the context requires otherwise:

"Agriculture" means the production of crops which
are planted, cultivated, and harvested for food,
ornamental, grazing, cultural, medicinal or forest
purposes.

"Aquaculture" means the farming or ranching of

aquatic life in a controlled salt, brackish, or fresh water environment; provided that the farm or ranch is on or directly adjacent to land.

"Board" means the board of land and natural resources.

"Crops" means a plant or animal or product thereof that can be grown and harvested for profit or subsistence.

"Cultural use" means use for traditional native Hawaiian practices.

"Department" means the department of land and natural resources.

"Domestic animal" means any of various animals which have been domesticated by humans in a condition mainly dependent on humans.

"Endangered wildlife" means any species, subspecies, or population of wildlife that has been officially listed by the federal government as endangered and any species, subspecies, or population of indigenous wildlife listed in, but not limited to the exhibit entitled "Exhibit 2, Chapter 13-124, List of Species of Endangered Wildlife in Hawaii 11/1/14" and as updated, which is located at the end of this chapter and incorporated by reference.

"Export" means shipment to any point outside the State.

"Feral" means having escaped or been released from domestication and reverted to a wild state.

"Game birds" means those birds designated by statute or rule for hunting.

"Game mammals" means those mammals designated by statute or rule for hunting.

"Indigenous wildlife" means any species or subspecies of animal, including migratory forms, occurring or living naturally in Hawaii without having been brought to Hawaii by humans and listed in, but not limited to, the exhibit entitled "Exhibit 1, Chapter 13-124, Indigenous Wildlife of Hawaii, 11/1/14" and as updated, which is located at the end of this chapter and incorporated by reference.

"Injurious wildlife" means any species or subspecies of animal which is known to be harmful to

agriculture, aquaculture, indigenous wildlife or plants, or constitute a nuisance or health hazard and is listed in the exhibit entitled "Exhibit 5, Chapter 13-124, List of Species of Injurious Wildlife in Hawaii, 11/1/14" and as updated, which is located at the end of this chapter and incorporated by reference; and as established and designated by the board as injurious wildlife.

"Introduce" means an act of releasing wildlife into a habitat to which it is not indigenous.

"Introduced wild birds" means any non-domesticated species of birds introduced or imported to Hawaii by humans and living in a wild state other than game birds, including, but not limited to, species listed in the exhibit entitled "Exhibit 4, Chapter 13-124, Introduced Wild Birds Other Than Game Birds Which Have Become Established in the Wild, 11/1/14" and as updated, which is located at the end of this chapter and incorporated by reference.

"Introduced wildlife" means any wildlife introduced or imported to Hawaii by humans.

"Non-domesticated animal" means any of various animals that have not been domesticated by humans and that are in a condition mainly independent of humans.

"Plant" means any member of the plant kingdom, including seeds, roots, and other parts thereof.

"Release" means to free an animal from confinement or restraint.

"Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, possess, or collect endangered or threatened species of wildlife, or to attempt to engage in any such conduct.

"Threatened wildlife" means any species, subspecies, or population of wildlife that has been officially listed by the federal government as threatened and any species, subspecies, or population of indigenous wildlife listed in, but not limited to, the exhibit entitled "Exhibit 3, Chapter 13-124, List of Species of Threatened Wildlife in Hawaii, 11/1/14" and as updated, which is located at the end of this chapter and incorporated by reference.

"Wildlife" means any member of any non-

domesticated species of the animal kingdom, and game mammals and game birds living in a wild and non-domesticated state, whether reared in captivity or not, including any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof. [Eff 3/22/82; am and comp 8/28/86; am and comp 3/2/98; am and comp **FEB272015**] (Auth: HRS §§ 183D-2, 183D-3, 183D-31, 183D-51, 183D-61, 195D-3, 195D-4, 195D-6) (Imp: HRS §§ 183D-2, 183D-3, 183D-31, 183D-51, 183D-61, 195D-3, 195D-4, 195D-6)

§13-124-2.1 Revocation of permits. Any permit issued pursuant to this chapter shall be revocable for good cause and shall be nonassignable unless otherwise provided by law. Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of two years from the date of revocation. [Eff and comp **FEB 272015**] (Auth: HRS §§183D-2, 183D-3, 183D-6, 183D-61, 195D-3, 195D-4, 195D-5, 195D-6) (Imp: HRS §§183D-2, 183D-3, 183D-6, 183D-61, 195D-3, 195D-4, 195D-5, 195D-6, 195D-8, 195D-9)

Historical note: §13-124-2.1 is based substantially upon §13-124-7.1. [Eff 3/2/98; R **FEB272015**]

§13-124-2.2 Compliance with laws. All persons applying for and receiving permits under this chapter shall comply with all federal, state, and county laws, rules, and required permits or licenses. [Eff and comp **FEB272015**] (Auth: HRS §§183D-3, 183D-6, 183D-61, 195D-3, 195D-4, 195D-5, 195D-6) (Imp: HRS §§183D-3, 183D-6, 183D-61, 195D-3, 195D-4, 195D-5, 195D-8, 195D-9)

Historical note: §13-124-2.2 is based

substantially upon §13-124-7.2. [Eff_3/2/98; R FEB272015]

§13-124-2.3 Exemption. This chapter shall not apply to any activity involving indigenous, endangered, or threatened wildlife which was held in captivity, or in a controlled environment on May 10, 1975; provided that the purposes of the holding were not contrary to the purposes of chapter 195D, HRS, and that the wildlife were not held for sale or resale. [Eff and comp FEB272015] (Auth: HRS §§183D-61, 195D-3, 195D-4, 195D-6) (Imp: HRS §§183D-61, 195D-3, 195D-4, 195D-6)

Historical note: §13-124-2.3 is based substantially upon §13-124-9. [Eff and comp 8/28/86; am and comp 3/2/98; R FEB272015]

§13-124-2.4 Severability. These rules are declared to be severable and if any portion or the application thereof to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of the remainder to other persons or property shall not be affected. [Eff and comp FEB272015] (Auth: HRS §§183D-2, 183D-3, 195D-6, 195D-10) (Imp: HRS §§183D-2, 183D-3, 195D-6, 195D-10)

Historical note: §13-124-2.4 is based substantially upon §13-124-10. [Eff 3/2/98; R FEB272015]

SUBCHAPTER 2

INDIGENOUS, INJURIOUS, INTRODUCED WILD BIRDS, AND INTRODUCED WILDLIFE

§13-124-3 Prohibited activities. (a) With respect to indigenous wildlife and introduced wild birds, and except as provided in subsection (e) or as permitted by the department, no person shall, or attempt to:

- (1) Catch, possess, injure, kill, destroy, sell, offer for sale, or transport any such species, or any young or egg, or the dead body or skin thereof; or
- (2) Export any such species, or any young or egg, or the dead body or skin thereof from the State.

The prohibitions against the destruction of wild birds shall not apply to those introduced wild birds listed as injurious wildlife.

(b) No person shall remove, damage, or disturb the nest of any indigenous wildlife except as provided in subsection (e) or as permitted by the department.

(c) With respect to injurious wildlife, except as provided in subsection (e) or as permitted by the department, no person shall, or attempt to:

- (1) Release injurious wildlife into the wild;
- (2) Transport live injurious wildlife to islands or locations within the State where they are not already established and living in a wild state; or
- (3) Export any such species, or the dead body or parts thereof, from the State.

(d) With respect to introduced wildlife, except as provided in subsection (e) or as permitted by the department, no person shall, or attempt to, release introduced wildlife.

(e) The prohibited activities in this section shall not apply to:

- (1) Authorized employees of the department;
- (2) Enforcement agents, researchers, and inspectors of the department of agriculture and United States Fish and Wildlife Service when acting in the course of their official duties; or
- (3) Persons authorized by the board or its

authorized representative and as provided elsewhere in this chapter. [Eff 3/22/82; am and comp 8/28/86; am and comp 3/2/98; am and comp **FEB272015**] (Auth: HRS §§183D-8, 183D-61, 183D-62, 183D-63, 183D-64, 195D-3, 195D-4, 195D-5, 195D-6) (Imp: HRS §§183D-8, 183D-61, 183D-62, 183D-63, 183D-64, 195D-3, 195D-4, 195D-6)

§13-124-4 Scientific, propagation, and educational permits. Permits for collecting, possessing, killing, selling or offering for sale, and transporting indigenous wildlife, introduced wild birds, game birds, or game mammals may be issued by the board or its authorized representative for scientific or educational purposes including cultural activities, or for activities which will enhance the survival of the wildlife species. [Eff 3/22/82; am and comp 8/28/86; am and comp 3/2/98; am and comp **FEB272015**] (Auth: HRS §§183D-6, 183D-61, 195D-3, 195D-4, 195D-6) (Imp: HRS §§183D-6, 183D-61, 195D-3, 195D-4, 195D-5, 195D-6)

§13-124-5 REPEALED. [R 3/2/98]

§13-124-6 Permits for keeping indigenous wildlife, introduced wild birds, game birds, and game mammals. Permits may be issued by the board or its authorized representative to qualified persons who apply in writing to maintain indigenous wildlife, introduced wild birds, game birds, or game mammals in captivity for the protection, treatment for injury or disease, propagation, and other purposes consistent with the preservation, protection, and conservation of the animals. [Eff 3/22/82; am and comp 8/28/86; am and comp 3/2/98; am and comp **FEB272015**] (Auth: HRS §§183D-6, 183D-61, 195D-3, 195D-4, 195D-6) (Imp: HRS §§183D-6, 183D-61, 195D-3, 195D-4, 195D-6)

§13-124-7 Crop damage, nuisance, and threat to human health and safety permits. (a) Provided that no such permit shall be required on private land for game mammals when otherwise in compliance with chapter 123, the board or its authorized representative may issue permits to destroy or otherwise control game birds, game mammals, introduced wildlife, or introduced wild birds causing substantial damage to agricultural or aquacultural crops, indigenous plants or wildlife, or pose a threat to human health and safety under the following conditions:

- (1) An authorized agent of the department has investigated the complaint and is satisfied that substantial damage has occurred or is likely to occur;
- (2) Permits shall state the species and may specify the number to be destroyed and the method of control to be used. The permit may include other terms and conditions as may seem proper and applicable;
- (3) Permits for restricted use pesticides may be issued only after an integrated animal damage control plan has been submitted to and approved by an authorized agent of the department; or
- (4) When species of introduced wildlife are found to be generally harmful or destructive to agriculture or aquaculture, native plants or wildlife, or constituting a threat to human health or safety, the board or its authorized representative may authorize the destruction or control of the species in any area for a specified time period without requiring permits or reports.

(b) The board or its authorized representative may issue permits to destroy or otherwise control indigenous wildlife other than threatened and endangered species, causing substantial damage to agricultural or aquacultural crops, indigenous plants or wildlife, or pose a threat to human health and safety under the following conditions:

- (1) An authorized agent of the department has investigated the complaint and is satisfied that substantial damage has occurred or is likely to occur;
 - (2) Permits shall state the species to be destroyed or taken; the method of control to be used; the maximum number of individuals of each species to be destroyed or taken; and the disposition of individuals destroyed or taken. The permit shall include other terms and conditions as may seem proper and applicable; and
 - (3) Permits to destroy indigenous wildlife shall be issued only after significant efforts to haze or non-lethally deter the pest animals have been attempted and proved ineffective.
- (c) Permittees shall submit monthly summary reports to the department on forms provided or facsimiles that include:
- (1) The common name of the target and non-target wildlife taken;
 - (2) The number of each wildlife species;
 - (3) The disposition of the wildlife; and
 - (4) Any other information required by the permit.
- (d) Failure to submit monthly reports is grounds for cancellation of permits by the board or its authorized representative.
- (e) No permit shall be issued or used for the destruction of any endangered or threatened species of wildlife.
- (f) Permits may only be amended or otherwise altered by the board or its authorized representative. A copy of the amendment and written approval must be attached to the permit.
- (g) No permit is required merely to scare or herd depredating wildlife other than endangered or threatened species of wildlife. [Eff 3/22/82; am and comp 8/28/86; am and comp 3/2/98; am and comp FEB 27 2015]

(Auth: HRS §§183D-61, 195D-3, 195D-4, 195D-5, 195D-6)

(Imp: HRS §§183D-61, 195D-3, 195D-4, 195D-5, 195D-6)

§13-124-8 Penalty. (a) Any person violating any part of this subchapter shall be guilty of a petty misdemeanor, and upon conviction thereof, shall be punished as follows:

- (1) For a first conviction, by a mandatory fine of not less than \$100, or imprisonment of not more than thirty days, or both;
- (2) For a second conviction within five years of a previous conviction, by a mandatory fine of not less than \$500, or by imprisonment of not more than thirty days, or both, and all firearms used in the commission of such violations shall be considered contraband to be forfeited to and disposed of by the State; and
- (3) For a third or subsequent conviction within five years of the first two or more convictions, by a mandatory fine of not less than \$1,000, or by imprisonment of not more than thirty days, or both, and all firearms used in the commission of such violations shall be considered contraband to be forfeited to and disposed of by the State.

(b) In addition to any other penalty imposed under this section, a mandatory fine of \$100 shall be levied for each bird illegally taken under this chapter and a mandatory fine of \$500 shall be levied for each mammal illegally taken under this chapter.

(c) The disposition of fines collected for violations of the provisions concerning wildlife conservation shall be subject to HRS section 183D-10.5.

(d) Except as otherwise provided by law, the board is authorized to set, charge, and collect administrative fines or bring legal action to recover administrative costs of the department or payment for damages or for the cost to correct damages resulting from a violation of HRS subtitle 4 of title 12 or any

rule adopted thereunder. The administrative fines shall be as follows:

- (1) For a first violation, by a fine of not more than \$10,000;
- (2) For a second violation within five years of a previous violation, by a fine of not more than \$15,000; and
- (3) For a third or subsequent violation within five years of the last violation, by a fine of not more than \$25,000.

(e) In addition, an administrative fine of up to \$5,000 may be levied for each specimen of wildlife taken, killed, injured, or damaged in violation of HRS subtitle 4 of title 12 or any rule adopted thereunder.

(f) Any criminal action against a person for any violation of HRS subtitle 4 of title 12 or any rule adopted thereunder shall not be deemed to preclude the State from pursuing civil legal action to recover administrative fines and costs against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of HRS subtitle 4 of title 12 or any rule adopted thereunder shall not be deemed to preclude the State from pursuing any criminal action against that person.

(g) Any equipment, article, instrument, aircraft, vehicle, vessel, business record or natural resource used or taken in violation of the provisions of this chapter may be seized and subject to forfeiture as provided by HRS section 199-7 and chapter 712A. [Eff 3/22/82; am and comp 8/28/86; comp 3/2/98; am and comp **FEB 27 2015**] (Auth: HRS §§183D-3, 183D-5, 183D-10.5, 183D-12, 199-7, 712A-4, 712A-6) (Imp: HRS §§183D-3, 183D-5, 183D-10.5, 183D-12, 199-7, 712A-4, 712A-6)

SUBCHAPTER 3

ENDANGERED AND THREATENED WILDLIFE

§13-124-11 Prohibited activities. (a)

With respect to endangered and threatened species of wildlife except as provided in subsection (c) or as permitted by the department, no person shall or attempt to:

- (1) Take, possess, process, sell, offer for sale, or transport any such species, any young or egg, or the dead body or skin thereof within the State; or
- (2) Export any such species, or any young or egg, or the dead body or parts thereof, from the State.

(b) No person shall remove, damage, or disturb the nest of any endangered or threatened species except as provided in subsection (c) or as permitted by the department.

(c) The prohibited activities in this section shall not apply to:

- (1) Authorized employees of the department;
- (2) Enforcement agents, researchers, and inspectors of the department of agriculture and United States Fish and Wildlife Service when acting in the course of their official duties; or
- (3) Persons authorized by the board or its authorized representative and as provided elsewhere in this chapter. [Eff and comp FEB 27 2015] (Auth: HRS §§183D-8, 183D-61, 183D-64, 195D-3, 195D-4, 195D-5, 195D-6) (Imp: HRS §§183D-8, 183D-61, 183D-64, 195D-3, 195D-4, 195D-5, 195D-6)

§13-124-12 Scientific, propagation, and educational permits. (a) Permits for collecting, possessing, killing, selling or offering for sale, and transporting threatened wildlife may be issued by the

board or its authorized representative for scientific or educational purposes including cultural activities, or for activities which will enhance the survival of the wildlife species.

(b) Permits to take, possess, process, sell or offer for sale, transport, or export any endangered species of wildlife may be issued only for scientific purposes or to enhance the propagation or survival of the wildlife species, except permits to possess legally obtained endangered species may be issued for educational purposes which enhance the survival of that species. [Eff and comp FEB 27 2015] (Auth: HRS §§183D-6, 183D-61, 195D-3, 195D-4, 195D-5, 195D-6) (Imp: HRS §§183D-6, 183D-6, 183D-61, 195D-3, 195D-4, 195D-5, 195D-6)

§13-124-13 Penalty. (a) Any person who violates any of the provisions of this subchapter shall be guilty of a misdemeanor and shall be punished as follows:

- (1) For a first offense by a fine of not less than \$250 or by imprisonment of not more than one year, or both; and
- (2) For a second or subsequent offense within five years of a previous conviction by a fine of not less than \$500 or by imprisonment of not more than one year, or both.

(b) In addition to the above penalties, except for violations under approved habitat conservation plans under section HRS 195D-21 or approved safe harbor agreements under section HRS 195D-22 as determined by the board, a fine of \$5,000 for each specimen of a threatened species and \$10,000 for each specimen of an endangered species intentionally, knowingly, or recklessly killed or removed from its original growing location, shall be levied against the convicted person.

(c) The disposition of fines collected for violations of the provisions concerning wildlife conservation shall be subject to HRS 183D-10.5.

(d) Except as otherwise provided by law, the board or its authorized representative by proper delegation is authorized to set, charge, and collect administrative fines or bring legal action to recover administrative fees and costs as documented by receipts or affidavit, including attorneys' fees and costs, or bring legal action to recover administrative fines, fees, and costs, including attorneys' fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of this chapter. The administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$2,500;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$5,000; and
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$10,000.

(e) In addition, an administrative fine of up to \$5,000 may be levied for each specimen of wildlife or plant taken, killed, injured, or damaged in violation of this chapter.

(f) Any criminal action against a person for any violation of this chapter shall not be deemed to preclude the State from pursuing civil legal action to recover administrative fines and costs against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter shall not be deemed to preclude the State from pursuing any criminal action against that person.

(g) Any equipment, article, instrument, aircraft, vehicle, vessel, business record or natural resource used or taken in violation of the provisions of this chapter may be seized and subject to forfeiture as provided by HRS section 199-7 and chapter 712A. [Eff and comp FEB272015] (Auth: HRS §§195D-3, 195D-4, 195D-6, 195D-7, 195D-8, 195D-9, 199-7, 712A-4, 712A-6) (Imp: HRS §§195D-3, 195D-4, 195D-6, 195D-7, 195D-8, 195D-9, 199-7, 712A-4, 712A-6)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to and compilation of chapter 124, title 13, Hawaii Administrative Rules Regulating Indigenous Wildlife, Endangered and Threatened Wildlife, Injurious Wildlife, Introduced Wild Birds, and Introduced Wildlife on the Summary Page dated December 12, 2014 were adopted on December 12, 2014 following public hearings held on March 27, 28, and April 1, 2, 3, 4 and 5 after public notice was given on February 17, 2013, in the Sunday editions of The Honolulu Star-Advertiser, The Garden Island, The Maui News, West Hawaii Today, and Hawaii Tribune-Herald.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

/S/ Carty S. Chang
CARTY S. CHANG
Chairperson of the Board
Land and Natural Resources

/S/ David Ige
David Ige
Governor
State of Hawaii

Date: Filed with the Office
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Approved as to form

/S/ Linda Chow
Deputy Attorney General

Modified

- 27) HAR §§ 13-231-2 to 13-231-6, 13-231-8, 13-231-11, 13-231-13, 13-231-15, §§ 13-231-21 to 13-231-27, § 13-231-45, §§ 13-231-55 to 13-231-67, § 13-231-70, and §§ 13-231-85.5 to 13-231-89**

Relating to Use of small boat harbors, offshore mooring, and generally applicable provisions; Boat operation; Commercial activities; Allocation of berths and offshore mooring

Rules Amending Title 13
Hawaii Administrative Rules

DATE

1. Chapter 13-231, Hawaii Administrative Rules, entitled "Operation Of Boats, Small Boat Harbors, And Permits," is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART 1

SMALL BOAT [~~HARBORS~~] FACILITIES AND PROVISIONS
GENERALLY APPLICABLE TO ALL STATE NAVIGABLE WATERS

CHAPTER 231

OPERATION OF BOATS, SMALL BOAT HARBORS, AND USE
PERMITS FOR ALL NAVIGABLE WATERS

Historical note

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Offshore Mooring, and Generally
Applicable Provisions

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- §13-231-3 Use permits; issuance

- §13-231-4 Use permits; part-time or intermittent occupancy
- §13-231-5 Period of validity and renewal of various types of use [~~permit~~] permits
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- §13-231-20 Houseboats prohibited
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- §13-231-22 Staying aboard transient or visiting vessels
- §13-231-23 Interim use of berth during temporary absence of regular permittee's vessel
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- §13-231-41 Navigation or mooring vessels in small boat harbor
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- §13-231-56 Definitions, gross receipts
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- §13-231-61 [~~Renewal~~] Reissuance of commercial use permits and catamaran registration certificates
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- §13-231-70 Water taxi operations
- ~~§13-231-71 (Reserved)~~
- ~~§13-231-72 Small inter island passenger vessel permit]~~
- ~~§§13-231-73] §§13-231-71 to 13-231-75 (Reserved)~~

Subchapter 4 Special Area Rules

- §13-231-76 Repealed
- §13-231-77 Ala Wai Canal
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- §13-231-84 Withdrawal of application; effect if application has become void, expires, or has been withdrawn
- §13-231-85 Priority and procedures in allocation of berths
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- §13-231-86 Categories of berths; priority of allocation
- §13-231-87 Notice to owner of available berth or offshore mooring
- §13-231-88 Offer of regular mooring permit valid only fourteen days; written notice of intention; acceptance
- §13-231-89 Offer of temporary mooring permit valid only seven days; notification of intention; acceptance
- ~~§13-231-90 Offer of category I (breakwater) berth Ala Wai harbor]~~

EXHIBIT "A"
EXHIBIT "B"

Historical note. [~~This chapter is based on use of small boat harbors, boat operation, commercial activities, special area rules, allocation of berths of the small boat harbors rules, effective November 5, 1981, and as amended thereafter, under the jurisdiction of the Department of Transportation, Harbors Division.~~] The administrative jurisdiction for recreational boating and related vessel activities was transferred from the Department of Transportation, Harbors Division, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94; comp]

SUBCHAPTER 1

USE OF SMALL BOAT HARBORS, OFFSHORE MOORING, AND
GENERALLY APPLICABLE PROVISIONS

§13-231-1 General statement and restrictions on mooring dormant vessels. (a) Berths in state small boat harbors and offshore mooring areas shall be used to accommodate recreational and commercial boats used for water transportation or fishing.

(b) Occupancy of berths at any small boat harbor or offshore mooring area shall be limited to vessels actively used as a means of transportation on water.

(c) The use permit for any vessel determined to be dormant by the department shall be terminated upon a show cause order. The show cause order may be issued by the department and shall contain the basis for the department's determination that the vessel is dormant. The show cause order shall be delivered to the owner as set forth in section 13-231-6. The owner shall have five working days after notification as provided in section 13-231-6 to inform the department of the owner's plan to resolve and correct the deficiencies noted in the show cause order. Failure to respond or failure to execute an approved plan in a timely manner shall result in the termination of the use permit. The department reserves the right to impound, remove and dispose of a vessel in accordance with chapter 200, Hawaii Revised Statutes, and these rules.

(d) The department reserves the right to restrict the use of state facilities to those who are in compliance with all state and federal laws and rules and make full and timely payment of their fees and charges. Failure to comply with this section shall be cause for termination of any use permit and for refusal or withholding the granting of any future use permit requests. [Eff 2/24/94; comp]
(Auth: HRS §§200-2, 200-3, 200-4, 200-6) (Imp: HRS §§200-2, 200-3, 200-4, 200-6)

§13-231-2 Agreement for the use of small boat harbor property, facilities and offshore mooring areas. (a) Before any property or facility at a small boat harbor or offshore mooring area is utilized by any vessel, its owner shall comply with the following:

- (1) Execute an agreement as set forth in Exhibit "A", dated [~~May 15, 1991~~] July 2012, located at the end of this chapter and incorporated herein;
- (2) Obtain the approval of the department as evidenced by the chairperson's or the chairperson's representative's signature on the agreement; and
- (3) Be in compliance with all state and federal laws and rules of the department.

(b) Nothing contained herein shall restrict the department's power to waive the requirements of this section as the circumstances may warrant.

(c) For the purpose of this section, a lessee under a lease not intended as security is not an "owner".

(d) Offshore mooring rules and areas are described in chapter 13-235. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-6) (Imp: HRS §§200-2, 200-3, 200-4, 200-6)

§13-231-3 Use permits; issuance. (a) "Use permit" as used in these rules means the authorization by the department to utilize state boating facilities, offshore mooring areas, offshore mooring, [~~and~~] state ocean waters, and navigable streams, as evidenced by the fully executed "agreement" described in section 13-231-2. The department may issue the following types of use permits:

- (1) Mooring permit. A use permit which authorizes the docking, mooring, or anchoring of a vessel at a small boat harbor or offshore mooring area.
 - (A) Regular mooring permit. A use permit which authorizes the permittee to moor

a vessel in a state small boat harbor or at an offshore mooring area for a period not to exceed one year from the date of issuance.

(B) Temporary mooring permit. A non-renewable use permit which authorizes the permittee to moor a vessel in a state small boat harbor or at an offshore mooring area for a period of thirty days or less from the date of issuance.

~~[(2) Harbor resident permit. A use permit which authorizes use of a state small boat harbor by the permittee for the purpose of residing on board a vessel authorized by the department to be used as a principal place of habitation while moored in Ala Wai or Ke'ehi boat harbor or in Ke'ehi Lagoon.]~~

(2) Catamaran registration certificate. A catamaran registration certificate is a commercial permit that may be issued for Waikiki ocean waters and beach.

(3) Stay aboard permit. A use permit which authorizes use of a state small boat harbor or offshore mooring by the permittee for the purpose of staying aboard a vessel while moored in a state small boat harbor or at an offshore mooring or at anchor.

(4) Vacation permit. A use permit which authorizes use of the small boat harbor or an offshore mooring area by the permittee for the purpose of using a vessel as a vacation site while moored in a state small boat harbor or at an offshore mooring or at anchor.

(5) Principal habitation permit. A use permit which authorizes use of the small boat harbor by the permittee for the purpose of using the vessel as a principal place of habitation while moored in Ala Wai or Ke'ehi small boat harbor or in the Ke'ehi Lagoon mooring area.

- ~~[(6) Living aboard permit. A use permit which authorizes use of a small boat harbor by living aboard a vessel at a small boat harbor other than Ala Wai or Ke'ehi boat harbor.]~~
- [(7)] (6) Commercial use permit. A use permit which authorizes the owner of a commercial vessel to ~~[use a small boat harbor and its facilities or an offshore mooring for]~~ engage in commercial activities as specified in the permit.
- ~~[(8)]~~ (7) Storage permit. A use permit which authorizes use of a small boat harbor storage area for vessels or other items on land at a small boat harbor.
- ~~[(9)]~~ (8) Miscellaneous permit. A use permit which authorizes use of a small boat harbor or an offshore mooring area for other purposes as may be authorized by the department in its use permit and is consistent with these rules and applicable laws.

(b) Use permits shall be issued only after the department has determined that all applicable laws have been complied with and that all fees and charges have been paid.

(c) The issuance of any use permit by the department shall not create a property interest in favor of the permittee to an unrestricted use of state small boat harbors, facilities or state ocean waters. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-6) (Imp: HRS §§200-2, 200-3, 200-4, 200-6)

§13-231-4 Use permits; part-time or intermittent occupancy. (a) No use permit for docking, mooring, or anchoring a vessel at a small boat harbor or at an offshore mooring area shall be issued to any person who has been issued a use permit to moor the same vessel at any other small boat harbor, offshore mooring, private marina or yacht club in the State. A

temporary mooring permit may be issued to authorize temporary mooring in any small boat harbor or offshore mooring area.

~~[(b) No use permit shall be issued authorizing temporary mooring of same vessel within the same small boat harbor or offshore mooring area for a cumulative period of more than ninety days in the same calendar year, provided that for Ala Wai small boat harbor the cumulative period shall not exceed one hundred and twenty days if space is available at the designated transient mooring area and the temporary mooring permit is issued in accordance with section 13-231-85.]~~ (b) Temporary mooring of a vessel within the same small boat harbor or offshore mooring area shall not exceed a cumulative period of more than one hundred and twenty days in the same calendar year per vessel, except as provided in section 13-256-73.11 for commercial vessels authorized for use at He'eia Kea small boat harbor. Temporary mooring permits shall be issued in accordance with section 13-231-85.

(c) Notwithstanding the provisions of subsection (a), the department may issue additional offshore mooring permits to owners of vessels holding a valid commercial use permit issued pursuant to section 13-231-59". [Eff 2/24/94; am and comp]
(Auth: HRS §§200-2, 200-3, 200-4, 200-6) (Imp: HRS §§200-2, 200-3, 200-4, 200-6)

§13-231-5 Period of validity and renewal of various types of use [permit] permits. (a) The department may issue or [renew]reissue a use permit of all types, including but not limited to commercial use permits, catamaran registration certificates, and mooring permits, for any period up to, but not exceeding one year. Upon expiration of the period stated therein, the use permit and all rights of the permittee thereunder shall automatically terminate. No type of use permit shall be renewed unless all the conditions or covenants of the original issuance, including the requirement of prompt monthly payment of charges in advance, have been met and the rules

governing small boat harbors and navigable waters managed of the department of land and natural resources have been fully complied with.

(b) If a permittee fails to renew a [~~regular mooring~~] use permit on or before the date on which it expires, that person may be granted a thirty (30) calendar day period to reinstate the regular mooring permit as long as all the conditions or covenants of the original issuance, including the requirement of prompt monthly payment of charges in advance, have been met and the rules governing small boat harbors of the department of land and natural resources have been fully complied with. The person shall pay a one-time penalty fee of \$250.00 as well as all other applicable fees. Impoundment of the vessel shall be stayed only until the grace period has expired. [Eff 2/24/94; am 8/8/11; am and comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-6 Revocation of use permit. (a) If after notice and lapse of a reasonable period of time set by the department, the permittee fails to remedy any breach of the duties, covenants or conditions of the use permit or to desist from violating or permitting violation of these rules, the department may revoke the permittee's use permit.

(b) In addition to subsection (a), the department may revoke a use permit for a deliberate misstatement or [~~wilful~~] willful failure to disclose any material fact in an application for a vessel number, documentation, registration of a vessel, or any of the use permits specified in section 13-231-3.

(c) A permittee's failure to pay all fees owed to the department within thirty days of the date payment is due shall result in suspension of the right to conduct business under the commercial use permit or catamaran registration certificate until all past due fees are paid in full. Each and every notification of default shall be sent by certified mail, return receipt requested to the last address of record of the permittee on record with the division of boating and

ocean recreation. Any delinquency beyond the due date, even within the thirty days, may cause the commercial use permit or catamaran registration certificate to be revoked. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

§13-231-7 Assignment and reassignment of moorings and vessel storage space. Holders of mooring permits may be temporarily assigned or reassigned to berths and spaces within the same small boat harbor, if possible, to accommodate small boat harbor repairs, improvements, maintenance, construction, emergencies, or when necessary during a special event. Reassignments may also be made within the same harbor if a vessel's size in relationship to the size of the assigned berth does not permit maximum and efficient public utilization of small boat harbor facilities or if a reassignment will in any other manner permit maximum and efficient public utilization of small boat harbor facilities. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-8 Inspections. All vessels located in or upon the waters of a small boat harbor or offshore mooring area shall be subject to inspection by the department or any peace officer of the State or its political subdivisions at any time when necessary and proper for the purpose of enforcing these rules. [Eff 2/24/94; comp] [Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-9 Cancellation of use permit. A use permit may be cancelled by a boat owner upon thirty days written notice to the department. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-10 Removal and custody of a vessel or contrivance. (a) The department may impound and remove or dispose of any vessel or contrivance moored or left at a small boat harbor or offshore mooring area [~~seventy-two~~] 72 hours after notice is given as provided in section 13-230-6 for the owner to remove the vessel or contrivance from the small boat harbor or an offshore mooring area when its presence is contrary to law or these rules or when the department determines that the removal is necessary to protect human life and property. This includes any property or personal articles located on board; its tackle, apparel, fixtures, equipment, and furnishings. Any action taken by the department to remove the vessel or contrivance, including any property or personal articles located thereon, shall be at the sole cost and risk of the owner of the vessel or contrivance.

(b) The department shall, within [~~seventy-two~~] 72 hours of impoundment, send by certified mail, return receipt requested, a notice of impoundment to the registered owner or operator of any unauthorized vessel. The owner or operator of an unauthorized vessel shall have ten days after receipt of notice of impoundment of the vessel to request in writing an administrative hearing to the administrator, division of boating and ocean recreation. The written request for an administrative hearing shall be mailed or delivered in person to the administrator during normal business hours. Any requests delivered outside of the normal business hours shall be deemed received on the next working day for the purpose of compliance with the time schedule for completing the administrative hearing as provided in chapter 200, Hawaii Revised Statutes. This administrative hearing is solely for the purpose of allowing the owner or operator of an unauthorized vessel to contest the basis given by the department for the administrative impoundment of the vessel. The administrative hearing shall be held within the time period established by statute and after the administrator's receipt of the written

request. The procedures for the administrative hearing are contained in sections 13-231-31 and 13-231-32 of these rules.

(c) Custody of an unauthorized vessel shall be returned to the person entitled to possession upon payment of all fees and costs due, and fines levied by a court. Any unauthorized vessel, contrivance or material impounded under this section, which remains unclaimed by the person entitled to possession, the registered owner, or a lien holder, for more than thirty days, can be sold by the department at public auction in accordance with chapter 200, Hawaii Revised Statutes. [Eff 2/24/94; am and comp]
(Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-16)
(Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-16)

§13-231-11 Absence of vessel for more than fourteen days; effect on permits. (a) A regular mooring permit and related use permits issued to a vessel shall automatically expire if the vessel is absent from its assigned berth or mooring for more than fourteen days, unless the holder of the permit or permits submits an application prior to departure on a form furnished by the department enumerating the permits the holder wishes to reserve during the holder's absence. If this is done, the application may be approved, by the department, subject to subsection (b) and the regular permittee reserves for the estimated period of absence noted in the permittee's application which shall not exceed one year, the privilege of returning the vessel to its assigned berth or mooring and also retains, for the estimated period of absence noted in the holder's application which shall not exceed one year, any other related use permit designated in the holder's application; provided that the regular permittee continues, during the absence from the assigned berth or mooring, to pay the fees and charges payable to the department in the amounts prescribed in section 13-234-6. The application shall contain information as to the duration of the absence of the regular

permittee's vessel from the berth or mooring. If the assigned vessel does not return within thirty days after the time of return indicated in the approved application for the retention of the regular mooring permit and related use permits, or within one year, whichever is less, all use permits shall automatically expire unless the regular permittee applies to the department prior to the expiration date indicated on the approved application for an extension and the extension is approved by the department. No application to extend the period of retention of a permit to use the assigned berth or mooring and any other related use permits upon return shall be approved by the department if the absence of the permittee's vessel from the assigned berth or mooring would exceed one year unless the regular permittee presents conclusive evidence to the department that due to requirements of the United States Coast Guard, a boating accident, casualty, hull or equipment failure, weather, sea or related environmental conditions involving the permittee's vessel or similar unforeseen occurrences, the granting of additional time is reasonable and essential to prevent undue hardship. No extension in any case shall authorize the permittee to retain a permit to use the assigned berth or mooring or any other related use permits upon return if the period of absence of the permittee's vessel from its assigned berth or mooring would exceed fifteen months.

(b) Nothing contained in this section shall be construed as a waiver of the right of the department to:

- (1) Deny the application to retain the berth or mooring;
- (2) Deny the reissuance of or to revoke any use permit for failure to comply with any section of these rules; or
- (3) Reassign a vessel to another berth or mooring in order to provide for more efficient use of facilities in the reasonable discretion of the department or

when a berth or mooring is unusable,
eliminated, or in need of repairs.

(c) A temporary mooring permit and related use permits issued for a vessel shall automatically expire if the vessel is absent from its assigned berth or mooring for more than fourteen days.

(d) The department recognizes that a vessel operator may depart on a voyage with the intent of returning to the small boat harbor or assigned mooring within fourteen days or less but may be unable to return as planned due to wind, sea, or related environmental conditions, delays in completing repairs or refurbishing, or other unforeseen occurrences. Therefore, under these circumstances, the holder of the regular mooring permit may initially apply to the department by letter, telephone, or any other means of communication and be permitted to retain the mooring permit and any other related use permits upon return of the vessel to the assigned berth or mooring, provided that the initial application is received not later than the fourteenth day following departure from the assigned berth or mooring and confirmed in writing by the permittee within ten days of the date of initial application. [Eff 2/24/94; comp]
(Auth: HRS §§200-2, 200-3, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-9, 200-10)

§13-231-12 Discontinuance of services. When necessary and proper to do so, the department may, after reasonable notice, discontinue any service or withdraw the use of any utility, property, or facility at a small boat harbor as may be reasonable under the circumstances. [Eff 2/24/94; comp]
(Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-13 Joint and several liability; non-transferability of use [permit] permits. (a) All [~~persons~~] individuals and entities [~~whose signatures~~] who have [been affixed to] signed any agreement with

respect to a vessel shall be jointly and severally liable for the full performance of such agreement. No use permit shall be transferable, so that whenever a permittee parts with possession or transfers the title to or interest in the vessel identified in the permit to another person by any arrangement, the use permit shall expire except as provided herein [~~with respect to the original permittee~~]. The new possessor, transferee, or owner shall have no right to use the [~~space covered by the use~~] permit.

(b) Upon written application to and approval by the department:

- (1) The original mooring permittee may retain the mooring space under the permittee's mooring permit; provided that within thirty days the permittee moves into the space another vessel owned by the permittee of appropriate characteristics for occupancy of the berth or mooring space and pays the appropriate fees therefor;
- (2) A principal owner of a vessel may retain a berth or mooring space if that owner acquires the interest of one or more co-owners because a co-owner has died or moved out of the State;
- (3) An owner may retain the berth or mooring space if an interest in a vessel is transferred to the owner's spouse or [~~other~~] immediate family member, or a personal partner authorized to live on board under a principal habitation permit;
- (4) The spouse or immediate family member, or a personal partner authorized to live on board under a principal habitation permit, of a permittee, may retain all [~~small boat harbor~~] use permits [~~held by the permittee~~] upon the death of the permittee, provided that the permittee's will, trust, or a court decree (the department may require a court decree if the department finds it necessary) states that the spouse or immediate family member, or a personal partner authorized to

live on board under a principal habitation permit shall be awarded ownership of the vessel identified in the ~~[mooring]~~ use permit; or

- (5) The department may extend the deadline for the permittee holder to place a new vessel in the assigned berth or mooring space or in operation if conclusive evidence is presented to the department that the granting of additional time for compliance is reasonable and essential to prevent undue hardship, provided that any extension of time necessary to place a new vessel in the berth or mooring space or in operation shall not exceed one hundred twenty days from the date of sale or transfer of the previously assigned vessel.

(c) Notwithstanding the requirements of subsection (a), the department may permit a one-time change in ownership of the permittee's vessel from personal ownership to corporate or other business ownership, provided that the ~~[permittee]~~ individual holds a valid commercial use permit, a valid catamaran registration certificate, or is engaged in commercial fishing as a primary means of livelihood, and notifies the department in writing of an intended change in ownership. The transfer of all ~~[small boat harbor]~~ use permits (or registration certificate) from the individual to the new corporation or other business entity shall be completed within one year of the date of receipt of the notification of intended change of ownership. The following requirements and conditions shall apply to the foregoing change in ownership:

- (1) The ownership of any corporation or other business entity formed under the provisions of this subsection shall ~~[be limited to]~~ include the original individual owner ~~[permittee, any co-owners of the vessel, and the members of the immediate families of the permittee and co-owners];~~
- (2) The permittee or certificate holder shall apply for the reissuance of the commercial

permit, mooring permit, catamaran registration certificate, and any other ~~[small boat harbor]~~ use permits in the name of the corporation or other business entity in accordance with the application procedures established by this chapter. Each application shall be accompanied by a copy of the charter of incorporation or other evidence acceptable to the department that the new corporation or other business entity is properly registered with the department of commerce and consumer affairs and is licensed to do business in the State; and

- (3) Each application for change of ownership shall be reviewed by the department in accordance with the provisions of section 13-231-82.

(d) No corporation or other business entity shall be eligible for the initial issuance of a mooring permit at a state small boat harbor unless the entity is eligible for a then available commercial use permit or catamaran registration certificate.

(e) "Immediate family member" means, for purposes of this section, a natural individual who by blood line or adoption is a child, grandchild, parent, or grandparent of the deceased.

[Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: §§200-2, 200-4, 200-9, 200-10)

§13-231-14 Sale of abandoned vessels or to collect delinquent fees. In the event any vessel is abandoned at a small boat harbor or any owner is delinquent in the payment of any fee or charge, after reasonable notice, the department may institute proceedings in accordance with chapter 200, Hawaii Revised Statutes, to secure the sale of the vessel.
[Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-10, 200-16, part III of chapter 200)

§13-231-15 Boat owner required to report change of ownership, address, and other changes. (a) The owner of any vessel moored, stored, or left in a small boat harbor or offshore mooring area shall notify the department in writing within seven days if:

- (1) The owner no longer has possession of the vessel;
- (2) All or any interest in the vessel is transferred to another person or persons;
- (3) The owner's address or telephone number changes;
- (4) The vessel is chartered, leased, or rented; or
- (5) There is any change of [~~tenants or~~] agents or their telephone numbers or addresses.

(b) The new possessor or owner of any interest in any vessel moored in a small boat harbor or offshore mooring area shall within seven days after acquiring the same, inform the department in writing concerning the acquisition. If the vessel is owned by a corporation, the duties and obligations of the "owner" as prescribed in this section devolve upon the person who owns or controls a majority of the stock of the corporation. If there is no such ownership or control, the corporation must perform the duties and obligations. "Transfer" as used in this section includes transfers of stock in a corporate owner if the transfer affects a change in the majority stockholder. "Interest" as used in this section includes ownership of stock in a corporation that owns a vessel moored in a small boat harbor or offshore mooring area.

(c) Evidence of any [~~wilful~~] willful misstatement or omission of fact regarding the ownership of a vessel moored in a state small boat harbor or offshore mooring area, or regarding transfer of ownership of a corporation or other business entity to which a mooring permit, commercial use permit, catamaran registration certificate, or other [~~use~~] permit has been issued, including failure to notify the department of a change of ownership, shall be cause for immediate termination of all [~~state small~~

~~boat harbor use~~] permits and catamaran registration certificates held by the parties involved, and may be a bar against the issuance of any ~~[use]~~ permits or catamaran registration certificates ~~[for state small boat harbor facilities]~~ in the future. [Eff 2/24/94; am and comp] [Auth: HRS §§200-2, 200-3, 200-4, 200-10] [Imp: HRS §§200-2, 200-3, 200-4, 200-10]

§13-231-16 Numbers or other vessel identification. Owners of vessels required by law to be documented or numbered shall document or number their boats prior to obtaining a mooring permit. Owners of vessels not required by law or regulation to be documented or numbered shall, prior to obtaining a mooring permit, affix the boat's name, the owner's name, or the name of the vessel to which it is attached, in letters not smaller than three inches in height and in a color which contrasts with the background so as to be clearly visible for identification. Transient vessels are exempt from the provisions of this section. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-17 Mooring prohibited except at assigned locations. (a) A vessel, contrivance or material shall not be moored, anchored, or stored:

- (1) At a small boat harbor, offshore mooring or space other than that to which it was properly assigned.
- (2) Contrary to directions of proper authorities.

(b) Any vessel, contrivance or material moored, anchored, or stored, including any property located thereon or therein or attached thereto, in violation of this section, may be removed by the department to an impounding area or other location at the owner's risk and expense and the State shall not be liable for any damage which may result if notice to remove is given by placing it upon the vessel, contrivance or

material, or as near as possible, indicating the violation of this section, the date and time the notice was posted and that the vessel, contrivance or material must be removed within seventy-two hours from the time the notice was posted. When a vessel is so removed, appropriate fees and charges shall be assessed therefore and possession of the space the vessel unlawfully occupied shall vest in the department. The removal to the impounding area shall not be deemed to confer any rights of occupancy in the impounding area occupied by such vessel.

(c) In addition, the department, within seventy-two hours of impoundment, shall send by certified mail, return receipt requested, a notice of impoundment to the registered owner or operator of any impounded vessel, contrivance or material. The owner or operator of an impounded vessel, contrivance or material shall have ten calendar days after receipt of notice of impoundment of the vessel, contrivance or material to request in writing an administrative hearing. The written request for an administrative hearing must be mailed or delivered in person to the administrator during normal business hours. After hours requests will be deemed received on the next working day for the purpose of compliance with the time schedule for completing the administrative hearing as provided in chapter 200, Hawaii Revised Statutes. This administrative hearing is solely for the purpose of allowing the owner or operator of an impounded vessel, contrivance or material to contest the basis given by the department for the impoundment of the vessel, contrivance or material. The administrative hearing shall be held within the time period established by statute and after the administrator's receipt of the written request. The procedures for the administrative hearing are contained in sections 13-231-31 and 13-231-32 of these rules.

(d) Any unauthorized vessel, contrivance or material impounded under this section, which remains unclaimed by the person entitled to possession, the registered owner or a lien holder, for more than

thirty days, can be sold by the department at public auction in accordance with chapter 200, Hawaii Revised Statutes. [Eff 2/24/94; am and comp]
 (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-16)
 (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-16)

§13-231-18 Vessel reconstruction. Vessel reconstruction or major modification shall be accomplished only in an area designated by the small boat harbor supervisor. [Eff 2/24/94; comp]
 (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-19 Salvage. If a vessel is moored so as to be in danger of wreckage, damaging other property, or sinking, the department shall, upon notice and after reasonable time has elapsed, not to exceed ten days, to allow the owner or the owner's agent to take appropriate action, take such action as the circumstances require to save or rescue the vessel, or prevent damage to other property or the obstruction of waterways; provided that an emergency, where life or property is endangered or the vessel may interfere with other vessels or with free and proper navigation of waterway unless immediate action is taken, remedial action may be taken by the department without prior notice. Appropriate fees and charges shall be assessed against the owner for such services. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-20 Houseboats prohibited. A use permit shall not be issued for any houseboat in any small boat harbor or designated mooring area, except in Ke'ehi Lagoon and in accordance with section 13-235-31. The department may consider the following in determining whether a vessel is a houseboat:

- (1) Whether the vessel is actually used as a dwelling or abode;

- (1) The operator applies for and is granted a living aboard permit authorizing the persons named in the permit to live aboard the operator's vessel.
- (2) The mooring of the vessel in a small boat harbor with persons living aboard does not interfere with the maximum, safe, and efficient utilization of the small boat harbor facilities; and
- (3) The vessel conforms with the department's standards of safety, sanitation, and maintenance as prescribed in these rules and the state boating rules.

(c) Small boat harbors are constructed, operated and maintained for the primary purposes of providing public recreational boating facilities and promoting the fishing industry. To implement these purposes an application for a living aboard permit shall be reviewed and additional information may be required by the department to ascertain the effect or probable effect the issuance of the permit would have on the maximum efficient utilization of small boat harbor facilities for recreational boating activities and the promotion of the fishing industry. No permit to live aboard a vessel shall be issued by the department unless the application and supporting information clearly shows that the issuance thereof is not contrary to the public interest, or otherwise unlawful. [Eff 2/24/94; am and comp]
 (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-22 Staying aboard transient or visiting vessels. A stay aboard permit authorizing persons to stay aboard a transient or visiting vessel moored in a small boat harbor or offshore mooring area may be issued to the owner, master, crew, and passengers for a period or periods not to exceed [ninety]one hundred twenty nights in a calendar year. ~~[, except that for Ala Wai small boat harbor the period shall not exceed one hundred twenty nights in a calendar year.]~~ [Eff

2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-23 Interim use of berth during temporary absence of regular permittee's vessel. (a) The department may allocate a berth assigned to a regular permittee to another person, pursuant to section 13-231-5 for interim use while the regular permittee's vessel assigned thereto is temporarily absent from the berth or for a period not to exceed thirty days, whichever period is shorter. A temporary mooring permit for interim use, issued pursuant to this section, shall be nonrenewable.

(b) Interim use of the berth by a temporary permittee, pursuant to this section, while the regular permittee's vessel assigned thereto is absent, does not grant the temporary permittee any right to retain the use of the berth or any other space in the small boat harbor[7]. ~~upon~~ Upon expiration of the temporary mooring permit or upon lapse of forty-eight ~~[hour-written]~~ hours of notice in writing to vacate the berth prior to the return of the regular permittee's vessel, whichever ~~[event]~~ occurs first, ~~[and]~~ the temporary permittee shall immediately remove the temporary permittee's vessel from the berth and the harbor ~~[upon the occurrence of either event]~~ if not already removed from the berth and the harbor.

(c) Failure of a temporary permittee, allocated a berth for interim use pursuant to this section, to vacate the berth and the small boat harbor[7] upon expiration of the temporary mooring permit or upon lapse of forty-eight hours of written notice to vacate, in order to accommodate the return of the regular permittee's vessel, shall subject the temporary permittee to liability for any damages incurred by the returning regular permittee resulting from the temporary permittee's failure to vacate, and to a fine pursuant to section 200-14 or section 200-14.5, Hawaii Revised Statutes, and entitles the department to remove the temporary permittee's vessel

to an impounding area. The temporary permittee shall indemnify and hold harmless the State from any liability for damages arising out of a failure to vacate the berth and the small boat harbor and from the removal of the vessel to an impounding area by the department in accordance with this rule. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: §§200-2, 200-4, 200-9, 200-10)

§13-231-24 Interim use of berth pending occupancy by regular permittee. (a) The department shall allocate an unassigned berth to the senior applicant for a regular mooring permit as expeditiously as possible pursuant to section 13-231-5. It is recognized that, despite efforts to expedite the process, variable periods of time will elapse before the berth is assigned and the newly-assigned regular permittee actually moves a vessel into the berth. Therefore the department may allocate the berth to another person, pursuant to section 13-231-5 for interim use, until the allocation and assignment procedures have been completed and the newly-assigned regular permittee is prepared to move a vessel into the berth, or for a nonrenewable period not to exceed thirty days, whichever period is shorter.

(b) Interim use of a berth by a temporary permittee pursuant to this section does not grant the temporary permittee any right to retain the use of the berth or any other space in the small boat harbor~~[r]~~. ~~[upon]~~ Upon expiration of the temporary permittee's temporary mooring permit or upon lapse of forty-eight ~~[hours]~~ hours of notice in writing to vacate the berth prior to movement of the newly-assigned regular permittee's vessel into the berth, whichever ~~[event]~~ occurs first, ~~[and]~~ the temporary permittee shall immediately remove the temporary permittee's vessel from the berth and the small boat harbor ~~[upon the occurrence of either event]~~ if not already removed from the berth and harbor.

(c) Failure of a temporary permittee, allocated a berth for interim use pursuant to this section, to

vacate the berth and the small boat harbor[7] upon expiration of the temporary mooring permit or receipt of a forty-eight hours notice to vacate, in order to accommodate the regular permittee's vessel, shall subject the temporary permittee to liability for any damages incurred by the regular permittee resulting from the temporary permittee's failure to vacate, and to a fine and other penalties pursuant to section 200-14 and section 14.5, Hawaii Revised Statutes, and entitles the department to remove the temporary permittee's vessel to an impounding area. The temporary permittee shall indemnify and hold harmless the State from any liability for damages arising out of a failure to vacate the berth and the small boat harbor and from the removal of the vessel to an impounding area by the department in accordance with this rule. [Eff 2/24/94; am and comp _____] (Auth: §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, §§200-9, 200-10)

§13-231-25 Exchange of berths. A permittee holding a regular mooring permit to moor in [~~the~~] a small boat harbor may, upon approval by the department, exchange the permittee's berth with another permittee holding a regular mooring permit to moor in the same small boat harbor if:

- (1) The vessels are suitable for the berths as determined by the factors enumerated in section 13-231-5;
- (2) There is mutual agreement between the permittees; and
- (3) The berths to be exchanged are of the same characteristics, (e.g. category, length, size, configuration). [Eff 2/24/94; am and comp _____] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-26 Use of a vessel as a place of principal habitation. (a) A vessel owner who holds a

valid regular mooring permit issued by the department authorizing the owner to moor the owner's vessel in Ala Wai or [~~Ke'ehi~~] Ke'ehi small boat [~~harbor~~] harbors may use that vessel as a place of principal habitation if the owner has applied for and secured[+]

~~(1) A~~ a principal habitation permit [;and] issued by the department in accordance with these rules, provided that the owner and the vessel meet the requirements set forth in these rules.

~~[(2) A harbor resident permit issued by the department in accordance with these rules, provided that the owner and the vessel meet the requirements set forth in these rules.]~~

(b) A permit authorizing the use of a vessel as a place of principal habitation shall not be issued if the vessel is owned by a corporation.

(c) No person shall be issued a permit authorizing the use of any vessel as a place of principal habitation while the vessel is moored at the following locations in Ala Wai small boat harbor:

- (1) Berths 23 through 79;
- (2) The area leased to the Waikiki Yacht Club;
- (3) The area leased as a marine fueling facility; and
- (4) [~~The area leased to Ala Wai Marine, Ltd.~~] A haul-out facility[;and].

~~[(5) The moorings adjacent to the breakwater.]~~

(d) A vessel owner may utilize the owner's vessel as a place of principal habitation while moored in the area leased to the Hawaii Yacht Club if the owner has applied for and holds a valid principal habitation permit [~~and harbor resident permit~~] issued by the department in accordance with these rules.

(e) Only the vessel owner, co-owner, the spouse or, in the alternative, one personal partner of each, and their legal dependents may be issued a [~~harbor resident~~] principal habitation permit. A "personal partner" is an individual considered to be a "significant other" of the vessel owner principal habitation permittee who is not a relative by biology or adoption of the vessel owner principal habitation

permittee. While living together on the vessel, the vessel owner principal habitation permittee and personal partner shall not have a landlord-tenant relationship. The department shall retain the right to limit the total number of people allowed to live on a particular vessel based on reasonable health, safety, security, or environmental concerns for persons on the vessel, other permittee's at the harbor, public use of the harbor, or the harbor itself, and may deny the issuance of a [~~harbor resident~~] principal habitation permit if such issuance would exceed the limit determined by the department to be appropriate.

(f) The owners of no more than one hundred twenty-nine vessels moored at Ala Wai small boat harbor shall be issued permits to use their vessels as a place of principal habitation. The owners of no more than thirty-five vessels moored at [~~Keeki~~] Ke'ehi small boat harbor [~~shall~~] may be issued such permits. Any vessel used as a place of principal habitation that is temporarily absent from its [~~moorings~~] mooring shall continue to be considered as one of the vessels being used as a place of principal habitation if the owner retains a principal habitation permit as provided in section 13-231-11. [Eff 2/24/94; am 8/20/12; am and comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-27 Allocation of principal habitation permits. (a) Application for a principal habitation permit; period of validity; renewal of application.

- (1) The first owner to file an application may be offered a principal habitation permit as described under subsection (e) if the maximum number of vessels authorized by subsection 13-231-26(f) are not being used as the principal habitation of the owners; provided that no prior requests [~~therefore~~] are pending as provided in this section.

- (2) If the maximum number of vessels permitted by subsection 13-231-26(f) is being used as the principal habitation of the owners, an owner's application for a principal habitation permit shall be retained and honored when the total number of vessels so used is less than the maximum limit and the issuance of the permit is determined by the department to not be detrimental to the operations of the harbor or any planned use of the harbor. ~~[so that the issuance of such a permit is authorized pursuant to these rules.]~~
- (A) An application for the issuance of a principal habitation permit shall be made in writing to the department by the owner on a form provided by the department. The department shall accept the application for consideration by endorsing it and entering the filing time and date on the application form submitted; one copy shall be given to the applicant. The time and date the application is endorsed by the department shall be the filing date and the effective date of the application for consideration and shall establish such applicant's seniority or priority over later applicants if the application remains valid. No application shall be accepted unless and until the application fee prescribed in these rules is paid by the applicant and review thereof has been conducted pursuant to subsection (b).
- (B) An application shall continue in full force and effect for a period ending one year from the effective date of the application, except as provided in subsection (c) unless terminated sooner in accordance with these rules. An

application is void after the date of expiration indicated thereon.

- (C) An application may be renewed within a ninety-day period preceding its expiration date. An application properly renewed prior to its expiration date shall be valid for a period ending one year from expiration date of the previous application. No application for renewal shall be accepted until the fee prescribed in these rules is paid by the applicant.
- (D) It is the policy of the department to mail an application renewal notice to an applicant, prior to the expiration of the application, at the address the applicant has furnished to the department pursuant to subsection (c). However, the applicant is nonetheless responsible for the timely renewal of an application without receipt of a renewal notice from the department.

(b) Review, and acceptance, or rejection of applications.

- (1) The department shall examine and determine the genuineness and regularity of each application and may conduct any investigation as may be deemed necessary for its examination and determination; and it may require additional information from the applicant as may be necessary to determine the genuineness and regularity of the application.
- (2) The department shall reject any application that contains a material misstatement or if the applicant has failed to disclose any material fact in the application.
- (3) An application shall not be accepted for consideration and shall be rejected if:
 - (A) The application fee is not paid at the time the application is made;

- (B) The applicant is delinquent in the payment of any moneys due and payable to the department; or
 - (C) The applicant has pending a citation for violation of any of the department's rules.
- (4) Upon rejection of an application, the department shall inform the applicant, in writing within a reasonable time, that the application has not been accepted for consideration and has been rejected and the reasons therefore. An applicant may cure the defect and reapply.
- (c) Applicant required to furnish address and report changes; effect of failure to report changes.
- (1) An applicant shall include the applicant's address in the application to the department for a principal habitation permit.
 - (2) An applicant shall immediately notify the department in writing of any changes in the applicant's address in order to maintain the validity of his application.
 - (3) An application shall be void if the department is unable to reach the applicant to offer the applicant a principal habitation permit at the address:
 - (A) Appearing on the application; or
 - (B) Furnished in writing to the department by the applicant as a change of address subsequent to submitting the application.
- (d) Withdrawal of application; effect if application has become void, expires, or has been withdrawn.
- (1) An application may be withdrawn by an applicant upon written notice to the department.
 - (2) An applicant who withdraws an application or whose application has expired, or become void, may submit a new application for acceptance by the department. Seniority begins on the date the applicant's new

application is accepted for consideration as provided in subsection (a)(2)(A).

(e) Priority in the allocation of principal habitation permits. When the total number of vessels authorized by the department to be used as the principal habitation of the owners at Ala Wai or [~~Ke'ehi boat harbor~~] Ke'ehi small boat harbors is less than the maximum number of vessels authorized to be so used pursuant to the provisions of section 13-231-26(f), the department [~~shall~~] may offer a principal habitation permit to the senior applicant eligible to receive such a permit.

(f) Notice to owner of available principal habitation permit. When an offer of a principal habitation permit is provided for in this section, the department shall deliver the offer or send it by certified mail - return receipt requested, addressed to the applicant eligible to receive the offer pursuant to this section at the post office address furnished to the department in writing by the applicant.

(g) Offer of principal habitation permit valid only fourteen days; written notice of intention; acceptance.

- (1) An applicant may decline an offer of a principal habitation permit and retain the applicant's seniority if the applicant declines the offer in writing addressed to and received by the department, not later than fourteen days after the date of receipt of the offer. An applicant who declines an offer in writing and retains the applicant's seniority pursuant to this subsection shall not be considered for another offer on the basis of the applicant's seniority until six months have elapsed since the date of the applicant's last refusal.
- (2) (A) If an applicant decides to accept the offer of a principal habitation permit, the applicant shall either:
 - (i) Deliver a written notice of intention to accept the offer to

- the department within fourteen days after the date of receipt of the offer; or
- (ii) Accept the offer by securing a principal habitation permit, within fourteen days after the receipt of the offer.
- (B) The applicant's application for a principal habitation permit and the offer by the State of a principal habitation permit shall be void if the applicant fails to either secure a principal habitation permit or give notice of intent to accept or to decline the offer in writing within fourteen days after the date of receipt of the offer, and the permit shall then be offered to the next senior applicant pursuant to this section.
- (3) (A) An applicant who has not accepted the offer but has delivered a written notice of intention to accept to the department pursuant to paragraph (2) shall accept the offer by securing a principal habitation permit as prescribed in sections 13-231-2 and 13-231-3 within fourteen days after the applicant mails or personally delivers the notice of intention to accept to the department.
- (B) Except as provided in paragraph (4) the applicant's application for a principal habitation permit, the offer by the State of a principal habitation permit and the applicant's notice of intention to accept the offer shall be void if the applicant fails to secure a principal habitation permit within the fourteen days as prescribed herein, and the principal habitation permit shall then be offered to the next senior applicant in accordance with these rules.

- (4) The department may extend the deadline for acceptance prescribed in paragraph (2) if the applicant presents evidence to the department that the granting of additional time for compliance is reasonable and essential to prevent undue hardship, provided that any extension of time for compliance shall not exceed a period of sixty days from the date the department received from the applicant a written notice of intention to accept the offer of a principal habitation permit.
- (5) Since time is of the essence, the offer delivered or mailed to an applicant pursuant to subsection (f) shall contain a statement that the offer will lapse unless accepted in accordance with the procedures of this section. [Eff 2/24/94; am and comp
] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-28 Staying aboard vessels moored at Ala Wai or [~~Ke'ehi~~] Ke'ehi small boat harbor. (a) Staying aboard a vessel moored at Ala Wai or [~~Ke'ehi~~] Ke'ehi small boat harbor is prohibited except that:

- (1) Owners holding a valid regular mooring permit, the spouse or personal partner of each, their legal dependents, and their nonpaying guests, when in the company of the owner, may stay aboard the vessel without a use permit upon written notification to the department on or before the date of stay; provided that the period does not exceed any three nights in a week and a total of any one hundred twenty nights in a calendar year, including vessels used as a vacation site;
- (2) Staying aboard a vessel in excess of any three nights in a week may be permitted when done in accordance with a valid:

- (A) Stay aboard permit issued pursuant to section 13-231-22 (staying aboard transient or visiting vessels);
- (B) Stay aboard permit issued pursuant to section 13-231-29 (vessel used as a vacation site);
- (C) Stay aboard permit issued to a vessel owner holding a valid principal habitation permit authorizing a nonpaying bona fide guest to stay aboard the vessel in the company of the owner for a period not to exceed any thirty days in a calendar year.

(b) When staying aboard in accordance with subsection (a)(1), and the stay is extended past the third day, the entire period of stay will be counted against time used as a vacation site in accordance with section 13-231-29.

(c) Each harbor resident or other person authorized by the department to stay aboard a vessel in a small boat harbor in accordance with this chapter, except for those under the age of six, may secure one shower facility key. Prior to receiving the shower key, the person shall deposit with the State the amount specified in section 13-234-32. No person shall be permitted to replace a shower facility key more than two times. [Eff 2/24/94; am 8/8/11; comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-29 Vessel used as a vacation site. (a) Staying aboard a vessel moored in Ala Wai or [~~Kechi~~] Ke'ehi small boat harbor during a vacation is authorized but limited to owners holding valid regular mooring permits authorizing them to moor their vessels in the small boat harbor, the spouse or personal partner of each, their legal dependents, and nonpaying guests when accompanied by the owner, provided that:

- (1) The aggregate period of the stay is not more than thirty days in a calendar year;
- (2) The vessel owner secures a vacation permit

and a stay-aboard permit for each individual vacationer;

- (3) The vessel and its occupants comply with the sanitation, vessel equipment, and all other requirements set forth under this chapter; and
- (4) The vessel owner provides evidence that the owner maintains a bona fide shoreside residence.

(b) No vacation permit shall be issued for a vessel registered or documented as being owned by a corporation. [Eff 2/24/94; am 8/8/11; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-30 Restrictions on multiple permits.

The accumulation of more than two permits for a berth, mooring, or both by a co-owner, firm, corporation, trust, association, organization, institution, or lessee is prohibited in any one small boat harbor. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-31 Administrative hearing.

(a) The procedures under this section shall be used for any administrative hearing conducted by the division of boating and ocean recreation as required by law.

(b) An administrative hearing officer shall be appointed by the chairperson. Upon setting the time for the hearing, the administrative hearing officer shall make a reasonable effort to transmit a notice to the owners or their attorneys, if any, at their last known address, containing the following:

- (1) The date, time, place and nature of hearing;
- (2) The legal authority under which the hearing is to be held;
- (3) The fact that any party may retain counsel if the party so desires and the fact that an individual may appear on the individual's

own behalf, or a member of a partnership or limited liability company may represent the partnership or limited liability company, or an authorized officer or authorized employee or trustee of a corporation or trust or association, as appropriate, may represent the corporation, trust or association.

(c) All parties shall be afforded an opportunity to present evidence and argument on all relevant issues involved.

(d) Any procedure in the administrative hearing may be modified or waived by stipulation of the parties and informal disposition may be made of any administrative hearing by stipulation, agreed settlement, consent order, or default.

(e) A tape recording may be made of the proceedings. No videotaping or other cameras shall be allowed during the hearing.

(f) Appeals from the decision may be made in accordance with chapter 91, Hawaii Revised Statutes. [Eff 2/24/94; am and comp] (Auth: HRS §§91-9, 200-4, 200-16, 200-49) (Imp: HRS §§200-4, 200-16, 200-49)

§13-231-32 Rules of evidence; official notice.

(a) The administrative hearing officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence as provided by law with a view of doing substantial justice.

(b) In administrative hearings:

(1) Any oral or documentary evidence may be received, but the department shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and

substantial evidence. The department shall give effect to the rules of privilege recognized by law.

- (2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request parties shall be given an opportunity to compare the copy with the original.
- (3) Every party shall have the right to conduct cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence at the time of the hearing.
- (4) Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree of quantum of proof shall be a preponderance of the evidence.
[Eff 2/24/94; comp _____] (Auth: HRS §§91-10, 200-4, 200-16, 200-49) (Imp: HRS §§200-4, 200-16, 200-49)

§§13-231-33 to 13-231-39 (Reserved)

SUBCHAPTER 2

BOAT OPERATION

§13-231-40 General statement. This subchapter shall govern the operation of vessels in small boat harbors. Nothing contained in this subchapter shall be construed to limit the authority of the federal government. (Refer also to subchapter 4, chapter 231 for provisions relating to specific area.) [Eff 2/24/94; comp _____] (Auth: HRS §§200-1, 200-2, 200-4) (Imp: HRS §§200-1, 200-2, 200-4)

§13-231-41 Navigation or mooring vessels in small boat harbors. Whenever a vessel enters a small boat harbor, its operator shall immediately come under the jurisdiction of these rules. Such vessels shall be operated, navigated, moored, or stored in accordance with reasonable directions of small boat harbor authorities. The department may designate areas for special boating activities. Each vessel is to be navigated within a state small boat harbor at a speed low enough that its wake will not disturb any other vessel or property. [Eff 2/24/94; comp] (Auth: HRS §§200-1, 200-2, 200-4)
(Imp: HRS §§200-1, 200-2, 200-4)

§13-231-42 Interference with navigation. Unless otherwise authorized, no log, boom, float, pier, dock, fence, pile, anchorage, or other obstruction shall be installed or placed in small boat harbors without a permit from the department. No person shall operate any vessel in a manner which will unreasonably interfere with other vessels or free and proper navigation of waterways. Anchoring in heavily travelled channels or main thoroughfares shall constitute such interference. [Eff 2/24/94; comp] (Auth: HRS §§200-1, 200-2, 200-4)
(Imp: HRS §§200-1, 200-2, 200-4)

§13-231-43 Pilotage. Every person operating a vessel in a small boat harbor or through channels or entrances leaving or approaching such harbor shall do so at this person's own risk. [Eff 2/24/94; comp] (Auth: HRS §§200-1, 200-2, 200-4)
(Imp: HRS §§200-1, 200-2, 200-4)

§13-231-44 Vessel loading zone. Vessel loading zone means a portion of a small boat harbor facility reserved for the exclusive use of vessels during fueling, loading, or unloading. No person shall stop

or moor a vessel for any purpose other than for the expeditious loading, unloading, or fueling in any place marked as a vessel loading zone during the hours when the regulations applicable to such loading zone are applicable. Except when otherwise prescribed by signs, the use of a vessel loading zone by any one vessel shall not exceed thirty minutes. No person shall leave a vessel unattended at a vessel loading zone. [Eff 2/24/94; comp] (Auth: HRS §§200-1, 200-2, 200-4) (Imp: HRS §§200-1, 200-2, 200-4)

§13-231-45 Vessel inspections. (a) "Approved marine surveyor" as used in this section means a person who has been approved by the chairperson to inspect a vessel for an owner seeking a permit to moor a vessel in a small boat harbor in accordance with subsections (h) and (i). "Approved vessel inspector" as used in this section means an employee of the department who has been designated by the chairperson to inspect a vessel for compliance with criteria necessary to obtain a mooring permit. An inspection conducted by an approved vessel inspector is deemed to meet the requirements of the marine inspection required by section 200-13, Hawaii Revised Statutes, and ~~[shall]~~ may be valid for a period of ~~[only one]~~ two [year] years.

(b) Before a regular mooring permit is issued or renewed, the vessel owner shall complete a satisfactory vessel inspection conducted by an approved vessel inspector, or present a certificate not more than two years old to the department at the owner's own expense, signed by an approved marine surveyor certifying the surveyor has inspected the vessel and considers it to fulfill the minimum requirements described in ~~[the exhibit]~~ Exhibit "B" located at the end of this chapter and incorporated herein entitled "vessel inspection report" and dated July 2012. The department reserves the right to inspect any vessel to ensure that any deficiencies or omissions noted on a marine ~~[survey]~~ inspection have

been corrected prior to issuing a mooring permit. All vessel owners shall also demonstrate to the department that their vessel is capable of navigating beyond the confines of the harbor and returning under its own power to its assigned mooring/berth prior to the mooring permit being issued.

(c) Commercial vessels carrying more than six passengers for hire are exempted from the provisions of subsection (a) and (b) when evidence of a current Coast Guard certificate of inspection is presented.

(d) Owners of vessels failing the vessel inspection shall have thirty days to correct deficiencies and complete the inspection. Failure to do so will preclude re-issuance of the use permit or be cause for rejection of the application for mooring.

(e) The department may extend the deadline for correction of deficiencies prescribed in subsection (d) if the vessel owner presents conclusive evidence to the department that the granting of additional time is reasonable and essential due to the necessity of replacing essential parts and gear and that reasonable and diligent efforts by the owner to secure the items necessary to repair the vessel or replacement of parts is demonstrated, and further provided that any extension of time for compliance shall not exceed sixty days.

(f) Owners of vessels that fail the vessel inspection may contest the decision ~~at~~ before an arbitration board as established in section 200-13, Hawaii Revised Statutes. The costs of the arbitration shall be borne by the vessel owner if it is determined that the vessel does not meet the minimum requirements to moor in a small boat harbor in accordance with these rules. No additional time allowance for the correction of deficiencies will be granted following arbitration and the vessel shall be removed from the harbor. The costs of the arbitration shall be borne by the State if it is determined that the vessel does meet minimum requirements.

(g) The fee for a vessel inspection conducted by the department, pursuant to this section shall be as prescribed in section 13-234-29 provided that holders

of commercial use permits and registration certificates with proof of certification of inspection from the United States Coast Guard shall be exempt from this requirement or state fees associated therewith.

(h) A person who desires to become an approved marine surveyor shall apply to the department upon a form furnished by the department and pay the application fee prescribed in section 13-234-30.

(i) An application to become an approved marine surveyor shall not be accepted by the department unless the applicant is engaged wholly or partly in the business of performing marine surveys for gain or compensation and the person's surveys are acceptable to at least one insurance company or surety company authorized to do business in the State[-], and is a member of a nationally recognized marine surveyor organization as approved by the department.

(j) An approved marine surveyor permit shall be valid for a period of three years from date of issuance. The department reserves the right to revoke any approved marine surveyor permit at any time prior to the expiration of the permit.

(k) A satisfactory vessel inspection shall consist of the following:

- (1) Presentation of the vessel to be inspected at a place designated by the harbor agent;
- (2) A demonstration that the vessel is capable of being regularly navigated beyond the confines of the harbor or mooring area and maneuvering into and out of the assigned berth;
- (3) A finding that the vessel and all systems are in good material and operating condition;
- (4) A finding that the requirements described in the exhibit at the end of this chapter entitled "vessel inspection report" are met; and

Applicable standards published by the U.S. Coast Guard and the American Boat and Yacht Council, Inc. (ABYC) shall be used in conducting the vessel inspection, and

are adopted and incorporated herein by reference.

(l) A marine survey shall be required for any vessel which has undergone any substantial reconstruction, alteration or modification of the original vessel design, certifying that such reconstruction, alteration or modification does not materially affect the vessel's stability or maneuverability, and the existing power plant is in good operating condition and meets the minimum power requirement necessary for safe navigation beyond the confines of the small boat harbor or offshore mooring area in which it is moored. Any vessel operating under a commercial use permit or registration certificate that can produce evidence of a valid United States Coast Guard inspection certification for the above condition shall not be required to obtain a separate marine survey. A certificate of protection and indemnity insurance for the vessel, in an amount of not less than \$100,000, naming the State as an additional insured, shall be required in addition to the marine survey.

(m) No modification or alteration to a houseboat moored in Ke'ehi Lagoon which changes the length, beam or size of silhouette area from that which existed at the time of issuance of the initial mooring permit shall be allowed without prior approval of the department, provided that routine maintenance and repairs for safety, security and structural integrity shall be allowed. [Eff 2/24/94; am and comp
] (Auth: HRS §§200-1, 200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-1, 200-2, 200-4, 200-9, 200-10)

§13-231-46 Vessel limitations. Due to the restricted entrance and turning area in Lahaina small boat harbor, [~~No~~] no vessel of any size will be allowed to moor on the makai side of the Lahaina loading (fuel) dock from sunset to sunrise. Mooring from sunrise to sunset will be limited to fifteen minutes. [Eff 2/24/94; am and comp]

(Auth: HRS §§200-1, 200-2, 200-4) (Imp: HRS §§200-1, 200-2, 200-4)

§§13-231-47 to 13-231-49 (Reserved)

SUBCHAPTER 3

COMMERCIAL ACTIVITIES

§13-231-50 General statement. No regular or extensive use of any state property or facilities for private gain or purposes shall be permitted without corresponding and reasonable benefits and returns to the public. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-4)

§13-231-51 Business activities. No person shall engage in any business or commercial activity at any small boat harbor or other small boat facility without:

- (1) Prior written approval of the department; or
- (2) The proper execution of an agreement with the department. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-52 Solicitations and advertisements. Without limiting its generality, the words "business or commercial activity" as used in section 13-231-51 includes any solicitations and advertisements, intended for private gain or purposes. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-53 Signs. No person shall post or display any signs at a small boat harbor without the

prior written approval of the department, except that signs strictly pertaining to the sale of vessels and of maximum dimensions of three feet by three feet shall be permitted on the vessel without approval. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-54 Commercial vessel; definition.

“Commercial vessel” as used in this subchapter means a vessel engaged in any trade or business including, but not limited to, carrying passengers for hire, charter fishing, bare boat (demise) or any type of charter maintenance, harvesting coral or similar resources, construction, towing, tow-boating, or other trade or business wherein the vessel is used in any manner to promote the venture, or is registered with the State or documented by the United States Coast Guard for commercial use. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-55 Berthing commercial vessels at Ala

Wai or [Keehi] Ke’ehi small boat harbor. (a)
~~[Commercial vessels shall not be moored nor shall any person be issued a permit to moor a commercial vessel at the Ala Wai or Keehi boat harbor, including the areas leased to Hawaii and Waikiki Yacht Clubs, except at the areas leased to Ala Wai Marine, Ltd. and Texaco, Inc. for purposes authorized in their leases.]~~
The total number of valid commercial use permits that may be issued for vessels assigned mooring in Ala Wai small boat harbor shall not exceed fifteen per cent of the total number of berths and shall not exceed thirty-five per cent of the total number of berths at the [Keehi] Ke’ehi small boat harbor; provided that at the Ala Wai small boat harbor, vessels issued commercial use permits shall:

- (1) Not exceed sixty-five feet in length;
- (2) Occupy not more than fifty-six berths located along the row of berths furthestmost

mauka or adjacent to Holomoana Street, with the remainder located throughout the Ala Wai small boat harbor, with priority assigned to row five hundred, row seven hundred, and row eight hundred;

- (3) Be phased-in in a manner that does not displace any existing recreational boater or existing catamaran operator; and
- (4) Include commercial catamarans, for which valid commercial use permits or existing registration certificates have been issued by the department that allow the catamarans to operate upon Waikiki shore waters for hire.

(b) The department may issue a temporary mooring permit authorizing the owner to temporarily moor at Ala Wai or ~~[Ke'ehi boat harbor]~~ Ke'ehi small boat harbors, provided the vessel is not engaged in commercial activities.

(c) This section is not applicable to a vessel used principally for recreational purposes (more than fifty per cent of its operating time) but licensed to engage in commercial fishing. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9) (Imp: HRS §§200-2, 200-4, 200-9)

§13-231-56 Definitions, gross receipts. Gross receipts as used in this subchapter means all moneys paid or payable to the account of the vessel owner, for the rendition of services, or resulting from trade, business, commerce, or sales by the vessel owner when the services, trade, business, commerce, ~~[and]~~ or sales have a direct relationship to the vessel. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-57 Berthing or using commercial vessels in state small boat harbors~~[; signs and other structures]~~. (a) This section is applicable ~~[to]~~ to

all state small boat harbors [~~and boat launching facilities except Ala Wai and Kechi small boat harbors~~]. This section is applicable to all commercial vessels including commercial fishing vessels engaged in charter fishing or any other trade or business; provided that commercial fishing vessels are exempt from this section if the total income derived from the use of the vessel is generated through the sale of fish or permitted coral.

(b) No commercial vessel shall load or discharge passengers or cargo or engage in any other commercial activity at any small boat harbor unless the owner possesses a regular mooring permit and a valid commercial use permit or valid catamaran registration certificate issued by the department [~~in accordance with this chapter~~]. Inter-island ferry service within Maui County shall be afforded preferential consideration in accordance with section 200-9(d), Hawaii Revised Statutes. The [~~foregoing~~] restrictions of this section shall not apply to any commercial vessel operated in connection with the lease of premises at a small boat harbor.

(c) Notwithstanding subsection (b) and except at the Ala Wai and Ke'ehi small boat harbors, the department may authorize the owner of a transient or visiting commercial vessel engaged in a trade or business elsewhere to:

- (1) Carry passengers for hire in the [~~above listed~~] small boat harbors if the vessel will be so engaged as a registered participant in a bona fide fishing tournament;
- (2) While on cruise, off-load and load passengers in the [~~above listed~~] small boat harbors if those passengers are embarked elsewhere or bound for another destination; provided that a reservation for a berth was made in advance and space is available; or
- (3) Embark and disembark passengers occasionally and infrequently, not exceeding [~~eight~~] twenty-four times in a calendar year on a special charter when approved not less than seven days in advance of the voyage.

(d) A commercial use permit or catamaran registration certificate shall automatically expire upon the department's notice to vacate, if any vessel granted a temporary mooring permit under section 13-231-57(c) engages in a trade or business contrary to the provisions of the permit or certificate [~~issued for the vessel while authorized to be moored in the above listed~~ ~~small boat harbors~~]. [Eff 2/24/94; am and comp] (Auth: HRS §200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-58 Limitations on the number of commercial use permits and catamaran registration certificates for vessels assigned permanent moorings.

(a) The total number of valid commercial use permits which may be issued for vessels assigned permanent mooring in [~~Mānele~~] Mānele small boat harbor shall not exceed ten percent of the available berths.

(b) Subject to any other limitations on commercial catamarans that may be provided in these rules, [The] the total number of valid commercial use permits or catamaran registration certificates [~~which~~] that may be issued for vessels assigned [~~permanent~~] mooring in the [~~following small boat harbors are:~~] Ala Wai small boat harbor shall not exceed fifteen per cent of the total number of berths; provided that at the Ala Wai small boat harbor, vessels issued commercial use permits or catamaran registration certificates shall:

- (1) Not exceed sixty-five feet in length;
- (2) Occupy not more than fifty-six berths located along the row of berths furthest mauka or adjacent to Holomoana Street, with the remainder located throughout the Ala Wai small boat harbor, with priority assigned to row five hundred, row seven hundred, and row eight hundred;
- (3) Be phased-in in a manner that does not displace any existing recreational boater or existing catamaran operator; and

(4) Include commercial catamarans for which valid commercial use permits or existing registration certificates have been issued by the department, that allow the catamarans to operate upon Waikīkī shore waters for hire.

(c) The total number of valid commercial use permits or catamaran registration certificates that may be issued for vessels assigned mooring at the Ke'ehi small boat harbor shall not exceed thirty-five per cent of the total number of berths;

~~(b)~~ (d) The total number of valid commercial use permits ~~which~~ or commercial registration certificates that may be issued for vessels assigned permanent mooring in the following small boat harbors are:

| <u>Harbor</u> | <u>Number of commercial use permits</u> |
|----------------------------------------------------------------|------------------------------------------------------------------------|
| (1) Ala Wai | (0) <u>as provided for in Hawaii Revised Statutes 200-9</u> |
| (2) Keeki | (0) <u>as provided for in Hawaii Revised Statutes 200-9</u> |
| (3) (1) [Heeia] He'eia Kea | (7) <u>as provided for in section 13-256-73.1</u> |
| (4) (2) [Haleiwa] Hale'iwa | (8) <u>20</u> |
| (5) (3) [Waianae] Waianae | 15 |
| (6) (4) [Nawiliwili] Nāwiliwili | 10 |
| (7) (5) Port Allen | 12 |
| (8) (6) [Kikiaola] Kikīaola | 3 |
| (9) (7) [Kukui'ula] Kukui'ula | 4 |
| (10) (8) [Hana] Hāna | 2 |
| (11) (9) Kaunakakai | 9 |
| (12) (10) Lahaina | 32 |
| (13) (11) [Maalaea] Mā'alaea | 29 |
| (14) (12) [Honokohau] Honokōhau | 120 |
| (15) (13) Kawaihae (north) | 4 |
| (16) (14) Kawaihae (south) | (14) <u>10</u> |
| (17) (15) Kailua-Kona Makai | 3 |
| (18) (16) [Keauhou] Kailua-Kona Offshore | (6) <u>8</u> |
| (19) (17) Wailoa | (20) <u>10</u> |
| (20) (18) Reed's Bay | 3 |

(19) Keauhou

6

~~[(e)]~~ (e) Notwithstanding the provisions of subsections (a) ~~[and (b)]~~ through (d) limiting the number of commercial use permits and catamaran registration certificates that ~~[which]~~ may be issued, the owner of a commercial vessel holding a regular mooring permit and a valid commercial use permit or valid catamaran registration certificate on the effective date of the rule amendments for the above listed small boat harbors, may retain and apply for reissuance of the commercial use permit or catamaran registration certificate, provided that all other requirements of these rules are met.

~~[(d)]~~ (f) Upon the approval by the department, a person or ~~[corporation]~~ business entity possessing a valid commercial ~~[activity]~~ use permit for a vessel moored elsewhere may be issued a regular mooring permit at a state boating facility listed in subsection ~~[(b)]~~ (d), and retain the commercial ~~[activity]~~ use permit, provided that the permittee relinquishes the vessel moored elsewhere permit and that the total number of valid commercial ~~[activity]~~ use permits for vessels moored elsewhere shall be reduced accordingly. A regular mooring permittee who possesses a valid commercial ~~[activity]~~ use permit may~~[-]~~ relinquish the regular mooring permit and retain the commercial ~~[activity]~~ use permit, provided that the total number of valid commercial ~~[activity]~~ use permits for vessels moored in the state boating facility plus the number of commercial ~~[activity]~~ use permits for vessels moored elsewhere are not exceeded, and that the category of commercial ~~[activity]~~ use permits assigned to vessels moored elsewhere pursuant to section 13-231-59(d) shall not exceed the passenger capacity of the vessel formerly moored in the state boating facility. [Eff 2/24/94; am 6/16/03; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-9, 200-10)

§13-231-59 Limitations on commercial use permits

for vessels moored elsewhere. (a) The department recognizes that it may be necessary or desirable to operate a commercial vessel from more than one small boat harbor, and that lack of mooring facilities in certain areas has required numerous vessels to establish permanent moorings offshore, outside of the small boat harbors of intended use. Therefore, notwithstanding section 13-231-57, the department may issue a limited number of commercial use permits to owners of vessels moored elsewhere for use of small boat harbor facilities. The number and categories of those commercial use permits shall be based on the physical capacity of the small boat harbor facilities to accommodate the additional volume of activity expected to be generated by the additional permits, and shall be determined by the department on a case-by-case basis for each small boat harbor, subject to the limitations listed in subsection (b).

(b) No commercial vessel moored elsewhere shall use any small boat harbor facilities for commercial purposes unless the owner of the commercial vessel moored elsewhere has been issued a commercial use permit for that vessel, or the vessel is exempt from commercial use permit requirements under the provisions of subsection 13-231-57(c) or as otherwise permitted by the department. "Commercial purposes" as used in this subsection includes the staging, loading and discharge of passengers or supplies at a state boating facility for further transport to a vessel's offshore location by means of a water taxi or any other vessel, or provisioning a vessel before or after a voyage involving the carriage of passengers for hire.

(c) The number of commercial use permits for vessels moored elsewhere which may be issued for each small boat harbor shall be as follows:

- (1) [~~Maalaea harbor~~] Mā'alaea small boat harbor: twenty;
- (2) Lahaina [~~harbor~~] small boat harbor: sixteen;
- (3) Manele [~~and Heeia Kea harbors~~] small boat harbor: six [~~each, except that for Heeia Kea, commercial permits shall be limited to~~];

~~vessels having passenger categories I and II as listed in subsection (d), and may include the use of an auxiliary platform in an offshore operating area for which the owner has been issued a permit by the department; provided that there shall be no increase in the level of commercial activity by the permittee, as of June 19, 1990, the effective date of Act 208, SLH 1990]; and~~

- (4) All other small boat harbors except for He'eia Kea small boat harbor, which is subject to section 13-256-73.1: no limit. ~~[These limits notwithstanding, all valid commercial permits for vessels moored elsewhere in effect on the effective date of these rules shall be permitted to remain in effect and be eligible for reissuance provided that all other provisions of these rules are met.]~~

(d) Each commercial use permit issued for a vessel moored elsewhere shall be assigned one of the following categories, depending on the passenger-carrying capacity of the vessel named in the permit:

- (1) Category I - one to twenty-four passengers
- (2) Category II - twenty-five to forty-nine passengers
- (3) Category III - fifty to seventy-four passengers
- (4) Category IV - seventy-five to ninety-nine passengers
- (5) Category V - one hundred to one hundred forty-nine passengers

(e) No commercial use permit for vessels moored elsewhere shall be issued for any vessel with a passenger-carrying capacity in excess of one hundred forty-nine, and no existing commercial use permit issued for a vessel moored elsewhere shall be issued a permit whenever the owner seeks to increase the passenger-carrying capacity above the limit of the category to which the ~~[original]~~ current permit was

assigned.

(f) The department reserves the right to impose further restrictions on the operation of commercial vessels moored elsewhere, on a case-by-case basis, as may be necessary to reduce congestion and achieve more efficient use of small boat harbor facilities. Restrictions may include designation of docking times for passenger loading and unloading or fueling, and parking restrictions for patron and delivery vehicles. Additional restrictions shall be implemented by addenda to existing commercial use permits issued by the department. Refusal of a permittee to accept or comply with additional restrictions implemented in this manner shall be cause for immediate termination of the commercial use permit.

(g) Use of any vessel in violation of this section may be cause for termination of all small boat harbor use permits issued to the owner by the department. [Eff 2/24/94; am and comp]
(Auth: HRS §§200-2, 200-3, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-9, 200-10)

§13-231-60 Allocation of commercial use permits and catamaran registration certificates. (a) Commercial use permits and catamaran registration certificates shall be issued to qualified applicants in the order in which applications are received by the department. Seniority begins on the date an application is received and accepted by the department. The allocation procedures specified in subchapter 5, Allocation of berths, shall also govern the allocation of commercial use permits and catamaran registration certificates under this section; provided that waiting lists for commercial use permits and catamaran registration certificates shall be established and maintained separately from waiting lists for berth assignment.

(b) The sale or transfer of any corporation or other business entity while on the waiting list which results in a change of the majority stockholder or person holding the majority interest in the business

shall result in loss of seniority, and the applicant shall be placed at the bottom of the waiting list.

(c) The department may reject an application for a commercial use permit if the type of commercial activity is determined by the department to be inappropriate for the facility or area for which the permit is being requested, in addition to the grounds for rejection of an application for a permit listed in section 13-231-82.

(d) When a commercial use permit becomes available for a vessel moored elsewhere, the permit issued shall be of the same category as the commercial use permit which was previously in effect. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

§13-231-61 [~~Renewal~~] Reissuance of commercial use permits and catamaran registration certificates.

(a) The department may reissue a commercial use permit or catamaran registration certificate provided that:

(1) The gross receipts during the twelve-month period under the commercial use permit or catamaran registration certificate for which the application for reissuance has been submitted, equals or exceeds the following minimums as applicable:

- (A) Vessel used for bare boat(demise) charters and charter sail boats \$7,000
- (B) Vessels registered by the state or documented by the U.S. Coast Guard to carry six passengers or less[7]; including charter fishing boats \$15,000
- (C) Vessels certified by the U.S. Coast Guard

- to carry seven to twenty-~~five~~six passengers \$45,000
- (D) Vessels certified by the U.S. Coast Guard to carry twenty-~~five~~seven to forty-nine passengers \$85,000
- (E) Vessels certified by the U.S. Coast Guard to carry fifty to ninety-nine passengers \$125,000
- (F) Vessels certified by the U.S. Coast Guard to carry more than ninety-nine passengers. \$250,000
- (G) Vessels engaged in another trade or business not delineated and governed by an appropriate paragraph above \$7,000 [~~7~~]
- (H) Water sports equipment rentals \$7,000 ;
or
- (2) The permittee applies to the department in writing for reissuance of the permittee's commercial use permit or catamaran registration certificate and concurrently presents evidence that any failure to generate gross receipts from the operation of the permittee's vessel or certificate holder's catamaran as prescribed in this subsection was due to:
 - (A) The sinking, loss, or destruction of the permittee's vessel or certificate holder's catamaran;
 - (B) The permittee's vessel or certificate holder's catamaran being inoperative in excess of sixty days due to disability of the permittee or certificate holder;
 - (C) The permittee's vessel or certificate holder's catamaran was rendered inoperative in excess of sixty days due to damage to the vessel, or due to the

necessity of replacing essential parts and gear, provided that reasonable and diligent efforts by the permittee to secure such items necessary to repair the vessel or replacement of parts is demonstrated; or

(D) Where conditions and circumstances are demonstrated wherein a reissuance of the permittee's commercial use permit or the catamaran registration certificate would be fair and warranted, and the application for reissuance is approved by the department; and

(3) All fees and charges due and payable to the department have been paid and no violations are outstanding.

(b) No commercial use permit or catamaran registration certificate shall be issued to any permittee or certificate holder whose commercial use permit or catamaran registration certificate has been terminated for cause, provided that the permittee or certificate holder may apply for a new commercial use permit or catamaran registration certificate after one year has expired from the date of termination [~~of the commercial permit~~], all fees and charges owing the State have been paid, and the permittee or certificate holder is in compliance with federal and state laws.

(c) A corporation must have been in continuous commercial operation as evidenced by the submission of monthly reports of gross receipts for a minimum of twelve months in order to retain commercial use permits or a catamaran registration certificate upon the transfer of any interest in that corporation. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

§13-231-62 Transferability of commercial use permits and catamaran registration certificates. (a)

Commercial use permits and catamaran registration certificates issued to individuals.

- (1) A commercial use permit issued to an individual is non-transferable, so that whenever the permittee parts with possession or transfers the title or interest in the vessel identified in the commercial use permit to another person by any arrangement, the commercial use permit shall expire except as provided herein with respect to the original permittee. The new possessor, transferee, or owner of the vessel shall have no right to use the commercial use permit. However, a sole proprietor holding a commercial use permit or catamaran registration certificate for a commercial catamaran to land on Waikiki beach and operate upon Waikiki shore waters for hire may transfer ownership of the vessel from personal ownership to corporate or other business ownership without terminating the right to operate. The existing permit or registration certificate shall be reissued in a timely manner in the name of the transferee corporation or other business entity. No commercial use permit or catamaran registration certificate for an existing Waikiki beach catamaran operation shall be denied or revoked without a prior hearing in accordance with chapter 91, hawaii revised statutes;
- (2) An original commercial use permittee or catamaran certificate holder [~~holding both~~] who also holds a [~~commercial permit and a~~] regular mooring permit, upon written application and approval by the department may retain the commercial use permit or catamaran registration certificate, provided that within thirty days the permittee moves into the small boat harbor another vessel owned by the mooring permittee pursuant to the provisions of section 13-231-13; and

- (3) An original permittee holding a commercial use permit and moored elsewhere may, upon written application to and approval by the department retain the commercial use permit, provided that within thirty days the permittee resumes operation with another vessel owned by the permittee pursuant to the provisions of sections 13-231-13 and 13-231-61.

(b) The following rights, conditions, and restrictions apply to commercial use permits and catamaran registration certificates issued to a corporation or other business entity.

- (1) Notwithstanding section 13-231-13, a corporation or other business entity holding a valid commercial use permit or catamaran registration certificate may transfer any or all stock or interest and retain the commercial use permit or catamaran registration certificate and all other valid small boat harbor use permits in effect on the date of transfer, provided that the corporation or other business entity has been in continuous operation as evidenced by the submission of monthly reports of gross receipts for a minimum period of one full year and meets all requirements necessary for issuance of a commercial use permit or catamaran registration certificate. The department shall be notified within ten working days of:

- (A) All transactions that amount to a transfer of ten per cent or more of the stock or interest in the firm by owners of record on the ~~[effective]~~ date of issuance of the current commercial use permit or catamaran registration certificate ~~[these rules]~~;
- (B) The transfer of any stock or interest which results in a change of the principal stockholder or owner; and

- (C) The business transfer fee is paid on or before the date of transfer; and
- (2) A commercial use permit or catamaran registration certificate issued to a corporation or other business entity shall automatically expire:
 - (A) Upon the voluntary or involuntary dissolution of the corporation or business entity;
 - (B) If the vessel or vessels operated under the commercial use permit or catamaran registration certificate are sold or otherwise transferred and not replaced in accordance with the provisions of section 13-231-13(b); or
 - (C) If the permittee or certificate holder fails to operate the vessel for which the commercial use permit or catamaran registration certificate is issued for a period in excess of sixty days, except as provided in section 13-231-61(a)(2), and except when the permittee or certificate holder provides advance notification to the department in writing that operations will be temporarily suspended for a specific period not to exceed four months. [Eff 2/24/94; am and comp]
(Auth: HRS §§200-2, 200-3, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-9, 200-10)

§13-231-63 Retention of berth upon termination of commercial use permit or catamaran registration certificate. The owner of a vessel moored in any of the above listed small boat harbors whose commercial use permit or catamaran registration certificate has been cancelled at the owner's request, expired, or revoked by the department pursuant to the provisions of these rules may continue to moor the vessel in the small boat harbor in accordance with the owner's

regular mooring permit and to utilize the vessel for non-commercial purposes if the vessel and the owner conform to the conditions set forth in these rules to renew or maintain a regular mooring permit. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-64 Fees and charges. Fees and charges for commercial vessels shall be as prescribed in chapter 13-234 and chapter 13-253. (Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-231-65 Insurance requirements. A use permittee issued a commercial use permit or catamaran registration certificate shall, concurrently with the execution of the permit or registration certificate, shall tender to the department a copy of either a comprehensive general liability insurance policy or policies or a protection and indemnity insurance policy, or a certificate of insurance in lieu thereof, evidencing that such policy has been and is in force, with a combined single limit of not less than \$500,000 for commercial vessels not authorized to carry passengers and for those authorized to carry not more than six passengers; not less than \$500,000 for vessels authorized to carry more than six passengers, but less than twenty-six passengers; and not less than \$750,000 for vessels authorized to carry more than twenty-five passengers, for bodily injury and damage to property per occurrence. The specification of limits contained herein shall not be construed in any way to be a limitation on the liability of the permittee or certificate holder for any injury or damage proximately caused by it or for purposes of indemnification of the State of Hawaii. This insurance shall:

- (1) Be issued by an insurance company authorized to do business in the State and approved in writing by the department;
- (2) Name the State as an additional insured;
- (3) Provide that the department shall be notified in writing at least thirty days prior to any termination, cancellation, or material change in insurance coverage;
- (4) Cover all injuries, losses, or damages arising from, growing out of, or caused by any acts or omissions of the permittee or certificate holder, its officers, agents, employees, invitees, members, shareholders, subcontractors, or licensees, in connection with the permittee's or certificate holder's activities under the permit or certificate; and
- (5) Be maintained and kept in effect at the permittee's or certificate holder's own expense throughout the life of the permit or certificate. The permittee or certificate holder shall submit evidence to the department of renewals or other actions proving that the insurance policy remains in effect as prescribed herein.

~~[tender to the department a copy of either a comprehensive general liability insurance policy or policies or a protection and indemnity insurance policy, or a certificate of insurance in lieu thereof, evidencing that such policy has been and is in force, with a combined single limit of not less than \$300,000 for commercial vessels not authorized to carry passengers and for those authorized to carry not more than six passengers; not less than \$500,000 for vessels authorized to carry more than six passengers, but less than twenty six passengers; and not less than \$750,000 for vessels authorized to carry more than twenty five passengers for bodily injury and damage to property per occurrence. The specification of limits contained herein 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. This insurance shall:~~

- ~~(1) Be issued by an insurance company or surety company authorized to do business in the State and approved in writing by the department;~~
- ~~(2) Name the State as an additional insured;~~
- ~~(3) Provide that the department shall be notified at least thirty days prior to any termination, cancellation, or material change in its insurance coverage;~~
- ~~(4) 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~~
- ~~(5) 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 herein.]~~

[Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-231-66 Limitation on number of berths held by a commercial permittee. No person [~~holding a valid commercial vessel permit for a commercial vessel moored~~] shall be issued permits to moor more than two commercial vessels in any of the state's small boat harbors [~~listed in section 13-231-57 shall be issued a use permit authorizing the person to moor more than two commercial vessels in one of these small boat harbors~~] except temporarily pursuant to section 13-231-57(c) or as provided by section 13-231-69; provided further, that any person holding valid

commercial use permits on the 1994 effective date of these rules authorizing the mooring of more than two commercial vessels in any of these small boat harbors may continue to moor the person's vessels in the small boat [~~harbors~~] harbor subject to compliance with the conditions of the commercial use [permit] permits and this chapter and until the commercial use permits expire or terminate without a proper reissuance. [Eff 2/24/94; am and comp]

(Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-231-67 Limitation on commercial use permits issued for the use of state boat launching ramps. (a) State boat launching ramps were constructed for the primary purpose of providing access to the waters of the State for trailered boats. Therefore, commercial use permits issued for the use of state boat launching facilities shall be restricted to boats that are regularly launched and recovered from boat launching ramps and used in the course of doing business. A commercial use permit shall be required for any trailered vessel which is rented off-site, but launches or recovers from a state boat launching facility. The owner of a trailered vessel shall be required to obtain a commercial use permit and comply with all other rules of the department governing commercial vessel activities. Notwithstanding the limitation of the number of commercial use permits which may be issued for launching ramps in subsections (d)(3) through (d)(9) below, the owner may apply for and may be issued a commercial use permit for the number of vessels owned and registered in furtherance of its commercial use by the business on the 1994 effective date of these rules. Vessels registered to boat dealers and manufacturers and used for the purpose of conducting sea trials and instruction of prospective owners shall be exempt from commercial use permit requirements.

(b) No commercial use permits for the use of state boat launching ramps shall be issued for the purpose of embarking or disembarking passengers by

small craft or lighter from a vessel moored offshore.

(c) A commercial use permit issued for the use of a state boat launching ramp shall also be valid for all other state boat ramps on the same island at which commercial activities are permitted except those listed in subsection (d); provided that the permittee shall indicate which launching ramp is expected to be the location of primary use and the fees derived from ~~[two]~~ three percent of gross revenues shall be paid to that account. No commercial use permit shall be issued for a launching ramp located on an island other than the place of business of the permittee.

(d) The maximum number of commercial use permits which may be issued for the use of the following launching ramps are:

- | | | |
|---------------------------------------------|---|--------------------------------------------------------------|
| (1) Ala Wai | - | [none] <u>3</u> |
| (2) [Kechi] <u>Ke'ehi</u> | - | [none] <u>3</u> |
| (3) [Heeia] <u>He'eia</u> Kea | - | [7] <u>as provided for in section 13-256-73.1</u> |
| (4) Maunalua Bay | - | <u>5</u> |
| (5) [Mala] <u>Māla</u> | - | <u>15</u> |
| (6) [Kihei] <u>Kihei</u> | - | <u>15</u> |
| (7) [Manele] <u>Mānele</u> | - | <u>3</u> |
| (8) Kaunakakai | - | <u>5</u> |
| (9) [Kukuiula] <u>Kukui'ula</u> | - | <u>6</u> |
| (10) [All others] <u>Lahaina</u> | - | [no limit.] <u>none</u> |
| (11) <u>Mā'alaea</u> | - | <u>none</u> |
| (12) <u>Kikīaola</u> | - | <u>10</u> |
| (13) <u>Nāwiliwili</u> | - | <u>5</u> |
| (14) <u>Port Allen</u> | - | <u>9</u> |
| (15) <u>Waika'ea</u> | - | <u>5</u> |
| (16) <u>Honokōhau</u> | - | <u>35</u> |
| (17) <u>Kawaihae (N)</u> | - | <u>5</u> |
| (18) <u>Kawaihae (S)</u> | - | <u>10</u> |
| (19) <u>Puakō</u> | - | <u>4</u> |
| (20) <u>Pohoiki</u> | - | <u>4</u> |
| (21) <u>Wailoa</u> | - | <u>10</u> |
| (22) <u>Kailua Pier</u> | - | <u>6</u> |
| (23) <u>Keauhou</u> | - | <u>11</u> |
| (24) <u>All others</u> | - | <u>no limit.</u> |

(e) The maximum number of commercial use permits that may be issued for the use of any launch ramp is

two (2) per business entity or sole proprietor registered to do business in the state.

Notwithstanding this section, all owners of commercial use permits on the effective date of these rules may continue operations and be permitted to apply for and renew their commercial use permits subject to compliance with all other conditions set forth in this chapter until their total number is reduced by attrition or other means to the numbers in subsection (d)" [Eff 2/24/94; am and comp]
(Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-39)
(Imp: HRS §§220-2, 200-3, 200-4, 200-10, 200-39)

§13-231-68 Signs and other structures at a state small boat harbor. (a) No person shall erect or place a sign, ticket booth, or any other structure in a state small boat harbor without the prior written approval of the department. All such structures shall only be erected or placed within a state small boat harbor if they are in conformity with state and county laws and ordinances, and prior approval of all appropriate governing agencies has been obtained.

(b) Signs identifying commercial activities posted or displayed within a state small boat harbor shall be limited to twelve square feet maximum sign area and be designed in accordance with the guide for small boat harbor signs provided by the department. Structures for ticket booths shall be limited to thirty-six square feet maximum and be designed in accordance with the guide for ticket booths provided by the department.

(c) Signs and other structures placed or erected within Lahaina small boat harbor shall also comply with the requirements of the Maui County Cultural Resources Commission.

(d) Fees for signs and ticket booths are set forth in chapter 13-234. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-10)

§13-231-69 Multiple use of mooring facilities by commercial vessels. (a) Notwithstanding the provisions of section 13-231-4, a permittee holding a valid mooring permit for a commercial vessel may place another commercial vessel of the same size category that is owned by the permittee in the permittee's assigned berth when the commercial vessel for which the mooring permit is issued is temporarily absent from the berth, provided that prior notification is provided to the department.

(b) The mooring permit for the assigned berth shall be issued for the largest commercial vessel to utilize the berth, and mooring fees charged in accordance with the fee schedule shown in section 13-234-25. The vessel name and registration or documentation number of each additional vessel expected to utilize the berth shall be listed as an addendum to the regular mooring permit issued for that berth. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10.)

§13-231-70 Water taxi operations. (a) Water taxi operations may be permitted at all small boat harbors [~~except Ala Wai and Keeki,~~] provided that the owner of the water taxi operation has been issued a commercial use permit. For the purpose of this section, "water taxi operations" means the shuttling of persons or cargo to or from the small boat harbor facility or a shoreside location authorized for such use under chapter 13-256, Hawaii Administrative Rules, to a destination or vessel located outside the small boat harbor boundary.

(b) No water taxi operations may be permitted to transport passengers and crew from commercial vessels moored offshore, or the shuttling of passengers to and from a commercial vessel moored elsewhere if that vessel has not been issued a commercial use permit for the small boat harbor or other valid commercial use permit issued by the department. There shall be no restriction on the use of water taxi service by

recreational vessels, vessels owned by the United States, or commercial vessels which are exempt from commercial use permit requirements under the provisions of section 13-231-57.

(c) The department may furnish a current list of commercial vessels authorized to receive water taxi service as provided in subsection (b) upon request by the owner of the vessel performing water taxi operations at no charge. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

~~[§13-231-71 Reserved]~~

~~[§13-231-72 Small inter island passenger vessel permit. (a) This section shall apply only to vessels that are berthed at a location other than a state boating facility that conduct inter island passenger cruises, and are certified by the United States Coast Guard to carry no more than 49 passengers.~~

~~(b) An operator of a small inter island passenger vessel may apply to the department for a permit to conduct passenger visits to one or more state boating facilities during the course of inter island cruises in accordance with the provisions of section 13-231-57(c)(2), provided that a schedule of planned passenger visits is provided not less than one week in advance. The term of the permit shall not exceed one year.~~

~~(c) Notwithstanding the provisions of section 13-234-26, the permittee shall pay fees in accordance with section 13-234-25(a)(2). The permittee shall designate a state boating facility of principal use for accounting purposes, and the fee assessed under this section shall be paid to that account.]~~

[R]

~~[§§13-231-73]~~ §§13-231-71 to 13-231-75
(Reserved)

SUBCHAPTER 4

SPECIAL AREA RULES

~~§13-231-76 Kewalo basin. The Kewalo basin is not a small boat harbor for the purpose of these rules. (See rules governing commercial harbors.)~~
[Eff 2/24/94; R]

§13-231-77 Ala Wai canal. Operation of vessels in Ala Wai canal shall be accomplished in a manner that will not create a nuisance to area residents. All applicable provisions of these rules shall apply to Ala Wai canal. [Eff 2/24/94; comp]
(Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§§13-231-78 to 13-231-79 (Reserved)

SUBCHAPTER 5

ALLOCATION OF BERTHS AND OFFSHORE MOORING

§13-231-80 General. (a) This subchapter shall govern the allocation of berths as they become available in small boat harbors.

(b) It is the policy of the department to promptly assign an available berth on a first-come, first-served basis to the first qualified applicant, determined in accordance with the provisions of this subchapter, for the type of mooring requested provided that the proposed use by the vessel affords maximum, safe, convenient, and efficient utilization of facilities and provided that assignment is not contrary to public interests, or otherwise unlawful or contrary to these rules.

(c) Since each berth and each vessel presents unique ship handling and other peculiar berthing problems in relation to the small boat harbor, the department reserves the right to utilize its fair and impartial judgment, flexibility, and discretionary authority to allocate berths based upon its knowledge of available facilities, prevailing small boat harbor conditions, safe boating practices, effective harbor management procedures, and other factors which must be thoroughly considered prior to acceptance of an application and allocating a berth to a vessel. The many factors that the department may take into consideration in accepting an application and allocating a berth include, but are not limited to, the applicant's vessel length, draft, beam, method of propulsion; the proposed vessel use and any other special or unique vessel handling problems in relation to the size of the available berth; berth location, water depth, prevailing winds and currents, and other pertinent factors relative to the available berth.

(d) If berths of varying lengths are available for assignment in a small boat harbor then no regular mooring permit shall be issued which allocates a berth to a vessel, if the length of the berth to be assigned exceeds the vessel length overall by more than five feet; provided, however this provision does not apply:

- (1) When more than one vessel is assigned to and occupies a single berth end to end; or
- (2) In a small boat harbor with established categories of berths which may be assigned to designated classes of vessels, pursuant to section 13-231-86.

(e) A vessel with a length overall which exceeds the catwalk or pier length may be nonetheless allocated an available berth if the vessel may be safely moored in the berth and provided that the vessel, while moored in the berth, does not obstruct or hamper safe and convenient navigation within the small boat harbor.

(f) The department may establish categories of berths available to corresponding classes of vessels in a small boat harbor for allocation to applicants

and shall place applicants in the most appropriate vessel classification to assure that vessels are allocated to suitable berths in order to promote the maximum, safe, convenient, and efficient utilization of facilities. Categories of berths and corresponding classes of vessels have been established in the small boat harbors enumerated in section [~~13-231-76~~] 13-231-86. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-81 Application for a berth; seniority of applications; period of validity; renewal of application.

(a) The department shall allocate a berth to an applicant by issuing a use permit pursuant to this subchapter and sections 13-231-2 and 13-231-3 if:

- (1) A berth is vacant in the small boat harbor and is available for such assignment pursuant to this subchapter;
- (2) No prior valid application for such is pending.

(b) A person desiring to moor a vessel in a small boat harbor where no berths are available for allocation pursuant to this subchapter may apply for and be allocated a berth as prescribed in this subchapter when a berth suitable for the vessel becomes vacant in the future.

- (1) An application for a berth shall be made in writing to the department on a form provided by the department. The applicant shall indicate in the application the type and characteristics of the vessel the applicant proposes to moor, including but not limited to, the vessel's length overall, draft, beam, principal source of propulsion, and any secondary or auxiliary source of propulsion, the type of mooring desired, and if applicable, the category or categories desired, provided that except in small boat harbors where the department has not

established categories of berths an applicant may modify at any time the material contained in the applicant's application relating to the type and characteristics of the vessel the applicant proposes to moor in the small boat harbor and retain seniority or priority over later applicants. The department shall accept the application for consideration by endorsing it and entering the filing time and date on the application form submitted; one copy shall be given to the applicant. The time and date the application is endorsed by the department shall be the filing date and the effective date of the application for consideration and shall establish such applicant's seniority or priority over later applicants if the application remains valid, subject to the suitability of the berth which becomes available for allocation to the vessel to be moved into the berth by the applicant. Priority of applicants for mooring in small boat harbors with established categories of berths is set forth in section 13-231-86. No application shall be accepted until the applicant pays the application fee prescribed in these rules and review thereof has been conducted pursuant to section 13-231-82.

- (2) An application shall continue in full force and effect for a period ending one year from the effective date of the application except as provided in paragraph (3), unless sooner terminated in accordance with these rules. An application is void after the date of expiration indicated thereon.
- (3) An application may be renewed within a ninety-day period preceding its expiration date. An application renewed prior to its expiration date shall be valid for a period ending one year from the expiration date of the previous application.

- (4) It is the policy of the department to mail an application renewal notice to the applicant, prior to the expiration of this application, at the address the applicant has furnished to the department pursuant to section 13-231-83. However, the applicant is responsible for the timely renewal of an application without receipt of a renewal notice from the department. [Eff 2/24/94; comp _____] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-82 Review, acceptance, or rejection of applications. (a) The department shall examine and determine the genuineness and regularity of each application for a mooring or other small boat harbor use permit and may conduct any investigation as may be deemed necessary for its examination and determination; and it may require additional information from the applicant as may be necessary to determine the genuineness and regularity of the application.

(b) The department shall reject any application that contains a material misstatement or if the applicant has failed to disclose any material fact in the application.

(c) An application shall not be accepted for consideration and shall be rejected if:

- (1) The application fee is not paid at the time the application is made;
- (2) The applicant is delinquent in payment of any moneys due and payable to the department;
- (3) The applicant has pending a citation for violation of any of the department's rules; or
- (4) The category or type of mooring requested is inappropriate for the vessel to be moored by the applicant and will not, therefore, afford maximum, safe, convenient, and

efficient utilization of small boat harbor facilities as determined by the department pursuant to section 13-231-80.

(d) Upon rejection of an application, the department shall inform the applicant, in writing within a reasonable time, that the person's application has not been accepted for consideration and has been rejected and the reasons therefor. The applicant shall be afforded the opportunity to submit a new application upon the correction of deficiencies cited in the notification of rejection of the original application. [Eff 2/24/94; am and comp]
 (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-83 Applicant required to furnish address and report changes; effect of failure to report changes. (a) An applicant shall include the applicant's address in the application to the department for a berth.

(b) An applicant shall immediately inform the department in writing of any changes in the applicant's address in order to maintain the validity of the applicant's application.

(c) An application shall be void if the department is unable to notify the applicant of a vacancy at the address:

- (1) Appearing on the application; or
- (2) Furnished in writing to the department by the applicant[+] as a change of address subsequent to submitting the application.
 [Eff 2/24/94; am and comp]
 (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-84 Withdrawal of application; effect if application has become void, expires, or has been withdrawn. (a) An application may be withdrawn by an applicant upon written notice to the department.

(b) An applicant who withdraws an application or whose application has expired or becomes void may submit a new application for acceptance by the department. The applicant's seniority begins on the date the new application is accepted for consideration as provided in section 13-231-81.

(c) The application fee shall not be refunded if an applicant withdraws an application or if the application expires, or becomes void. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-85 Priority and procedures in allocation of berths.

(a) An unassigned berth (a berth that is not assigned to a permittee by a regular mooring permit) shall first be offered to the senior applicant holding a regular mooring permit authorizing the applicant to moor in the small boat harbor who has applied for movement to another berth within the same harbor, provided that the vacant berth is of the same characteristics, category, or type as the berth currently allocated to the applicant and assignment of the applicant's vessel to the vacant berth would not be contrary to public interest or otherwise unlawful or contrary to these rules.

(b) Except as provided in subsection (a) and except where allocation shall be made pursuant to section 13-231-86 in small boat harbors with established categories of berths, an unassigned berth shall be promptly offered to the senior applicant for a regular mooring permit subject to the limitations contained in these rules promoting maximum, safe, convenient, and efficient utilization of facilities. Therefore, when the department receives a notice of cancellation of a regular mooring permit pursuant to section 13-231-9; a regular mooring permit expires, becomes void or is cancelled; or an assigned berth is vacated, other than temporarily for any reason, the department shall commence the process of allocating the berth to the senior applicant for a regular

mooring permit as expeditiously as possible as provided herein or in section 13-231-86.

(c) If assignment of the senior applicant's vessel to the available berth would not afford maximum, safe, convenient, and efficient utilization of the facility as determined in accordance with the factors enumerated in section 13-231-80 or is contrary to public interest or is otherwise unlawful or contrary to these rules, the berth shall then be promptly offered to the next senior qualified applicant whose vessel is suitable for the berth.

(d) An assigned berth, temporarily vacant while the regular permittee's vessel assigned thereto is temporarily absent from the berth, or an unassigned berth that is temporarily vacant pending allocation to and occupancy by a regular permittee shall be temporarily allocated to applicants as follows subject to sections 13-231-23 and 13-231-24 and the suitability of the vessel for the berth as determined by evaluation of the factors enumerated in this subchapter in order to promote the maximum safe, convenient, and efficient utilization of the small boat harbor facilities.

- (1) A nonrenewable temporary mooring permit authorizing interim use of a temporarily vacant berth for a period not to exceed the anticipated period of temporary vacancy or in any event not to exceed thirty days, whichever period is shorter, shall be offered to the senior applicant for a temporary mooring permit for the berth available pursuant to subsection (2) if suitable for the applicant's vessel in accordance with the factors enumerated in this subchapter, to promote maximum, safe, convenient, and efficient utilization of the facility. If the senior applicant for a temporary mooring permit declines the offer of interim use of the berth, the applicant's application for a temporary mooring permit shall be void and the berth shall be offered

to the next senior applicant for a temporary mooring permit.

(2) Priorities for allocation of temporarily vacant berths for interim use as they become available shall be as prescribed herein:

(A) First priority. The senior applicant to moor a transient vessel who applied in advance in writing for interim use of a temporarily vacant berth to begin at a specified time and whose application was received and accepted by the department shall have priority for use of the berth over other applicants for temporary moorings enumerated in this subsection; provided that a transient vessel shall be allocated to a berth that has been set aside and designated by the department for use by transient vessels only unless the transient berths available for allocation at that time are not suitable for the vessel, or no such transient berths have been set aside in that harbor.

(B) Second priority. If none of the vessels owned by the applicants, enumerated in paragraph (2)(A) are suitable for allocation to a temporarily vacant berth available for use, or if the eligible applicants decline an offer by the department to utilize a suitable berth, the senior applicant who applied in advance in writing to moor a vessel, other than a transient vessel, for an interim period whose application was received and accepted by the department shall have priority for use of the berth over other applicant's enumerated in subparagraph (C).

(C) Third priority. If none of the vessels owned by the applicants awaiting a

berth, enumerated in subparagraphs (A) and (B), are suitable for allocation to a temporarily vacant berth, or the eligible applicants decline an offer by the department to utilize the berth, the berth shall be offered on a first-come, first-served basis. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-85.5 Allocation of offshore mooring permits. Offshore mooring permits shall be allocated in accordance with and following the procedures set forth for mooring permits for berths. [Eff and comp] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

§13-231-86 Categories of berths; priority of allocation. (a) Categories or berths available to applicants for moorings in Ala Wai, [Keahi, and] Lahaina, Nāwiliwili, and Port Allen small boat harbors are established as shown in subsections (b), (c), (d), and (e). In these small boat harbors an applicant for a berth shall be placed in an appropriate vessel class by the department and is eligible for the corresponding category of berths. Applicants may apply by separate application for more than one category; provided, that their vessel is eligible for assignment only to those categories which correspond to the vessel class in which they are placed. An available berth shall be allocated to the senior applicant eligible for assignment to that category of berth provided that the proposed assignment of the vessel to the berth affords maximum, safe, convenient, and efficient utilization of facilities, and provided that the assignment is not contrary to public interest or is otherwise unlawful or contrary to these rules. Allocation of a berth shall not be made if the length

of the senior applicant's vessel is greater or less than the length limitations prescribed for each category as shown below. Each category of berths is subject to all the limitations prescribed by this section.

Allocation of temporary mooring permits shall be made in accordance with the categories as established by this section and pursuant to the terms and conditions of section 13-231-87(c).

(b) Ala Wai small boat harbor. The following categories of berths are established at Ala Wai small boat harbor.

| <u>CATEGORIES</u> | <u>[PIER/CATWALK LENGTH/TYPE_]</u> | <u>VESSELS ELIGIBLE TO MOOR</u> |
|-------------------|-------------------------------------------------------------------|-------------------------------------------------------------------|
| A | [25' Floating piers] | [From] 20' to 28' in length |
| B | [30' Floating piers [30' Fixed piers] | ["28' to 34' " "] ["] 28' to <u>35'</u> " " |
| C | [40' Floating piers [40' Fixed piers] | ["35' to 44' " "] ["] 35' to <u>45'</u> " " |
| D | [50' Floating piers [50' Fixed piers] | ["45' to 54' " "] ["] 45' to <u>55'</u> " " |
| <u>E</u> | [60' " " "] | ["] 55' to 65' " " |
| <u>F</u> | [65' " " "] | ["60] <u>65'</u> to [70] <u>75'</u> " " |
| <u>G</u> | [70' " " "] | ["65] <u>75'</u> to [75] <u>85'</u> " " |
| <u>H</u> | [80' " " "] | ["75' to 85' " "] <u>up to 19'</u> in length |
| <u>I</u> | [Bow stern berths [490 to 494] | Multihull vessels exclusively of varying lengths |

| <u>[CATEGORIES</u> | <u>PIER/CATWALK LENGTH/TYPE_</u> | <u>VESSELS ELIGIBLE TO MOOR</u> |
|--------------------|--------------------------------------|-------------------------------------|
| <u>J</u> | Bow stern berths | Vessels of varying |

| | | |
|---|------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| K | Berths 801 to 835 Marginal wharf (Diamond Head End) | lengths up to 45' Hobie Cats and other small sailing vessels. |
| F | Bow stern Transient vessels berths 836 to 865] | lengths up to 45' |

~~[(c) Kechi boat harbor. The following categories of berths are established at Kechi boat harbor.]~~

| <u>CATEGORIES</u> | <u>PIER/CATWALK LENGTH/TYPE</u> | <u>VESSELS ELIGIBLE TO MOOR</u> |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
| A | 16' Fixed pier | From 18' to 25' in length |
| B | 20' " " | " 20' to 27' " " |
| C | 26' " " | " 25' to 35' " " |
| D | 30' " " | " 30' to 40' " " |
| E | 40' " " | " 40' to 50' " " |
| F | 48' " " | " 46' to 55' " " |
| G | Alongside pier (former skiff mooring area) | " 40' to 50' " " |
| S | Fore/aft skiff reserved exclusively for skiffs, open motorboats and similar vessels with low profiles, less than twenty four feet in length.] | |

(c) ~~[(d)]~~ Lahaina small boat harbor. The following categories of berths are established at Lahaina small boat harbor.

| <u>CATEGORIES</u> | <u>PIER/CATWALK LENGTH/TYPE</u> | <u>VESSELS ELIGIBLE TO MOOR</u> |
|-------------------|-------------------------------------|-------------------------------------|
| A | Old marginal wharf, | Commercial vessels |

- berths 2-5 Up to 65' in length
- B Catwalks, berths 6-21 Commercial vessels
Up to 55' in length
- C New marginal wharf, berths 22-100 Up to 50' in length

Commercial vessels holding valid mooring permits within Lahaina small boat harbor shall load and unload passengers from the assigned berth, unless otherwise authorized by the department to load and unload passengers from the loading dock. The mooring of any vessel within Lahaina small boat harbor shall be subject to sections 13-231-7, 13-231-80 and other applicable rules of the department.

~~[(c) Heeia Kea boat harbor. The following categories of berths are established at Heeia Kea boat harbor.]~~

| <u>CATEGORIES</u> | <u>PIER/CATWALK BULKHEAD/TYPE</u> | <u>VESSELS ELIGIBLE TO MOOR</u> |
|-------------------|-------------------------------------------------------|---------------------------------|
| A | Buoy moorings, berths and 300, 302 | Up to 30' in length |
| B | 200 Row, fore/aft cable moorings | Up to 25' in length |
| C | 200 Row, fore/aft buoy moorings | Up to 28' in length |
| D | Fixed piers, odd-numbered berths 303-319 | From 30' to 45' |
| E | Fixed piers, even-numbered berths 304-320] | From 40' to 55' |

(d) Nāwiliwili small boat harbor. The following categories of berths are established at Nāwiliwili small boat harbor.

| <u>CATEGORIES</u> | <u>PIER/CATWALK</u> | <u>ELIGIBLE VESSELS TO MOOR</u> |
|-------------------|------------------------------------------|---------------------------------|
| <u>A</u> | <u>60'</u> <u>Pier 100</u> | <u>55' to 65' in length</u> |
| <u>B</u> | <u>40'</u> <u>Piers 100, 200, 300</u> | <u>35' to 45' " "</u> |

| | | | |
|----------|------------|-------------------------|------------------------------|
| <u>C</u> | <u>30'</u> | <u>Pier 300</u> | <u>25' to 35' " "</u> |
| <u>D</u> | | <u>Harbor basin</u> | <u>Not to exceed 50' " "</u> |
| <u>E</u> | | <u>Offshore Mooring</u> | |

(e) Port Allen small boat harbor. The following categories of berths are established at Port Allen small boat harbor.

| <u>CATEGORIES</u> | <u>PIER/CATWALK</u> | <u>ELIGIBLE VESSELS TO MOOR</u> | |
|-------------------|---------------------|---------------------------------|------------------------------|
| <u>A</u> | <u>50'</u> | <u>Pier 100</u> | <u>45' to 55' in length</u> |
| <u>B</u> | <u>40'</u> | <u>Piers 100, 200</u> | <u>35' to 45' " "</u> |
| <u>C</u> | | <u>Harbor Basin</u> | <u>Not to exceed 50' " "</u> |

[Eff 2/24/94; am 11/15/99; am and comp]
 (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-9, 200-10)

§13-231-87 Notice to owner of available berth or offshore mooring. (a) When an offer of a regular mooring permit to use a berth or offshore mooring area can be made, as provided for in this subchapter, the department shall deliver the offer or send it by certified mail, return receipt requested, addressed to the applicant eligible to receive the offer pursuant to this subchapter at the post office address furnished to the department in writing by the applicant.

(b) The department shall offer a temporary mooring permit to the applicant eligible to receive it by telephone, personal service, or first class mail, postage prepaid addressed to the applicant at the post office address furnished to the department in writing by the applicant. [Eff 2/24/94; am and comp]
 (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-88 Offer of regular mooring permit valid only fourteen days; written notice of intention; acceptance. (a) An applicant for a regular mooring permit may decline an offer to the applicant of a

regular mooring permit and retain the applicant's seniority if the applicant declines the offer in writing addressed to and received by the department, not later than fourteen days after the date of receipt of the offer. An applicant who declines an offer in writing and retains the applicant's seniority pursuant to this section, shall not be considered for a second offer on the basis of the applicant's seniority until six months have elapsed since the date of the applicant's first refusal. If the applicant decides to accept the offer, the applicant shall either deliver a written notice of intention to accept the offer to the department within fourteen days after the date of receipt of the offer or accept the offer by securing a use permit, complying with the requirements of section 200-9 and moving the applicant's vessel into the assigned berth or assigned mooring area, as applicable, within fourteen days after the receipt of the offer. The applicant's application for a use permit and the offer by the department of a use permit shall be void if the applicant fails to either move the applicant's vessel into the [~~small boat harbor~~] berth or mooring area, as applicable, or to give notice of intent to accept or to decline the offer in writing within fourteen days after the date of receipt of the offer, and the use permit shall then be offered to the next senior applicant for berth or mooring area, as applicable, pursuant to this subchapter. An applicant's application for a regular mooring permit shall also be void if the applicant fails to accept [~~the~~] a second offer of a regular mooring permit to use a berth, or mooring area, as applicable, and the [~~berth~~] permit shall then be offered to the next senior applicant for berth or mooring area, as applicable. Since time is of the essence, the offer delivered or mailed pursuant to section 13-231-87 shall contain a statement that the offer will lapse unless accepted in accordance with the procedures of this section. For the purposes of this subsection an applicant who declines a berth offered to the applicant as provided herein after presenting conclusive evidence to the department that for reasons

of safety or navigation the berth offered to the applicant is unsuitable for the applicant's vessel shall not be classified as "an applicant who has declined the offer of a berth".

(b) An applicant who has delivered a written notice of intention to accept the offer to the department shall accept the offer by:

- (1) Securing a use permit for use of the berth or mooring area offered to the applicant as prescribed in sections 13-231-2 and 13-231-3 within fourteen days after the applicant mails or personally delivers the notice of intention to accept to the department;
- (2) Otherwise complying with section 200-9, HRS, and sections 13-231-2 and 13-231-3; and
- (3) Moving the applicant's vessel into the assigned berth or mooring area, as applicable, within fourteen days after the applicant mails or personally delivers the notice of intention to accept the offer to the department. Except as provided in subsection (c) the applicant's application for a use permit, the offer by the State of a use permit and the applicant's notice of intention to accept the offer shall be void if the applicant fails to secure a use permit and to move the applicant's vessel into the applicant's assigned berth or mooring area, as applicable, within fourteen days as prescribed herein, and the use permit shall then be offered to the next senior applicant in accordance with these rules.

(c) The department may extend the deadline for acceptance prescribed in subsection (b) if the applicant presents conclusive evidence to the department that the granting of additional time for compliance is reasonable and essential to prevent undue hardship, provided that any extension of time for compliance shall not exceed a period of one hundred twenty days from the date the department received from the applicant a written notice of

intention to accept the offer of a use permit. This exception is only applicable to an applicant who has been offered a regular mooring permit.

(d) Should an applicant receive additional time for compliance and fail to bring in a vessel to occupy the accepted berth or mooring, the applicant shall pay \$250.00 per month, from the time of original acceptance until the one hundred and twentieth day lapses. [Eff 2/24/94; am and comp]

(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-231-89 Offer of temporary mooring permit valid only seven days; notification of intention; acceptance. (a) An applicant for a temporary mooring permit to moor the applicant's vessel in a temporarily vacant berth or offshore mooring who has been offered the use of a berth or mooring area pursuant to this subchapter shall, within seven days after the offer was made by telephone, personal service, or mail, notify the department of the applicant's intention to accept, or decline the offer. If the applicant declines the offer the applicant's application for a temporary mooring permit shall be void and the berth or mooring area shall be offered to the next senior applicant in accordance with these rules.

(b) An applicant who has notified the department of the applicant's intention to accept the offer shall accept the offer by:

- (1) Securing a temporary mooring permit for use of the berth or mooring area offered within seven days after the date the offer was made;
- (2) Moving the applicant's vessel into the assigned berth or mooring area within seven days after the date the offer was made by telephone, personal service, or mail, whichever event is earlier; and
- (3) Otherwise complying with the requirements of section 200-9, Hawaii Revised Statutes.

The applicant's application for a use permit and the applicant's notice of intention to accept the offer shall be void if the applicant fails to secure a use permit and to move the applicant's vessel into the applicant's assigned berth or mooring area within seven days as prescribed herein and the use permit shall then be offered to the next senior applicant for the type of berth or mooring available in accordance with the rules. [Eff 2/24/94; am and comp]
 (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

~~[\$13-231-90 Offer of category I (breakwater) berth—Ala Wai harbor. An applicant for a regular mooring permit may be offered a mooring buoy on the breakwater. The breakwater moorings have no water, electricity, roadway, or walkway. Access to the moorings is across the water from the 700 mole by boat. There is no way that emergency vehicles can reach the area, and the only toilet and shower facilities are located on the 700 mole. Principal habitation, stay aboard, and vacation permits are not available. The offer of a mooring buoy on the breakwater will follow the requirements of section 13-231-88 with the exception that acceptance or rejection of the mooring buoy on the breakwater will not alter the applicant's seniority for a regular mooring permit for any other category that the applicant enjoys.]"~~
 [R]

EXHIBIT "A"

CONTENTS DESCRIPTION OF THE AGREEMENT OF BOATOWNER
PURSUANT TO SECTION 13-231-2 OF THE SMALL BOAT
HARBORS REGULATIONS, INCLUDING OFFSHORE MOORING

An agreement effectuating provisions of Section 13-231-2 of the small boat harbors rules, including offshore mooring, may contain the following terms, covenants and conditions:

1. The owner's certification of all information contained in the application and submitted by him, as being true.
2. The owner's covenant to abide by any and all provisions of the small boat harbors rules, including offshore mooring, and the incorporation by reference of such rules into the agreement.
3. The owner's authorization of the state to assign and reassign berths and spaces for his vessel in accordance with section 13-231-7 of the small boat harbors rules, including offshore mooring.
4. A provision stating that all persons signing the agreement shall be jointly and severally liable for the full performance of all terms, covenants and conditions thereof.
5. The owner's authorization of the state to board his vessel to effect reasonable inspection in the manner and pursuant to procedures set out in section 13-231-8 of the small boat harbors rules, including offshore mooring.
6. The owner's covenant to pay all applicable fees and charges, and his authorization of the state to assess collection and service charges for the delinquent payment thereof.
7. The owner's covenant to indemnify the state and its officers and employees for damages and injuries arising out of the owner's exercise of privileges granted by the use permit.
8. A provision that the term of the agreement and use permit shall terminate upon expiration of the period stated therein pursuant to section 13-231-5 of the small boat harbors rules, including offshore mooring, thereby requiring a renewal of the agreement and use permit in order that the owner may continue to use the small boat harbor and its facilities.

9. A provision that the use permit with its attendant privileges is revocable and cancellable in accordance with sections 13-231-9 and 13-231-10 of the small boat harbors rules, including offshore mooring; and the owner's covenant to pay, upon his failure to promptly remove his vessel from the small boat harbor upon revocation, cancellation or termination of the use permit, a reasonable sum to be established between the parties and to be made a part of the agreement, as liquidated damages.
10. The owner's authorization of the state to reasonably effect the removal of his vessel pursuant to sections 13-231-10 and/or 13-231-17 of the small boat harbors rules, including offshore mooring.
11. The owner's covenant to pay all costs and attorney's fees, including costs of collection of delinquent fees and charges in the event the state is forced to institute a suit against the owner of his violation of any and all provisions of the small boat harbors rules, including offshore mooring, and/or the agreement, and is successful in such suit.
12. A provision stating that neither the agreement, use permit or the privileges attendant thereto is assignable nor in any way transferable, in part or in its entirety.
13. An open provision to enable the state and the owner to negotiate additional terms, covenants and conditions as may be proper under the particular circumstances, including but not limited to provisions requiring sufficient comprehensive liability insurance coverage at a minimum of \$500,000 per occurrence as approved by the department and performance and/or compliance bonds in such amounts as may be warranted under the circumstances.
14. A provision that in the event the fees and charges which shall have accrued in favor of the department shall not be paid as provided in these small boat harbors rules, including offshore mooring, the department may, after reasonable notice, take possession of the vessel, its tackle, apparel, fixtures, equipment and furnishings, and may retain such possession until all charges then owing and any charges which shall thereafter accrue are fully paid and the remedy thus provided is in addition to and not in lieu of any other remedies which the department may have by virtue of statute or otherwise.

STATE OF HAWAII
DLNR - DIVISION OF BOATING
AND OCEAN RECREATION

VESSEL INSPECTION REPORT

DATE: _____

OWNER: _____

PERSON(S) PRESENT FOR INSPECTION: _____

VESSEL NAME: _____ REG/DOC # _____ EXP. DATE: _____

REGISTERED /DOCUMENTED USE: _____

DESCRIPTION OF VESSEL: _____

PROPULSION: _____ NET TONNAGE (commercial only): _____

RADIO - TYPE(S) & CALL SIGN: _____ EPIRB ABOARD? _____

Each item shall meet applicable U.S. COAST GUARD,
AMERICAN BOAT & YACHT COUNCIL STANDARDS AND
DEPARTMENT OF LAND AND NATURAL RESOURCES ADMINISTRATIVE RULES.

[=====]
=====]

| INSPECTION ITEM | PASSED | NOT PASSED | N/A | REMARKS |
|--------------------------------|--------|------------|-----|---------|
| CERTIFICATE/DOCUMENT ABOARD | | | | |
| REG/DOC NO. PROPERTY DISPLAYED | | | | |
| MFG'S SER. NO. DISPLAYED | | | | |
| SAFETY EQUIPMENT | | | | |
| PFD'S | | | | |
| VISUAL DISTRESS SIGNAL(S) | | | | |
| HORN, WHISTLE [&] AND/OR BELL | | | | |
| PLACARDS [7]: TRASH, OIL | | | | |
| FIRE EXTINGUISHER(S) | | | | |
| PROPER LIGHTS | | | | |
| BILGE PUMPING DEVICE | | | | |
| OIL IN [BILGE] BILGE | | | | |
| OIL ABSORBENT PADS OPERATIVE | | | | |
| OTHER FUELS PROPERLY VENTED | | | | |
| PROPULSION | | | | |
| ENGINE ABOARD | | | | |
| ENGINE OPERATIVE/APPROP. SIZE | | | | |
| BACKFIRE FLAME ARRESTER | | | | |
| ENGINE COMPARTMENT VENTILATED | | | | |
| FUEL COMPARTMENT VENTILATED | | | | |
| EXHAUST SYSTEM | | | | |
| SPARS OPERATIVE | | | | |

| | | | | |
|---------------------------------|--|--|--|--|
| RIGGING OPERATIVE | | | | |
| APPROPRIATE SAILS ABOARD | | | | |
| MARINE SANITATION DEVICE ABOARD | | | | |
| HOLDING TANK - TYPE | | | | |
| FLOW THROUGH | | | | |
| PROPERLY INSTALLED | | | | |

(Continued on reverse side)

(Continued from reverse side)

[=====]
=====]

| INSPECTION ITEM | PASSED | NOT PASSED | N/A | REMARKS |
|--------------------------------------|--------|------------|-----|---------|
| ADEQUATE STEERING/RUDDER OPER. | | | | |
| HULL/PROP/RUDDER CLEAN FOR USE | | | | |
| ADEQUATE EXITS | | | | |
| UNSECURED OPEN'GS/HULL/DECK/CAB | | | | |
| RECONSTRUCTION/SURVEY/INSURANCE | | | | |
| CHAFE GEAR | | | | |
| GROUND TACKLE | | | | |
| [WATER BACKFLOW DEVICE] | | | | |
| GENERAL APPEARANCE | | | | |
| REASONABLE CLEANLINESS | | | | |
| ANIMAL ABOARD | | | | |
| HOW MANY LIVING ABOARD? | | | | |

COMMENTS: _____

I inspected the vessel described on the front of this form on _____ [19] 20 ___ at _____ (AM) (PM) at _____ . I have observed the vessel described on the front of this form move by its own propulsion (POWER/SAIL), at an adequate speed indicating that the vessel was in good operating condition, from _____ to _____, the route designated by the harbor agent for this vessel. I have personally inspected every item on the checklist on the front and reverse side of this form for the vessel described therein and (CONSIDER / DO NOT CONSIDER) it to be in good material and operating condition in accordance with the requirements [~~contain~~] contained in the Hawaii Administrative Rules, Department of Land and Natural Resources, State of

Hawaii. I further certify that the vessel's length (end to end over deck: LOD) is _____ feet _____ inches; and [~~overall~~] length overall (including extension such as bowsprit: LOA) is _____ feet _____ inches.

Date signed: _____ Signature: _____

Name typed or printed: _____

Company Name: _____

Address: _____

City: _____ State: _____ Zip: _____

[H. Ph.: _____ B. Ph.: _____ Other Ph.: _____]

Contact Phone No: _____

PERMIT NO. _____ PERMIT EXPIRATION DATE: _____

2. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes to reflect these amendments are not underscored.

4. The amendments and compilation of chapter 13-231, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

WILLIAM J. AILA, JR.
Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendment and Compilation of Chapter 13-231
Hawaii Administrative Rules
April 25, 2014

SUMMARY

1. Title amended.
2. §§13-231-2 to 13-231-32 are amended.
3. §§13-231-41 to 13-231-46 are amended.
4. §§13-231-55 to 13-231-68 are amended.
5. §13-231-70 is amended.
6. §13-231-72 is repealed.
7. §13-231-76 is repealed.
8. §§13-231-85.5 to 13-231-89 are amended.
9. §13-231-90 is repealed.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART 1

SMALL BOAT FACILITIES AND PROVISIONS GENERALLY
APPLICABLE TO ALL STATE NAVIGABLE WATERS

CHAPTER 231

OPERATION OF BOATS, SMALL BOAT HARBORS, AND USE
PERMITS FOR ALL NAVIGABLE WATERS

Subchapter 1 Use of Small Boat Harbors,
Offshore Mooring, and Generally
Applicable Provisions

- \$13-231-1 General statement and restrictions on mooring dormant vessels
- \$13-231-2 Agreement for the use of small boat harbor property, facilities, and offshore mooring areas
- \$13-231-3 Use permits; issuance
- \$13-231-4 Use permits; part-time or intermittent occupancy
- \$13-231-5 Period of validity and renewal of various types of use permits
- \$13-231-6 Revocation of use permit
- \$13-231-7 Assignment and reassignment of moorings and vessel storage space
- \$13-231-8 Inspections
- \$13-231-9 Cancellation of use permit
- \$13-231-10 Removal and custody of a vessel or contrivance

- \$13-231-11 Absence of vessel for more than fourteen days; effect on permits
- \$13-231-12 Discontinuance of services
- \$13-231-13 Joint and several liability; non-transferability of use permits
- \$13-231-14 Sale of abandoned vessels or to collect delinquent fees
- \$13-231-15 Boat owner required to report change of ownership, address, and other changes
- \$13-231-16 Numbers or other vessel identification
- \$13-231-17 Mooring prohibited except at assigned locations
- \$13-231-18 Vessel reconstruction
- \$13-231-19 Salvage
- \$13-231-20 Houseboats prohibited
- \$13-231-21 Restrictions on mooring vessels utilized for living aboard at small boat harbors other than Ala Wai and Keehi small boat harbors
- \$13-231-22 Staying aboard transient or visiting vessels
- \$13-231-23 Interim use of berth during temporary absence of regular permittee's vessel
- \$13-231-24 Interim use of berth pending occupancy by regular permittee
- \$13-231-25 Exchange of berths
- \$13-231-26 Use of a vessel as a place of principal habitation
- \$13-231-27 Allocation of principal habitation permits
- \$13-231-28 Staying aboard vessels moored at Ala Wai or Keehi small boat harbor
- \$13-231-29 Vessel used as a vacation site
- \$13-231-30 Restrictions on multiple permits
- \$13-231-31 Administrative hearing
- \$13-231-32 Rules of evidence; official notice
- §§13-231-33 to 13-231-39 (Reserved)

Subchapter 2 Boat Operation

- \$13-231-40 General statement

- \$13-231-41 Navigation or mooring vessels in small boat harbor
- \$13-231-42 Interference with navigation
- \$13-231-43 Pilotage
- \$13-231-44 Vessel loading zone
- \$13-231-45 Vessel inspections
- \$13-231-46 Vessel limitations
- \$\$13-231-47 to 13-231-49 (Reserved)

Subchapter 3 Commercial Activities

- \$13-231-50 General statement
- \$13-231-51 Business activities
- \$13-231-52 Solicitations and advertisements
- \$13-231-53 Signs
- \$13-231-54 Commercial vessel; definition
- \$13-231-55 Berthing commercial vessels at Ala Wai and Keehi small boat harbors.
- \$13-231-56 Definitions, gross receipts
- \$13-231-57 Berthing or using commercial vessels in state small boat harbors
- \$13-231-58 Limitations on the number of commercial use permits and catamaran registration certificates for vessels assigned permanent moorings
- \$13-231-59 Limitations on commercial use permits for vessels moored elsewhere
- \$13-231-60 Allocation of commercial use permits for vessels and catamaran registration certificates
- \$13-231-61 Reissuance of commercial use permits and catamaran registration certificates
- \$13-231-62 Transferability of commercial use permits and catamaran registration certificates
- \$13-231-63 Retention of berth upon termination of commercial use permit or catamaran registration certificate
- \$13-231-64 Fees and charges
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- \$13-231-66 Limitation on number of berths held by a commercial permittee

- §13-231-67 Limitations on commercial use permits issued for the use of state boat launching ramps
- §13-231-68 Signs and other structures at a state small boat harbor
- §13-231-69 Multiple use of mooring facilities by commercial vessels
- §13-231-70 Water taxi operations
- §13-231-71 (Reserved)
- §13-231-72 Repealed
- §§13-231-73 to 13-231-75 (Reserved)

Subchapter 4 Special Area Rules

- §13-231-76 Repealed
- §13-231-77 Ala Wai canal
- §§13-231-78 to 13-231-79 (Reserved)

Subchapter 5 Allocation of Berths and Offshore Mooring

- §13-231-80 General
- §13-231-81 Application for a berth; seniority of application; period of validity; renewal of application
- §13-231-82 Review, acceptance, or rejection of applications
- §13-231-83 Applicant required to furnish address and report changes; effect of failure to report changes
- §13-231-84 Withdrawal of application; effect if application has become void, expires, or has been withdrawn
- §13-231-85 Priority and procedures in allocation of berths
- §13-231-85.5 Allocation of offshore mooring permits
- §13-231-86 Categories of berths; priority of allocation
- §13-231-87 Notice to owner of available berth or offshore mooring

- §13-231-88 Offer of regular mooring permit valid only fourteen days; written notice of intention; acceptance
- §13-231-89 Offer of temporary mooring permit valid only seven days; notification of intention; acceptance
- §13-231-90 Repealed

Historical note. The administrative jurisdiction for recreational boating and related vessel activities was transferred from the Department of Transportation, Harbors Division, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94; am and comp **SEP 25 2014**]

SUBCHAPTER 1

USE OF SMALL BOAT HARBORS, OFFSHORE MOORING, AND GENERALLY APPLICABLE PROVISIONS

§13-231-1 General statement and restrictions on mooring dormant vessels. (a) Berths in state small boat harbors and offshore mooring areas shall be used to accommodate recreational and commercial boats used for water transportation or fishing.

(b) Occupancy of berths at any small boat harbor or offshore mooring area shall be limited to vessels actively used as a means of transportation on water.

(c) The use permit for any vessel determined to be dormant by the department shall be terminated upon a show cause order. The show cause order may be issued by the department and shall contain the basis for the department's determination that the vessel is dormant. The show cause order shall be delivered to the owner as set forth in section 13-231-6. The owner shall have five working days after notification as provided in section 13-231-6 to inform the department of the owner's plan to resolve and correct the

deficiencies noted in the show cause order. Failure to respond or failure to execute an approved plan in a timely manner shall result in the termination of the use permit. The department reserves the right to impound, remove and dispose of a vessel in accordance with chapter 200, Hawaii Revised Statutes, and these rules.

(d) The department reserves the right to restrict the use of state facilities to those who are in compliance with all state and federal laws and rules and make full and timely payment of their fees and charges. Failure to comply with this section shall be cause for termination of any use permit and for refusal or withholding the granting of any future use permit requests. [Eff 2/24/94; comp **SEP 25 2014**]
(Auth: HRS §§200-2, 200-3, 200-4, 200-6) (Imp: HRS §§200-2, 200-3, 200-4, 200-6)

§13-231-2 Agreement for the use of small boat harbor property, facilities and offshore mooring areas. (a) Before any property or facility at a small boat harbor or offshore mooring area is utilized by any vessel, its owner shall comply with the following:

- (1) Execute an agreement as set forth in Exhibit "A", CONTENTS DESCRIPTION OF THE AGREEMENT OF BOATOWNER PURSUANT TO SECTION 13-231-2 OF THE SMALL BOAT HARBORS REGULATIONS, INCLUDING OFFSHORE MOORING dated July 2012, located at the end of this chapter; and incorporated herein;
- (2) Obtain the approval of the department as evidenced by the chairperson's or the chairperson's representative's signature on the agreement; and
- (3) Be in compliance with all state and federal laws and rules of the department.

(b) Nothing contained herein shall restrict the department's power to waive the requirements of this section as the circumstances may warrant.

(c) For the purpose of this section, a lessee under a lease not intended as security is not an "owner".

(d) Offshore mooring rules and areas are described in chapter 13-235. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4, 200-6) (Imp: HRS §§200-2, 200-3, 200-4, 200-6)

§13-231-3 Use permits; issuance. (a) "Use permit" as used in these rules means the authorization by the department to utilize state boating facilities, offshore mooring areas, offshore mooring, state ocean waters, and navigable streams, as evidenced by the fully executed "agreement" described in section 13-231-2. The department may issue the following types of use permits:

- (1) Mooring permit. A use permit which authorizes the docking, mooring, or anchoring of a vessel at a small boat harbor or offshore mooring area.
 - (A) Regular mooring permit. A use permit which authorizes the permittee to moor a vessel in a state small boat harbor or at an offshore mooring area for a period not to exceed one year from the date of issuance.
 - (B) Temporary mooring permit. A non-renewable use permit which authorizes the permittee to moor a vessel in a state small boat harbor or at an offshore mooring area for a period of thirty days or less from the date of issuance.
- (2) Waikiki catamaran registration certificate. A Waikiki catamaran registration certificate is a document, issued by the department, that may authorize its holder to utilize state boating facilities, offshore and onshore mooring, in Waikiki ocean waters and beach.

- (3) Stay aboard permit. A use permit which authorizes use of a state small boat harbor or offshore mooring by the permittee for the purpose of staying aboard a vessel while moored in a state small boat harbor or at an offshore mooring or at anchor.
- (4) Vacation permit. A use permit which authorizes use of the small boat harbor or an offshore mooring area by the permittee for the purpose of using a vessel as a vacation site while moored in a state small boat harbor or at an offshore mooring or at anchor.
- (5) Principal habitation permit. A use permit which authorizes use of the small boat harbor by the permittee for the purpose of using the vessel as a principal place of habitation while moored in Ala Wai or Keehi small boat harbor or in the Keehi Lagoon mooring area.
- (6) Commercial use permit. A use permit which authorizes the owner of a commercial vessel to engage in commercial activities as specified in the permit.
- (7) Storage permit. A use permit which authorizes use of a small boat harbor storage area for vessels or other items on land at a small boat harbor.
- (8) Miscellaneous permit. A use permit which authorizes use of a small boat harbor or an offshore mooring area for other purposes as may be authorized by the department in its use permit and is consistent with these rules and applicable laws.

(b) Use permits, or where applicable, Waikiki catamaran registration certificates, shall be issued only after the department has determined that all applicable laws have been complied with and that all fees and charges have been paid.

(c) The issuance of any use permit by the department shall not create a property interest in favor of the permittee to an unrestricted use of state

small boat harbors, facilities or state ocean waters. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4, 200-6) (Imp: HRS §§200-2, 200-3, 200-4, 200-6)

§13-231-4 Use permits; part-time or intermittent occupancy. (a) No use permit for docking, mooring, or anchoring a vessel at a small boat harbor or at an offshore mooring area shall be issued to any person who has been issued a use permit to moor the same vessel at any other small boat harbor, offshore mooring, private marina or yacht club in the State. A temporary mooring permit may be issued to authorize temporary mooring in any small boat harbor or offshore mooring area.

(b) Temporary mooring of a vessel within the same small boat harbor or offshore mooring area shall not exceed a cumulative period of more than one hundred and twenty days in the same calendar year per vessel, except as provided in section 13-256-73.11 for commercial vessels authorized for use at Heeia Kea small boat harbor. Temporary mooring permits shall be issued in accordance with section 13-231-85.

(c) Notwithstanding the provisions of subsection (a), the department may issue additional offshore mooring permits to owners of vessels holding a valid commercial use permit issued pursuant to section 13-231-59. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4, 200-6) (Imp: HRS §§200-2, 200-3, 200-4, 200-6)

§13-231-5 Period of validity and renewal of various types of use permits. (a) The department may issue or reissue a use permit of all types, including but not limited to commercial use permits, catamaran registration certificates, and mooring permits, for any period up to, but not exceeding one year. Upon expiration of the period stated therein, the use permit and all rights of the permittee thereunder shall automatically terminate. No type of use permit

shall be renewed unless all the conditions or covenants of the original issuance, including the requirement of prompt monthly payment of charges in advance, have been met and the rules governing small boat harbors and navigable waters managed of the department of land and natural resources have been fully complied with.

(b) If a permittee fails to renew a use permit on or before the date on which it expires, that person may be granted a thirty (30) calendar day period to reinstate the regular mooring permit as long as all the conditions or covenants of the original issuance, including the requirement of prompt monthly payment of charges in advance, have been met and the rules governing small boat harbors of the department of land and natural resources have been fully complied with. The person shall pay a one-time penalty fee of \$250.00 as well as all other applicable fees. Impoundment of the vessel shall be stayed only until the grace period has expired. [Eff 2/24/94; am 8/8/11; am and comp

SEP 25 2014] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-6 Revocation of use permit. (a) If after notice and lapse of a reasonable period of time set by the department, the permittee fails to remedy any breach of the duties, covenants or conditions of the use permit or to desist from violating or permitting violation of these rules, the department may revoke the permittee's use permit.

(b) In addition to subsection (a), the department may revoke a use permit for a deliberate misstatement or wilful failure to disclose any material fact in an application for a vessel number, documentation, registration of a vessel, or any of the use permits specified in section 13-231-3.

(c) A permittee's failure to pay all fees owed to the department within thirty days of the date payment is due shall result in suspension of the right to conduct business under the commercial use permit or catamaran registration certificate until all past due

fees are paid in full. Each and every notification of default shall be sent by certified mail, return receipt requested to the last address of record of the permittee on record with the division of boating and ocean recreation. Any delinquency beyond the due date, even within the thirty days, may cause the commercial use permit or catamaran registration certificate to be revoked. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

§13-231-7 Assignment and reassignment of moorings and vessel storage space. Holders of mooring permits may be temporarily assigned or reassigned to berths and spaces within the same small boat harbor, if possible, to accommodate small boat harbor repairs, improvements, maintenance, construction, emergencies, or when necessary during a special event. Reassignments may also be made within the same harbor if a vessel's size in relationship to the size of the assigned berth does not permit maximum and efficient public utilization of small boat harbor facilities or if a reassignment will in any other manner permit maximum and efficient public utilization of small boat harbor facilities. [Eff 2/24/94; comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-8 Inspections. All vessels located in or upon the waters of a small boat harbor or offshore mooring area shall be subject to inspection by the department or any peace officer of the State or its political subdivisions at any time when necessary and proper for the purpose of enforcing these rules. [Eff 2/24/94; am and comp **SEP 25 2014**] [Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-9 Cancellation of use permit. A use permit may be cancelled by a boat owner upon thirty days written notice to the department. [Eff 2/24/94; comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-10 Removal and custody of a vessel or contrivance. (a) The department may impound and remove or dispose of any vessel or contrivance moored or left at a small boat harbor or offshore mooring area seventy-two hours after notice is given as provided in section 13-230-6 for the owner to remove the vessel or contrivance from the small boat harbor or an offshore mooring area when its presence is contrary to law or these rules or when the department determines that the removal is necessary to protect human life and property. This includes any property or personal articles located on board; its tackle, apparel, fixtures, equipment, and furnishings. Any action taken by the department to remove the vessel or contrivance, including any property or personal articles located thereon, shall be at the sole cost and risk of the owner of the vessel or contrivance.

(b) The department shall, within seventy-two hours of impoundment, send by certified mail, return receipt requested, a notice of impoundment to the registered owner or operator of any unauthorized vessel. The owner or operator of an unauthorized vessel shall have ten days after receipt of notice of impoundment of the vessel to request in writing an administrative hearing to the administrator, division of boating and ocean recreation. The written request for an administrative hearing shall be mailed or delivered in person to the administrator during normal business hours. Any requests delivered outside of the normal business hours shall be deemed received on the next working day for the purpose of compliance with the time schedule for completing the administrative hearing as provided in chapter 200, Hawaii Revised Statutes. This administrative hearing is solely for the purpose of allowing the owner or operator of an

unauthorized vessel to contest the basis given by the department for the administrative impoundment of the vessel. The administrative hearing shall be held within the time period established by statute and after the administrator's receipt of the written request. The procedures for the administrative hearing are contained in sections 13-231-31 and 13-231-32.

(c) Custody of an unauthorized vessel shall be returned to the person entitled to possession upon payment of all fees and costs due, and fines levied by a court. Any unauthorized vessel, contrivance or material impounded under this section, which remains unclaimed by the person entitled to possession, the registered owner, or a lien holder, for more than thirty days, can be sold by the department at public auction in accordance with chapter 200, Hawaii Revised Statutes. [Eff 2/24/94; am and comp **SEP 25 2014**]
 (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-16)
 (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-16)

§13-231-11 Absence of vessel for more than fourteen days; effect on permits. (a) A regular mooring permit and related use permits issued to a vessel shall automatically expire if the vessel is absent from its assigned berth or mooring for more than fourteen days, unless the holder of the permit or permits submits an application prior to departure on a form furnished by the department enumerating the permits the holder wishes to reserve during the holder's absence. If this is done, the application may be approved, by the department, subject to subsection (b) and the regular permittee reserves for the estimated period of absence noted in the permittee's application which shall not exceed one year, the privilege of returning the vessel to its assigned berth or mooring and also retains, for the estimated period of absence noted in the holder's application which shall not exceed one year, any other related use permit designated in the holder's application; provided that the regular permittee

continues, during the absence from the assigned berth or mooring, to pay the fees and charges payable to the department in the amounts prescribed in section 13-234-6. The application shall contain information as to the duration of the absence of the regular permittee's vessel from the berth or mooring. If the assigned vessel does not return within thirty days after the time of return indicated in the approved application for the retention of the regular mooring permit and related use permits, or within one year, whichever is less, all use permits shall automatically expire unless the regular permittee applies to the department prior to the expiration date indicated on the approved application for an extension and the extension is approved by the department. No application to extend the period of retention of a permit to use the assigned berth or mooring and any other related use permits upon return shall be approved by the department if the absence of the permittee's vessel from the assigned berth or mooring would exceed one year unless the regular permittee presents conclusive evidence to the department that due to requirements of the United States Coast Guard, a boating accident, casualty, hull or equipment failure, weather, sea or related environmental conditions involving the permittee's vessel or similar unforeseen occurrences, the granting of additional time is reasonable and essential to prevent undue hardship. No extension in any case shall authorize the permittee to retain a permit to use the assigned berth or mooring or any other related use permits upon return if the period of absence of the permittee's vessel from its assigned berth or mooring would exceed fifteen months.

(b) Nothing contained in this section shall be construed as a waiver of the right of the department to:

- (1) Deny the application to retain the berth or mooring;
- (2) Deny the reissuance of or to revoke any use permit for failure to comply with any section of these rules; or

(3) Reassign a vessel to another berth or mooring in order to provide for more efficient use of facilities in the reasonable discretion of the department or when a berth or mooring is unusable, eliminated, or in need of repairs.

(c) A temporary mooring permit and related use permits issued for a vessel shall automatically expire if the vessel is absent from its assigned berth or mooring for more than fourteen days.

(d) The department recognizes that a vessel operator may depart on a voyage with the intent of returning to the small boat harbor or assigned mooring within fourteen days or less but may be unable to return as planned due to wind, sea, or related environmental conditions, delays in completing repairs or refurbishing, or other unforeseen occurrences. Therefore, under these circumstances, the holder of the regular mooring permit may initially apply to the department by letter, telephone, or any other means of communication and be permitted to retain the mooring permit and any other related use permits upon return of the vessel to the assigned berth or mooring, provided that the initial application is received not later than the fourteenth day following departure from the assigned berth or mooring and confirmed in writing by the permittee within ten days of the date of initial application. [Eff 2/24/94; am and comp

SEP 25 2014] (Auth: HRS §§200-2, 200-3, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-9, 200-10)

§13-231-12 Discontinuance of services. When necessary and proper to do so, the department may, after reasonable notice, discontinue any service or withdraw the use of any utility, property, or facility at a small boat harbor as may be reasonable under the circumstances. [Eff 2/24/94; comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-13 Joint and several liability; non-transferability of use permits. (a) All individuals and entities who have signed any agreement with respect to a vessel shall be jointly and severally liable for the full performance of such agreement. No use permit shall be transferable, so that whenever a permittee parts with possession or transfers the title to or interest in the vessel identified in the permit to another person by any arrangement, the use permit shall expire except as provided herein. The new possessor, transferee, or owner shall have no right to use the permit.

(b) Upon written application to and approval by the department:

- (1) The original mooring permittee may retain the mooring space under the permittee's mooring permit; provided that within thirty days the permittee moves into the space another vessel owned by the permittee of appropriate characteristics for occupancy of the berth or mooring space and pays the appropriate fees therefor;
- (2) A principal owner of a vessel may retain a berth or mooring space if that owner acquires the interest of one or more co-owners because a co-owner has died or moved out of the State;
- (3) An owner may retain the berth or mooring space if an interest in a vessel is transferred to the owner's spouse or immediate family member or a personal partner authorized to live on board under a principal habitation permit;
- (4) The spouse or immediate family member, or a personal partner authorized to live on board under a principal habitation permit, of a permittee, may retain all use permits upon the death of the permittee, provided that the permittee's will, trust, or a court decree (the department may require a court decree if the department finds it necessary)

- states that the spouse or immediate family member, or a personal partner authorized to live on board under a principal habitation permit shall be awarded ownership of the vessel identified in the use permit; or
- (5) The department may extend the deadline for the permittee holder to place a new vessel in the assigned berth or mooring space or in operation if conclusive evidence is presented to the department that the granting of additional time for compliance is reasonable and essential to prevent undue hardship, provided that any extension of time necessary to place a new vessel in the berth or mooring space or in operation shall not exceed one hundred twenty days from the date of sale or transfer of the previously assigned vessel.

(c) Notwithstanding the requirements of subsection (a), the department may permit a one-time change in ownership of the permittee's vessel from personal ownership to corporate or other business ownership, provided that the individual holds a valid commercial use permit, a valid catamaran registration certificate, or is engaged in commercial fishing as a primary means of livelihood, and notifies the department in writing of an intended change in ownership. The transfer of all use permits or registration certificates from the individual to the new corporation or other business entity shall be completed within one year of the date of receipt of the notification of intended change of ownership. The following requirements and conditions shall apply to the foregoing change in ownership:

- (1) The ownership of any corporation or other business entity formed under the provisions of this subsection shall include the original individual owner;
- (2) The permittee or certificate holder shall apply for the reissuance of the commercial permit, mooring permit, catamaran registration certificate, and any other use

permits in the name of the corporation or other business entity in accordance with the application procedures established by this chapter. Each application shall be accompanied by a copy of the charter of incorporation or other evidence acceptable to the department that the new corporation or other business entity is properly registered with the department of commerce and consumer affairs and is licensed to do business in the State; and

- (3) Each application for change of ownership shall be reviewed by the department in accordance with the provisions of section 13-231-82.

(d) No corporation or other business entity shall be eligible for the initial issuance of a mooring permit at a state small boat harbor unless the entity is eligible for a then available commercial use permit or catamaran registration certificate.

(e) "Immediate family member" means, for purposes of this section, a natural individual who by blood line or adoption is a child, grandchild, parent, or grandparent of the deceased. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-14 Sale of abandoned vessels or to collect delinquent fees. In the event any vessel is abandoned at a small boat harbor or any owner is delinquent in the payment of any fee or charge, after reasonable notice, the department may institute proceedings in accordance with chapter 200, Hawaii Revised Statutes, to secure the sale of the vessel. [Eff 2/24/94; comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-10, 200-16, part III of chapter 200)

§13-231-15 Boat owner required to report change of ownership, address, and other changes. (a) The

owner of any vessel moored, stored, or left in a small boat harbor or offshore mooring area shall notify the department in writing within seven days if:

- (1) The owner no longer has possession of the vessel;
- (2) All or any interest in the vessel is transferred to another person or persons;
- (3) The owner's address or telephone number changes;
- (4) The vessel is chartered, leased, or rented; or
- (5) There is any change of agents or their telephone numbers or addresses.

(b) The new possessor or owner of any interest in any vessel moored in a small boat harbor or offshore mooring area shall within seven days after acquiring the same, inform the department in writing concerning the acquisition. If the vessel is owned by a corporation, the duties and obligations of the "owner" as prescribed in this section devolve upon the person who owns or controls a majority of the stock of the corporation. If there is no such ownership or control, the corporation must perform the duties and obligations. "Transfer" as used in this section includes transfers of stock in a corporate owner if the transfer affects a change in the majority stockholder. "Interest" as used in this section includes ownership of stock in a corporation that owns a vessel moored in a small boat harbor or offshore mooring area.

(c) Evidence of any wilful misstatement or omission of fact regarding the ownership of a vessel moored in a state small boat harbor or offshore mooring area, or regarding transfer of ownership of a corporation or other business entity to which a mooring permit, commercial use permit, catamaran registration certificate, or other permit has been issued, including failure to notify the department of a change of ownership, shall be cause for immediate termination of all permits and catamaran registration certificates held by the parties involved, and may be a bar against the issuance of any permit or catamaran

registration certificates in the future. [Eff 2/24/94; am and comp **SEP 25 2014**] [Auth: HRS §§200-2, 200-3, 200-4, 200-10] [Imp: HRS §§200-2, 200-3, 200-4, 200-10]

§13-231-16 Numbers or other vessel identification. Owners of vessels required by law to be documented or numbered shall document or number their boats prior to obtaining a mooring permit. Owners of vessels not required by law or regulation to be documented or numbered shall, prior to obtaining a mooring permit, affix the boat's name, the owner's name, or the name of the vessel to which it is attached, in letters not smaller than three inches in height and in a color which contrasts with the background so as to be clearly visible for identification. Transient vessels are exempt from the provisions of this section. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-17 Mooring prohibited except at assigned locations. (a) A vessel, contrivance or material shall not be moored, anchored, or stored:

- (1) At a small boat harbor, offshore mooring or space other than that to which it was properly assigned;
- (2) Contrary to directions of proper authorities.

(b) Any vessel, contrivance or material moored, anchored, or stored, including any property located thereon or therein or attached thereto, in violation of this section, may be removed by the department to an impounding area or other location at the owner's risk and expense and the State shall not be liable for any damage which may result if notice to remove is given by placing it upon the vessel, contrivance or material, or as near as possible, indicating the violation of this section, the date and time the notice was posted and that the vessel, contrivance or

material must be removed within seventy-two hours from the time the notice was posted. When a vessel is so removed, appropriate fees and charges shall be assessed therefore and possession of the space the vessel unlawfully occupied shall vest in the department. The removal to the impounding area shall not be deemed to confer any rights of occupancy in the impounding area occupied by such vessel.

(c) In addition, the department, within seventy-two hours of impoundment, shall send by certified mail, return receipt requested, a notice of impoundment to the registered owner or operator of any impounded vessel, contrivance or material. The owner or operator of an impounded vessel, contrivance or material shall have ten calendar days after receipt of notice of impoundment of the vessel, contrivance or material to request in writing an administrative hearing. The written request for an administrative hearing must be mailed or delivered in person to the administrator during normal business hours. After hours requests will be deemed received on the next working day for the purpose of compliance with the time schedule for completing the administrative hearing as provided in chapter 200, Hawaii Revised Statutes. This administrative hearing is solely for the purpose of allowing the owner or operator of an impounded vessel, contrivance or material to contest the basis given by the department for the impoundment of the vessel, contrivance or material. The administrative hearing shall be held within the time period established by statute and after the administrator's receipt of the written request. The procedures for the administrative hearing are contained in sections 13-231-31 and 13-231-32.

(d) Any unauthorized vessel, contrivance or material impounded under this section, which remains unclaimed by the person entitled to possession, the registered owner or a lien holder, for more than thirty days, can be sold by the department at public auction in accordance with chapter 200, Hawaii Revised Statutes. [Eff 2/24/94; am and comp **SEP 25 2014**]

(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-16)
(Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-16)

§13-231-18 Vessel reconstruction. Vessel reconstruction or major modification shall be accomplished only in an area designated by the small boat harbor supervisor. [Eff 2/24/94; comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-19 Salvage. If a vessel is moored so as to be in danger of wreckage, damaging other property, or sinking, the department shall, upon notice and after reasonable time has elapsed, not to exceed ten days, to allow the owner or the owner's agent to take appropriate action, take such action as the circumstances require to save or rescue the vessel, or prevent damage to other property or the obstruction of waterways; provided that an emergency, where life or property is endangered or the vessel may interfere with other vessels or with free and proper navigation of waterway unless immediate action is taken, remedial action may be taken by the department without prior notice. Appropriate fees and charges shall be assessed against the owner for such services. [Eff 2/24/94; comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-20 Houseboats prohibited. A use permit shall not be issued for any houseboat in any small boat harbor or designated mooring area, except in Keehi Lagoon and in accordance with section 13-235-31. The department may consider the following in determining whether a vessel is a houseboat:

- (1) Whether the vessel is actually used as a dwelling or abode;
- (2) If used as a dwelling or abode, to what extent and in what manner;

- (3) The extent to which it is actually used for any recreational boating or for fishing;
- (4) Whether it is so constructed, reconstructed, or designed as to be capable of being used for recreational boating or fishing in the waters surrounding the small boat harbor or designated mooring area in which it is moored;
- (5) The frequency with which it leaves the confines of the small boat harbor or designated mooring area in which it is moored; and
- (6) Whether it is equipped with any operating means of propulsion. [Eff 2/24/94; comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-6, 200-10) (Imp: HRS §§200-2, 200-4, 200-6, 200-10)

§13-231-21 Restrictions on mooring vessels utilized for living aboard at small boat harbors other than Ala Wai and Keehi small boat harbors. (a) This section is applicable in all small boat harbors, except Ala Wai and Keehi small boat harbors. Further, it is not applicable to a:

- (1) Vessel other than a yacht engaged in carrying passengers for hire on international voyages;
- (2) Vessel owned by the United States Government; or
- (3) Tug boat or towboat.

(b) No person shall moor any vessel or any contrivance in a state small boat harbor if any person is living aboard, provided that the department may permit the operator and other persons accompanying the operator, of a visiting or transient vessel to moor the vessel and live aboard for a period not to exceed thirty days at any one small boat harbor during the calendar year, if the following conditions are met:

- (1) The operator applies for and is granted a living aboard permit authorizing the persons

named in the permit to live aboard the operator's vessel;

- (2) The mooring of the vessel in a small boat harbor with persons living aboard does not interfere with the maximum, safe, and efficient utilization of the small boat harbor facilities; and
- (3) The vessel conforms with the department's standards of safety, sanitation, and maintenance as prescribed in these rules and the state boating rules.

(c) Small boat harbors are constructed, operated and maintained for the primary purposes of providing public recreational boating facilities and promoting the fishing industry. To implement these purposes an application for a living aboard permit shall be reviewed and additional information may be required by the department to ascertain the effect or probable effect the issuance of the permit would have on the maximum efficient utilization of small boat harbor facilities for recreational boating activities and the promotion of the fishing industry. No permit to live aboard a vessel shall be issued by the department unless the application and supporting information clearly shows that the issuance thereof is not contrary to the public interest, or otherwise unlawful. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-22 Staying aboard transient or visiting vessels. A stay aboard permit authorizing persons to stay aboard a transient or visiting vessel moored in a small boat harbor or offshore mooring area may be issued to the owner, master, crew, and passengers for a period or periods not to exceed one hundred twenty nights in a calendar year. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-23 Interim use of berth during temporary absence of regular permittee's vessel. (a) The department may allocate a berth assigned to a regular permittee to another person, pursuant to section 13-231-5 for interim use while the regular permittee's vessel assigned thereto is temporarily absent from the berth or for a period not to exceed thirty days, whichever period is shorter. A temporary mooring permit for interim use, issued pursuant to this section, shall be nonrenewable.

(b) Interim use of the berth by a temporary permittee, pursuant to this section, while the regular permittee's vessel assigned thereto is absent, does not grant the temporary permittee any right to retain the use of the berth or any other space in the small boat harbor. Upon expiration of the temporary mooring permit or upon lapse of forty-eight hours of notice in writing to vacate the berth prior to the return of the regular permittee's vessel, whichever occurs first, the temporary permittee shall immediately remove the temporary permittee's vessel from the berth and the harbor if not already removed from the berth and the harbor.

(c) Failure of a temporary permittee, allocated a berth for interim use pursuant to this section, to vacate the berth and the small boat harbor upon expiration of the temporary mooring permit or upon lapse of forty-eight hours of written notice to vacate, in order to accommodate the return of the regular permittee's vessel, shall subject the temporary permittee to liability for any damages incurred by the returning regular permittee resulting from the temporary permittee's failure to vacate, and to a fine pursuant to section 200-14 or section 200-14.5, Hawaii Revised Statutes, and entitles the department to remove the temporary permittee's vessel to an impounding area. The temporary permittee shall indemnify and hold harmless the State from any liability for damages arising out of a failure to vacate the berth and the small boat harbor and from the removal of the vessel to an impounding area by the department in accordance with this rule. [Eff 2/24/94;

am and comp [SFP 25 2014] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-24 Interim use of berth pending occupancy by regular permittee. (a) The department shall allocate an unassigned berth to the senior applicant for a regular mooring permit as expeditiously as possible pursuant to section 13-231-5. It is recognized that, despite efforts to expedite the process, variable periods of time will elapse before the berth is assigned and the newly-assigned regular permittee actually moves a vessel into the berth. Therefore the department may allocate the berth to another person, pursuant to section 13-231-5 for interim use, until the allocation and assignment procedures have been completed and the newly-assigned regular permittee is prepared to move a vessel into the berth, or for a nonrenewable period not to exceed thirty days, whichever period is shorter.

(b) Interim use of a berth by a temporary permittee pursuant to this section does not grant the temporary permittee any right to retain the use of the berth or any other space in the small boat harbor. Upon expiration of the temporary permittee's temporary mooring permit or upon lapse of forty-eight hours of notice in writing to vacate the berth prior to movement of the newly-assigned regular permittee's vessel into the berth, whichever occurs first, the temporary permittee shall immediately remove the temporary permittee's vessel from the berth and the small boat harbor if not already removed from the berth and harbor.

(c) Failure of a temporary permittee, allocated a berth for interim use pursuant to this section, to vacate the berth and the small boat harbor upon expiration of the temporary mooring permit or receipt of a forty-eight hours notice to vacate, in order to accommodate the regular permittee's vessel, shall subject the temporary permittee to liability for any damages incurred by the regular permittee resulting

from the temporary permittee's failure to vacate, and to a fine and other penalties pursuant to Sections 200-14 and 200-14.5, Hawaii Revised Statutes, and entitles the department to remove the temporary permittee's vessel to an impounding area. The temporary permittee shall indemnify and hold harmless the State from any liability for damages arising out of a failure to vacate the berth and the small boat harbor and from the removal of the vessel to an impounding area by the department in accordance with this rule. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, §§200-9, 200-10)

§13-231-25 Exchange of berths. A permittee holding a regular mooring permit to moor in a small boat harbor may, upon approval by the department, exchange the permittee's berth with another permittee holding a regular mooring permit to moor in the same small boat harbor if:

- (1) The vessels are suitable for the berths as determined by the factors enumerated in section 13-231-5;
- (2) There is mutual agreement between the permittees; and
- (3) The berths to be exchanged are of the same characteristics, (e.g. category, length, size, configuration). [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-26 Use of a vessel as a place of principal habitation. (a) A vessel owner who holds a valid regular mooring permit issued by the department authorizing the owner to moor the owner's vessel in Ala Wai or Keehi small boat harbors may use that vessel as a place of principal habitation if the owner has applied for and secured a principal habitation permit issued by the department in accordance with

these rules, provided that the owner and the vessel meet the requirements set forth in these rules.

(b) A permit authorizing the use of a vessel as a place of principal habitation shall not be issued if the vessel is owned by a corporation.

(c) No person shall be issued a permit authorizing the use of any vessel as a place of principal habitation while the vessel is moored at the following locations in Ala Wai small boat harbor:

- (1) Berths 23 through 79;
- (2) The area leased to the Waikiki Yacht Club;
- (3) The area leased as a marine fueling facility; and
- (4) A haul-out facility.

(d) A vessel owner may utilize the owner's vessel as a place of principal habitation while moored in the area leased to the Hawaii Yacht Club if the owner has applied for and holds a valid principal habitation permit issued by the department in accordance with these rules.

(e) Only the vessel owner, co-owner, the spouse or, in the alternative, one personal partner of each, and their legal dependents may be issued a principal habitation permit. A "personal partner" is an individual considered to be a "significant other" of the vessel owner principal habitation permittee who is not a relative by biology or adoption of the vessel owner principal habitation permittee. While living together on the vessel, the vessel owner principal habitation permittee and personal partner shall not have a landlord-tenant relationship. The department shall retain the right to limit the total number of people allowed to live on a particular vessel based on reasonable health, safety, security, or environmental concerns for persons on the vessel, other permittee's at the harbor, public use of the harbor, or the harbor itself, and may deny the issuance of a principal habitation permit if such issuance would exceed the limit determined by the department to be appropriate.

(f) The owners of no more than one hundred twenty-nine vessels moored at Ala Wai small boat harbor shall be issued permits to use their vessels as

a place of principal habitation. The owners of no more than thirty-five vessels moored at Keehi small boat harbor may be issued such permits. Any vessel used as a place of principal habitation that is temporarily absent from its mooring shall continue to be considered as one of the vessels being used as a place of principal habitation if the owner retains a principal habitation permit as provided in section 13-231-11. [Eff 2/24/94; am 8/20/12; am and comp SEP 25 2014] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-27 Allocation of principal habitation permits. (a) Application for a principal habitation permit; period of validity; renewal of application.

- (1) The first owner to file an application may be offered a principal habitation permit as described under subsection (e) if the maximum number of vessels authorized by Section 13-231-26(f) are not being used as the principal habitation of the owners; provided that no prior requests are pending as provided in this section.
- (2) If the maximum number of vessels permitted by Section 13-231-26(f) is being used as the principal habitation of the owners, an owner's application for a principal habitation permit shall be retained and honored when the total number of vessels so used is less than the maximum limit and the issuance of the permit is determined by the department to not be detrimental to the operations of the harbor or any planned use of the harbor.
 - (A) An application for the issuance of a principal habitation permit shall be made in writing to the department by the owner on a form provided by the department. The department shall accept the application for consideration by endorsing it and

entering the filing time and date on the application form submitted; one copy shall be given to the applicant. The time and date the application is endorsed by the department shall be the filing date and the effective date of the application for consideration and shall establish such applicant's seniority or priority over later applicants if the application remains valid. No application shall be accepted unless and until the application fee prescribed in these rules is paid by the applicant and review thereof has been conducted pursuant to subsection (b).

- (B) An application shall continue in full force and effect for a period ending one year from the effective date of the application, except as provided in subsection (c) unless terminated sooner in accordance with these rules. An application is void after the date of expiration indicated thereon.
- (C) An application may be renewed within a ninety-day period preceding its expiration date. An application properly renewed prior to its expiration date shall be valid for a period ending one year from expiration date of the previous application. No application for renewal shall be accepted until the fee prescribed in these rules is paid by the applicant.
- (D) It is the policy of the department to mail an application renewal notice to an applicant, prior to the expiration of the application, at the address the applicant has furnished to the department pursuant to subsection (c). However, the applicant is nonetheless responsible for the timely renewal of

an application without receipt of a renewal notice from the department.

(b) Review, and acceptance, or rejection of applications.

- (1) The department shall examine and determine the genuineness and regularity of each application and may conduct any investigation as may be deemed necessary for its examination and determination; and it may require additional information from the applicant as may be necessary to determine the genuineness and regularity of the application.
- (2) The department shall reject any application that contains a material misstatement or if the applicant has failed to disclose any material fact in the application.
- (3) An application shall not be accepted for consideration and shall be rejected if:
 - (A) The application fee is not paid at the time the application is made;
 - (B) The applicant is delinquent in the payment of any moneys due and payable to the department; or
 - (C) The applicant has pending a citation for violation of any of the department's rules.
- (4) Upon rejection of an application, the department shall inform the applicant, in writing within a reasonable time, that the application has not been accepted for consideration and has been rejected and the reasons therefore. An applicant may cure the defect and reapply.

(c) Applicant required to furnish address and report changes; effect of failure to report changes.

- (1) An applicant shall include the applicant's address in the application to the department for a principal habitation permit.
- (2) An applicant shall immediately notify the department in writing of any changes in the

applicant's address in order to maintain the validity of his application.

- (3) An application shall be void if the department is unable to reach the applicant to offer the applicant a principal habitation permit at the address:
 - (A) Appearing on the application; or
 - (B) Furnished in writing to the department by the applicant as a change of address subsequent to submitting the application.

(d) Withdrawal of application; effect if application has become void, expires, or has been withdrawn.

- (1) An application may be withdrawn by an applicant upon written notice to the department.
- (2) An applicant who withdraws an application or whose application has expired, or become void, may submit a new application for acceptance by the department. Seniority begins on the date the applicant's new application is accepted for consideration as provided in subsection (a) (2) (A).

(e) Priority in the allocation of principal habitation permits. When the total number of vessels authorized by the department to be used as the principal habitation of the owners at Ala Wai or Keehi small boat harbors is less than the maximum number of vessels authorized to be so used pursuant to the provisions of section 13-231-26(f), the department may offer a principal habitation permit to the senior applicant eligible to receive such a permit.

(f) Notice to owner of available principal habitation permit. When an offer of a principal habitation permit is provided for in this section, the department shall deliver the offer or send it by certified mail - return receipt requested, addressed to the applicant eligible to receive the offer pursuant to this section at the post office address furnished to the department in writing by the applicant.

(g) Offer of principal habitation permit valid only fourteen days; written notice of intention; acceptance.

- (1) An applicant may decline an offer of a principal habitation permit and retain the applicant's seniority if the applicant declines the offer in writing addressed to and received by the department, not later than fourteen days after the date of receipt of the offer. An applicant who declines an offer in writing and retains the applicant's seniority pursuant to this subsection shall not be considered for another offer on the basis of the applicant's seniority until six months have elapsed since the date of the applicant's last refusal.
- (2) (A) If an applicant decides to accept the offer of a principal habitation permit, the applicant shall either:
 - (i) Deliver a written notice of intention to accept the offer to the department within fourteen days after the date of receipt of the offer; or
 - (ii) Accept the offer by securing a principal habitation permit, within fourteen days after the receipt of the offer.
- (B) The applicant's application for a principal habitation permit and the offer by the State of a principal habitation permit shall be void if the applicant fails to either secure a principal habitation permit or give notice of intent to accept or to decline the offer in writing within fourteen days after the date of receipt of the offer, and the permit shall then be offered to the next senior applicant pursuant to this section.
- (3) (A) An applicant who has not accepted the offer but has delivered a written

notice of intention to accept to the department pursuant to paragraph (2) shall accept the offer by securing a principal habitation permit as prescribed in sections 13-231-2 and 13-231-3 within fourteen days after the applicant mails or personally delivers the notice of intention to accept to the department.

- (B) Except as provided in paragraph (4) the applicant's application for a principal habitation permit, the offer by the State of a principal habitation permit and the applicant's notice of intention to accept the offer shall be void if the applicant fails to secure a principal habitation permit within the fourteen days as prescribed herein, and the principal habitation permit shall then be offered to the next senior applicant in accordance with these rules.
- (4) The department may extend the deadline for acceptance prescribed in paragraph (2) if the applicant presents evidence to the department that the granting of additional time for compliance is reasonable and essential to prevent undue hardship, provided that any extension of time for compliance shall not exceed a period of sixty days from the date the department received from the applicant a written notice of intention to accept the offer of a principal habitation permit.
- (5) Since time is of the essence, the offer delivered or mailed to an applicant pursuant to subsection (f) shall contain a statement that the offer will lapse unless accepted in accordance with the procedures of this section. [Eff 2/24/94; am and comp
SEP 25 2014] (Auth: HRS §§200-2, 200-4,

200-10) (Imp: HRS §§200-2, 200-4, 200-9,
200-10)

§13-231-28 Staying aboard vessels moored at Ala Wai or Keehi small boat harbor. (a) Staying aboard a vessel moored at Ala Wai or Keehi small boat harbor is prohibited except that:

- (1) Owners holding a valid regular mooring permit, the spouse or personal partner of each, their legal dependents, and their nonpaying guests, when in the company of the owner, may stay aboard the vessel without a use permit upon written notification to the department on or before the date of stay; provided that the period does not exceed any three nights in a week and a total of any one hundred twenty nights in a calendar year, including vessels used as a vacation site;
 - (2) Staying aboard a vessel in excess of any three nights in a week may be permitted when done in accordance with a valid:
 - (A) Stay aboard permit issued pursuant to section 13-231-22 (staying aboard transient or visiting vessels);
 - (B) Stay aboard permit issued pursuant to section 13-231-29 (vessel used as a vacation site);
 - (C) Stay aboard permit issued to a vessel owner holding a valid principal habitation permit authorizing a nonpaying bona fide guest to stay aboard the vessel in the company of the owner for a period not to exceed any thirty days in a calendar year.
- (b) When staying aboard in accordance with subsection (a)(1), and the stay is extended past the third day, the entire period of stay will be counted against time used as a vacation site in accordance with section 13-231-29.
- (c) Each harbor resident or other person

authorized by the department to stay aboard a vessel in a small boat harbor in accordance with this chapter, except for those under the age of six, may secure one shower facility key. Prior to receiving the shower key, the person shall deposit with the State the amount specified in section 13-234-32. No person shall be permitted to replace a shower facility key more than two times. [Eff 2/24/94; am 8/8/11; comp SEP 25 2014] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-29 Vessel used as a vacation site. (a) Staying aboard a vessel moored in Ala Wai or Keehi small boat harbor during a vacation is authorized but limited to owners holding valid regular mooring permits authorizing them to moor their vessels in the small boat harbor, the spouse or personal partner of each, their legal dependents, and nonpaying guests when accompanied by the owner, provided that:

- (1) The aggregate period of the stay is not more than thirty days in a calendar year;
- (2) The vessel owner secures a vacation permit and a stay-aboard permit for each individual vacationer;
- (3) The vessel and its occupants comply with the sanitation, vessel equipment, and all other requirements set forth under this chapter; and
- (4) The vessel owner provides evidence that the owner maintains a bona fide shoreside residence.

(b) No vacation permit shall be issued for a vessel registered or documented as being owned by a corporation. [Eff 2/24/94; am 8/8/11; comp SEP 25 2014] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

§13-231-30 Restrictions on multiple permits. The accumulation of more than two permits for a berth, mooring, or both by a co-owner, firm, corporation,

trust, association, organization, institution, or lessee is prohibited in any one small boat harbor. [Eff 2/24/94; comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-31 Administrative hearing. (a) The procedures under this section shall be used for any administrative hearing conducted by the division of boating and ocean recreation as required by law.

(b) An administrative hearing officer shall be appointed by the chairperson. Upon setting the time for the hearing, the administrative hearing officer shall make a reasonable effort to transmit a notice to the owners or their attorneys, if any, at their last known address, containing the following:

- (1) The date, time, place and nature of hearing;
- (2) The legal authority under which the hearing is to be held;
- (3) The fact that any party may retain counsel if the party so desires and the fact that an individual may appear on the individual's own behalf, or a member of a partnership or limited liability company may represent the partnership or limited liability company, or an authorized officer or authorized employee or trustee of a corporation or trust or association, as appropriate, may represent the corporation, trust or association.

(c) All parties shall be afforded an opportunity to present evidence and argument on all relevant issues involved.

(d) Any procedure in the administrative hearing may be modified or waived by stipulation of the parties and informal disposition may be made of any administrative hearing by stipulation, agreed settlement, consent order, or default.

(e) A tape recording may be made of the proceedings. No videotaping or other cameras shall be allowed during the hearing.

(f) Appeals from the decision may be made in accordance with chapter 91, Hawaii Revised Statutes. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§91-9, 200-4, 200-16, 200-49) (Imp: HRS §§200-4, 200-16, 200-49)

§13-231-32 Rules of evidence; official notice.

(a) The administrative hearing officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence as provided by law with a view of doing substantial justice.

(b) In administrative hearings:

- (1) Any oral or documentary evidence may be received, but the department shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The department shall give effect to the rules of privilege recognized by law.
- (2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request parties shall be given an opportunity to compare the copy with the original.
- (3) Every party shall have the right to conduct cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence at the time of the hearing.
- (4) Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of

persuasion. The degree of quantum of proof shall be a preponderance of the evidence. [Eff 2/24/94; comp **SEP 25 2014**] (Auth: HRS §§91-10, 200-4, 200-16, 200-49) (Imp: HRS §§200-4, 200-16, 200-49)

§§13-231-33 to 13-231-39 (Reserved)

SUBCHAPTER 2

BOAT OPERATION

§13-231-40 General statement. This subchapter shall govern the operation of vessels in small boat harbors. Nothing contained in this subchapter shall be construed to limit the authority of the federal government. (Refer also to subchapter 4, chapter 231 for provisions relating to specific area.) [Eff 2/24/94; comp **SEP 25 2014**] (Auth: HRS §§200-1, 200-2, 200-4) (Imp: HRS §§200-1, 200-2, 200-4)

§13-231-41 Navigation or mooring vessels in small boat harbors. Whenever a vessel enters a small boat harbor, its operator shall immediately come under the jurisdiction of these rules. Such vessels shall be operated, navigated, moored, or stored in accordance with reasonable directions of small boat harbor authorities. The department may designate areas for special boating activities. Each vessel is to be navigated within a state small boat harbor at a speed low enough that its wake will not disturb any other vessel or property. [Eff 2/24/94; comp **SEP 25 2014**] (Auth: HRS §§200-1, 200-2, 200-4) (Imp: HRS §§200-1, 200-2, 200-4)

§13-231-42 Interference with navigation. Unless otherwise authorized, no log, boom, float, pier, dock,

fence, pile, anchorage, or other obstruction shall be installed or placed in small boat harbors without a permit from the department. No person shall operate any vessel in a manner which will unreasonably interfere with other vessels or free and proper navigation of waterways. Anchoring in heavily travelled channels or main thoroughfares shall constitute such interference. [Eff 2/24/94; comp **SEP 25 2014**] (Auth: HRS §§200-1, 200-2, 200-4) (Imp: HRS §§200-1, 200-2, 200-4)

§13-231-43 Pilotage. Every person operating a vessel in a small boat harbor or through channels or entrances leaving or approaching such harbor shall do so at this person's own risk. [Eff 2/24/94; comp **SEP 25 2014**] (Auth: HRS §§200-1, 200-2, 200-4) (Imp: HRS §§200-1, 200-2, 200-4)

§13-231-44 Vessel loading zone. Vessel loading zone means a portion of a small boat harbor facility reserved for the exclusive use of vessels during fueling, loading, or unloading. No person shall stop or moor a vessel for any purpose other than for the expeditious loading, unloading, or fueling in any place marked as a vessel loading zone during the hours when the regulations applicable to such loading zone are applicable. Except when otherwise prescribed by signs, the use of a vessel loading zone by any one vessel shall not exceed thirty minutes. No person shall leave a vessel unattended at a vessel loading zone. [Eff 2/24/94; comp **SEP 25 2014**] (Auth: HRS §§200-1, 200-2, 200-4) (Imp: HRS §§200-1, 200-2, 200-4)

§13-231-45 Vessel inspections. (a) "Approved marine surveyor" as used in this section means a person who has been approved by the chairperson to inspect a vessel for an owner seeking a permit to moor a vessel in a small boat harbor in accordance with

subsections (h) and (i). "Approved vessel inspector" as used in this section means an employee of the department who has been designated by the chairperson to inspect a vessel for compliance with criteria necessary to obtain a mooring permit. An inspection conducted by an approved vessel inspector is deemed to meet the requirements of the marine inspection required by section 200-13, Hawaii Revised Statutes, and may be valid for a period of two years.

(b) Before a regular mooring permit is issued or renewed, the vessel owner shall complete a satisfactory vessel inspection conducted by an approved vessel inspector, or present a certificate not more than two years old to the department at the owner's own expense, signed by an approved marine surveyor certifying the surveyor has inspected the vessel and considers it to fulfill the minimum requirements described in Exhibit "B" located at the end of this chapter and incorporated herein entitled "vessel inspection report" and dated July 2012. The department reserves the right to inspect any vessel to ensure that any deficiencies or omissions noted on a marine inspection have been corrected prior to issuing a mooring permit. All vessel owners shall also demonstrate to the department that their vessel is capable of navigating beyond the confines of the harbor and returning under its own power to its assigned mooring/berth prior to the mooring permit being issued.

(c) Commercial vessels carrying more than six passengers for hire are exempted from the provisions of Subsections (a) and (b) when evidence of a current Coast Guard certificate of inspection is presented.

(d) Owners of vessels failing the vessel inspection shall have thirty days to correct deficiencies and complete the inspection. Failure to do so will preclude re-issuance of the use permit or be cause for rejection of the application for mooring.

(e) The department may extend the deadline for correction of deficiencies prescribed in subsection (d) if the vessel owner presents conclusive evidence to the department that the granting of additional time

is reasonable and essential due to the necessity of replacing essential parts and gear and that reasonable and diligent efforts by the owner to secure the items necessary to repair the vessel or replacement of parts is demonstrated, and further provided that any extension of time for compliance shall not exceed sixty days.

(f) Owners of vessels that fail the vessel inspection may contest the decision before an arbitration board as established in section 200-13, Hawaii Revised Statutes. The costs of the arbitration shall be borne by the vessel owner if it is determined that the vessel does not meet the minimum requirements to moor in a small boat harbor in accordance with these rules. No additional time allowance for the correction of deficiencies will be granted following arbitration and the vessel shall be removed from the harbor. The costs of the arbitration shall be borne by the State if it is determined that the vessel does meet minimum requirements.

(g) The fee for a vessel inspection conducted by the department, pursuant to this section shall be as prescribed in section 13-234-29 provided that holders of commercial use permits and registration certificates with proof of certification of inspection from the United States Coast Guard shall be exempt from this requirement or state fees associated therewith.

(h) A person who desires to become an approved marine surveyor shall apply to the department upon a form furnished by the department and pay the application fee prescribed in section 13-234-30.

(i) An application to become an approved marine surveyor shall not be accepted by the department unless the applicant is engaged wholly or partly in the business of performing marine surveys for gain or compensation and the person's surveys are acceptable to at least one insurance company or surety company authorized to do business in the State, and is a member of a nationally recognized marine surveyor organization as approved by the department.

(j) An approved marine surveyor permit shall be

valid for a period of three years from date of issuance. The department reserves the right to revoke any approved marine surveyor permit at any time prior to the expiration of the permit.

(k) A satisfactory vessel inspection shall consist of the following:

- (1) Presentation of the vessel to be inspected at a place designated by the harbor agent;
- (2) A demonstration that the vessel is capable of being regularly navigated beyond the confines of the harbor or mooring area and maneuvering into and out of the assigned berth;
- (3) A finding that the vessel and all systems are in good material and operating condition;
- (4) A finding that the requirements described in the exhibit at the end of this chapter entitled "vessel inspection report" are met; and

Applicable standards published by the U.S. Coast Guard and the American Boat and Yacht Council, Inc. (ABYC) shall be used in conducting the vessel inspection, and are adopted and incorporated herein by reference.

(l) A marine survey shall be required for any vessel which has undergone any substantial reconstruction, alteration or modification of the original vessel design, certifying that such reconstruction, alteration or modification does not materially affect the vessel's stability or maneuverability, and the existing power plant is in good operating condition and meets the minimum power requirement necessary for safe navigation beyond the confines of the small boat harbor or offshore mooring area in which it is moored. Any vessel operating under a commercial use permit or registration certificate that can produce evidence of a valid United States Coast Guard inspection certification for the above condition shall not be required to obtain a separate marine survey. A certificate of protection and indemnity insurance for the vessel, in an amount of not less than \$100,000, naming the State as an

additional insured, shall be required in addition to the marine survey.

(m) No modification or alteration to a houseboat moored in Keehi Lagoon which changes the length, beam or size of silhouette area from that which existed at the time of issuance of the initial mooring permit shall be allowed without prior approval of the department, provided that routine maintenance and repairs for safety, security and structural integrity shall be allowed. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-1, 200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-1, 200-2, 200-4, 200-9, 200-10)

§13-231-46 Vessel limitations. Due to the restricted entrance and turning area in Lahaina small boat harbor, no vessel of any size will be allowed to moor on the makai side of the Lahaina loading (fuel) dock from sunset to sunrise. Mooring from sunrise to sunset will be limited to fifteen minutes. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-1, 200-2, 200-4) (Imp: HRS §§200-1, 200-2, 200-4)

§§13-231-47 to 13-231-49 (Reserved)

SUBCHAPTER 3

COMMERCIAL ACTIVITIES

§13-231-50 General statement. No regular or extensive use of any state property or facilities for private gain or purposes shall be permitted without corresponding and reasonable benefits and returns to the public. [Eff 2/24/94; comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-4)

§13-231-51 Business activities. No person shall engage in any business or commercial activity at any small boat harbor or other small boat facility without:

- (1) Prior written approval of the department; or
- (2) The proper execution of an agreement with the department. [Eff 2/24/94; comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-52 Solicitations and advertisements. Without limiting its generality, the words "business or commercial activity" as used in section 13-231-51 includes any solicitations and advertisements, intended for private gain or purposes. [Eff 2/24/94; comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-53 Signs. No person shall post or display any signs at a small boat harbor without the prior written approval of the department, except that signs strictly pertaining to the sale of vessels and of maximum dimensions of three feet by three feet shall be permitted on the vessel without approval. [Eff 2/24/94; comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-54 Commercial vessel; definition. "Commercial vessel" as used in this subchapter means a vessel engaged in any trade or business including, but not limited to, carrying passengers for hire, charter fishing, bare boat (demise) or any type of charter maintenance, harvesting coral or similar resources, construction, towing, tow-boating, or other trade or business wherein the vessel is used in any manner to promote the venture, or is registered with the State or documented by the United States Coast Guard for commercial use. [Eff 2/24/94; comp **SEP 25 2014**]

(Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-55 Berthing commercial vessels at Ala Wai or Keehi small boat harbor. (a) The total number of valid commercial use permits that may be issued for vessels assigned mooring in Ala Wai small boat harbor shall not exceed fifteen per cent of the total number of berths and shall not exceed thirty-five per cent of the total number of berths at the Keehi small boat harbor; provided that at the Ala Wai small boat harbor, vessels issued commercial use permits shall:

- (1) Not exceed sixty-five feet in length;
- (2) Occupy not more than fifty-six berths located along the row of berths furthestmost mauka or adjacent to Holomoana Street, with the remainder located throughout the Ala Wai small boat harbor, with priority assigned to row five hundred, row seven hundred, and row eight hundred;
- (3) Be phased-in in a manner that does not displace any existing recreational boater or existing catamaran operator; and
- (4) Include commercial catamarans, for which valid commercial use permits or existing registration certificates have been issued by the department that allow the catamarans to operate upon Waikiki shore waters for hire.

(b) The department may issue a temporary mooring permit authorizing the owner to temporarily moor at Ala Wai or Keehi small boat harbors, provided the vessel is not engaged in commercial activities.

(c) This section is not applicable to a vessel used principally for recreational purposes (more than fifty per cent of its operating time) but licensed to engage in commercial fishing. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-9) (Imp: HRS §§200-2, 200-4, 200-9)

§13-231-56 Definitions, gross receipts. Gross receipts as used in this subchapter means all moneys paid or payable to the account of the vessel owner, for the rendition of services, or resulting from trade, business, commerce, or sales by the vessel owner when the services, trade, business, commerce, or sales have a direct relationship to the vessel. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-57 Berthing or using commercial vessels in state small boat harbors. (a) This section is applicable to all state small boat harbors. This section is applicable to all commercial vessels including commercial fishing vessels engaged in charter fishing or any other trade or business; provided that commercial fishing vessels are exempt from this section if the total income derived from the use of the vessel is generated through the sale of fish or permitted coral.

(b) No commercial vessel shall load or discharge passengers or cargo or engage in any other commercial activity at any small boat harbor unless the owner possesses a regular mooring permit and a valid commercial use permit or valid catamaran registration certificate issued by the department. Inter-island ferry service within Maui County shall be afforded preferential consideration in accordance with section 200-9(d), Hawaii Revised Statutes. The restrictions of this section shall not apply to any commercial vessel operated in connection with the lease of premises at a small boat harbor.

(c) Notwithstanding subsection (b) and except at the Ala Wai and Keehi small boat harbors, the department may authorize the owner of a transient or visiting commercial vessel engaged in a trade or business elsewhere to:

- (1) Carry passengers for hire in the small boat harbors if the vessel will be so engaged as a registered participant in a bona fide

- fishing tournament;
- (2) While on cruise, off-load and load passengers in the small boat harbors if those passengers are embarked elsewhere or bound for another destination; provided that a reservation for a berth was made in advance and space is available; or
 - (3) Embark and disembark passengers occasionally and infrequently, not exceeding twenty-four times in a calendar year on a special charter when approved not less than seven days in advance of the voyage.
 - (d) A commercial use permit or catamaran registration certificate shall automatically expire upon the department's notice to vacate, if any vessel granted a temporary mooring permit under section 13-231-57(c) engages in a trade or business contrary to the provisions of the permit or certificate. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-58 Limitations on the number of commercial use permits and catamaran registration certificates for vessels assigned permanent moorings.

(a) The total number of valid commercial use permits which may be issued for vessels assigned permanent mooring in Manele small boat harbor shall not exceed ten percent of the available berths.

(b) Subject to any other limitations on commercial catamarans that may be provided in these rules, the total number of valid commercial use permits or catamaran registration certificates that may be issued for vessels assigned mooring in the Ala Wai small boat harbor shall not exceed fifteen per cent of the total number of berths; provided that at the Ala Wai small boat harbor, vessels issued commercial use permits or catamaran registration certificates shall:

- (1) Not exceed sixty-five feet in length;

- (2) Occupy not more than fifty-six berths located along the row of berths furthestmost mauka or adjacent to Holomoana Street, with the remainder located throughout the Ala Wai small boat harbor, with priority assigned to row five hundred, row seven hundred, and row eight hundred;
- (3) Be phased-in in a manner that does not displace any existing recreational boater or existing catamaran operator; and
- (4) Include commercial catamarans for which valid commercial use permits or existing registration certificates have been issued by the department, that allow the catamarans to operate upon Waikiki shore waters for hire.

(c) The total number of valid commercial use permits or catamaran registration certificates that may be issued for vessels assigned mooring at the Keehi small boat harbor shall not exceed thirty-five per cent of the total number of berths;

(d) The total number of valid commercial use permits or commercial registration certificates that may be issued for vessels assigned permanent mooring in the following small boat harbors are:

| <u>Harbor</u> | <u>Number of commercial use permits</u> |
|-----------------------|--------------------------------------------------|
| Ala Wai | as provided for in Hawaii Revised Statutes 200-9 |
| Keehi | as provided for in Hawaii Revised Statutes 200-9 |
| (1) <u>Heeia Kea</u> | as provided for in section 13-256-73.1 |
| (2) Haleiwa | 20 |
| (3) Waianae | 15 |
| (4) Nawiliwili | 10 |
| (5) Port Allen | 12 |
| (6) Kikiaola | 3 |
| (7) Kukuiula | 4 |
| (8) Hana | 2 |
| (9) Kaunakakai | 9 |
| (10) Lahaina | 32 |

| | |
|---------------------------|-----|
| (11) Maalaea | 29 |
| (12) Honokohau | 120 |
| (13) Kawaihae (north) | 4 |
| (14) Kawaihae (south) | 10 |
| (15) Kailua-Kona Makai | 3 |
| (16) Kailua-Kona Offshore | 8 |
| (17) Wailoa | 10 |
| (18) Reed's Bay | 3 |
| (19) Keauhou | 6 |

(e) Notwithstanding the provisions of subsections (a) through (d) limiting the number of commercial use permits and catamaran registration certificates that may be issued, the owner of a commercial vessel holding a regular mooring permit and a valid commercial use permit or valid catamaran registration certificate on the effective date of the rule amendments for the above listed small boat harbors, may retain and apply for reissuance of the commercial use permit or catamaran registration certificate, provided that all other requirements of these rules are met.

(f) Upon the approval by the department, a person or business entity possessing a valid commercial use permit for a vessel moored elsewhere may be issued a regular mooring permit at a state boating facility listed in subsection (d), and retain the commercial use permit, provided that the permittee relinquishes the vessel moored elsewhere permit and that the total number of valid commercial use permits for vessels moored elsewhere shall be reduced accordingly. A regular mooring permittee who possesses a valid commercial use permit may relinquish the regular mooring permit and retain the commercial use permit, provided that the total number of valid commercial use permits for vessels moored in the state boating facility plus the number of commercial use permits for vessels moored elsewhere are not exceeded, and that the category of commercial use permits assigned to vessels moored elsewhere pursuant to section 13-231-59(d) shall not exceed the passenger capacity of the vessel formerly moored in the state boating facility. [Eff 2/24/94; am 6/16/03; am and

comp SEP 25 2014] (Auth: HRS §§200-2, 200-3, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-9, 200-10)

§13-231-59 Limitations on commercial use permits for vessels moored elsewhere. (a) The department recognizes that it may be necessary or desirable to operate a commercial vessel from more than one small boat harbor, and that lack of mooring facilities in certain areas has required numerous vessels to establish permanent moorings offshore, outside of the small boat harbors of intended use. Therefore, notwithstanding section 13-231-57, the department may issue a limited number of commercial use permits to owners of vessels moored elsewhere for use of small boat harbor facilities. The number and categories of those commercial use permits shall be based on the physical capacity of the small boat harbor facilities to accommodate the additional volume of activity expected to be generated by the additional permits, and shall be determined by the department on a case-by-case basis for each small boat harbor, subject to the limitations listed in subsection (b).

(b) No commercial vessel moored elsewhere shall use any small boat harbor facilities for commercial purposes unless the owner of the commercial vessel moored elsewhere has been issued a commercial use permit for that vessel, or the vessel is exempt from commercial use permit requirements under the provisions of subsection 13-231-57(c) or as otherwise permitted by the department. "Commercial purposes" as used in this subsection includes the staging, loading and discharge of passengers or supplies at a state boating facility for further transport to a vessel's offshore location by means of a water taxi or any other vessel, or provisioning a vessel before or after a voyage involving the carriage of passengers for hire.

(c) The number of commercial use permits for vessels moored elsewhere which may be issued for each small boat harbor shall be as follows:

- (1) Maalaea small boat harbor: twenty;
- (2) Lahaina small boat harbor: sixteen;
- (3) Manele small boat harbor: six; and
- (4) All other small boat harbors except for Heeia Kea small boat harbor, which is subject to section 13-256-73.1: no limit.

(d) Each commercial use permit issued for a vessel moored elsewhere shall be assigned one of the following categories, depending on the passenger-carrying capacity of the vessel named in the permit:

- (1) Category I - one to twenty-four passengers
- (2) Category II - twenty-five to forty-nine passengers
- (3) Category III - fifty to seventy-four passengers
- (4) Category IV - seventy-five to ninety-nine passengers
- (5) Category V - one hundred to one hundred forty-nine passengers

(e) No commercial use permit for vessels moored elsewhere shall be issued for any vessel with a passenger-carrying capacity in excess of one hundred forty-nine, and no existing commercial use permit issued for a vessel moored elsewhere shall be issued a permit whenever the owner seeks to increase the passenger-carrying capacity above the limit of the category to which the current permit was assigned.

(f) The department reserves the right to impose further restrictions on the operation of commercial vessels moored elsewhere, on a case-by-case basis, as may be necessary to reduce congestion and achieve more efficient use of small boat harbor facilities. Restrictions may include designation of docking times for passenger loading and unloading or fueling, and parking restrictions for patron and delivery vehicles. Additional restrictions shall be implemented by addenda to existing commercial use permits issued by the department. Refusal of a permittee to accept or comply with additional restrictions implemented in this manner shall be cause for immediate termination

of the commercial use permit.

(g) Use of any vessel in violation of this section may be cause for termination of all small boat harbor use permits issued to the owner by the department. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-9, 200-10)

§13-231-60 Allocation of commercial use permits for vessels and catamaran registration certificates.

(a) Commercial use permits and catamaran registration certificates shall be issued to qualified applicants in the order in which applications are received by the department. Seniority begins on the date an application is received and accepted by the department. The allocation procedures specified in subchapter 5, Allocation of berths, shall also govern the allocation of commercial use permits and catamaran registration certificates under this section; provided that waiting lists for commercial use permits and catamaran registration certificates shall be established and maintained separately from waiting lists for berth assignment.

(b) The sale or transfer of any corporation or other business entity while on the waiting list which results in a change of the majority stockholder or person holding the majority interest in the business shall result in loss of seniority, and the applicant shall be placed at the bottom of the waiting list.

(c) The department may reject an application for a commercial use permit if the type of commercial activity is determined by the department to be inappropriate for the facility or area for which the permit is being requested, in addition to the grounds for rejection of an application for a permit listed in section 13-231-82.

(d) When a commercial use permit becomes available for a vessel moored elsewhere, the permit issued shall be of the same category as the commercial use permit which was previously in effect. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS

§§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

§13-231-61 Reissuance of commercial use permits, and catamaran registration certificates. (a) The

department may reissue a commercial use permit or catamaran registration certificate provided that:

(1) The gross receipts during the twelve-month period under the commercial use permit or catamaran registration certificate for which the application for reissuance has been submitted equals or exceeds the following minimums as applicable:

- | | |
|--------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| (A) Vessel used for bare boat (demise) charters and charter sail boats | \$7,000 |
| (B) Vessels registered by the state or documented by the U.S. Coast Guard to carry six passengers or less; including charter fishing boats | \$15,000 |
| (C) Vessels certified by the U.S. Coast Guard to carry seven to twenty-six passengers | \$45,000 |
| (D) Vessels certified by the U.S. Coast Guard to carry twenty-seven to forty-nine passengers | \$85,000 |
| (E) Vessels certified by the U.S. Coast Guard to carry fifty to ninety-nine passengers | \$125,000 |
| (F) Vessels certified by the U.S. Coast Guard to carry more than ninety-nine passengers. | \$250,000 |
| (G) Vessels engaged in | |

another trade or
business not delineated
and governed by an
appropriate paragraph above \$7,000

- (H) Water sports equipment
rentals \$7,000;

or

- (2) The permittee applies to the department in writing for reissuance of the permittee's commercial use permit or catamaran registration certificate and concurrently presents evidence that any failure to generate gross receipts from the operation of the permittee's vessel or certificate holder's catamaran as prescribed in this subsection was due to:
- (A) The sinking, loss, or destruction of the permittee's vessel or certificate holder's catamaran;
 - (B) The permittee's vessel or certificate holder's catamaran being inoperative in excess of sixty days due to disability of the permittee or certificate holder;
 - (C) The permittee's vessel or certificate holder's catamaran was rendered inoperative in excess of sixty days due to damage to the vessel, or due to the necessity of replacing essential parts and gear, provided that reasonable and diligent efforts by the permittee to secure such items necessary to repair the vessel or replacement of parts is demonstrated; or
 - (D) Where conditions and circumstances are demonstrated wherein a reissuance of the permittee's commercial use permit or the catamaran registration certificate would be fair and warranted, and the application for reissuance is approved by the department; and
- (3) All fees and charges due and payable to the

department have been paid and no violations are outstanding.

(b) No commercial use permit or catamaran registration certificate shall be issued to any permittee or certificate holder whose commercial use permit or catamaran registration certificate has been terminated for cause, provided that the permittee or certificate holder may apply for a new commercial use permit or catamaran registration certificate after one year has expired from the date of termination, all fees and charges owing the State have been paid, and the permittee or certificate holder is in compliance with federal and state laws.

(c) A corporation must have been in continuous commercial operation as evidenced by the submission of monthly reports of gross receipts for a minimum of twelve months in order to retain commercial use permits or a catamaran registration certificate upon the transfer of any interest in that corporation. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

§13-231-62 Transferability of commercial use permits and catamaran registration certificates. (a) Commercial use permits and catamaran registration certificates issued to individuals.

(1) A commercial use permit issued to an individual is non-transferable, so that whenever the permittee parts with possession or transfers the title or interest in the vessel identified in the commercial use permit to another person by any arrangement, the commercial use permit shall expire except as provided herein with respect to the original permittee. The new possessor, transferee, or owner of the vessel shall have no right to use the commercial use permit. However, a sole proprietor holding a commercial use permit or catamaran registration certificate for a commercial

catamaran to land on Waikiki beach and operate upon Waikiki shore waters for hire may transfer ownership of the vessel from personal ownership to corporate or other business ownership without terminating the right to operate. The existing permit or registration certificate shall be reissued in a timely manner in the name of the transferee corporation or other business entity. No commercial use permit or catamaran registration certificate for an existing Waikiki beach catamaran operation shall be denied or revoked without a prior hearing in accordance with chapter 91, Hawaii Revised Statutes;

- (2) An original commercial use permittee or catamaran certificate holder who also holds a regular mooring permit, upon written application and approval by the department may retain the commercial use permit or catamaran registration certificate, provided that within thirty days the permittee moves into the small boat harbor another vessel owned by the mooring permittee pursuant to the provisions of section 13-231-13; and
- (3) An original permittee holding a commercial use permit and moored elsewhere may, upon written application to and approval by the department retain the commercial use permit, provided that within thirty days the permittee resumes operation with another vessel owned by the permittee pursuant to the provisions of sections 13-231-13 and 13-231-61.

(b) The following rights, conditions, and restrictions apply to commercial use permits and catamaran registration certificates issued to a corporation or other business entity.

- (1) Notwithstanding section 13-231-13, a corporation or other business entity holding a valid commercial use permit or catamaran registration certificate may transfer any or

all stock or interest and retain the commercial use permit or catamaran registration certificate and all other valid small boat harbor use permits in effect on the date of transfer, provided that the corporation or other business entity has been in continuous operation as evidenced by the submission of monthly reports of gross receipts for a minimum period of one full year and meets all requirements necessary for issuance of a commercial use permit or catamaran registration certificate. The department shall be notified within ten working days of:

- (A) All transactions that amount to a transfer of ten per cent or more of the stock or interest in the firm by owners of record on the date of issuance of the current commercial use permit or catamaran registration certificate;
 - (B) The transfer of any stock or interest which results in a change of the principal stockholder or owner; and
 - (C) The business transfer fee is paid on or before the date of transfer; and
- (2) A commercial use permit or catamaran registration certificate issued to a corporation or other business entity shall automatically expire:
- (A) Upon the voluntary or involuntary dissolution of the corporation or business entity;
 - (B) If the vessel or vessels operated under the commercial use permit or catamaran registration certificate are sold or otherwise transferred and not replaced in accordance with the provisions of section 13-231-13(b); or
 - (C) If the permittee or certificate holder fails to operate the vessel for which the commercial use permit or catamaran registration certificate is issued for

a period in excess of sixty days, except as provided in section 13-231-61(a)(2), and except when the permittee or certificate holder provides advance notification to the department in writing that operations will be temporarily suspended for a specific period not to exceed four months. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-9, 200-10)

§13-231-63 Retention of berth upon termination of commercial use permit or catamaran registration certificate. The owner of a vessel moored in any of the above listed small boat harbors whose commercial use permit or catamaran registration certificate has been cancelled at the owner's request, expired, or revoked by the department pursuant to the provisions of these rules may continue to moor the vessel in the small boat harbor in accordance with the owner's regular mooring permit and to utilize the vessel for non-commercial purposes if the vessel and the owner conform to the conditions set forth in these rules to renew or maintain a regular mooring permit. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-64 Fees and charges. Fees and charges for commercial vessels shall be as prescribed in chapter 13-234 and chapter 13-253. (Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-231-65 Insurance requirements. A use permittee issued a commercial use permit or catamaran registration certificate shall, concurrently with the

execution of the permit or registration certificate, shall tender to the department a copy of either a comprehensive general liability insurance policy or policies or a protection and indemnity insurance policy, or a certificate of insurance in lieu thereof, evidencing that such policy has been and is in force, with a combined single limit of not less than \$500,000 for commercial vessels not authorized to carry passengers and for those authorized to carry not more than six passengers; not less than \$500,000 for vessels authorized to carry more than six passengers, but equal to or less than twenty-seven passengers; and not less than \$750,000 for vessels authorized to carry more than twenty-seven passengers, for bodily injury and damage to property per occurrence. The specification of limits contained herein shall not be construed in any way to be a limitation on the liability of the permittee or certificate holder for any injury or damage proximately caused by it or for purposes of indemnification of the State of Hawaii.

This insurance shall:

- (1) Be issued by an insurance company authorized to do business in the State and approved in writing by the department;
- (2) Name the State as an additional insured;
- (3) Provide that the department shall be notified in writing at least thirty days prior to any termination, cancellation, or material change in insurance coverage;
- (4) Cover all injuries, losses, or damages arising from, growing out of, or caused by any acts or omissions of the permittee or certificate holder, its officers, agents, employees, invitees, members, shareholders, subcontractors, or licensees, in connection with the permittee's or certificate holder's activities under the permit or certificate; and
- (5) Be maintained and kept in effect at the permittee's or certificate holder's own expense throughout the life of the permit or certificate. The permittee or certificate

holder shall submit evidence to the department of renewals or other actions proving that the insurance policy remains in effect as prescribed herein.

[Eff 2/24/94; am and comp **SEP 25 2014** (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-231-66 Limitation on number of berths held by a commercial permittee. No person shall be issued permits to moor more than two commercial vessels in any of the state's small boat harbors except temporarily pursuant to section 13-231-57(c) or as provided by section 13-231-69; provided further, that any person holding valid commercial use permits on the 1994 effective date of these rules authorizing the mooring of more than two commercial vessels in any of these small boat harbors may continue to moor the person's vessels in the small boat harbor subject to compliance with the conditions of the commercial use permits and this chapter and until the commercial use permits expire or terminate without a proper reissuance. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-231-67 Limitation on commercial use permits issued for the use of state boat launching ramps. (a) State boat launching ramps were constructed for the primary purpose of providing access to the waters of the State for trailered boats. Therefore, commercial use permits issued for the use of state boat launching facilities shall be restricted to boats that are regularly launched and recovered from boat launching ramps and used in the course of doing business. A commercial use permit shall be required for any trailered vessel which is rented off-site, but launches or recovers from a state boat launching facility. The owner of a trailered vessel shall be

required to obtain a commercial use permit and comply with all other rules of the department governing commercial vessel activities. Notwithstanding the limitation of the number of commercial use permits which may be issued for launching ramps in subsections (d)(1) through (d)(23) below, the owner may apply for and may be issued a commercial use permit for the number of vessels owned and registered in furtherance of its commercial use by the business on the 1994 effective date of these rules. Vessels registered to boat dealers and manufacturers and used for the purpose of conducting sea trials and instruction of prospective owners shall be exempt from commercial use permit requirements.

(b) No commercial use permits for the use of state boat launching ramps shall be issued for the purpose of embarking or disembarking passengers by small craft or lighter from a vessel moored offshore.

(c) A commercial use permit issued for the use of a state boat launching ramp shall also be valid for all other state boat ramps on the same island at which commercial activities are permitted except those listed in subsection (d); provided that the permittee shall indicate which launching ramp is expected to be the location of primary use and the fees derived from three percent of gross revenues shall be paid to that account. No commercial use permit shall be issued for a launching ramp located on an island other than the place of business of the permittee.

(d) The maximum number of commercial use permits which may be issued for the use of the following launching ramps are:

- | | | |
|------------------|---------------------|----|
| (1) Ala Wai | - | 3 |
| (2) Keehi | - | 3 |
| (3) Heeia Kea | as provided for in | |
| | section 13-256-73.1 | |
| (4) Maunalua Bay | - | 5 |
| (5) Mala | - | 15 |
| (6) Kihei | - | 15 |
| (7) Manele | - | 3 |
| (8) Kaunakakai | - | 5 |
| (9) Kukuiula | - | 6 |

- (10) Lahaina - none
- (11) Maalaea - none
- (12) Kikiaola - 10
- (13) Nawiliwili - 5
- (14) Port Allen - 9
- (15) Waikaea - 5
- (16) Honokohau - 35
- (17) Kawaihae (N) - 5
- (18) Kawaihae (S) - 10
- (19) Puako - 4
- (20) Pohoiki - 4
- (21) Wailoa - 10
- (22) Kailua Pier - 6
- (23) Keauhou - 11
- (24) All others - no limit.

(e) The maximum number of commercial use permits that may be issued for the use of any launch ramp is two (2) per business entity or sole proprietor registered to do business in the state.

Notwithstanding this section, all owners of commercial use permits on the effective date of these rules may continue operations and be permitted to apply for and renew their commercial use permits subject to compliance with all other conditions set forth in this chapter until their total number is reduced by attrition or other means to the numbers in subsection

(d)." [Eff 2/24/94; am and comp **SEP 25 2014**]
 (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-39)
 (Imp: HRS §§220-2, 200-3, 200-4, 200-10, 200-39)

§13-231-68 Signs and other structures at a state small boat harbor. (a) No person shall erect or place a sign, ticket booth, or any other structure in a state small boat harbor without the prior written approval of the department. All such structures shall only be erected or placed within a state small boat harbor if they are in conformity with state and county laws and ordinances, and prior approval of all appropriate governing agencies has been obtained.

(b) Signs identifying commercial activities posted or displayed within a state small boat harbor

shall be limited to twelve square feet maximum sign area and be designed in accordance with the guide for small boat harbor signs provided by the department. Structures for ticket booths shall be limited to thirty-six square feet maximum and be designed in accordance with the guide for ticket booths provided by the department.

(c) Signs and other structures placed or erected within Lahaina small boat harbor shall also comply with the requirements of the Maui County Cultural Resources Commission.

(d) Fees for signs and ticket booths are set forth in chapter 13-234. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-10)

§13-231-69 Multiple use of mooring facilities by commercial vessels. (a) Notwithstanding the provisions of section 13-231-4, a permittee holding a valid mooring permit for a commercial vessel may place another commercial vessel of the same size category that is owned by the permittee in the permittee's assigned berth when the commercial vessel for which the mooring permit is issued is temporarily absent from the berth, provided that prior notification is provided to the department.

(b) The mooring permit for the assigned berth shall be issued for the largest commercial vessel to utilize the berth, and mooring fees charged in accordance with the fee schedule shown in section 13-234-25. The vessel name and registration or documentation number of each additional vessel expected to utilize the berth shall be listed as an addendum to the regular mooring permit issued for that berth. [Eff 2/24/94; comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10.)

§13-231-70 Water taxi operations. (a) Water taxi operations may be permitted at all small boat

harbors provided that the owner of the water taxi operation has been issued a commercial use permit. For the purpose of this section, "water taxi operations" means the shuttling of persons or cargo to or from the small boat harbor facility or a shoreside location authorized for such use under chapter 13-256, Hawaii Administrative Rules, to a destination or vessel located outside the small boat harbor boundary.

(b) No water taxi operations may be permitted to transport passengers and crew from commercial vessels moored offshore, or the shuttling of passengers to and from a commercial vessel moored elsewhere if that vessel has not been issued a commercial use permit for the small boat harbor or other valid commercial use permit issued by the department. There shall be no restriction on the use of water taxi service by recreational vessels, vessels owned by the United States, or commercial vessels which are exempt from commercial use permit requirements under the provisions of section 13-231-57.

(c) The department may furnish a current list of commercial vessels authorized to receive water taxi service as provided in subsection (b) upon request by the owner of the vessel performing water taxi operations at no charge. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

§13-231-71 (Reserved)

§13-231-72 REPEALED. [R **SEP 25 2014**]

§§13-231-73 to 13-231-75 (Reserved)

SUBCHAPTER 4

SPECIAL AREA RULES

§13-231-76 REPEALED [R SEP 25 2014]

§13-231-77 Ala Wai canal. Operation of vessels in Ala Wai canal shall be accomplished in a manner that will not create a nuisance to area residents. All applicable provisions of these rules shall apply to Ala Wai canal. [Eff 2/24/94; comp SEP 25 2014] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§§13-231-78 to 13-231-79 (Reserved)

SUBCHAPTER 5

ALLOCATION OF BERTHS AND OFFSHORE MOORING

§13-231-80 General. (a) This subchapter shall govern the allocation of berths as they become available in small boat harbors.

(b) It is the policy of the department to promptly assign an available berth on a first-come, first-served basis to the first qualified applicant, determined in accordance with the provisions of this subchapter, for the type of mooring requested provided that the proposed use by the vessel affords maximum, safe, convenient, and efficient utilization of facilities and provided that assignment is not contrary to public interests, or otherwise unlawful or contrary to these rules.

(c) Since each berth and each vessel presents unique ship handling and other peculiar berthing problems in relation to the small boat harbor, the department reserves the right to utilize its fair and impartial judgment, flexibility, and discretionary authority to allocate berths based upon its knowledge of available facilities, prevailing small boat harbor conditions, safe boating practices, effective harbor management procedures, and other factors which must be

thoroughly considered prior to acceptance of an application and allocating a berth to a vessel. The many factors that the department may take into consideration in accepting an application and allocating a berth include, but are not limited to, the applicant's vessel length, draft, beam, method of propulsion; the proposed vessel use and any other special or unique vessel handling problems in relation to the size of the available berth; berth location, water depth, prevailing winds and currents, and other pertinent factors relative to the available berth.

(d) If berths of varying lengths are available for assignment in a small boat harbor then no regular mooring permit shall be issued which allocates a berth to a vessel, if the length of the berth to be assigned exceeds the vessel length overall by more than five feet; provided, however this provision does not apply:

- (1) When more than one vessel is assigned to and occupies a single berth end to end; or
- (2) In a small boat harbor with established categories of berths which may be assigned to designated classes of vessels, pursuant to section 13-231-86.

(e) A vessel with a length overall which exceeds the catwalk or pier length may be nonetheless allocated an available berth if the vessel may be safely moored in the berth and provided that the vessel, while moored in the berth, does not obstruct or hamper safe and convenient navigation within the small boat harbor.

(f) The department may establish categories of berths available to corresponding classes of vessels in a small boat harbor for allocation to applicants and shall place applicants in the most appropriate vessel classification to assure that vessels are allocated to suitable berths in order to promote the maximum, safe, convenient, and efficient utilization of facilities. Categories of berths and corresponding classes of vessels have been established in the small boat harbors enumerated in section 13-231-86. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS

§§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-81 Application for a berth; seniority of applications; period of validity; renewal of application. (a) The department shall allocate a berth to an applicant by issuing a use permit pursuant to this subchapter and sections 13-231-2 and 13-231-3 if:

- (1) A berth is vacant in the small boat harbor and is available for such assignment pursuant to this subchapter;
 - (2) No prior valid application for such is pending.
- (b) A person desiring to moor a vessel in a small boat harbor where no berths are available for allocation pursuant to this subchapter may apply for and be allocated a berth as prescribed in this subchapter when a berth suitable for the vessel becomes vacant in the future.
- (1) An application for a berth shall be made in writing to the department on a form provided by the department. The applicant shall indicate in the application the type and characteristics of the vessel the applicant proposes to moor, including but not limited to, the vessel's length overall, draft, beam, principal source of propulsion, and any secondary or auxiliary source of propulsion, the type of mooring desired, and if applicable, the category or categories desired, provided that except in small boat harbors where the department has not established categories of berths an applicant may modify at any time the material contained in the applicant's application relating to the type and characteristics of the vessel the applicant proposes to moor in the small boat harbor and retain seniority or priority over later applicants. The department shall accept the

application for consideration by endorsing it and entering the filing time and date on the application form submitted; one copy shall be given to the applicant. The time and date the application is endorsed by the department shall be the filing date and the effective date of the application for consideration and shall establish such applicant's seniority or priority over later applicants if the application remains valid, subject to the suitability of the berth which becomes available for allocation to the vessel to be moved into the berth by the applicant. Priority of applicants for mooring in small boat harbors with established categories of berths is set forth in section 13-231-86. No application shall be accepted until the applicant pays the application fee prescribed in these rules and review thereof has been conducted pursuant to section 13-231-82.

- (2) An application shall continue in full force and effect for a period ending one year from the effective date of the application except as provided in paragraph (3), unless sooner terminated in accordance with these rules. An application is void after the date of expiration indicated thereon.
- (3) An application may be renewed within a ninety-day period preceding its expiration date. An application renewed prior to its expiration date shall be valid for a period ending one year from the expiration date of the previous application.
- (4) It is the policy of the department to mail an application renewal notice to the applicant, prior to the expiration of this application, at the address the applicant has furnished to the department pursuant to section 13-231-83. However, the applicant is responsible for the timely renewal of an application without receipt of a renewal

notice from the department. [Eff 2/24/94; am
comp **SEP 25 2014**] (Auth: HRS §§200-2,
200-4, 200-10) (Imp: HRS §§200-2, 200-4,
200-9, 200-10)

§13-231-82 Review, acceptance, or rejection of applications. (a) The department shall examine and determine the genuineness and regularity of each application for a mooring or other small boat harbor use permit and may conduct any investigation as may be deemed necessary for its examination and determination; and it may require additional information from the applicant as may be necessary to determine the genuineness and regularity of the application.

(b) The department shall reject any application that contains a material misstatement or if the applicant has failed to disclose any material fact in the application.

(c) An application shall not be accepted for consideration and shall be rejected if:

- (1) The application fee is not paid at the time the application is made;
- (2) The applicant is delinquent in payment of any moneys due and payable to the department;
- (3) The applicant has pending a citation for violation of any of the department's rules; or
- (4) The category or type of mooring requested is inappropriate for the vessel to be moored by the applicant and will not, therefore, afford maximum, safe, convenient, and efficient utilization of small boat harbor facilities as determined by the department pursuant to section 13-231-80.

(d) Upon rejection of an application, the department shall inform the applicant, in writing within a reasonable time, that the person's application has not been accepted for consideration and has been rejected and the reasons therefor. The

applicant shall be afforded the opportunity to submit a new application upon the correction of deficiencies cited in the notification of rejection of the original application. [Eff 2/24/94; comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-83 Applicant required to furnish address and report changes; effect of failure to report changes. (a) An applicant shall include the applicant's address in the application to the department for a berth.

(b) An applicant shall immediately inform the department in writing of any changes in the applicant's address in order to maintain the validity of the applicant's application.

(c) An application shall be void if the department is unable to notify the applicant of a vacancy at the address:

(1) Appearing on the application; or

(2) Furnished in writing to the department by the applicant as a change of address subsequent to submitting the application.

[Eff 2/24/94; am and comp **SEP 25 2014**]

(Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-84 Withdrawal of application; effect if application has become void, expires, or has been withdrawn. (a) An application may be withdrawn by an applicant upon written notice to the department.

(b) An applicant who withdraws an application or whose application has expired or becomes void may submit a new application for acceptance by the department. The applicant's seniority begins on the date the new application is accepted for consideration as provided in section 13-231-81.

(c) The application fee shall not be refunded if an applicant withdraws an application or if the application expires, or becomes void. [Eff 2/24/94;

comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-85 Priority and procedures in allocation of berths. (a) An unassigned berth (a berth that is not assigned to a permittee by a regular mooring permit) shall first be offered to the senior applicant holding a regular mooring permit authorizing the applicant to moor in the small boat harbor who has applied for movement to another berth within the same harbor, provided that the vacant berth is of the same characteristics, category, or type as the berth currently allocated to the applicant and assignment of the applicant's vessel to the vacant berth would not be contrary to public interest or otherwise unlawful or contrary to these rules.

(b) Except as provided in subsection (a) and except where allocation shall be made pursuant to section 13-231-86 in small boat harbors with established categories of berths, an unassigned berth shall be promptly offered to the senior applicant for a regular mooring permit subject to the limitations contained in these rules promoting maximum, safe, convenient, and efficient utilization of facilities. Therefore, when the department receives a notice of cancellation of a regular mooring permit pursuant to section 13-231-9; a regular mooring permit expires, becomes void or is cancelled; or an assigned berth is vacated, other than temporarily for any reason, the department shall commence the process of allocating the berth to the senior applicant for a regular mooring permit as expeditiously as possible as provided herein or in section 13-231-86.

(c) If assignment of the senior applicant's vessel to the available berth would not afford maximum, safe, convenient, and efficient utilization of the facility as determined in accordance with the factors enumerated in section 13-231-80 or is contrary to public interest or is otherwise unlawful or contrary to these rules, the berth shall then be

promptly offered to the next senior qualified applicant whose vessel is suitable for the berth.

(d) An assigned berth, temporarily vacant while the regular permittee's vessel assigned thereto is temporarily absent from the berth, or an unassigned berth that is temporarily vacant pending allocation to and occupancy by a regular permittee shall be temporarily allocated to applicants as follows subject to sections 13-231-23 and 13-231-24 and the suitability of the vessel for the berth as determined by evaluation of the factors enumerated in this subchapter in order to promote the maximum safe, convenient, and efficient utilization of the small boat harbor facilities.

- (1) A nonrenewable temporary mooring permit authorizing interim use of a temporarily vacant berth for a period not to exceed the anticipated period of temporary vacancy or in any event not to exceed thirty days, whichever period is shorter, shall be offered to the senior applicant for a temporary mooring permit for the berth available pursuant to subsection (2) if suitable for the applicant's vessel in accordance with the factors enumerated in this subchapter, to promote maximum, safe, convenient, and efficient utilization of the facility. If the senior applicant for a temporary mooring permit declines the offer of interim use of the berth, the applicant's application for a temporary mooring permit shall be void and the berth shall be offered to the next senior applicant for a temporary mooring permit.
- (2) Priorities for allocation of temporarily vacant berths for interim use as they become available shall be as prescribed herein:
 - (A) First priority. The senior applicant to moor a transient vessel who applied in advance in writing for interim use of a temporarily vacant berth to begin at a specified time and whose

application was received and accepted by the department shall have priority for use of the berth over other applicants for temporary moorings enumerated in this subsection; provided that a transient vessel shall be allocated to a berth that has been set aside and designated by the department for use by transient vessels only unless the transient berths available for allocation at that time are not suitable for the vessel, or no such transient berths have been set aside in that harbor.

- (B) Second priority. If none of the vessels owned by the applicants, enumerated in paragraph (2)(A) are suitable for allocation to a temporarily vacant berth available for use, or if the eligible applicants decline an offer by the department to utilize a suitable berth, the senior applicant who applied in advance in writing to moor a vessel, other than a transient vessel, for an interim period whose application was received and accepted by the department shall have priority for use of the berth over other applicant's enumerated in subparagraph (C).
- (C) Third priority. If none of the vessels owned by the applicants awaiting a berth, enumerated in subparagraphs (A) and (B), are suitable for allocation to a temporarily vacant berth, or the eligible applicants decline an offer by the department to utilize the berth, the berth shall be offered on a first-come, first-served basis. [Eff 2/24/94; am comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-85.5 Allocation of offshore mooring permits. Offshore mooring permits shall be allocated in accordance with and following the procedures set forth for mooring permits for berths. [Eff and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

§13-231-86 Categories of berths; priority of allocation. (a) Categories or berths available to applicants for moorings in Ala Wai, Lahaina, Nawiliwili, and Port Allen small boat harbors are established as shown in subsections (b), (c), (d), and (e). In these small boat harbors an applicant for a berth shall be placed in an appropriate vessel class by the department and is eligible for the corresponding category of berths. Applicants may apply by separate application for more than one category; provided, that their vessel is eligible for assignment only to those categories which correspond to the vessel class in which they are placed. An available berth shall be allocated to the senior applicant eligible for assignment to that category of berth provided that the proposed assignment of the vessel to the berth affords maximum, safe, convenient, and efficient utilization of facilities, and provided that the assignment is not contrary to public interest or is otherwise unlawful or contrary to these rules. Allocation of a berth shall not be made if the length of the senior applicant's vessel is greater or less than the length limitations prescribed for each category as shown below. Each category of berths is subject to all the limitations prescribed by this section.

Allocation of temporary mooring permits shall be made in accordance with the categories as established by this section and pursuant to the terms and conditions of section 13-231-87.

(b) Ala Wai small boat harbor. The following

categories of berths are established at Ala Wai small boat harbor.

| <u>CATEGORIES</u> | <u>VESSELS ELIGIBLE TO MOOR</u> |
|-------------------|--------------------------------------------------------|
| A | 20' to 28' in length |
| B | 28' to 35' in length |
| C | 35' to 45' in length |
| D | 45' to 55' in length |
| <u>E</u> | 55' to 65' in length |
| <u>F</u> | 65' to 75' in length |
| G | 75' to 85' in length |
| H | up to 19' in length |
| I | Multihull vessels exclusively of varying lengths |

(c) Lahaina small boat harbor. The following categories of berths are established at Lahaina small boat harbor.

| <u>CATEGORIES</u> | <u>PIER/CATWALK LENGTH/TYPE</u> | <u>VESSELS ELIGIBLE TO MOOR</u> |
|-------------------|-------------------------------------|-------------------------------------------|
| A | Marginal wharf, berths 2-5 | Commercial vessels Up to 65' in length |
| B | Catwalks, berths 6- 21 and 86-99 | Commercial vessels Up to 55' in length |
| C | Marginal wharf, berths 22-85 | Up to 50' in length |

Commercial vessels holding valid mooring permits within Lahaina small boat harbor shall load and unload passengers from the assigned berth, unless otherwise authorized by the department to load and unload passengers from the loading dock. The mooring of any vessel within Lahaina small boat harbor shall be subject to sections 13-231-7, 13-231-80 and other applicable rules of the department.

(d) Nawiliwili small boat harbor. The following categories of berths are established at Nawiliwili small boat harbor.

| <u>CATEGORIES</u> | <u>PIER/CATWALK</u> | <u>ELIGIBLE VESSELS TO MOOR</u> |
|-------------------|---------------------|---------------------------------|
| A 60' | Pier 100 | 55' to 65' in length |
| B 40' | Piers 100, 200, 300 | 35' to 45' in length |
| C 30' | Pier 300 | 25' to 35' in length |
| D | Harbor basin | Not to exceed 50' in length |
| E | Offshore Mooring | |

(e) Port Allen small boat harbor. The following categories of berths are established at Port Allen small boat harbor.

| <u>CATEGORIES</u> | <u>PIER/CATWALK</u> | <u>ELIGIBLE VESSELS TO MOOR</u> |
|-------------------|---------------------|---------------------------------|
| A 50' | Pier 100 | 45' to 55' in length |
| B 40' | Piers 100, 200 | 35' to 45' in length |
| C | Harbor Basin | Not to exceed 50' in length |

[Eff 2/24/94; am 11/15/99; am and comp]
 (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-9, 200-10)

§13-231-87 Notice to owner of available berth or offshore mooring. (a) When an offer of a regular mooring permit to use a berth or offshore mooring area can be made, as provided for in this subchapter, the department shall deliver the offer or send it by certified mail, return receipt requested, addressed to the applicant eligible to receive the offer pursuant to this subchapter at the post office address furnished to the department in writing by the applicant.

(b) The department shall offer a temporary mooring permit to the applicant eligible to receive it by telephone, personal service, or first class mail, postage prepaid addressed to the applicant at the post

office address furnished to the department in writing by the applicant. [Eff 2/24/94; am and comp SEP 25 2014] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-88 Offer of regular mooring permit valid only fourteen days; written notice of intention; acceptance. (a) An applicant for a regular mooring permit may decline an offer to the applicant of a regular mooring permit and retain the applicant's seniority if the applicant declines the offer in writing addressed to and received by the department, not later than fourteen days after the date of receipt of the offer. An applicant who declines an offer in writing and retains the applicant's seniority pursuant to this section, shall not be considered for a second offer on the basis of the applicant's seniority until six months have elapsed since the date of the applicant's first refusal. If the applicant decides to accept the offer, the applicant shall either deliver a written notice of intention to accept the offer to the department within fourteen days after the date of receipt of the offer or accept the offer by securing a use permit, complying with the requirements of section 200-9 and moving the applicant's vessel into the assigned berth or assigned mooring area, as applicable, within fourteen days after the receipt of the offer. The applicant's application for a use permit and the offer by the department of a use permit shall be void if the applicant fails to either move the applicant's vessel into the berth or mooring area, as applicable, or to give notice of intent to accept or to decline the offer in writing within fourteen days after the date of receipt of the offer, and the use permit shall then be offered to the next senior applicant for berth or mooring area, as applicable, pursuant to this subchapter. An applicant's application for a regular mooring permit shall also be void if the applicant fails to accept a second offer of a regular mooring permit to use a berth, or mooring area, as applicable, and the permit shall then be

offered to the next senior applicant for berth or mooring area, as applicable. Since time is of the essence, the offer delivered or mailed pursuant to section 13-231-87 shall contain a statement that the offer will lapse unless accepted in accordance with the procedures of this section. For the purposes of this subsection an applicant who declines a berth offered to the applicant as provided herein after presenting conclusive evidence to the department that for reasons of safety or navigation the berth offered to the applicant is unsuitable for the applicant's vessel shall not be classified as "an applicant who has declined the offer of a berth".

(b) An applicant who has delivered a written notice of intention to accept the offer to the department shall accept the offer by:

- (1) Securing a use permit for use of the berth or mooring area offered to the applicant as prescribed in sections 13-231-2 and 13-231-3 within fourteen days after the applicant mails or personally delivers the notice of intention to accept to the department;
- (2) Otherwise complying with section 200-9, HRS, and sections 13-231-2 and 13-231-3; and
- (3) Moving the applicant's vessel into the assigned berth or mooring area, as applicable, within fourteen days after the applicant mails or personally delivers the notice of intention to accept the offer to the department. Except as provided in subsection (c) the applicant's application for a use permit, the offer by the State of a use permit and the applicant's notice of intention to accept the offer shall be void if the applicant fails to secure a use permit and to move the applicant's vessel into the applicant's assigned berth or mooring area, as applicable, within fourteen days as prescribed herein, and the use permit shall then be offered to the next senior applicant in accordance with these rules.

(c) The department may extend the deadline for acceptance prescribed in subsection (b) if the applicant presents conclusive evidence to the department that the granting of additional time for compliance is reasonable and essential to prevent undue hardship, provided that any extension of time for compliance shall not exceed a period of one hundred twenty days from the date the department received from the applicant a written notice of intention to accept the offer of a use permit. This exception is only applicable to an applicant who has been offered a regular mooring permit.

(d) Should an applicant receive additional time for compliance and fail to bring in a vessel to occupy the accepted berth or mooring, the applicant shall pay \$250.00 per month, from the time of original acceptance until the one hundred and twentieth day lapses. [Eff 2/24/94; am and comp SEP 25 2014]
(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-231-89 Offer of temporary mooring permit valid only seven days; notification of intention; acceptance. (a) An applicant for a temporary mooring permit to moor the applicant's vessel in a temporarily vacant berth or offshore mooring who has been offered the use of a berth or mooring area pursuant to this subchapter shall, within seven days after the offer was made by telephone, personal service, or mail, notify the department of the applicant's intention to accept, or decline the offer. If the applicant declines the offer the applicant's application for a temporary mooring permit shall be void and the berth or mooring area shall be offered to the next senior applicant in accordance with these rules.

(b) An applicant who has notified the department of the applicant's intention to accept the offer shall accept the offer by:

- (1) Securing a temporary mooring permit for use of the berth or mooring area offered within

- seven days after the date the offer was made;
- (2) Moving the applicant's vessel into the assigned berth or mooring area within seven days after the date the offer was made by telephone, personal service, or mail, whichever event is earlier; and
 - (3) Otherwise complying with the requirements of section 200-9, Hawaii Revised Statutes.

The applicant's application for a use permit and the applicant's notice of intention to accept the offer shall be void if the applicant fails to secure a use permit and to move the applicant's vessel into the applicant's assigned berth or mooring area within seven days as prescribed herein and the use permit shall then be offered to the next senior applicant for the type of berth or mooring available in accordance with the rules. [Eff 2/24/94; am and comp **SEP 25 2014** (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)]

§13-231-90 REPEALED. [R **SEP 25 2014**]

EXHIBIT "A"
July 2012

CONTENTS DESCRIPTION OF THE AGREEMENT OF BOATOWNER
PURSUANT TO SECTION 13-231-2 OF THE SMALL BOAT
HARBORS REGULATIONS, INCLUDING OFFSHORE MOORING

An agreement effectuating provisions of Section 13-231-2 of the small boat harbors rules, including offshore mooring, may contain the following terms, covenants and conditions:

1. The owner's certification of all information contained in the application and submitted by him, as being true.
2. The owner's covenant to abide by any and all provisions of the small boat harbors rules, including offshore mooring, and the incorporation by reference of such rules into the agreement.
3. The owner's authorization of the State to assign and reassign berths and spaces for his vessel in accordance with section 13-231-7 of the small boat harbors rules, including offshore mooring.
4. A provision stating that all persons signing the agreement shall be jointly and severally liable for the full performance of all terms, covenants and conditions thereof.
5. The owner's authorization of the State to board his vessel to effect reasonable inspection in the manner and pursuant to procedures set out in section 13-231-8 of the small boat harbors rules, including offshore mooring.
6. The owner's covenant to pay all applicable fees and charges, and his authorization of the state to assess collection and service charges for the delinquent payment thereof.
7. The owner's covenant to indemnify the State and its officers and employees for damages and injuries arising out of the owner's exercise of privileges granted by the use permit.
8. A provision that the term of the agreement and use permit shall terminate upon expiration of the period stated therein pursuant to section 13-231-5 of the small boat harbors rules, including offshore mooring, thereby requiring a renewal of the agreement and use permit in order that the owner may continue to use the small boat harbor and its facilities.

9. A provision that the use permit with its attendant privileges is revocable and cancellable in accordance with sections 13-231-9 and 13-231-10 of the small boat harbors rules, including offshore mooring; and the owner's covenant to pay, upon his failure to promptly remove his vessel from the small boat harbor upon revocation, cancellation or termination of the use permit, a reasonable sum to be established between the parties and to be made a part of the agreement, as liquidated damages.
10. The owner's authorization of the state to reasonably effect the removal of his vessel pursuant to sections 13-231-10 and/or 13-231-17 of the small boat harbors rules, including offshore mooring.
11. The owner's covenant to pay all costs and attorney's fees, including costs of collection of delinquent fees and charges in the event the state is forced to institute a suit against the owner of his violation of any and all provisions of the small boat harbors rules, including offshore mooring, and/or the agreement, and is successful in such suit.
12. A provision stating that neither the agreement, use permit or the privileges attendant thereto is assignable nor in any way transferable, in part or in its entirety.
13. An open provision to enable the state and the owner to negotiate additional terms, covenants and conditions as may be proper under the particular circumstances, including but not limited to provisions requiring sufficient comprehensive liability insurance coverage at a minimum of \$500,000 per occurrence as approved by the department and performance and/or compliance bonds in such amounts as may be warranted under the circumstances.
14. A provision that in the event the fees and charges which shall have accrued in favor of the department shall not be paid as provided in these small boat harbors rules, including offshore mooring, the department may, after reasonable notice, take possession of the vessel, its tackle, apparel, fixtures, equipment and furnishings, and may retain such possession until all charges then owing and any charges which shall thereafter accrue are fully paid and the remedy thus provided is in addition to and not in lieu of any other remedies which the department may have by virtue of statute or otherwise.

EXHIBIT "B"
July 2012

STATE OF HAWAII
DLNR - DIVISION OF
BOATING
AND OCEAN RECREATION

VESSEL INSPECTION REPORT

DATE: _____

OWNER: _____

PERSON(S) PRESENT FOR INSPECTION: _____

VESSEL NAME: _____ REG/DOC # _____

EXP. DATE: _____

REGISTERED/DOCUMENTED USE: _____

DESCRIPTION OF VESSEL: _____

PROPULSION: _____ NET TONNAGE

(commercial only): _____

RADIO - TYPE(S) & CALL SIGN: _____

EPIRB ABOARD?

Each item shall meet applicable U.S. COAST GUARD,
AMERICAN BOAT & YACHT COUNCIL STANDARDS AND
DEPARTMENT OF LAND AND NATURAL RESOURCES ADMINSTRATIVE
RULES.

| INSPECTION ITEM | PASSED | NOT PASSED | N/A | REMARKS |
|-----------------------------|--------|------------|-----|---------|
| CERTIFICATE/DOCUMENT ABOARD | | | | |

| | | | | |
|----------------------------------------------|--|--|--|--|
| REG/DOC NO. PROPERTY DISPLAYED | | | | |
| MFG'S SER. NO. DISPLAYED | | | | |
| SAFETY EQUIPMENT | | | | |
| PFD'S | | | | |
| VISUAL DISTRESS SIGNAL(S) | | | | |
| HORN, WHISTLE AND/OR BELL | | | | |
| PLACARDS: TRASH, OIL FIRE EXTINGUISHER(S) | | | | |
| PROPER LIGHTS | | | | |
| BILGE PUMPING DEVICE | | | | |
| OIL IN BILGE | | | | |
| OIL ABSORBENT PADS OPERATIVE | | | | |
| OTHER FUELS PROPERLY VENTED | | | | |
| PROPULSION | | | | |
| ENGINE ABOARD | | | | |
| ENGINE OPERATIVE/APPROP. SIZE | | | | |
| BACKFIRE FLAME ARRESTER | | | | |
| ENGINE COMPARTMENT VENTILATED | | | | |
| FUEL COMPARTMENT VENTILATED | | | | |
| EXHAUST SYSTEM | | | | |
| SPARS OPERATIVE | | | | |
| RIGGING OPERATIVE | | | | |
| APPROPRIATE SAILS ABOARD | | | | |
| MARINE SANITATION DEVICE ABOARD | | | | |
| HOLDING TANK - TYPE | | | | |
| FLOW THROUGH | | | | |
| PROPERLY INSTALLED | | | | |

(Continued on reverse side)

| INSPECTION ITEM | PASSE D | NOT PASSE D | N/ A | REMARK S |
|-------------------------------------|------------|-------------------|---------|-------------|
| ADEQUATE STEERING/RUDDER OPER. | | | | |
| HULL/PROP/RUDDER CLEAN FOR USE | | | | |
| ADEQUATE EXITS | | | | |
| UNSECURED OPEN'GS/HULL/DECK/CAB | | | | |
| RECONSTRUCTION/SURVEY/INSURA NCE | | | | |
| CHAFE GEAR | | | | |
| GROUND TACKLE | | | | |
| GENERAL APPEARANCE | | | | |
| REASONABLE CLEANLINESS | | | | |
| ANIMAL ABOARD | | | | |
| HOW MANY LIVING ABOARD? | | | | |

COMMENTS: _____

I inspected the vessel described on the front of this form on _____ 20 _____ at _____ (AM) (PM) at _____ . I have observed the vessel described on the front of this form move by its own propulsion (POWER/SAIL), at an adequate speed indicating that the vessel was in good operating condition, from _____ to _____ , the route designated by the harbor agent for this vessel. I have personally inspected every item on the checklist on the front and

reverse side of this form for the vessel described therein and (CONSIDER / DO NOT CONSIDER) it to be in good material and operating condition in accordance with the requirements contained in the Hawaii Administrative Rules, Department of Land and Natural Resources, State of Hawaii. I further certify that the vessel's length (end to end over deck: LOD) is _____ feet _____ inches; and length overall (including extension such as bowsprit: LOA) is _____ feet _____ inches.

Date signed: _____ Signature: _____

Name typed or printed: _____

Company Name: _____

Address: _____

City: _____ State: _____

Zip: _____

Contact Phone No: _____

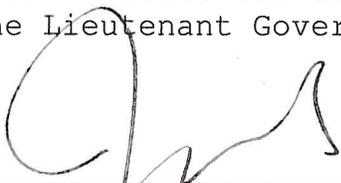
PERMIT NO. _____ PERMIT EXPIRATION

DATE: _____

DEPARTMENT OF LAND AND NATURAL RESOURCES

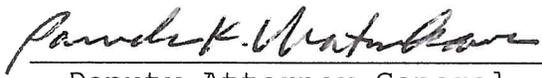
Amendments to and compilation of chapter 231, title 13, Hawaii Administrative Rules, on the Summary Page dated April 25, 2014 were adopted on April 25, 2014, following public hearings held on April 2 and 3, 2014, after public notice was given in the Honolulu Star-Advertiser, The Garden Island News, The Maui News, The Hawaii Tribune-Herald, and West Hawaii Today on March 2, 2014.

These amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.



WILLIAM J. AILA, JR.
Chairperson
Board of Land and Natural
Resources

APPROVED AS TO FORM:



Deputy Attorney General



NEIL ABERCROMBIE
Governor
State of Hawaii

Date: 9.9.14

Filed SEP15 1:26PM
LT GOVERNOR
STATE OF HAWAII

Modified

28) HAR §§ 13-251-36 to 13-251-46, §§ 13-251-48 to 13-251-52, §§ 13-251-57 to 13-251-58, and § 13-251-76

Relating to Waikiki and Kaanapali catamarans; Waikiki and Kaanapali beach and ocean waters; Commercial activities

DEPARTMENT OF LAND AND NATURAL RESOURCES

Rules Amending Title 13
Hawaii Administrative Rules

April 25, 2014

1. Chapter 13-251, Hawaii Administrative Rules, entitled "Waikiki and Kaanapali Ocean Waters", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART III

OCEAN WATERS, NAVIGABLE STREAMS AND BEACHES

CHAPTER 251

[~~WAIKIKI AND KAA NAPALI OCEAN WATERS~~] COMMERCIAL
ACTIVITIES ON STATE OCEAN WATERS, NAVIGABLE STREAMS,
AND BEACHES

Subchapter 1 Catamaran Captain, Canoe Captain,
Canoe Second Captain, Surfboard
Instructor, Sailboard Instructor
and Commercial Motorboat Operator
Permits

§13-251-1 Permits
§13-251-2 What persons shall not receive permits
§13-251-3 Special restrictions

§13-251-4 Learner steersperson permits
 §13-251-5 Application for operator permit
 §13-251-6 Examination of applicants
 §13-251-7 Operator permits issued to catamaran
 captains, canoe captains, canoe second
 captains, surfboard instructors, sail-
 board instructors and commercial
 motorboat operators
 §13-251-8 Operator permit to be carried on board
 and exhibited upon demand
 §13-251-9 Duplicate certificate
 §13-251-10 Expiration of operator permit
 §13-251-11 Records to be kept by the department
 §§13-251-12 to 13-251-15 (Reserved)

Subchapter 2 Suspension or Revocation of Operator Permits

§13-251-16 Authority of department to revoke
 operator permit
 §13-251-17 Authority of department to suspend
 operator permit
 §13-251-18 Department may require re-examination
 §13-251-19 Period of suspension or revocation
 §13-251-20 Surrender and return of operator permit
 §§13-251-21 to 13-251-25 (Reserved)

Subchapter 3 Violation of Operator Permit Provisions

§13-251-26 Unlawful use of operator permit
 §13-251-27 Operating while operator permit
 suspended or revoked
 §13-251-28 Permitting unauthorized person to
 operate catamaran or canoe
 §§13-251-29 to 13-251-30 (Reserved)

Subchapter 4 Repealed

§13-251-31 Repealed
§13-251-32 Repealed

Subchapter 4.1 Use Permits

§13-251-33 Use permit
§13-251-34 Insurance requirements
§13-251-35 Reissuance of a registration
certificate and/or commercial use
permit

Subchapter 5 Waikiki and Kaanapali Catamarans

§13-251-36 Application for a catamaran
registration certificate and/or
commercial use permit
§13-251-37 Grounds for refusing an application for
a registration certificate and/or
commercial use permit
§13-251-38 Registration certificate and/or
commercial use permit indices
§13-251-39 Department to issue registration
certificate and/or commercial use
permit
§13-251-40 Registration certificates and/or
commercial use permits to be exhibited
upon demand
§13-251-41 Identification of catamarans with a
registration certificate and/or
commercial use permit
§13-251-42 Expiration of registration certificate
and/or commercial use permit
§13-251-43 Application for renewal of registration
certificate and/or commercial use
permit
§13-251-44 Notice of change of address
§13-251-45 Transfer of registration certificate
and/or commercial use permit

§13-251-46 New owner must secure new registration certificate and/or commercial use permit
§13-251-47 Repealed
§13-251-48 Operation of a catamaran when registration certificate and/or commercial use permit suspended or revoked
§13-251-49 Authority of department to suspend or revoke registration certificate and/or commercial use permit
§13-251-50 Duplicate registration certificate and/or commercial use permit
§13-251-51 Catamaran registration limitations
§13-251-52 Allocation of catamaran registration certificates and/or commercial use permits
§13-251-53 Waikiki catamarans; mooring of
§§13-251-54 to 13-251-55 (Reserved)

Subchapter 6 Waikiki and Kaanapali Beach and Ocean Waters

§13-251-56 Repealed
§13-251-57 Waikiki ocean waters
§13-251-58 Kaanapali beach and ocean waters
§13-251-59 Repealed
§13-251-60 Repealed
§§13-251-61 to 13-251-65 (Reserved)

Subchapter 7 Special Operating Restrictions

§13-251-66 Canoe operation; required crew
§13-251-67 Catamaran crews
§13-251-68 Repealed
§13-251-69 Learner steersperson
§§12-251-70 to 13-251-75 (Reserved)

Kaanapali ocean waters unless the person has a valid permit under this part.

(b) No person shall navigate a commercial motorboat in or upon Kaanapali ocean waters unless the person has a valid permit under this part.

(c) No permit is required for captains navigating catamarans carrying passengers for hire who, while cruising, enter Waikiki or Kaanapali ocean waters other than restricted waters described in sections 13-251-57 and 13-251-58, and do not load or unload passengers in or on Waikiki or Kaanapali ocean waters or shores. [Eff 2/24/94; comp]
(Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-2 What persons shall not receive permits[-]. The department shall not issue an operator permit to any person:

- (1) Who is under the age of twenty-one years for a catamaran captain or commercial motorboat operator, or under the age of twenty years for a canoe captain, or under the age of eighteen for a canoe second captain, or surfboard or sailboard instructor;
- (2) Whose permit has been suspended or revoked, while the suspension or revocation is in effect;
- (3) Who is a habitual drunkard, or a habitual user of narcotic or other drugs, to a degree which renders the person incapable of safely operating as a permittee;
- (4) Who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency as provided by law, such as to render the person incapable of safely operating as a permittee;
- (5) Who is required by this chapter to pass an examination or re-examination and has failed to do so; or

- (6) Who the chairperson has good cause to believe is incapable of operating as a permittee without substantially jeopardizing public safety and welfare. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-3 Special restrictions[~~-~~]. (a) The department, upon issuing an operator permit, shall indicate thereon the class of permit so issued and shall appropriately examine each applicant according to the class.

(b) The department shall not issue a catamaran captain permit unless the applicant has a valid Coast Guard license to operate sailing catamarans carrying passengers for hire, and has a minimum of ninety working days catamaran sailing experience in Waikiki ocean waters, Zone A, or Kaanapali ocean waters, as appropriate, attested to by two persons holding valid catamaran captain permits issued by the department.

(c) The department shall not issue a canoe captain permit unless the department is fully satisfied as to the applicant's competency and fitness to receive the permit, and the applicant has a minimum of three years experience in canoe handling, possesses a current Red Cross advanced life saving certificate, knows elementary first aid, and is physically qualified to perform the duties the position requires, as evidenced by a written report of a physician's physical examination made no earlier than thirty days prior to the effective date of the permit.

(d) The department shall not issue a canoe second captain's permit unless the department is fully satisfied as to the applicant's competency and fitness to receive the permit, and the applicant has a minimum of eighteen months experience in canoe handling, possesses a current Red Cross advanced life saving certificate, knows elementary first aid, and is physically qualified to perform the duties the position requires, as evidenced by a written report of

a physician's examination made no earlier than thirty days prior to the effective date of the permit.

(e) The department shall not issue a senior surfboard instructor's permit or a sailboard instructor's permit unless the department is fully satisfied as to the applicant's competency and fitness to receive the permit, and the applicant has a minimum of three years surfboard or sailboard riding experience, as appropriate, possesses a current Red Cross advanced life saving certificate, knows elementary first aid, and is physically qualified to perform the duties the position requires, as evidenced by a written report of a physician's examination made no earlier than thirty days prior to the effective date of the permit.

(f) The department shall not issue a primary surfboard instructor's permit unless the department is fully satisfied as to the applicant's competency and fitness to receive the permit, and the applicant has a minimum of three years surfboard riding experience, possesses a current Red Cross advanced life saving certificate (on application for original permit only), knows elementary first aid, and is physically qualified to perform the duties the position requires, as evidenced by a written report of a physician's examination made no earlier than thirty days prior to the effective date of the permit.

(g) A primary surfboard instructor's permit for Waikiki shall entitle the permittee to instruct only in waters five feet or less in depth at mean low water and not in the outer surfbreak area. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-4 Learner steersperson permits~~[]~~. Any person who is at least seventeen years of age may apply to the department for a learner steersperson permit. After the applicant has passed all parts of the applicable examination other than a canoe surfing test, the department may issue to the applicant a learner steersperson permit which shall entitle the

applicant to navigate a canoe, registered by the department and not carrying passengers for hire, in or upon Waikiki or Kaanapali ocean waters as appropriate. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-5 Application for operator permit[-].

(a) Every application for an operator permit shall be accompanied by the proper fee and payment of such fee shall entitle the applicant to not more than three attempts to pass any examination within a period of six months from the date of application.

(b) Every application shall include the full name, aliases, date of birth, sex, and resident address of the applicant and briefly describe the applicant, and the applicant's experience related to the vessel, surfboard, or sailboard the applicant wishes to use or operate. The application shall state whether the applicant has been issued a permit and, if so, when and whether the permit has ever been suspended or revoked, or whether an application has ever been refused and, if so, the date and reason for the suspension, revocation, or refusal. Two recent photographs shall be attached to the application. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-6 Examination of applicants[-]. (a)

The department shall examine every applicant for an operator permit, except as otherwise provided in this section. The examination shall include a test of the applicant's knowledge of this chapter and shall include an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of catamarans, canoes, surfboards, sailboards, or commercial motorboats, as the case may be, and such further written, physical, and mental examination as the department feels is necessary to

determine the applicant's fitness to operate a catamaran, canoe, surfboard, sailboard, or motorboat safely upon the Waikiki or Kaanapali ocean waters as appropriate; provided that applicants for learner steersperson permits shall not be required to pass the canoe surfing test.

(b) The department may issue without examination an operator permit to any person applying therefore who furnished evidence satisfactory to the department that the person is not disqualified under this chapter and that the person has previously been issued an operator permit by the department. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-7 Operator permits issued to catamaran captains, canoe captains, canoe second captains, surfboard instructors, sailboard instructors and commercial motorboat operators[-]. (a) An operator permit when issued by the department shall bear a distinguishing number assigned to the permit, the full name, date of birth, residence address, and brief description of the permittee, and a space upon which the permittee shall sign in ink the permittee's name immediately upon receipt of the permit. No permit shall be valid until it has been so signed by the permittee.

(b) Every operator permit shall bear the permittee's photograph showing the permittee's facial features, which shall be furnished by the permittee. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-8 Operator permit to be carried on board and exhibited upon demand[-]. Every permittee shall have the operator permit in the operator's immediate possession or at a place for safekeeping in the immediate vicinity at all times when operating as a permittee and shall display the same upon demand of a

lifeguard, peace officer, or representative of the department. [Eff 2/24/94; am and comp]
 (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-9 Duplicate certificate[-]. In the event that an operator permit issued under this subchapter is lost or destroyed, the permittee may obtain a duplicate or substitute thereof, upon payment of the required fee, as provided by chapter 13-253, obtain a duplicate or substitute thereof. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-10 Expiration of operator permit[-]. Every operator permit shall expire three years after its issuance. Application for a new permit shall be made as provided in section 13-251-5. The department may in its discretion, as provided in section 13-251-6, waive examination for renewal of a permit. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-11 Records to be kept by the department[-]. (a) The department shall file every application for a permit received by it and shall maintain suitable records concerning permits issued.
 (b) The department shall file upon receipt, all accident reports and abstracts of records of convictions for violating this chapter. The department shall also maintain convenient records or make suitable notations so that an individual record of each licensee, showing the licensee's convictions and accidents, shall be readily ascertainable and available for the consideration by the department upon any application for renewal of license or permit and at other suitable times. [Eff 2/24/94; am and comp]

] (Auth: HRS §§200-2, 200-3, 200-4)
(Imp: HRS §§200-2, 200-3, 200-4)

§§13-251-12 to 13-251-15 (Reserved)

SUBCHAPTER 2

SUSPENSION OR REVOCATION OF OPERATOR PERMITS

§13-251-16 Authority of department to revoke operator permit[-]. (a) The department may revoke any operator permit upon determining that the permittee failed to give the required or correct information in the application, committed any fraud in making such application, or repeatedly violated section 13-251-17.

(b) Upon revocation, the department shall immediately notify the permittee in writing and upon written request shall afford the permittee full and reasonable opportunity for a hearing. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-17 Authority of department to suspend operator permit[-]. (a) The department may suspend the operator permit of a catamaran captain upon sufficient evidence that the permittee does not have a valid Coast Guard license.

(b) The department may suspend the operator permit of a canoe captain, second captain, surfboard instructor, sailboard instructor, operator of a commercial motorboat or learner steersperson upon sufficient evidence that the permittee:

- (1) Has been convicted of violations of this chapter in such frequency and seriousness as to indicate a disregard for the safety of other persons on the waters;

- (2) Is incompetent to operate canoes, surfboards, sailboards or motorboats for charter or rent, as the case may be;
- (3) Has permitted an unlawful or fraudulent use of the permittee's license or permit; or
- (4) Has violated this chapter.

(c) Upon suspension, the department shall immediately notify the permittee in writing and upon a written request shall afford the permittee full and reasonable opportunity for a hearing. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-18 Department may require re-examination[-]. The department upon written notice of at least five days to the permittee, may require the permittee to submit to an examination if the department has good cause to believe that a permittee is incompetent or otherwise not qualified to retain an operator permit. Upon the conclusion of the examination, the department shall take action as may be appropriate and may suspend or revoke the permit of that person or may issue a permit subject to restriction. Refusal or neglect of the permittee to submit to this examination shall be grounds for suspension or revocation of the permit. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-19 Period of suspension or revocation[-]. (a) The department shall not suspend an operator permit for a period of more than one year, except as provided under section 13-251-27.

(b) Any person whose operator permit had been revoked shall not be entitled to have that permit or privilege renewed or restored unless the revocation was for a cause which has been remedied, except that after one year from the date on which the revoked permit was surrendered to and received by the department, the person may apply for a new permit as

provided by this chapter. However, the department shall not issue a new permit unless it is satisfied, after investigation, with the character and ability of the person. [Eff 2/24/94; am and comp]
(Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-20 Surrender and return of operator permit[-]. The department, upon suspending or revoking an operator permit, shall require that the permit be surrendered to and be retained by the department, except that at the end of the suspension, the surrendered permit shall be returned to the permittee. [Eff 2/24/94; am and comp]
(Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§§13-251-21 to 13-251-25 (Reserved)

SUBCHAPTER 3

VIOLATION OF OPERATOR PERMIT PROVISIONS

§13-251-26 Unlawful use of operator permit[-].
No person shall:

- (1) Display, cause or permit to be displayed, or have in the person's possession, any cancelled, revoked, suspended, fictitious, or fraudulently altered permit;
- (2) Lend the person's permit to any other person or knowingly permit the use thereof by another;
- (3) Display or represent as one's own, any permit not issued to oneself;
- (4) Fail or refuse to surrender any departmental permit to the department upon its lawful demand;

- (5) Permit any unlawful use of a permit issued to that person;
- (6) Do any act forbidden, or fail to perform any act required, by this chapter. [Eff 2/24/94; am and comp]
(Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-27 Operating while operator permit suspended or revoked[-]. (a) No person shall operate as a permittee at a time when the privilege is suspended or revoked.

(b) The department shall extend the operator's suspension for a period equal to the original suspension upon receiving a record of that person's conviction for operating while the person's operator permit was suspended. If the conviction was for operating while a permit was revoked, the department shall not issue a new permit for an additional period of one year from the date the person would otherwise have been entitled to apply for a new permit. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-28 Permitting unauthorized person to operate catamaran or canoe[-]. No person shall authorize or permit a catamaran or canoe carrying passengers for hire to be navigated in or upon Waikiki [~~or Kaanapali~~] ocean waters by any person who is not authorized by this chapter to do so. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§§13-251-29 to 13-251-30 (Reserved)

[~~SUBCHAPTER 4~~]

~~OWNERS OF PASSENGER CARRYING VESSELS, FOR RENT
SURFBOARDS, FOR RENT SAILBOARDS, FOR CHARTER OR RENT
MOTORBOATS AND FOR RENT WATERSPORTS EQUIPMENT-PROOF OF
FINANCIAL RESPONSIBILITY]~~

~~[\$13-251-31 Owner of passenger-carrying vessels,
for-rent surfboards, for-rent sailboards, for-charter
or rent motorboats, or for-rent water sports equipment
to give proof of financial responsibility. (a) It
shall be unlawful for the owner of any:~~

- ~~(1) Vessel carrying passengers for hire to
authorize or knowingly permit that vessel to
be navigated in or upon Waikiki or Kaanapali
ocean waters, unless the owner has
registered the catamaran as prescribed in
this subchapter; except that this paragraph
shall not apply to cruising vessels as
described in section 13-251-1;~~
- ~~(2) Surfboard or sailboard engaged in the
business of renting surfboards or sailboards
for use in Waikiki or Kaanapali ocean
waters, to rent a surfboard or sailboard,
unless the owner has registered the
surfboard or sailboard as prescribed in this
subchapter. The department shall not
register any vessel, surfboard, or sailboard
unless the owner gives proof of financial
responsibility as provided by this chapter.
The department shall cancel the registration
of any vessel, surfboard, or sailboard
whenever the department ascertains that the
owner has failed to or is unable to give and
maintain proof of financial responsibility;~~
- ~~(3) Water sports equipment engaged in the
business of renting water sports equipment
for use in Waikiki or Kaanapali ocean waters
to rent water sports equipment, unless the
owner has registered the water sports
equipment as prescribed in this subchapter.
The department shall not register any water
sports equipment unless the owner gives~~

~~proof of financial responsibility as provided by this subchapter. The department shall cancel the registration of any water sports equipment whenever the department ascertains that the owner has failed to or is unable to give and maintain proof of financial responsibility;~~

- ~~(4) Water sports equipment engaged in the business of renting water sports equipment for use in Waikiki or Kaanapali ocean waters to rent water sports equipment, unless the owner has registered the water sports equipment as prescribed in this subchapter. The department shall not register any water sports equipment unless the owner gives proof of financial responsibility as provided by this subchapter. The department shall cancel the registration of any water sports equipment whenever the department determines that the owner has failed to or is unable to give and maintain proof of financial responsibility.~~

~~(b) The owner shall submit to the department evidence that there has been issued to the owner by an insurance carrier authorized to do business in the State, and naming the State as an additional insured, a public liability insurance policy or policies covering the operations under the permits issued in accordance with this chapter and with the following minimum coverages:~~

- ~~(1) In the case of vessels carrying passengers for hire, the following amounts for bodily injury and damage to property per occurrence:~~
- ~~(A) \$100,000 for vessels authorized to carry not more than six passengers;~~
 - ~~(B) Not less than \$300,000 for vessels authorized to carry more than six passengers, but less than twenty-six;~~
 - ~~(C) Not less than \$500,000 for vessels authorized to carry more than twenty-five passengers;~~

- ~~(2) In the case of surfboard or sailboard operations, the amount of \$50,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$100,000 for bodily injury or death;~~
- ~~(3) In the case of motorboat operations, the amount of \$100,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$500,000 for bodily injury or death;~~
- ~~(4) In the case of water sports equipment operations, the amount of \$100,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$300,000 for bodily injury or death.~~

~~(c) The owner shall maintain the policy or policies in full force and effect during all times that the owner is engaged in the businesses described in subsection (a), unless the owner has given proof of financial responsibility as provided in section 13-251-32.] [Eff 2/24/94; am 6/16/03; R]~~

~~[§13-251-32 Owner of passenger-carrying vessels, for rent surfboards, for rent sailboards, for rent motorboats, and for rent water sports equipment when no policy obtained. (a) The department shall not register any vessel, surfboard, sailboard, motorboat, or water sports equipment rented, chartered or used for carrying passengers, as the case may be, in Waikiki or Kaaanapali ocean waters if the owner thereof has not given proof of financial responsibility as provided in section 13-251-31; provided no such proof is necessary if the owner demonstrates, to the satisfaction of the department, the financial ability to respond to claims for damages as follows:~~

- ~~(1) If the owner applies for registration of surfboards or sailboards, in the sum of at least \$50,000 per person injured or killed in a surfboard or sailboard operation, subject to the total coverage in any one~~

~~accident of \$100,000 for bodily injury or death; or~~

~~(2) If the owner applies for the registration of any vessel carrying passengers for hire, in the following sums for bodily injury or death per occurrence:~~

~~(A) \$100,000 for vessels authorized to carry not more than six passengers;~~

~~(B) Not less than \$300,000 for vessels authorized to carry more than six passengers but less than twenty-six;~~

~~(C) Not less than \$500,000 for vessels authorized to carry more than twenty-five passengers;~~

~~(3) In the case of motorboat operations, the amount of \$100,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$500,000; or~~

~~(4) In the case of water sports equipment operations, the amount of \$100,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$300,000.~~

~~(b) The department shall cancel the registration of any vessel, surfboard, sailboard, motorboat or water sports equipment whenever the department determines that the owner has failed or is unable to comply with the requirements of this section.] [Eff 2/24/94; R]~~

SUBCHAPTER 4.1

USE PERMITS

§13-251-33 Use Permit. No regular or extensive use of any state property or facilities or ocean waters or navigable streams for private gain or purposes shall be allowed without corresponding and reasonable benefits and returns to the public.

(a) No person shall engage in any business or commercial activity on the navigable waters of the state without:

- (1) Prior written approval from the board or its authorized representatives; or
- (2) The proper execution of an agreement with the department. [Eff and comp]
(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-34 Insurance requirements. A registration certificate and/or commercial use permit are subject to the insurance requirements of section 13-231-65. [Eff and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-35 Reissuance of a registration certificate and/or commercial use permit. (a) The department may reissue a registration certificate and/or commercial use permit provided that:

- (1) The gross receipts during the 12 month period under the registration certificate and/or commercial use permit for which the application for reissuance has been submitted, equals or exceeds the following minimums as applicable:
 - (A) Catamarans used for bare boat (demise) charters and charter sail boats \$ 7,000
 - (B) Catamarans with a registration certificate and/or commercial use permit by the State or documented by the U. S. Coast Guard to carry six passengers or less, including charter fishing boats \$15,000
 - (C) Catamarans certified by

- the U. S. Coast Guard
to carry seven to
twenty-six passengers \$45,000
- (D) Catamarans certified by
the U. S. Coast Guard to
carry twenty-seven to forty-nine
passengers \$85,000
- (E) Catamarans certified by
the U. S. Coast Guard
to carry fifty to ninety-nine
passengers \$125,000
- (F) Catamaran certified by
the U. S. Coast Guard
to carry more than
ninety-nine passengers \$250,000
- (G) Vessels engaged in
another trade or business
not delineated and
governed by an appropriate
paragraph above \$ 7,000;
or
- (2) The registered certificate holder and/or
commercial use permittee applies to the
department in writing for reissuance of the
registration certificate and/or commercial
use permit and concurrently presents
evidence that any failure to generate gross
receipts from the operation of the catamaran
as prescribed in this subsection was due to:
- (A) The sinking, loss, or destruction of
the catamaran;
- (B) The catamaran being inoperative in
excess of 60 days due to disability of
the registered certificate holder
and/or commercial use permittee;
- (C) The catamaran was rendered inoperative
in excess of 60 days due to damage to
the catamaran, or due to the necessity
of replacing essential parts and gear,
provided that reasonable and diligent
efforts to secure such items necessary
to repair the catamaran or replace

parts, is demonstrated to the satisfaction of the department; or
(D) Where conditions and circumstances are demonstrated wherein a reissuance of the registration certificate and/or commercial use permit would be fair and warranted, and the application for reissuance is approved by the department;

and

(3) All fees and charges due and payable to the department have been paid and no violations are outstanding.

(b) No registration certificate and/or commercial use permit whose registration certificate and/or commercial use permit has been terminated for cause shall be reissued; provided that the registered certificate holder and/or commercial use permittee may apply for, but not be automatically entitled to, a new registration certificate and/or commercial use permit after one year has expired from the date of termination of the registration certificate and/or commercial use permit, all fees and charges owing the State have been paid, and the registered certificate holder and/or commercial use permittee is in compliance with federal and state laws.

(c) A corporation or other business entity must have been in continuous commercial operation as evidenced by the submission of monthly reports of gross receipts for a minimum of 12 months in order to retain their registration certificate and/or commercial use permit upon the transfer of any interest in that corporation or other business entity and fee amounts in accordance with section 13-253-1 are paid.

(d) No reissuance of a registration certificate or commercial use permit may be denied for a catamaran operating in Waikiki ocean waters without a prior hearing held in accordance with Chapter 91, Hawaii Revised Statutes. [Eff and comp

(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-

24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

~~[§§13-251-33 to 13-251-35 (Reserved)]~~

SUBCHAPTER 5

[REGISTRATION] WAIKIKI AND KAAPALI CATAMARANS

§13-251-36 Application for a catamaran registration~~[=]~~ certificate and/or commercial use permit. (a) No person shall~~[÷~~
~~(1) Offer]~~ offer for hire, navigate, operate, or sail a catamaran ~~[or canoe carrying passengers boarded or to be disembarked in or]~~ on Waikiki or Kaanapali ocean waters and ~~[shores;]~~ beach without either a registration certificate or a commercial use permit;
~~[(2) Permit the use of a surfboard, sailboard or motorboat for compensation in and on the Waikiki or Kaanapali ocean waters and shores;~~
~~(3) Permit the use of water sports equipment for compensation in and on the Waikiki or Kaanapali ocean waters and shores; or~~
~~(4) As the owner of a vessel, surfboard, sailboard, motorboat or water sports equipment, permit or authorize those operations described in paragraphs (1), (2), or (3); unless the vessel, surfboard, sailboard or water sports equipment has been properly registered with the department.]~~
 (b) The registration certificate and/or commercial use permit shall be initiated by the owner upon appropriate forms furnished by the department in accordance with those procedures that the department may reasonably prescribe. [Eff 2/24/94; am and comp

] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-37 Grounds for refusing [registration.] an application for a registration certificate and/or commercial use permit. (a) The department shall refuse a registration[,] certificate and/or commercial use permit, or any transfer of registration[,]
certificate and/or commercial use permit, upon a finding that:

- (1) The application contains any false or fraudulent statement, the applicant has failed to furnish required information or reasonable additional information requested by the department, or the applicant is not entitled to a registration certificate and/or commercial use permit under this subchapter;
- (2) The [~~vessel, surfboard, sailboard or water sports equipment~~] catamaran is unsafe to be operated upon the Waikiki or Kaanapali ocean waters;
- (3) The registration certificate and/or commercial use permit of the [~~vessel, surfboard, sailboard or water sports equipment~~] catamaran stands suspended or revoked for any reason as provided in this subchapter;
- (4) The required fee has not been paid;
- (5) Any catamaran:
 - (A) Engaged in carrying more than six passengers does not have a valid Coast Guard certificate of inspection; or
 - (B) Engaged in carrying six or less passengers does not have a record of a condition survey, by a marine surveyor as defined in section 13-231-45, undertaken within ninety days prior to application for registration or renewal

of registration, attesting that the vessel:

- (i) Is in good material and operating condition;
 - (ii) The minimum required Coast Guard safety equipment is on board;
 - (iii) The catamaran is suitable to carry passengers in Waikiki or Kaanapali ocean waters while being propelled solely by sail;
- (6) The catamaran cannot be safely navigated in Waikiki or Kaanapali ocean waters, as appropriate, while being propelled by sail only;
- (7) The catamaran is equipped with auxiliary mechanical propulsion machinery using a propeller but does not have a propeller guard~~[,]~~ installed on the vessel or a captain or crew member designated to be a look-out to ensure public safety approved by the department~~[, permanently installed on the vessel];~~
- (8) The catamaran:
- (A) Is more than ~~[forty-five]~~ fifty feet in length for Waikiki ocean waters operation;
 - (B) Is more than sixty-five feet in length for Kaanapali ocean waters operation;
or
 - (C) Has a passenger capacity of more than forty-nine passengers;
- ~~[(9) The catamaran will be used to transport passengers in a shuttle-type service wherein passengers will be disembarked at a point other than at or near the embarkation point;]~~
- ~~[(10)]~~ (9) The applicant for a catamaran registration certificate and/or commercial use permit holds a valid registration certificate and/or commercial use permit issued by the department in accordance with this subchapter for another catamaran

- authorized to be used on Waikiki or Kaanapali ocean waters as applicable;
- ~~[(11)]~~ (10) The owner has not furnished proof of financial responsibility as prescribed in this subchapter;
- ~~[(12)]~~ (11) The owner of a catamaran holds a valid registration certificate and/or commercial use permit issued by the department in accordance with this subchapter for another catamaran authorized to be used on Waikiki or Kaanapali ocean waters, as applicable; or
- ~~[(13)]~~ ~~The operator of any vessel, surfboard, sailboard, or water sports equipment does not hold a valid operator permit; or]~~
- ~~[(14)]~~ (12) Any other grounds provided by this subchapter warrants refusal of the registration certificate and/or commercial use permit or transfer of registration~~[-]~~ and/or commercial use permit.

(b) The department shall notify the owner in writing of the refusal. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-38 Registration certificate and/or commercial use permit indices[-]. (a) The department shall receive ~~[applications]~~ an application for a registration ~~[of vessels, surfboards, sailboards, and water sports equipment]~~ certificate and/or commercial use permit for catamarans and when satisfied ~~[of]~~ with the ~~[genuineness]~~ accuracy, validity and regularity thereof, shall ~~[register]~~ provide a registration certificate and/or commercial use permit for the ~~[vessel, surfboard, sailboard, or water sports equipment,]~~ catamaran and keep a record of that registration~~[-]~~ certificate and/or commercial use permit.

(b) The total number of valid catamaran registration certificates and/or commercial use

permits issued under this subchapter shall be issued according to section 13-251-51.

(c) An owner may apply for a future vacancy, as prescribed in section 13-251-52, if registration certificates and commercial use permits continue to be issued. [Eff 2/24/94; am and comp]
 (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-39 Department to issue registration certificate~~[-]~~ and/or commercial use permit. [~~(a)~~ ~~The department shall issue a registration certificate upon registering a vessel., surfboard, sailboard or water sports equipment.~~]

~~[(b)]~~ The registration certificate and/or commercial use permit shall be issued to the owner, and shall contain the date issued, the name and address of the owner, the [~~registration~~] number or other [~~vessel, surfboard, sailboard or water sports equipment~~] identification, and the description of the [~~vessel, surfboard, sailboard or water sports equipment~~] catamaran as determined by the department. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-40 Registration certificates and/or commercial use permits to be exhibited upon demand~~[-]~~. Registration certificates and/or commercial use permit shall be shown upon demand of a [~~police~~] law enforcement officer, lifeguard, or [~~a~~] an authorized representative of the department. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-41 Identification of [~~vessels,~~ surfboards, sailboards or water sports equipment

~~registered by the department.] catamarans with a registration certificate and/or commercial use permit.~~

~~[(a)] A name, or number, or both, prescribed by law or adopted by the owner with prior approval of the department shall be painted on, or attached to each side of the bow of each catamaran~~[, canoe, or motorboat]~~ registered and/or commercial use permitted by the department, in a manner prescribed by the department and in a color which contrasts with the background in order that the name, or number, or both, may be completely visible and legible. Any lettering shall be no less than three inches in height. ~~[The department may issue a decal at the time of initial registration and upon renewal. The decal shall be placed three inches aft of and in line with the name or number on the right (starboard) side.~~~~

~~(b) Surfboards, sailboards and water sports equipment registered by the department shall be marked by the owner with a distinctive mark or a mark together with a color or combination of colors adopted by the owner with the prior approval of the department to make the owner's surfboards, sailboards, or water sports equipment distinguishable. The department may issue a decal at the time of initial registration and upon renewal. The decal shall be affixed to a registered surfboard, sailboard or water sports equipment in a manner prescribed by the department.]~~
[Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-42 Expiration of registration[-]
certificate and/or commercial use permit. Every
~~[vessel, surfboard, sailboard, or water sports equipment]~~ catamaran registration and/or commercial use permit under this part shall expire:

- (1) One year after the effective date of the registration[;] certificate and/or commercial use permit; or
- (2) When ownership has been transferred except as provided in section 13-251-45. [Eff

2/24/94; am and comp] (Auth:
 HRS §§200-2, 200-4, 200-9, 200-10, 200-22,
 200-24) (Imp: HRS §§200-2, 200-4, 200-9,
 200-10, 200-22, 200-24)

§13-251-43 Application for renewal of registration[-] certificate and/or commercial use permit. Application for renewal of a [~~vessel, surfboard, sailboard, or water sports equipment~~] registration certificates and/or commercial use permit shall be made by the owner upon proper application and by payment of the registration certificate and/or commercial use permit fee. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-44 Notice of change of address[-]. Whenever any person moves from the address stated on a registration certificate and/or commercial use permit or pending application for a [~~vessel, surfboard, sailboard, or watersports equipment,~~] registration certificate and/or commercial use permit, the person shall notify the department in writing of the person's old and new addresses within seven days of the change in address. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-45 [~~Registration expires on transfer of ownership; exception.~~] Transfer of registration certificate and/or commercial use permit. (a) Whenever the individual owner of a [~~registered vessel, surfboard, sailboard, or water sports equipment~~] catamaran transfers or assigns the individual owner's title or interest, or the title or interest [~~of an owner~~] passes to another owner other than by voluntary transfer, the registration certificate and/or

commercial use permit of the [vessel, surfboard, sailboard or water sports equipment] catamaran shall expire; provided, that upon the incapacitation or death of the individual owner, the registration certificate and/or commercial use permit may be transferred to a spouse or other member of the immediate family[-] if the individual inherits the catamaran as provided by law and no transfer fee shall apply.

- (b) Registration issued to individuals.
- (1) A registration certificate and/or commercial use permit issued to a sole proprietor may transfer the ownership of the vessel from personal ownership to corporate or other business ownership without terminating the right to operate under the commercial use permit or existing registration certificate;
- (2) The existing commercial use permit or existing registration certificate shall be reissued in a timely manner in the name of the transferee corporation or other business entity;
- (3) No valid commercial use permit or existing registration certificate issued to an owner of a commercial catamaran operating in the Waikiki ocean waters shall be denied or revoked without a prior hearing in accordance with chapter 91, Hawaii Revised Statutes;
- (4) An original registration certificate holder or commercial permittee holding a regular mooring permit, upon written application and approval by the department, may retain the mooring permit, provided that within 30 days the permittee moves into the small boat harbor another vessel owned by the permittee pursuant to the provisions of section 13-231-13; and
- (5) An original registration certificate holder and/or commercial use permittee may, upon written application to and approval by the department, retain the registration

certificate and/or commercial use permit, provided that within 30 days the permittee resumes operation with another vessel owned by the certificate holder or permittee pursuant to the provisions of sections 13-231-13 and 13-231-61.

(c) The following rights, conditions, and restrictions apply to a registration certificate and/or commercial use permit issued to a corporation or other business entity.

(1) Notwithstanding section 13-231-13, a corporation or other business entity holding a valid registration certificate and/or commercial use permit may transfer any or all stock or interest and retain the registration certificate and/or commercial use permit and all other valid small boat harbor use permits in effect on the date of transfer, provided that the corporation or other business entity has been in continuous operation as evidenced by the submission of monthly reports of gross receipts for a minimum period of one full year and meets all requirements necessary for issuance of a registration certificate and/or commercial use permit. The department shall be notified within ten working days of:

- (A) All transactions that amount to a transfer of 10 per cent or more of the stock or interest in the firm by owners of record on the effective date of the current registration certificate and/or commercial use permit;
- (B) The transfer of any stock or interest which results in a change of the principal stockholder or owner; and
- (C) The business transfer fee is paid on or before the date of transfer in accordance with the provisions of section 13-234-33; and

~~§13-251-47~~ Operation of vessels without proper identification. No person shall operate, nor shall an owner permit to be operated upon the Waikiki or Kaanapali ocean waters, any vessel or rented surfboard, sailboard or water sports equipment required to be registered under this subchapter, unless there shall be attached, painted on, or otherwise displayed a valid distinguishing name, number, or mark as required by this subchapter. [Eff 2/24/94; R]

§13-251-48 Operation of a [vessel or renting of surfboard, sailboards, or water sports equipment] catamaran when registration certificate and/or commercial use permit suspended or revoked[-]. No person shall operate [~~nor shall an owner knowingly permit to be operated~~] upon the Waikiki or Kaanapali ocean waters any [~~vessel or rented surfboard, sailboard, or water sports equipment,~~] catamaran for which the registration [of which] and/or commercial use permit has been suspended or revoked. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-49 Authority of department to suspend or revoke registration[-] certificate and/or commercial use permit. (a) The department may suspend or revoke the registration certificate and/or commercial use permit of a [~~vessel, surfboard, sailboard, or water sports equipment~~] catamaran whenever:

- (1) The department is satisfied that the registration certificate and/or commercial use permit was fraudulently or erroneously issued;
- (2) The department determines that a registered [~~vessel~~] and/or commercial use permitted

- catamaran is unsafe to be operated upon the Waikiki or Kaanapali ocean waters;
- (3) A registered [~~vessel~~] and/or commercial use permitted catamaran has been sold, dismantled, or wrecked, provided that the owner of the [~~vessel~~] catamaran at the time it was sold, dismantled, or wrecked may, upon written application to and approval by the department, transfer the registration certificate and/or commercial use permit to another [~~vessel~~] catamaran of like characteristics and ownership if the replacement [~~vessel~~] catamaran is in operation within [~~ninety~~] one-hundred twenty days of the transfer;
 - (4) The owner of any [~~for-rent surfboard, for-rent sailboard or water sports equipment, or vessel~~] catamaran carrying passengers for hire has failed or is unable to give proof of financial responsibility as provided in this subchapter;
 - (5) Any catamaran's Coast Guard Certificate of Inspection has expired;
 - ~~[(6) Any registered vessel boards passengers on Waikiki or Kaanapali ocean waters for a shuttle-type service and disembarks the passengers at a point other than at or near the point of boarding;]~~ or
 - ~~[(7)]~~ (6) A [~~registered vessel~~] catamaran has not been engaged in carrying passengers for hire in Waikiki or Kaanapali ocean waters for a period of thirty consecutive days~~[-]~~ unless actively making repairs in accordance with United States Coast Guard requirements and approved by the department.

(b) Upon suspending or revoking the registration certificate and/or commercial use permit of a [~~vessel, surfboard, sailboard or water sports equipment~~] catamaran the department shall immediately notify the owner in writing of the reason for the suspension or revocation.

(c) For catamarans operating in Waikiki ocean waters, no registration certificate or commercial use permit may be revoked without a prior hearing in accordance with chapter 91, Hawaii Revised Statutes.
 [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-50 Duplicate registration certificate~~[and/or commercial use permit]~~. In the event that a registration certificate and/or commercial use permit issued under the provisions of this part is lost or destroyed, the registration certificate ~~[holder]~~ and/or commercial use permit holder may, upon the payment of the required fee, obtain a duplicate or substitute. [Eff 2/24/94; am and comp]
 (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-51 Catamaran registration limitations.
 (a) The total number of valid catamaran registrations and commercial use permits issued under this subchapter shall not exceed four at any one time for Waikiki ocean waters or ten at any one time for Kaanapali ocean waters. An owner may apply for a future vacancy, as prescribed in section 13-251-52, if future catamarans are registered.

(b) Notwithstanding this section, all owners of catamarans holding valid registrations or commercial use permits to operate upon Waikiki ocean waters ~~[on November 6, 1981, and all owners of catamarans operating upon or under construction for operation upon]~~ or Kaanapali ocean waters on the effective date of these rules~~[, except catamarans engaged in a shuttle-type service,]~~ may continue operations and be permitted to apply for and renew their registration certificate or commercial use permit subject to compliance with all other conditions set forth in this chapter until their total number is reduced by

attrition or other means to the numbers in subsection (a). [Eff 2/24/94; am and comp]
(Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-52 Allocation of catamaran
~~[registrations.]~~ registration certificates and/or commercial use permits. (a) Application for a catamaran registration~~[+]~~ certificate and/or commercial use permit; period of validity; renewal of application.

- (1) The first owner to file an application may be offered a catamaran registration certificate and/or commercial use permit as prescribed under subsection (e) if the maximum number of catamaran ~~[registrations]~~ registration certificates and/or commercial use permits authorized by section 13-251-51 has not been issued and provided that no prior requests therefor are pending as provided in this section~~[+]~~;
- (2) If the maximum number of catamaran ~~[registrations]~~ registration certificates and/or commercial use permits permitted by section 13-251-51 has been issued and is valid, an owner's application for a catamaran registration certificate and/or commercial use permit shall be retained and honored when the total number of valid catamaran ~~[registrations]~~ registration certificates and/or commercial use permit is less than the maximum limit and the issuance of an additional catamaran registration certificate and/or commercial use permit is authorized pursuant to these rules~~[+]~~;
 - (A) An application for the issuance of a catamaran registration certificate and/or commercial use permit shall be made in writing to the department by the owner on a form provided by the department. The department shall

accept the application for consideration by endorsing it and entering the filing time and date on the application form submitted. One copy shall be given to the applicant. The time and date the application is endorsed by the department shall be the filing date and the effective date of the application for consideration and shall establish the applicant's seniority or priority over later applicants, if the application remains valid. No application shall be accepted unless and until the application fee prescribed in these rules is paid by the applicant and review thereof has been conducted pursuant to subsection (b) ~~[]~~;

- (B) An application shall continue in full force and effect for a period ending one year from the effective date of the application, except as provided in subparagraph (C) of this subsection, or unless sooner terminated in accordance with these rules. An application is void after the date of expiration ~~[]~~;
- (C) An application may be renewed within a ninety day period preceding its expiration date. An application properly renewed prior to its expiration date shall be valid for a period ending one year from the expiration date of the previous application. No application for renewal shall be accepted until the fee prescribed in these rules is paid by the applicant.

~~[(D) It is the policy of the department to mail an application renewal notice to an applicant prior to the expiration of the applicant's application, at the address furnished to the department~~

~~under section 13-251-52(d). However, the applicant is responsible for the timely renewal of an application without receipt of a renewal notice from the department.]~~

(b) Review and acceptance or rejection of applications.

- (1) The department shall examine and determine the ~~[genuineness and regularity]~~ accuracy, validity, and regularity of each application and may conduct any investigation it deems necessary for its examination and determination, and it may require additional information from the applicant necessary to determine the genuineness and regularity of the application.
- (2) The department shall reject any application that contains a material misstatement or where the applicant has failed to disclose any material fact on the application.
- (3) An application shall not be accepted for consideration, and shall be rejected if:
 - (A) The application fee is not paid at the time application is made;
 - (B) The applicant is delinquent in the payment of any moneys due and payable to the department; or
 - (C) The applicant has pending a citation for violation of any of the department's rules.

(c) Upon rejection of an application, the department shall inform the applicant, in writing within a reasonable time:

- (1) That the application has not been accepted for consideration;
- (2) That the application has been rejected; and
- (3) Of the department's reasons for rejection. An applicant may cure the defect and re-apply.

(d) Applicant required to furnish address and report changes; effect of failure to report changes.

- (1) An applicant shall include the applicant's address in the application to the department for a catamaran registration~~[-]~~ certificate and/or commercial use permit;
- (2) An applicant shall immediately notify the department in writing of any changes in the applicant's address in order to maintain the validity of an application~~[-]~~; and
- (3) An application shall be void if the department is unable to reach the applicant to offer the applicant a catamaran registration certificate and/or commercial use permit at the address:
 - (A) Appearing on the application; or
 - (B) Furnished in writing to the department by the applicant as a change of address subsequent to submitting the application.

(e) Withdrawal of application; effect if application has become void, expires, or been withdrawn.

- (1) An application may be withdrawn by an applicant upon written notice to the department~~[-]~~;
- (2) An applicant who withdraws an application or whose application has expired or becomes void may submit a new application for acceptance by the department. Seniority begins on the date the new application is accepted for consideration as provided in subsection (a) (2) (A).

(f) Priority in allocation of catamaran ~~[registrations.]~~ registration certificates and/or commercial use permits. When the total number of valid catamaran ~~[registrations is]~~ registration certificates and/or commercial use permits are less than the maximum limit authorized by section ~~[13-251-51,]~~ 13-251-38, the department ~~[shall]~~ may offer a catamaran registration certificate and/or commercial use permit to the senior applicant eligible to receive such a registration~~[-]~~ certificate and/or commercial use permit.

(g) Notice to owner of available catamaran registration~~[-]~~ certificate and/or commercial use permit. When an offer of a catamaran registration certificate and/or commercial use permit is provided for in this section, the department shall deliver the offer or send it by certified mail - return receipt requested, addressed to the applicant eligible to receive the offer at the address furnished to the department in writing by the applicant.

(h) Offer of catamaran registration certificate and/or commercial use permit valid only fourteen days; written notice of intention; acceptance.

- (1) An applicant may decline an offer of a catamaran registration certificate and/or commercial use permit and retain the applicant's seniority if the offer is declined in writing, addressed to and received by the department not later than fourteen days after the date of receipt of the offer. An applicant who declines an offer in writing and retains seniority pursuant to this subsection, shall not be considered for another offer on the basis of the applicant's seniority until six months have elapsed since the date of the last refusal~~[-]~~;
- (2) If an applicant decides to accept the offer of a catamaran registration~~[-]~~ certificate and/or commercial use permit, the applicant shall either:
 - (A) Deliver a written notice of intention to accept the offer to the department within fourteen days after the receipt of the offer; or
 - (B) Accept the offer by securing a catamaran registration certificate and/or commercial use permit within fourteen days after the receipt of the offer~~[-]~~;
- (3) The applicant's application for a catamaran registration certificate and/or commercial use permit and the offer by the State of a

catamaran registration certificate and/or commercial use permit shall be void if the applicant fails to either secure a catamaran registration certificate and/or commercial use permit or give written notice of intent to accept the offer within fourteen days after the receipt of the offer. The registration certificate and/or commercial use permit shall then be offered to the next senior applicant pursuant to this section[-];

- (4) An applicant who cannot immediately accept the offer but has delivered a written notice of intention to accept to the department pursuant to subsection (a)(2) shall accept the offer by securing a catamaran registration certificate and/or commercial use permit as prescribed in section 13-251-36 within fourteen days after the applicant mails or personally delivers the notice of intention to accept to the department[-];
- (5) Except as provided in subsection (h)(6) if the applicant fails to secure a catamaran registration certificate and/or commercial use permit within fourteen days, the application for a catamaran registration[-] certificate and/or commercial use permit, the offer of a catamaran registration certificate and/or commercial use permit, and the notice of intention to accept the offer shall be void, and the catamaran registration certificate and/or commercial use permit shall then be offered to the next senior applicant in accordance with these rules[-];
- (6) The department may extend the deadline for acceptance prescribed in subsection (h)(2), if the applicant presents evidence to the department that the granting of additional time for compliance is reasonable and essential to prevent undue hardship; provided that any extension of time for

compliance shall not exceed a period of 120 days from the date the department received from the applicant a written notice of intention to accept the offer of a catamaran registration[-] certificate and/or commercial use permit;

- (7) Because time is of the essence, the offer delivered or mailed to an applicant pursuant to subsection (g) shall contain a statement that the offer will lapse unless accepted in accordance with the procedures of this section. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-53 Waikiki catamarans; mooring of. Each catamaran operator holding a commercial use permit or registration certificate authorizing operation in Waikiki nearshore waters or on Waikiki beach shall maintain their beach moorings in the position and condition that they have established and maintained since January 1, 2013, provided:

(a) Approval is obtained from the board of land and natural resources regarding the type and location of the mooring to be installed on Waikiki beach or ocean waters for the purpose of securing the catamaran while conducting business. No additional fee shall be charged for said moorings beyond the amounts set forth in section 13-253-1.1;

(b) Operators shall assume all responsibility and liability for their moorings and operations, indemnify and defend the State, and carry general liability insurance in accordance with section 13-231-65;

(c) Operators shall obtain all applicable permits required to install moorings on Waikiki beach or ocean waters;

(d) Operators shall lower the catamarans' sails to prevent obstructing the view from lifeguard

stations upon the request of a Honolulu city and county lifeguard;

(e) Operators may apply to the department for temporary variance to its assigned mooring, as described in the attendant revocable permit, to accommodate governmental, natural or environmental conditions that make the regularly assigned moorings inaccessible or a danger to any of the catamarans operating in Waikiki. Such variance shall terminate upon the resolution of said dangerous condition. Such variance shall not encroach upon or adversely affect the operations of the other catamarans without the express written consent of the affected catamarans;

(f) Catamaran ingress and egress through the transit channel referred to as "Canoes" channel shall be limited to the four Waikiki catamaran registration holders presently moored and operating closest to the "Canoes" channel as more specifically described in the Waikiki beach mooring revocable permit;

(g) Catamaran ingress and egress through the transit channel referred to as "Sheraton" channel shall be limited to the three Waikiki catamaran registration holders presently moored and operating closest to the "Sheraton" channel as more specifically described in the Waikiki beach mooring revocable permit; and

(h) Any violation of this section shall be cause for fines, suspensions, or where repeated violations of this section are found, revocation of the registration certificate or commercial use permit of the catamaran owner. [Eff and comp]

(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§§13-251-54 to 13-251-55 (Reserved)

SUBCHAPTER 6

[RULES OF THE ROAD] WAIKIKI AND KAA NAPALI BEACH AND OCEAN WATERS

~~§13-251-56 Rules of the road. All vessels shall be operated in accordance with the "Navigation Rules, International - Inland" as set forth in U.S. Department of Transportation, United States Coast Guard, COMDTINST M16672.2A of 23 December 1983, and subsequent revisions thereto, which is incorporated herein by reference.] [Eff 2/24/94; R]~~

§13-251-57 Waikiki [restricted areas.] ocean waters. ~~[(a)]~~ Waikiki ocean waters means the area shown on Exhibit 1, dated May 1, 2012, located at the end of this subchapter and incorporated herein. The boundaries are as follows:

Beginning at the point where the mean high water mark intersects a line perpendicular to the shoreline below the Diamond Head Lighthouse; then in the Ewa direction along the mean high water mark to the makai boundary of the Ala Wai Small Boat Harbor and buoy R"8"; then west across the channel to the seawall on the Diamond Head side of Magic Island; then following along the mean high water mark to the seaward prolongation of the parking lot on the Ewa side of Magic Island; then along the edge of the reef to the revetment on the Waikiki side of the Kewalo Basin entrance channel; then along a straight line to the Kewalo Basin entrance channel buoy R"2"; then southeasterly along a straight line to the Ala Wai boat harbor entrance lighted buoy R"4"; then along a straight line to the Diamond Head buoy R"2"; then along a straight line the point of beginning.

The [areas in] Waikiki ocean waters are reserved primarily for use by bathers, [and] swimmers, surfers, snorkelers, and other recreational uses and subject to restrictions set forth in this section. No person shall operate a vessel or watercraft within the Waikiki ocean waters within 500 feet of the shoreline at a speed in excess of slow-no-wake. Vessel

operators shall exercise caution while transiting the area due to heavy use by swimmers. This section shall not apply in the event of an emergency, or to law enforcement or rescue craft, or vessels participating under a valid regatta permit issued by the department or the Coast Guard.

~~[(b) Zone A, Waikiki ocean waters.~~

~~(1) Zone A, Waikiki ocean waters means the area confined by the boundaries shown on Exhibit "B-1", June 1, 1981, located at the end of this chapter, which boundaries are described as follows:~~

~~Beginning at the makai Ewa corner of the natatorium; then seaward on a prolongation of the Ewa wall of the natatorium to the outer edge of the reef; then along the reef in the mauka direction to the seaward end of the Kapahulu drainage groin; then seaward along a straight line connecting the seaward end of the Kapahulu drainage groin and the Ala Wai boat harbor entrance lighted buoy (Red "2"); then mauka on a prolongation of the Diamond Head boundary line of Fort DeRussy to the mean high water mark of the beach adjacent to the boundary line; then along the mean high water mark in the Diamond Head direction to the mauka Ewa side of the natatorium; then along the Ewa side of the natatorium in a seaward direction to, and ending at, the point of beginning;~~

~~(2) Restrictions:~~

~~(A) No person shall navigate or moor a vessel in or on the Waikiki ocean waters, except that outrigger canoes operated by a duly organized canoe club, or a sailing catamaran, or a manually propelled outrigger canoe may be navigated, moored, or anchored in those~~

~~waters if the vessel has been registered in accordance with this subchapter and is under the immediate control of an operator who has been issued a permit by the department to navigate in the waters. Notwithstanding this subsection, a sailing catamaran may temporarily operate in Zone A, Waikiki ocean waters, as a power-driven catamaran when necessary to protect life or property and is that vessel is registered by the department to operate in Waikiki ocean waters and under the immediate control of an operator who has been issued a valid permit by the department;~~

- ~~(B) No person shall navigate or moor a catamaran in or on the waters of Zone A or on the shore below the mean high water mark if four catamarans are navigating or moored in such zone;~~
- ~~(C) The minimum distance separating any two catamarans moored in Zone A shall be eighty feet; and~~
- ~~(D) There shall be no surfing in the zone between the water's edge and a point fifty yards seaward therefrom, except for learners while receiving initial instructions under the direct supervision of a primary or senior surfboard instructor who has a permit issued by the department as provided by subchapter 1.~~

~~(c) Zone B, Waikiki ocean waters.~~

- ~~(1) Zone B, Waikiki ocean waters, means the area confined by the boundaries shown on Exhibit "C", June 1, 1981, located~~

~~at the end of this chapter, which boundaries are described as follows:~~

~~Beginning at a point where the Diamond Head side of the boundary of Fort DeRussy intersects the mean high water mark; then seaward on a prolongation of that boundary line to a straight line connecting the Ala Wai boat harbor entrance lighted buoy (Red "2") and the Ewa end of the Kapahulu drainage groin; then to the Ewa direction to the makai-Ewa corner of the breakwater makai of the Hawaiian Village rainbow tower; then Ewa along the breakwater to the mean high water mark; then along the mean high water mark; in a mauka-Diamond Head direction to, and ending at, the point of beginning;~~

- ~~(2) Restrictions: No person shall navigate, moor, or anchor a vessel in or on the waters of Zone B, except that a manually propelled outrigger canoe or a catamaran propelled by sail may be operated in those waters if the vessel has been registered in accordance with this subchapter, or that a catamaran propelled by sail capable of carrying six persons or less, with a valid permit to operate within Waikiki ocean waters under the provisions of section 13-251-51, may anchor overnight in the area adjacent to the groin in the vicinity of the Ala Wai Heliport. Notwithstanding this subsection, vessels operating from the Hilton Hawaiian Village pier are exempt from the restrictions in this paragraph~~
- ~~(d) Zone C, Waikiki ocean waters.~~
- ~~(1) Zone C, Waikiki ocean waters, means the area confined by the boundaries shown on Exhibit "D", June 1, 1981, located~~

~~at the end of this chapter, which boundaries are described as follows:~~

~~Beginning at the makai-Ewa corner of the concrete drainage groin located seaward of the junction of Kapahulu and Kalakaua Avenues; then to a point one hundred sixty yards in the Diamond Head direction on a straight line at right angles to the long axis of the groin; then to a point one hundred yards seaward on a straight line parallel to the long axis of the groin; then to a point three hundred ten yards in the Ewa direction on a straight line at right angles to the long axis of the groin; then in the shoreward direction on a straight line parallel to the long axis of the groin to the point where this line meets the concrete seawall; then in the Diamond Head direction to, and ending at, the point of beginning.~~

~~(2) Restrictions: No person shall navigate or moor a vessel or navigate or otherwise use a surfboard in or on the waters of Zone C, except that paipo boards not in excess of four feet in length and without skegs or any other fin-like projections protruding from the bottom of the boards are permitted to be used on the waters.~~

~~(c) Zone D, Waikiki ocean waters.~~

~~(1) Zone D, Waikiki ocean waters, means the area confined by the boundaries shown on Exhibit "E", June 1, 1981, located at the end of this chapter, which boundaries are described as follows:~~

~~Beginning at a point where the Diamond Head wall of the Natatorium intersects the mean high water mark; then along the wall in a seaward direction to the makai-Diamond Head corner; then in a Diamond Head~~

~~direction on a straight line to the seaward end of the first groin Diamond Head of the Sans Souci pier; then in a mauka direction along the groin to the mean high water mark; then in an Ewa direction along the mean high water mark to, and ending at, the point of beginning.~~

- ~~(2) Restrictions: No person shall navigate or moor a vessel in or on the waters of Zone D, except that a manually propelled outrigger canoe operated by a duly organized canoe club, or a commercially operated manually propelled outrigger canoe may be navigated in these waters if the vessel has been registered in accordance with this chapter and is under immediate control of an operator who has a valid permit issued by the department in accordance with subchapter 1.~~

~~(f) Zone E, Waikiki ocean waters. Zone E is the area encompassed by the boundaries of the zone shown on Exhibit "C-1", dated May 15, 1990, and located at the end of this subchapter. The boundaries of Zone E are described as follows:~~

~~Beginning at the shoreline on the western edge of the Kapahulu Groin, then to the intersection of the Kapahulu Groin and the Kuhio Beach seawall, then in a westerly direction along the seaward edge of the Kuhio Beach seawall to the groin fronting the Honolulu Police substation, then along the Kuhio Beach shoreline to the point of beginning.~~

~~Zone E is designated as a swimming, bathing and wading zone. No person shall engage in fishing by any means or device from the Kuhio seawall to the shoreline between the Kapahulu Groin and the Ewa groin.]~~

(a) Zone A is described as follows:

Beginning at the breakwater makai of the Hilton Hawaiian Village rainbow tower; then

following the mean high water mark northwesterly to the Duke Kahanamoku Lagoon; then southerly to 21°16'25.36"N, 157°50'12.15"W; then in a straight line ending at the starting point;

(1) Restrictions: No person shall navigate, moor, or anchor a vessel in or on the waters of Zone A, except that a manually propelled outrigger canoe or a catamaran propelled by sail may be operated in those waters if the vessel has been issued a permit by the department, or that a catamaran propelled by sail capable of carrying six persons or less, with a valid permit to operate within Waikiki ocean waters under the provisions of section 13-251-52, may anchor overnight in the area adjacent to the groin in the vicinity of the Ala Wai Heliport. Notwithstanding this subsection, vessels operating from the Hilton Hawaiian Village pier are exempt from the restrictions in this paragraph.

(b) Zone B is described as follows:

Beginning at the breakwater makai of the Hawaiian Village Rainbow Tower; then along the mean high water mark in the Diamond Head direction to the mauka Ewa side of the natatorium; then seaward along the Ewa wall of the natatorium to the outer edge of the reef at 21°15'52.26"N, 157°49'31.67"W; then along the reef in the north direction to the seaward end of the wall at Kapahulu; then in a straight line eastward ending at the starting point;

(1) Restrictions:

(A) No person shall navigate or moor a vessel in or on the Waikiki ocean waters, except that outrigger canoes operated by a duly organized canoe club, or a sailing catamaran, or a manually propelled outrigger canoe may be navigated, moored, or anchored in those waters if the vessel has been issued a permit by the department to

navigate in the waters.

Notwithstanding this subsection, a sailing catamaran may temporarily operate in Zone D as a power-driven catamaran when necessary to protect life or property and is that vessel is registered by the department to operate in Waikiki ocean waters and under the immediate control of an operator who has been issued a valid permit by the department;

- (B) No person shall navigate or moor a catamaran in or on the waters of Zone B or on the shore below the mean high water mark if four catamarans are navigating or moored in such zone;
- (C) The minimum distance separating any two catamarans moored in Zone B shall be eighty feet; and
- (D) For this subchapter, surfboards are not considered to be a vessel.

(c) Zone C is described as follows: Beginning at the end of the Ewa groin at the Duke Kahanamoku statue; then following the groin shoreward and along the Kuhio Beach shoreline to the mauka end of the wall at Kapahulu; then to the end of the wall; then following the seawall in a northward direction to the point of beginning.

- (1) Restrictions: Zone C is designated as a swimming, bathing and wading zone. No person shall engage in fishing by any means or device from the Kuhio seawall to the shoreline between the wall at Kapahulu and the Ewa groin.

(d) Zone D is described as follows:

Beginning at the makai-Ewa corner of the wall at Kapahulu; then 160 yards in the Diamond Head direction on a straight line perpendicular to the beach to 21°16'11.35"N, 157°49'24.49"W; then 100 yards seaward on a straight line ending at 21°16'10.43"N, 157°49'27.89"W; then 310 yards in the Ewa direction on a straight line ending at

21°16'19.32"N, 157°49'30.27"W; then 100 yards shoreward to 21°16'20.27"N, 157°49'26.90"W; then in a straight line back to the point of beginning.

(1) Restrictions: No person shall navigate or moor a vessel or navigate or otherwise use a surfboard in or on the waters of Zone D, except that paipo boards not in excess of four feet in length and without skegs or any other fin-like projections protruding from the bottom of the boards are permitted to be used on the waters.

(e) Zone E is described as follows:

Beginning at a point where the Diamond Head wall of the Natatorium intersects the mean high water mark at 21°15'50.66"N, 157°49'18.30"W; then following the mean high water mark in a Diamond Head direction to the Colony Surf Hotel at 21°15'44.76"N, 157°49'17.45"W; then in a seaward direction to 21°15.44.16"N, 157°49'19.32"W; then north to the makai-Diamond Head corner of the Natatorium; then in a straight line to the point of beginning.

(1) Restrictions: No person shall navigate or moor a vessel in or on the waters of Zone E, except that a manually propelled outrigger canoe operated by a duly organized canoe club, or a commercially operated manually propelled outrigger canoe may be navigated in these waters if the vessel has been registered in accordance with this chapter and is under immediate control of an operator who has a valid permit issued by the department in accordance with subchapter 1. [Eff 2/24/94; am and comp]
(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-58 Kaanapali beach and ocean waters~~[general restrictions.]~~. (a) ~~[The Kaanapali ocean~~

~~waters are subject to the following restrictions.]~~

This section shall not apply in the event of an emergency, to law enforcement or rescue craft, to vessels participating under a valid ocean waters permit issued by the department, or to Hawaiian design canoes engaged in crew training. The Kaanapali beach and ocean waters are shown on Exhibit "2", dated May 1, 2012, located at the end of this subchapter and incorporated herein. The boundaries are as follows:

Beginning at a point on the northern end of Kaanapali Beach and ocean waters located at 20°57'8.86"N, 156°41'33.68"W; then shoreward to the mean high water mark at 20°57'2.72"N, 156°41'25.33"W; then southward to the mean high water mark of the extended centerline of Wahikuli Road at 20°53'42.57"N, 156°41'6.44"W; then seaward to 20°53'42.75"N, 156°41'16.44"W; then north generally running parallel to the beach at 20°54'2.64"N, 156°41'16.43"W; then to 20°54'31.48"N, 156°41'32.99"W; then to 20°54'42.94"N, 156°41'51.26"W; then to 20°54'58.87"N, 156°41'58.32"W; then seaward of Black Rock at 20°55'40.15"N, 156°41'58.14"W; then to 20°56'11.79"N, 156°41'44.21"W; then to 20°56'52.51"N, 156°41'41.88"W; then to the point of beginning.

(b) Restrictions.

- (1) No person shall navigate any vessel at a speed in excess of "slow no wake" (five (5) miles per hour) within [~~five hundred~~] 500 feet of the shoreline;
- (2) No person shall navigate a motorboat within [~~two hundred~~] 200 feet of the shoreline, or designated swimming area, or within one hundred feet of a diver's flag, nor shall any person navigate a commercial motorized vessel within [~~five hundred~~] 500 feet of the shoreline except within a designated ingress/egress corridor. Notwithstanding this paragraph, vessels engaged in fishing outside the designated ingress/egress corridors are exempt from the [~~two hundred~~]

- 200-foot shoreline restriction, provided that designated swimming areas are approached with caution and due care;
- (3) No person shall navigate a motorized vessel within [~~three hundred~~] 300 feet of a vessel engaged in fishing;
- (4) A vessel engaged in fishing shall not impede the passage of any vessel passing through a designated ingress/egress corridor;
- ~~[(5) No person shall embark or disembark passengers on the beach to or from a catamaran registered to carry passengers for hire when the vessel exceeds sixty five feet in length or a passenger carrying capacity of forty nine persons unless prior permission to navigate is obtained from the department for each trip through these waters. Notwithstanding this paragraph, any company currently operating a catamaran which exceeds sixty five feet in length or a passenger carrying capacity of forty nine persons, which is in business on Kaanapali ocean waters and properly registered with the department of commerce and consumer affairs as of the effective date of these rules may apply for and renew its permit so long as the company remains in business, remains properly registered with the department of commerce and consumer affairs, and complies with the rules of that department;]~~
- ~~[(6)]~~ (5) No person shall anchor or moor a vessel, barge, platform, or raft within [~~two hundred~~] 200 feet of the shoreline or a designated ingress/egress corridor; and
- ~~[(7)]~~ (6) No person shall navigate or moor a vessel engaged in commercial use unless the vessel has been registered and the owner has a valid permit issued in accordance with this chapter; however, commercial vessels solely transiting through the Kaanapali

- ocean waters shall not be required to be registered or have a commercial permit.
- (7) Vessels holding a valid ocean recreation management area commercial use permit may use a state small boat harbor or boat launching ramp when winds are in excess of 25 miles per hour and/or during periods of high surf warnings as indicated by the National Weather Service would prevent safe access to the shoreline through a designated ingress or egress zone;
 - (8) The vessel operator or master shall afford the department prior notice of the presence or threat of such conditions and shall be subject to local direction and control as necessary to avoid conflict with other users of the facility; and
 - (9) Use of a state boating facility in accordance with this section shall not affect the permittee's right to use such boating facilities in the absence of such conditions as permitted by law.
- ~~[(b) Zone A, Kaanapali ocean waters.~~
- ~~(1) This zone is designated primarily for swimming, bathing, snorkeling and diving, and means the area confined by the boundaries shown and described in Exhibit "E(1)", July 9, 1984, located at the end of this chapter, which boundaries are described as follows:~~
- ~~Beginning at a point on the vegetation line six hundred fifty feet north along the mean high water mark from the intersection of the extended centerline of Kaniau Road and the vegetation line; thence running by azimuths measured clockwise from True South: 080 degrees for a distance of two hundred feet; 146 degrees 30 minutes for a distance of three thousand seven hundred fifty feet; 206 degrees to a point on the vegetation line; thence southward along the vegetation line to the point of beginning.~~

- ~~(2) No person shall navigate or moor a vessel, surfboard, sailboard or any other water recreational device in or on the waters of Zone A, provided that this restriction shall not apply to:
 - ~~(A) Paipo boards not in excess of four feet in length and without skegs or any other fin-like projections protruding from the bottom of the boards;~~
 - ~~(B) Hawaiian design club canoes engaged in crew training; and~~
 - ~~(C) Vessels engaged in fishing during periods of low use of the beach.~~~~
- ~~(c) Zone B, KaaNapali ocean waters~~
 - ~~(1) This zone is an area designed primarily for swimming, bathing, snorkeling and diving, and means the area confined by the boundaries shown on Exhibit "E(1)", July 9, 1984, located at the end of this chapter and defined as:

~~Beginning at a point on the vegetation line seven hundred fifty feet south along the vegetation line from the southernmost tip of Keka'a Point shoreline, thence running by azimuths measured clockwise from True South: 068 degrees for a distance of two hundred feet; 156 degrees for a distance of two hundred fifty feet; 078 degrees 30 minutes for a distance of three hundred fifty feet; 156 degrees for a distance of six hundred feet; 221 degrees for a distance of five hundred feet; 287 degrees to a point on the vegetation line; thence southward along the vegetation line to the point of beginning.~~~~
 - ~~(2) The same restrictions and exceptions thereof applicable to Zone A are applicable to Zone B.~~
- ~~(d) Ingress/Egress zones.~~
 - ~~(1) These zones shall be established at intervals along the shoreline to provide beach access, through corridors, for all~~

~~vessels governed by this chapter. Each zone shall be five hundred feet wide at the shoreline and shall extend seaward for a distance of five hundred feet.~~

~~Zone number one begins at the point where the north bank of Wahikuli Stream intersects the vegetation line; then northward along the vegetation line for a distance of five hundred feet.~~

~~Zone number two begins at a point on the vegetation line which is two thousand three hundred feet north along the vegetation line from a point where the north bank of Wahikuli Stream intersects the vegetation line; then northward along the vegetation line for a distance of five hundred feet.~~

~~Zone number three begins at a point on the vegetation line which is two thousand four hundred feet south along the vegetation line from the vegetation line of the southernmost tip of Keka'a Point shoreline; then southward along the vegetation line for a distance of five hundred feet.~~

~~Zone number four begins at a point on the vegetation line which is seven hundred fifty feet south along the vegetation line from the vegetation line from the southernmost tip of Keka'a Point shoreline; then southward along the vegetation line for a distance of five hundred feet.~~

~~Zone number five begins at a point on the vegetation line which is eight hundred twenty-five feet north along the vegetation line from the vegetation line from the southernmost tip of Keka'a Point shoreline, then northward along the vegetation line for a distance of five hundred feet.~~

- ~~(2) No person shall navigate a vessel within an ingress/egress zone unless operating within an ingress/egress corridor; provided that this restriction shall not apply to Hawaiian design club canoes engaged in crew training;~~

- ~~(e) Ingress/Egress corridors.~~
- ~~(1) These corridors shall be contained within each ingress/egress zone. Each corridor shall be one hundred feet wide and shall be established daily by the users of the corridor to determine the best direction for approach to or departure from the shoreline under existing wind and sea conditions.~~
- ~~(2) No person shall:~~
- ~~(A) Navigate a commercial vessel or noncommercial motor powered vessel to or from the beach area unless using a designated ingress/egress corridor;~~
 - ~~(B) Navigate a catamaran, registered for carrying passengers for hire, in an ingress/egress corridor, or approach the shoreline within a distance of five hundred feet, if another catamaran is beached within the boundaries of the intended corridor of use;~~
 - ~~(C) Beach a catamaran, registered for carrying passengers for hire, in an ingress/egress corridor in excess of thirty minutes; and~~
 - ~~(D) Navigate a vessel within an ingress/egress corridor at a speed exceeding slow-no-wake. Slow-no-wake means as slow as possible without losing steerageway and so as to make the least possible wake. This would almost always mean speeds of less than five miles per hour.~~
- ~~(3) Exceptions to the restrictions for Ingress/Egress Zones are applicable to Ingress/Egress Corridors.]~~

(c) Zone A, designated primarily for swimming, bathing, snorkeling and diving, is described as follows:

Beginning at a point 300 feet south of Leialii Parkway; then 200 feet seaward; then northward to seaward prolongation of Kaanapali Beachwalk at the north end of Hanakao Beach Park; then

shoreward to the high water mark; then southward along the high water mark to the point of beginning.

(1) No person shall navigate or moor a vessel, surfboard, sailboard or any other water recreational device in or on the waters of Zone A, provided that this restriction shall not apply to:

(A) Paipo boards not in excess of four feet in length and without skegs or any other fin-like projections protruding from the bottom of the boards; and

(B) Vessels engaged in fishing during periods of low use of the beach.

(d) Zone B, designated primarily for swimming, bathing, snorkeling and diving, is described as follows:

Beginning at a point on the high water mark on the seaward prolongation of the Kaanapali Beach Public Access Trail south of Kekaa Point at 20°55'29.70"N, 156°41'42.70"W; then seaward to 20°55'29.79"N, 156°41'49.40"W; then northward to 20°55'39.12"N, 156°41'52.40"W; then to 20°55'43.58"N, 156°41'48.89"W; then shoreward to the high water mark; then following Black Rock southward along the high water mark to the point of beginning.

(1) The same restrictions and exceptions applicable to Zone A are applicable to Zone B.

(e) Ingress/egress zones;

(1) Zone 1 begins at the seaward prolongation of Kaanapali Beachwalk at the north end of Hanakaoo Beach Park; then northward along the vegetation line for a distance of 500 feet;

(2) Zone 2 begins at a point on the vegetation line on the ocean-side of the Marriott's Maui Ocean Club Hotel; then northward along the vegetation line for a distance of 500 feet;

- (3) Zone 3 begins at a point on the vegetation line located north of the Westin Maui Hotel; then northward along the vegetation line for a distance of 500 feet;
- (4) Zone 4 begins at a point on the vegetation line located 575 feet south from the southernmost tip of Black Rock shoreline and south of the Kaanapali Beach Public Access Trail; then southward along the vegetation line for a distance of 500 feet; and
- (5) Zone 5 begins at a point on the vegetation line located north of the Black Rock shoreline, then northward along the vegetation line for a distance of 500 feet.

(f) These zones shall be established at intervals along the shoreline to provide beach access for all vessels governed by this chapter. Each zone shall be 500 feet wide at the shoreline and shall extend seaward for a distance of 500 feet.

(g) Users of the ingress/egress zones determine the best direction for approach to or departure from the shoreline under existing wind and sea conditions.

(h) No person shall:

- (1) Navigate a commercial vessel or noncommercial motorized vessel to or from the beach area unless using a designated ingress/egress zone;
- (2) Beach a catamaran, registered for carrying passengers for hire in an ingress/egress zone in excess of 30 minutes; and
- (3) Navigate a vessel within an ingress/egress zone at a speed exceeding slow-no-wake. [Eff 2/24/94; am 6/16/03; am and comp]
(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24, 200-37) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24, 200-37)

~~§13-251-59 Intoxication. (a) No person who is under the influence of intoxicating liquor, narcotics, or other habit-forming drug shall operate or be in actual physical control of any vessel, surfboard, sailboard, or water sports equipment.~~

~~(b) No owner of any vessel, surfboard, sailboard, or water sports equipment or any person in charge or in control of any vessel, surfboard, sailboard, or water sports equipment shall authorize or knowingly permit the same to be operated by any person who is under the influence of intoxicating liquor, or narcotic, or other habit-forming drug.]~~
[Eff 2/24/94; R]

~~§13-251-60 Careless operation. No person shall operate a vessel, surfboard, sailboard or water sports equipment in a careless or heedless manner so as to endanger other persons or the property of other persons.]~~ [Eff 2/24/94; R]

§§13-251-61 to 13-251-65 (Reserved)

SUBCHAPTER 7

SPECIAL OPERATING RESTRICTIONS

§13-251-66 Canoe operation; required crew[-].

(a) No person shall operate nor shall any owner authorize or permit a canoe carrying passengers for hire to engage in canoe surfing unless the canoe meets all requirements of these rules and a canoe captain and canoe second captain, each having a valid permit issued by the department, are aboard; provided, that a two-man canoe shall have either a canoe captain or second captain on board.

(b) No person shall operate nor shall any owner authorize or permit a canoe to transport passengers for hire unless the canoe meets all requirements of

these rules and a canoe captain or second captain, each having a valid permit issued by the department, is on board. In these instances the senior crew member aboard shall not permit the vessel to be utilized for canoe surfing unless a minimum crew as provided in subsection (a) is on board. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-67 Catamaran crews[~~-~~]. No person shall operate nor shall any owner authorize or permit a catamaran to transport passengers for hire, except cruising catamarans as described in section 13-251-1, unless the catamaran meets all requirements of these rules and a catamaran captain, having a permit issued by the department, and at least one other crew member are aboard. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

~~[§13-251-68 Catamarans; mooring of. (a) Catamarans moored in a restricted area (13-251-57) shall be moored below the mean high water mark at catamaran moorings so designated by the department and in a manner approved by the department. (b) Operators of catamarans moored in a restricted area (13-251-57[(1)]) shall lower the catamarans' sails to prevent obstructing the view from lifeguard stations upon request of a Honolulu city and county lifeguard.] [Eff 2/24/94; R]~~

§13-251-69 Learner steersperson[~~-~~]. (a) A learner steersperson shall steer an outrigger canoe engaged in canoe surfing only on a wave which is not carrying another canoe.

(b) A learner steersperson shall not steer an outrigger canoe carrying passengers for hire. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§§13-251-70 to 13-251-75 (Reserved)

SUBCHAPTER 8

SOLICITING PROHIBITED IN OR ON WAIKIKI AND KAAPALI OCEAN WATERS

§13-251-76 Commercial Activities~~[-]~~. (a) No person shall engage in commercial activities of any kind in or on Waikiki or Kaanapali ocean waters and beach without a written permit or registration certificate from the board or its authorized representatives.

(b) "Kaanapali beach" means the area within Kaanapali ocean waters that is situated between the shoreline and the mean high tide mark along the shores. [~~Exhibits E(2A) through E(2D), dated February 22, 2002, located at the end of this chapter, are provided for reference, and depict the shoreline location of Kaanapali Beach as of September 12, 2001.~~]

(c) Kaanapali beach is designated for public use for sunbathing, foot traffic, swimming, and other activities which, when engaged in, shall not unduly disrupt others from enjoying the beach.

(d) Constructing or placing any building or structure or storing any property, whether temporary, portable, or permanent, at Kaanapali beach shall be prohibited, except where authorized by the department, and, in addition to any other remedies, unauthorized buildings, structures, or property may be removed by the department at the sole risk and cost of the owner.

(e) Vessel owners shall be prohibited from storing any vessel or associated equipment on Kaanapali beach, unless authorized by the department.

(f) The following activities shall be prohibited on Kaanapali beach:

- (1) Kite flying; and
- (2) Kite surfing equipment.

(g) The maximum number of Kaanapali commercial permits that may be issued for monohull vessels to embark and disembark passengers at Kaanapali beach shall not be greater than five, but small craft used to shuttle passengers to and from a monohull vessel in the Kaanapali ocean waters may be included under that vessel's commercial activity permit.

(h) Law enforcement and rescue vessels are exempt from the provisions of this section." [Eff 2/24/94; am 6/16/03; am and comp]
(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

2. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes to reflect these amendments are not underscored.

4. The amendment and compilation of chapter 13-251, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on April 25, 2014 by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

WILLIAM J. AILA, JR.,
Chairperson
Board of Land and Natural
Resources

APPROVED AS TO FORM:

Deputy Attorney General

DEPARTMENT OF LAND AND NATURAL RESOURCES
Amendment and Compilation of Chapter 13-251
Hawaii Administrative Rules
April 25, 2014

SUMMARY

1. Title amended.
2. §§13-251-2 to 13-251-11 are amended.
3. §§13-251-16 to 13-251-20 are amended.
4. §§13-251-26 to 13-251-28 are amended.
5. §§13-251-31 and 13-251-32 are repealed.
6. §§13-251-33 to 13-251-35 are adopted.
7. §§13-251-36 to 13-251-46 are amended.
8. §13-251-47 is repealed.
9. §§13-251-48 to 13-251-52 are amended.
10. §13-251-53 is adopted.
11. §13-251-56 is repealed.
12. §§13-251-57 and 13-251-58 are amended.
13. §§13-251-59 and 13-251-60 are repealed.
14. §§13-251-66 and 13-251-67 are amended.
15. §13-251-68 is repealed.
16. §13-251-69 is amended.
17. §13-251-76 is amended.

18. Chapter 251 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART III

OCEAN WATERS, NAVIGABLE STREAMS AND BEACHES

CHAPTER 251

COMMERCIAL ACTIVITIES ON STATE OCEAN WATERS, NAVIGABLE
STREAMS, AND BEACHES

Subchapter 1 Catamaran Captain, Canoe Captain,
Canoe Second Captain, Surfboard
Instructor, Sailboard Instructor
and Commercial Motorboat Operator
Permits

- §13-251-1 Permits
- §13-251-2 What persons shall not receive permits
- §13-251-3 Special restrictions
- §13-251-4 Learner steersperson permits
- §13-251-5 Application for operator permit
- §13-251-6 Examination of applicants
- §13-251-7 Operator permits issued to catamaran
captains, canoe captains, canoe second
captains, surfboard instructors, sail-
board instructors and commercial
motorboat operators
- §13-251-8 Operator permit to be carried on board
and exhibited upon demand
- §13-251-9 Duplicate certificate
- §13-251-10 Expiration of operator permit
- §13-251-11 Records to be kept by the department

§§13-251-12 to 13-251-15 (Reserved)

Subchapter 2 Suspension or Revocation of
Operator Permits

§13-251-16 Authority of department to revoke
operator permit
§13-251-17 Authority of department to suspend
operator permit
§13-251-18 Department may require re-examination
§13-251-19 Period of suspension or revocation
§13-251-20 Surrender and return of operator permit
§§13-251-21 to 13-251-25 (Reserved)

Subchapter 3 Violation of Operator Permit
Provisions

§13-251-26 Unlawful use of operator permit
§13-251-27 Operating while operator permit
suspended or revoked
§13-251-28 Permitting unauthorized person to
operate catamaran or canoe
§§13-251-29 to 13-251-30 (Reserved)

Subchapter 4 Repealed

§13-251-31 Repealed
§13-251-32 Repealed

Subchapter 4.1 Use Permits

§13-251-33 Use permit
§13-251-34 Insurance requirements
§13-251-35 Reissuance of a registration
certificate and/or commercial use
permit

Subchapter 5 Waikiki and Kaanapali Catamarans

- §13-251-36 Application for a catamaran registration certificate and/or commercial use permit
- §13-251-37 Grounds for refusing an application for a registration certificate and/or commercial use permit
- §13-251-38 Registration certificate and/or commercial use permit indices
- §13-251-39 Department to issue registration certificate and/or commercial use permit
- §13-251-40 Registration certificates and/or commercial use permits to be exhibited upon demand
- §13-251-41 Identification of catamarans with a registration certificate and/or commercial use permit
- §13-251-42 Expiration of registration certificate and/or commercial use permit
- §13-251-43 Application for renewal of registration certificate and/or commercial use permit
- §13-251-44 Notice of change of address
- §13-251-45 Transfer of registration certificate and/or commercial use permit
- §13-251-46 New owner must secure new registration certificate and/or commercial use permit
- §13-251-47 Repealed
- §13-251-48 Operation of a catamaran when registration certificate and/or commercial use permit suspended or revoked
- §13-251-49 Authority of department to suspend or revoke registration certificate and/or commercial use permit
- §13-251-50 Duplicate registration certificate and/or commercial use permit
- §13-251-51 Catamaran registration limitations

- §13-251-52 Allocation of catamaran registration certificates and/or commercial use permits
§13-251-53 Waikiki catamarans; mooring of
§§13-251-54 to 13-251-55 (Reserved)

Subchapter 6 Waikiki and Kaanapali Beach and Ocean Waters

- §13-251-56 Repealed
§13-251-57 Waikiki ocean waters
§13-251-58 Kaanapali beach and ocean waters
§13-251-59 Repealed
§13-251-60 Repealed
§§13-251-61 to 13-251-65 (Reserved)

Subchapter 7 Special Operating Restrictions

- §13-251-66 Canoe operation; required crew
§13-251-67 Catamaran crews
§13-251-68 Repealed
§13-251-69 Learner steersperson
§§12-251-70 to 13-251-75 (Reserved)

Subchapter 8 Soliciting Prohibited In or On Waikiki and Kaanapali Ocean Waters

- §13-251-76 Commercial Activities

Historical note. The administrative jurisdiction for recreational boating and related vessel activities was transferred from the Department of Transportation, Harbors Division, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94; am and comp

SEP 25 2014]

SUBCHAPTER 1

CATAMARAN CAPTAIN, CANOE CAPTAIN, CANOE SECOND CAPTAIN, SURFBOARD INSTRUCTOR, SAILBOARD INSTRUCTOR AND COMMERCIAL MOTORBOAT OPERATOR PERMITS

§13-251-1 Permits. Catamaran captains, canoe captains, canoe second captains, surfboard instructors, sailboard instructors and commercial motorboat operators shall have an operator permit.

(a) No person shall navigate a catamaran or canoe as catamaran captain, canoe captain, or canoe second captain on a vessel carrying passengers for hire, or operate as a surfboard or sailboard instructor for compensation in or upon Waikiki or Kaanapali ocean waters unless the person has a valid permit under this part.

(b) No person shall navigate a commercial motorboat in or upon Kaanapali ocean waters unless the person has a valid permit under this part.

(c) No permit is required for captains navigating catamarans carrying passengers for hire who, while cruising, enter Waikiki or Kaanapali ocean waters other than restricted waters described in sections 13-251-57 and 13-251-58, and do not load or unload passengers in or on Waikiki or Kaanapali ocean waters or shores. [Eff 2/24/94; comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-2 What persons shall not receive permits. The department shall not issue an operator permit to any person:

- (1) Who is under the age of twenty-one years for a catamaran captain or commercial motorboat operator, or under the age of twenty years for a canoe captain, or under the age of eighteen for a canoe second captain, or surfboard or sailboard instructor;

- (2) Whose permit has been suspended or revoked, while the suspension or revocation is in effect;
- (3) Who is a habitual drunkard, or a habitual user of narcotic or other drugs, to a degree which renders the person incapable of safely operating as a permittee;
- (4) Who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency as provided by law, such as to render the person incapable of safely operating as a permittee;
- (5) Who is required by this chapter to pass an examination or re-examination and has failed to do so; or
- (6) Who the chairperson has good cause to believe is incapable of operating as a permittee without substantially jeopardizing public safety and welfare. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-3 Special restrictions. (a) The department, upon issuing an operator permit, shall indicate thereon the class of permit so issued and shall appropriately examine each applicant according to the class.

(b) The department shall not issue a catamaran captain permit unless the applicant has a valid Coast Guard license to operate sailing catamarans carrying passengers for hire, and has a minimum of ninety working days catamaran sailing experience in Waikiki ocean waters, Zone A, or Kaanapali ocean waters, as appropriate, attested to by two persons holding valid catamaran captain permits issued by the department.

(c) The department shall not issue a canoe captain permit unless the department is fully satisfied as to the applicant's competency and fitness

to receive the permit, and the applicant has a minimum of three years experience in canoe handling, possesses a current Red Cross advanced life saving certificate, knows elementary first aid, and is physically qualified to perform the duties the position requires, as evidenced by a written report of a physician's physical examination made no earlier than thirty days prior to the effective date of the permit.

(d) The department shall not issue a canoe second captain's permit unless the department is fully satisfied as to the applicant's competency and fitness to receive the permit, and the applicant has a minimum of eighteen months experience in canoe handling, possesses a current Red Cross advanced life saving certificate, knows elementary first aid, and is physically qualified to perform the duties the position requires, as evidenced by a written report of a physician's examination made no earlier than thirty days prior to the effective date of the permit.

(e) The department shall not issue a senior surfboard instructor's permit or a sailboard instructor's permit unless the department is fully satisfied as to the applicant's competency and fitness to receive the permit, and the applicant has a minimum of three years surfboard or sailboard riding experience, as appropriate, possesses a current Red Cross advanced life saving certificate, knows elementary first aid, and is physically qualified to perform the duties the position requires, as evidenced by a written report of a physician's examination made no earlier than thirty days prior to the effective date of the permit.

(f) The department shall not issue a primary surfboard instructor's permit unless the department is fully satisfied as to the applicant's competency and fitness to receive the permit, and the applicant has a minimum of three years surfboard riding experience, possesses a current Red Cross advanced life saving certificate (on application for original permit only), knows elementary first aid, and is physically qualified to perform the duties the position requires, as evidenced by a written report of a physician's

examination made no earlier than thirty days prior to the effective date of the permit.

(g) A primary surfboard instructor's permit for Waikiki shall entitle the permittee to instruct only in waters five feet or less in depth at mean low water and not in the outer surfbreak area. [Eff 2/24/94; am and comp SEP 25 2014] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-4 Learner steersperson permits. Any person who is at least seventeen years of age may apply to the department for a learner steersperson permit. After the applicant has passed all parts of the applicable examination other than a canoe surfing test, the department may issue to the applicant a learner steersperson permit which shall entitle the applicant to navigate a canoe, registered by the department and not carrying passengers for hire, in or upon Waikiki or Kaanapali ocean waters as appropriate. [Eff 2/24/94; am and comp SEP 25 2014] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-5 Application for operator permit. (a) Every application for an operator permit shall be accompanied by the proper fee and payment of such fee shall entitle the applicant to not more than three attempts to pass any examination within a period of six months from the date of application.

(b) Every application shall include the full name, aliases, date of birth, sex, and resident address of the applicant and briefly describe the applicant, and the applicant's experience related to the vessel, surfboard, or sailboard the applicant wishes to use or operate. The application shall state whether the applicant has been issued a permit and, if so, when and whether the permit has ever been suspended or revoked, or whether an application has ever been refused and, if so, the date and reason for the suspension, revocation, or refusal. Two recent

photographs shall be attached to the application.

[Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-6 Examination of applicants. (a) The department shall examine every applicant for an operator permit, except as otherwise provided in this section. The examination shall include a test of the applicant's knowledge of this chapter and shall include an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of catamarans, canoes, surfboards, sailboards, or commercial motorboats, as the case may be, and such further written, physical, and mental examination as the department feels is necessary to determine the applicant's fitness to operate a catamaran, canoe, surfboard, sailboard, or motorboat safely upon the Waikiki or Kaanapali ocean waters as appropriate; provided that applicants for learner steersperson permits shall not be required to pass the canoe surfing test.

(b) The department may issue without examination an operator permit to any person applying therefore who furnished evidence satisfactory to the department that the person is not disqualified under this chapter and that the person has previously been issued an operator permit by the department. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-7 Operator permits issued to catamaran captains, canoe captains, canoe second captains, surfboard instructors, sailboard instructors and commercial motorboat operators. (a) An operator permit when issued by the department shall bear a distinguishing number assigned to the permit, the full name, date of birth, residence address, and brief description of the permittee, and a space upon which the permittee shall sign in ink the permittee's name

immediately upon receipt of the permit. No permit shall be valid until it has been so signed by the permittee.

(b) Every operator permit shall bear the permittee's photograph showing the permittee's facial features, which shall be furnished by the permittee. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-8 Operator permit to be carried on board and exhibited upon demand. Every permittee shall have the operator permit in the operator's immediate possession or at a place for safekeeping in the immediate vicinity at all times when operating as a permittee and shall display the same upon demand of a lifeguard, peace officer, or representative of the department. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-9 Duplicate certificate. In the event that an operator permit issued under this subchapter is lost or destroyed, the permittee may obtain a duplicate or substitute thereof, upon payment of the required fee, as provided by chapter 13-253, obtain a duplicate or substitute thereof. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-10 Expiration of operator permit. Every operator permit shall expire three years after its issuance. Application for a new permit shall be made as provided in section 13-251-5. The department may in its discretion, as provided in section 13-251-6, waive examination for renewal of a permit. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-11 Records to be kept by the department.

(a) The department shall file every application for a permit received by it and shall maintain suitable records concerning permits issued.

(b) The department shall file upon receipt, all accident reports and abstracts of records of convictions for violating this chapter. The department shall also maintain convenient records or make suitable notations so that an individual record of each licensee, showing the licensee's convictions and accidents, shall be readily ascertainable and available for the consideration by the department upon any application for renewal of license or permit and at other suitable times. [Eff 2/24/94; am and comp

SEP 25 2014] (Auth: HRS §§200-2, 200-3, 200-4)
(Imp: HRS §§200-2, 200-3, 200-4)

§§13-251-12 to 13-251-15 (Reserved)

SUBCHAPTER 2

SUSPENSION OR REVOCATION OF OPERATOR PERMITS

§13-251-16 Authority of department to revoke operator permit. (a) The department may revoke any operator permit upon determining that the permittee failed to give the required or correct information in the application, committed any fraud in making such application, or repeatedly violated section 13-251-17.

(b) Upon revocation, the department shall immediately notify the permittee in writing and upon written request shall afford the permittee full and reasonable opportunity for a hearing. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-17 Authority of department to suspend operator permit. (a) The department may suspend the operator permit of a catamaran captain upon sufficient evidence that the permittee does not have a valid Coast Guard license.

(b) The department may suspend the operator permit of a canoe captain, second captain, surfboard instructor, sailboard instructor, operator of a commercial motorboat or learner steersperson upon sufficient evidence that the permittee:

- (1) Has been convicted of violations of this chapter in such frequency and seriousness as to indicate a disregard for the safety of other persons on the waters;
- (2) Is incompetent to operate canoes, surfboards, sailboards or motorboats for charter or rent, as the case may be;
- (3) Has permitted an unlawful or fraudulent use of the permittee's license or permit; or
- (4) Has violated this chapter.

(c) Upon suspension, the department shall immediately notify the permittee in writing and upon a written request shall afford the permittee full and reasonable opportunity for a hearing. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-18 Department may require re-examination. The department upon written notice of at least five days to the permittee, may require the permittee to submit to an examination if the department has good cause to believe that a permittee is incompetent or otherwise not qualified to retain an operator permit. Upon the conclusion of the examination, the department shall take action as may be appropriate and may suspend or revoke the permit of that person or may issue a permit subject to restriction. Refusal or neglect of the permittee to submit to this examination shall be grounds for suspension or revocation of the permit. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-

3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-19 Period of suspension or revocation.

(a) The department shall not suspend an operator permit for a period of more than one year, except as provided under section 13-251-27.

(b) Any person whose operator permit had been revoked shall not be entitled to have that permit or privilege renewed or restored unless the revocation was for a cause which has been remedied, except that after one year from the date on which the revoked permit was surrendered to and received by the department, the person may apply for a new permit as provided by this chapter. However, the department shall not issue a new permit unless it is satisfied, after investigation, with the character and ability of the person. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-20 Surrender and return of operator permit. The department, upon suspending or revoking an operator permit, shall require that the permit be surrendered to and be retained by the department, except that at the end of the suspension, the surrendered permit shall be returned to the permittee. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§§13-251-21 to 13-251-25 (Reserved)

SUBCHAPTER 3

VIOLATION OF OPERATOR PERMIT PROVISIONS

§13-251-26 Unlawful use of operator permit. No person shall:

- (1) Display, cause or permit to be displayed, or have in the person's possession, any cancelled, revoked, suspended, fictitious, or fraudulently altered permit;
- (2) Lend the person's permit to any other person or knowingly permit the use thereof by another;
- (3) Display or represent as one's own, any permit not issued to oneself;
- (4) Fail or refuse to surrender any departmental permit to the department upon its lawful demand;
- (5) Permit any unlawful use of a permit issued to that person;
- (6) Do any act forbidden, or fail to perform any act required, by this chapter. [Eff 2/24/94; am and comp SEP 25 2014]
(Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-27 Operating while operator permit suspended or revoked. (a) No person shall operate as a permittee at a time when the privilege is suspended or revoked.

(b) The department shall extend the operator's suspension for a period equal to the original suspension upon receiving a record of that person's conviction for operating while the person's operator permit was suspended. If the conviction was for operating while a permit was revoked, the department shall not issue a new permit for an additional period of one year from the date the person would otherwise have been entitled to apply for a new permit. [Eff 2/24/94; am and comp SEP 25 2014] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-28 Permitting unauthorized person to operate catamaran or canoe. No person shall authorize or permit a catamaran or canoe carrying passengers for

hire to be navigated in or upon Waikiki ocean waters by any person who is not authorized by this chapter to do so. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§§13-251-29 to 13-251-30 (Reserved)

§§13-251-31 and 13-251-32 REPEALED. [R **SEP 25 2014**]

SUBCHAPTER 4.1

USE PERMITS

§13-251-33 Use Permit. No regular or extensive use of any state property or facilities or ocean waters or navigable streams for private gain or purposes shall be allowed without corresponding and reasonable benefits and returns to the public.

(a) No person shall engage in any business or commercial activity on the navigable waters of the state without:

- (1) Prior written approval from the board or its authorized representatives; or
- (2) The proper execution of an agreement with the department. [Eff and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-34 Insurance requirements. A registration certificate and/or commercial use permit are subject to the insurance requirements of section 13-231-65. [Eff and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-35 Reissuance of a registration certificate and/or commercial use permit. (a) The department may reissue a registration certificate and/or commercial use permit provided that:

- (1) The gross receipts during the 12 month period under the registration certificate and/or commercial use permit for which the application for reissuance has been submitted, equals or exceeds the following minimums as applicable:
 - (A) Catamarans used for bare boat (demise) charters and charter sail boats \$ 7,000
 - (B) Catamarans with a registration certificate and/or commercial use permit by the State or documented by the U. S. Coast Guard to carry six passengers or less, including charter fishing boats \$15,000
 - (C) Catamarans certified by the U. S. Coast Guard to carry seven to twenty-six passengers \$45,000
 - (D) Catamarans certified by the U. S. Coast Guard to carry twenty-seven to forty-nine passengers \$85,000
 - (E) Catamarans certified by the U. S. Coast Guard to carry fifty to ninety-nine passengers \$125,000
 - (F) Catamaran certified by the U. S. Coast Guard to carry more than ninety-nine passengers \$250,000
 - (G) Vessels engaged in another trade or business not delineated and

governed by an appropriate
 paragraph above \$ 7,000;
 or

- (2) The registered certificate holder and/or commercial use permittee applies to the department in writing for reissuance of the registration certificate and/or commercial use permit and concurrently presents evidence that any failure to generate gross receipts from the operation of the catamaran as prescribed in this subsection was due to:
- (A) The sinking, loss, or destruction of the catamaran;
 - (B) The catamaran being inoperative in excess of 60 days due to disability of the registered certificate holder and/or commercial use permittee;
 - (C) The catamaran was rendered inoperative in excess of 60 days due to damage to the catamaran, or due to the necessity of replacing essential parts and gear, provided that reasonable and diligent efforts to secure such items necessary to repair the catamaran or replace parts, is demonstrated to the satisfaction of the department; or
 - (D) Where conditions and circumstances are demonstrated wherein a reissuance of the registration certificate and/or commercial use permit would be fair and warranted, and the application for reissuance is approved by the department;

and

- (3) All fees and charges due and payable to the department have been paid and no violations are outstanding.

(b) No registration certificate and/or commercial use permit whose registration certificate and/or commercial use permit has been terminated for cause shall be reissued; provided that the registered certificate holder and/or commercial use permittee may

apply for, but not be automatically entitled to, a new registration certificate and/or commercial use permit after one year has expired from the date of termination of the registration certificate and/or commercial use permit, all fees and charges owing the State have been paid, and the registered certificate holder and/or commercial use permittee is in compliance with federal and state laws.

(c) A corporation or other business entity must have been in continuous commercial operation as evidenced by the submission of monthly reports of gross receipts for a minimum of 12 months in order to retain their registration certificate and/or commercial use permit upon the transfer of any interest in that corporation or other business entity and fee amounts in accordance with section 13-253-1 are paid.

(d) No reissuance of a registration certificate or commercial use permit may be denied for a catamaran operating in Waikiki ocean waters without a prior hearing held in accordance with Chapter 91, Hawaii Revised Statutes. [Eff and comp **SEP 25 2014**]
(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

SUBCHAPTER 5

WAIKIKI AND KAA NAPALI CATAMARANS

§13-251-36 Application for a catamaran registration certificate and/or commercial use permit.

(a) No person shall offer for hire, navigate, operate, or sail a catamaran on Waikiki or Kaanapali ocean waters and beach without either a registration certificate or a commercial use permit;

(b) The registration certificate and/or commercial use permit shall be initiated by the owner upon appropriate forms furnished by the department in

accordance with those procedures that the department may reasonably prescribe. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-37 Grounds for refusing an application for a registration certificate and/or commercial use permit. (a) The department shall refuse a registration certificate and/or commercial use permit, or any transfer of registration certificate and/or commercial use permit, upon a finding that:

- (1) The application contains any false or fraudulent statement, the applicant has failed to furnish required information or reasonable additional information requested by the department, or the applicant is not entitled to a registration certificate and/or commercial use permit under this subchapter;
- (2) The catamaran is unsafe to be operated upon the Waikiki or Kaaanapali ocean waters;
- (3) The registration certificate and/or commercial use permit of the catamaran stands suspended or revoked for any reason as provided in this subchapter;
- (4) The required fee has not been paid;
- (5) Any catamaran:
 - (A) Engaged in carrying more than six passengers does not have a valid Coast Guard certificate of inspection; or
 - (B) Engaged in carrying six or less passengers does not have a record of a condition survey, by a marine surveyor as defined in section 13-231-45, undertaken within ninety days prior to application for registration or renewal of registration, attesting that the vessel:
 - (i) Is in good material and operating condition;

- (ii) The minimum required Coast Guard safety equipment is on board;
 - (iii) The catamaran is suitable to carry passengers in Waikiki or Kaanapali ocean waters while being propelled solely by sail;
- (6) The catamaran cannot be safely navigated in Waikiki or Kaanapali ocean waters, as appropriate, while being propelled by sail only;
- (7) The catamaran is equipped with auxiliary mechanical propulsion machinery using a propeller but does not have a propeller guard installed on the vessel or a captain or crew member designated to be a look-out to ensure public safety approved by the department;
- (8) The catamaran:
 - (A) Is more than fifty feet in length for Waikiki ocean waters operation;
 - (B) Is more than sixty-five feet in length for Kaanapali ocean waters operation;
 - or
 - (C) Has a passenger capacity of more than forty-nine passengers;
- (9) The applicant for a catamaran registration certificate and/or commercial use permit holds a valid registration certificate and/or commercial use permit issued by the department in accordance with this subchapter for another catamaran authorized to be used on Waikiki or Kaanapali ocean waters as applicable;
- (10) The owner has not furnished proof of financial responsibility as prescribed in this subchapter;
- (11) The owner of a catamaran holds a valid registration certificate and/or commercial use permit issued by the department in accordance with this subchapter for another catamaran authorized to be used on Waikiki

or Kaanapali ocean waters, as applicable;
or

- (12) Any other grounds provided by this subchapter warrants refusal of the registration certificate and/or commercial use permit or transfer of registration and/or commercial use permit.

(b) The department shall notify the owner in writing of the refusal. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-38 Registration certificate and/or commercial use permit indices. (a) The department shall receive an application for a registration certificate and/or commercial use permit for catamarans and when satisfied with the accuracy, validity and regularity thereof, shall provide a registration certificate and/or commercial use permit for the catamaran and keep a record of that registration certificate and/or commercial use permit.

(b) The total number of valid catamaran registration certificates and/or commercial use permits issued under this subchapter shall be issued according to section 13-251-51.

(c) An owner may apply for a future vacancy, as prescribed in section 13-251-52, if registration certificates and commercial use permits continue to be issued. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-39 Department to issue registration certificate and/or commercial use permit. The registration certificate and/or commercial use permit shall be issued to the owner, and shall contain the date issued, the name and address of the owner, the number or other identification, and the description of

the catamaran as determined by the department. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-40 Registration certificates and/or commercial use permits to be exhibited upon demand. Registration certificates and/or commercial use permit shall be shown upon demand of a law enforcement officer, lifeguard, or an authorized representative of the department. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-41 Identification of catamarans with a registration certificate and/or commercial use permit. A name, or number, or both, prescribed by law or adopted by the owner with prior approval of the department shall be painted on, or attached to each side of the bow of each catamaran registered and/or commercial use permitted by the department, in a manner prescribed by the department and in a color which contrasts with the background in order that the name, or number, or both, may be completely visible and legible. Any lettering shall be no less than three inches in height. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-42 Expiration of registration certificate and/or commercial use permit. Every catamaran registration and/or commercial use permit under this part shall expire:

- (1) One year after the effective date of the registration certificate and/or commercial use permit; or

- (2) When ownership has been transferred except as provided in section 13-251-45. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-43 Application for renewal of registration certificate and/or commercial use permit. Application for renewal of a registration certificates and/or commercial use permit shall be made by the owner upon proper application and by payment of the registration certificate and/or commercial use permit fee. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-44 Notice of change of address. Whenever any person moves from the address stated on a registration certificate and/or commercial use permit or pending application for a registration certificate and/or commercial use permit, the person shall notify the department in writing of the person's old and new addresses within seven days of the change in address. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-45 Transfer of registration certificate and/or commercial use permit. (a) Whenever the individual owner of a catamaran transfers or assigns the individual owner's title or interest, or the title or interest passes to another owner other than by voluntary transfer, the registration certificate and/or commercial use permit of the catamaran shall expire; provided, that upon the incapacitation or death of the individual owner, the registration certificate and/or commercial use permit may be

transferred to a spouse or other member of the immediate family if the individual inherits the catamaran as provided by law and no transfer fee shall apply.

- (b) Registration issued to individuals.
 - (1) A registration certificate and/or commercial use permit issued to a sole proprietor may transfer the ownership of the vessel from personal ownership to corporate or other business ownership without terminating the right to operate under the commercial use permit or existing registration certificate;
 - (2) The existing commercial use permit or existing registration certificate shall be reissued in a timely manner in the name of the transferee corporation or other business entity;
 - (3) No valid commercial use permit or existing registration certificate issued to an owner of a commercial catamaran operating in the Waikiki ocean waters shall be denied or revoked without a prior hearing in accordance with chapter 91, Hawaii Revised Statutes;
 - (4) An original registration certificate holder or commercial permittee holding a regular mooring permit, upon written application and approval by the department, may retain the mooring permit, provided that within 30 days the permittee moves into the small boat harbor another vessel owned by the permittee pursuant to the provisions of section 13-231-13; and
 - (5) An original registration certificate holder and/or commercial use permittee may, upon written application to and approval by the department, retain the registration certificate and/or commercial use permit, provided that within 30 days the permittee resumes operation with another vessel owned by the certificate holder or permittee

pursuant to the provisions of sections 13-231-13 and 13-231-61.

(c) The following rights, conditions, and restrictions apply to a registration certificate and/or commercial use permit issued to a corporation or other business entity.

- (1) Notwithstanding section 13-231-13, a corporation or other business entity holding a valid registration certificate and/or commercial use permit may transfer any or all stock or interest and retain the registration certificate and/or commercial use permit and all other valid small boat harbor use permits in effect on the date of transfer, provided that the corporation or other business entity has been in continuous operation as evidenced by the submission of monthly reports of gross receipts for a minimum period of one full year and meets all requirements necessary for issuance of a registration certificate and/or commercial use permit. The department shall be notified within ten working days of:
 - (A) All transactions that amount to a transfer of 10 per cent or more of the stock or interest in the firm by owners of record on the effective date of the current registration certificate and/or commercial use permit;
 - (B) The transfer of any stock or interest which results in a change of the principal stockholder or owner; and
 - (C) The business transfer fee is paid on or before the date of transfer in accordance with the provisions of section 13-234-33; and
- (2) A registration certificate and/or commercial use permit issued to a corporation or other business entity shall automatically expire:
 - (A) Upon the voluntary or involuntary dissolution of the corporation or business entity;

- (B) If the catamaran operated under the registration certificate and/or commercial use permit is sold or otherwise transferred and not replaced in accordance with the provisions of section 13-231-13(b); or
- (C) If the registration certificate holder and/or commercial use permittee fails to operate the catamaran for which the registration certificate and/or commercial use permit is issued for a period in excess of sixty days, except as provided in section 13-231-61(a)(2), and except when the registration holder and/or commercial use permittee provides advance notification to the department in writing that operations will be temporarily suspended for a specific period not to exceed four months. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-46 New owner must secure new registration certificate and/or commercial use permit. A transferee shall obtain an original registration certificate and/or commercial use permit for a catamaran before operating or renting the same upon Waikiki or Kaanapali ocean waters. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-47 REPEALED. [R **SEP 25 2014**]

§13-251-48 Operation of a catamaran when registration certificate and/or commercial use permit

suspended or revoked. No person shall operate upon the Waikiki or Kaanapali ocean waters any catamaran for which the registration and/or commercial use permit has been suspended or revoked. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-49 Authority of department to suspend or revoke registration certificate and/or commercial use permit. (a) The department may suspend or revoke the registration certificate and/or commercial use permit of a catamaran whenever:

- (1) The department is satisfied that the registration certificate and/or commercial use permit was fraudulently or erroneously issued;
- (2) The department determines that a registered and/or commercial use permitted catamaran is unsafe to be operated upon the Waikiki or Kaanapali ocean waters;
- (3) A registered and/or commercial use permitted catamaran has been sold, dismantled, or wrecked, provided that the owner of the catamaran at the time it was sold, dismantled, or wrecked may, upon written application to and approval by the department, transfer the registration certificate and/or commercial use permit to another catamaran of like characteristics and ownership if the replacement catamaran is in operation within one-hundred twenty days of the transfer;
- (4) The owner of any catamaran carrying passengers for hire has failed or is unable to give proof of financial responsibility as provided in this subchapter;
- (5) Any catamaran's Coast Guard Certificate of Inspection has expired; or
- (6) A catamaran has not been engaged in carrying passengers for hire in Waikiki or Kaanapali

ocean waters for a period of thirty consecutive days unless actively making repairs in accordance with United States Coast Guard requirements and approved by the department.

(b) Upon suspending or revoking the registration certificate and/or commercial use permit of a catamaran the department shall immediately notify the owner in writing of the reason for the suspension or revocation.

(c) For catamarans operating in Waikiki ocean waters, no registration certificate or commercial use permit may be revoked without a prior hearing in accordance with chapter 91, Hawaii Revised Statutes. [Eff 2/24/94; am and comp SEP 25 2014] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-50 Duplicate registration certificate and/or commercial use permit. In the event that a registration certificate and/or commercial use permit issued under the provisions of this part is lost or destroyed, the registration certificate and/or commercial use permit holder may, upon the payment of the required fee, obtain a duplicate or substitute. [Eff 2/24/94; am and comp SEP 25 2014] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-51 Catamaran registration limitations.

(a) The total number of valid catamaran registrations and commercial use permits issued under this subchapter shall not exceed four at any one time for Waikiki ocean waters or ten at any one time for Kaanapali ocean waters. An owner may apply for a future vacancy, as prescribed in section 13-251-52, if future catamarans are registered.

(b) Notwithstanding this section, all owners of catamarans holding valid registrations or commercial use permits to operate upon Waikiki ocean waters or

Kaanapali ocean waters on the effective date of these rules may continue operations and be permitted to apply for and renew their registration certificate or commercial use permit subject to compliance with all other conditions set forth in this chapter until their total number is reduced by attrition or other means to the numbers in subsection (a). [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-52 Allocation of catamaran registration certificates and/or commercial use permits. (a) Application for a catamaran registration certificate and/or commercial use permit; period of validity; renewal of application.

- (1) The first owner to file an application may be offered a catamaran registration certificate and/or commercial use permit as prescribed under subsection (e) if the maximum number of catamaran registration certificates and/or commercial use permits authorized by section 13-251-51 has not been issued and provided that no prior requests therefor are pending as provided in this section;
- (2) If the maximum number of catamaran registration certificates and/or commercial use permits permitted by section 13-251-51 has been issued and is valid, an owner's application for a catamaran registration certificate and/or commercial use permit shall be retained and honored when the total number of valid catamaran registration certificates and/or commercial use permit is less than the maximum limit and the issuance of an additional catamaran registration certificate and/or commercial use permit is authorized pursuant to these rules;
 - (A) An application for the issuance of a catamaran registration certificate and/or commercial use permit shall be

made in writing to the department by the owner on a form provided by the department. The department shall accept the application for consideration by endorsing it and entering the filing time and date on the application form submitted. One copy shall be given to the applicant. The time and date the application is endorsed by the department shall be the filing date and the effective date of the application for consideration and shall establish the applicant's seniority or priority over later applicants, if the application remains valid. No application shall be accepted unless and until the application fee prescribed in these rules is paid by the applicant and review thereof has been conducted pursuant to subsection (b);

(B) An application shall continue in full force and effect for a period ending one year from the effective date of the application, except as provided in subparagraph (C) of this subsection, or unless sooner terminated in accordance with these rules. An application is void after the date of expiration;

(C) An application may be renewed within a ninety day period preceding its expiration date. An application properly renewed prior to its expiration date shall be valid for a period ending one year from the expiration date of the previous application. No application for renewal shall be accepted until the fee prescribed in these rules is paid by the applicant.

(b) Review and acceptance or rejection of applications.

- (1) The department shall examine and determine the accuracy, validity, and regularity of each application and may conduct any investigation it deems necessary for its examination and determination, and it may require additional information from the applicant necessary to determine the genuineness and regularity of the application.
- (2) The department shall reject any application that contains a material misstatement or where the applicant has failed to disclose any material fact on the application.
- (3) An application shall not be accepted for consideration, and shall be rejected if:
 - (A) The application fee is not paid at the time application is made;
 - (B) The applicant is delinquent in the payment of any moneys due and payable to the department; or
 - (C) The applicant has pending a citation for violation of any of the department's rules.
- (c) Upon rejection of an application, the department shall inform the applicant, in writing within a reasonable time:
 - (1) That the application has not been accepted for consideration;
 - (2) That the application has been rejected; and
 - (3) Of the department's reasons for rejection. An applicant may cure the defect and re-apply.
- (d) Applicant required to furnish address and report changes; effect of failure to report changes.
 - (1) An applicant shall include the applicant's address in the application to the department for a catamaran registration certificate and/or commercial use permit;
 - (2) An applicant shall immediately notify the department in writing of any changes in the applicant's address in order to maintain the validity of an application; and

- (3) An application shall be void if the department is unable to reach the applicant to offer the applicant a catamaran registration certificate and/or commercial use permit at the address:
 - (A) Appearing on the application; or
 - (B) Furnished in writing to the department by the applicant as a change of address subsequent to submitting the application.

(e) Withdrawal of application; effect if application has become void, expires, or been withdrawn.

- (1) An application may be withdrawn by an applicant upon written notice to the department;
- (2) An applicant who withdraws an application or whose application has expired or becomes void may submit a new application for acceptance by the department. Seniority begins on the date the new application is accepted for consideration as provided in subsection (a) (2) (A).

(f) Priority in allocation of catamaran registration certificates and/or commercial use permits. When the total number of valid catamaran registration certificates and/or commercial use permits are less than the maximum limit authorized by section 13-251-38, the department may offer a catamaran registration certificate and/or commercial use permit to the senior applicant eligible to receive such a registration certificate and/or commercial use permit.

(g) Notice to owner of available catamaran registration certificate and/or commercial use permit. When an offer of a catamaran registration certificate and/or commercial use permit is provided for in this section, the department shall deliver the offer or send it by certified mail - return receipt requested, addressed to the applicant eligible to receive the offer at the address furnished to the department in writing by the applicant.

(h) Offer of catamaran registration certificate and/or commercial use permit valid only fourteen days; written notice of intention; acceptance.

- (1) An applicant may decline an offer of a catamaran registration certificate and/or commercial use permit and retain the applicant's seniority if the offer is declined in writing, addressed to and received by the department not later than fourteen days after the date of receipt of the offer. An applicant who declines an offer in writing and retains seniority pursuant to this subsection, shall not be considered for another offer on the basis of the applicant's seniority until six months have elapsed since the date of the last refusal;
- (2) If an applicant decides to accept the offer of a catamaran registration certificate and/or commercial use permit, the applicant shall either:
 - (A) Deliver a written notice of intention to accept the offer to the department within fourteen days after the receipt of the offer; or
 - (B) Accept the offer by securing a catamaran registration certificate and/or commercial use permit within fourteen days after the receipt of the offer;
- (3) The applicant's application for a catamaran registration certificate and/or commercial use permit and the offer by the State of a catamaran registration certificate and/or commercial use permit shall be void if the applicant fails to either secure a catamaran registration certificate and/or commercial use permit or give written notice of intent to accept the offer within fourteen days after the receipt of the offer. The registration certificate and/or commercial

- use permit shall then be offered to the next senior applicant pursuant to this section;
- (4) An applicant who cannot immediately accept the offer but has delivered a written notice of intention to accept to the department pursuant to subsection (a) (2) shall accept the offer by securing a catamaran registration certificate and/or commercial use permit as prescribed in section 13-251-36 within fourteen days after the applicant mails or personally delivers the notice of intention to accept to the department;
 - (5) Except as provided in subsection (h) (6) if the applicant fails to secure a catamaran registration certificate and/or commercial use permit within fourteen days, the application for a catamaran registration certificate and/or commercial use permit, the offer of a catamaran registration certificate and/or commercial use permit, and the notice of intention to accept the offer shall be void, and the catamaran registration certificate and/or commercial use permit shall then be offered to the next senior applicant in accordance with these rules;
 - (6) The department may extend the deadline for acceptance prescribed in subsection (h) (2), if the applicant presents evidence to the department that the granting of additional time for compliance is reasonable and essential to prevent undue hardship; provided that any extension of time for compliance shall not exceed a period of 120 days from the date the department received from the applicant a written notice of intention to accept the offer of a catamaran registration certificate and/or commercial use permit;
 - (7) Because time is of the essence, the offer delivered or mailed to an applicant pursuant to subsection (g) shall contain a statement

that the offer will lapse unless accepted in accordance with the procedures of this section. [Eff 2/24/94; am and comp
SEP 25 2014] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-53 Waikiki catamarans; mooring of. Each catamaran operator holding a commercial use permit or registration certificate authorizing operation in Waikiki nearshore waters or on Waikiki beach shall maintain their beach moorings in the position and condition that they have established and maintained since January 1, 2013, provided:

(a) Approval is obtained from the board of land and natural resources regarding the type and location of the mooring to be installed on Waikiki beach or ocean waters for the purpose of securing the catamaran while conducting business. No additional fee shall be charged for said moorings beyond the amounts set forth in section 13-253-1.1;

(b) Operators shall assume all responsibility and liability for their moorings and operations, indemnify and defend the State, and carry general liability insurance in accordance with section 13-231-65;

(c) Operators shall obtain all applicable permits required to install moorings on Waikiki beach or ocean waters;

(d) Operators shall lower the catamarans' sails to prevent obstructing the view from lifeguard stations upon the request of a Honolulu city and county lifeguard;

(e) Operators may apply to the department for temporary variance to its assigned mooring, as described in the attendant revocable permit, to accommodate governmental, natural or environmental conditions that make the regularly assigned moorings inaccessible or a danger to any of the catamarans operating in Waikiki. Such variance shall terminate

upon the resolution of said dangerous condition. Such variance shall not encroach upon or adversely affect the operations of the other catamarans without the express written consent of the affected catamarans;

(f) Catamaran ingress and egress through the transit channel referred to as "Canoes" channel shall be limited to the four Waikiki catamaran registration holders presently moored and operating closest to the "Canoes" channel as more specifically described in the Waikiki beach mooring revocable permit;

(g) Catamaran ingress and egress through the transit channel referred to as "Sheraton" channel shall be limited to the three Waikiki catamaran registration holders presently moored and operating closest to the "Sheraton" channel as more specifically described in the Waikiki beach mooring revocable permit; and

(h) Any violation of this section shall be cause for fines, suspensions, or where repeated violations of this section are found, revocation of the registration certificate or commercial use permit of the catamaran owner. [Eff and comp SEP 25 2014]
(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§§13-251-54 to 13-251-55 (Reserved)

SUBCHAPTER 6

WAIKIKI AND KAA NAPALI BEACH AND OCEAN WATERS

§13-251-56 REPEALED. [R SEP 25 2014]

§13-251-57 Waikiki ocean waters. Waikiki ocean waters means the area shown on Exhibit 1, dated May 1, 2012, located at the end of this subchapter and incorporated herein. The boundaries are as follows:

Beginning at the point where the mean high water mark intersects a line perpendicular to the shoreline below the Diamond Head Lighthouse; then in the Ewa direction along the mean high water mark to the makai boundary of the Ala Wai Small Boat Harbor and buoy R"8"; then west across the channel to the seawall on the Diamond Head side of Magic Island; then following along the mean high water mark to the seaward prolongation of the parking lot on the Ewa side of Magic Island; then along the edge of the reef to the revetment on the Waikiki side of the Kewalo Basin entrance channel; then along a straight line to the Kewalo Basin entrance channel buoy R"2"; then southeasterly along a straight line to the Ala Wai boat harbor entrance lighted buoy R"4"; then along a straight line to the Diamond Head buoy R"2"; then along a straight line the point of beginning.

The Waikiki ocean waters are reserved primarily for use by bathers, swimmers, surfers, snorkelers, and other recreational uses and subject to restrictions set forth in this section. No person shall operate a vessel or watercraft within the Waikiki ocean waters within 500 feet of the shoreline at a speed in excess of slow-no-wake. Vessel operators shall exercise caution while transiting the area due to heavy use by swimmers. This section shall not apply in the event of an emergency, or to law enforcement or rescue craft, or vessels participating under a valid regatta permit issued by the department or the Coast Guard.

(a) Zone A is described as follows:

Beginning at the breakwater makai of the Hilton Hawaiian Village rainbow tower; then following the mean high water mark northwesterly to the Duke Kahanamoku Lagoon; then southerly to 21°16'25.36"N, 157°50'12.15"W; then in a straight line ending at the starting point;

(1) Restrictions: No person shall navigate, moor, or anchor a vessel in or on the waters of Zone A, except that a manually propelled outrigger canoe or a catamaran propelled by

sail may be operated in those waters if the vessel has been issued a permit by the department, or that a catamaran propelled by sail capable of carrying six persons or less, with a valid permit to operate within Waikiki ocean waters under the provisions of section 13-251-52, may anchor overnight in the area adjacent to the groin in the vicinity of the Ala Wai Heliport.

Notwithstanding this subsection, vessels operating from the Hilton Hawaiian Village pier are exempt from the restrictions in this paragraph.

(b) Zone B is described as follows:

Beginning at the breakwater makai of the Hawaiian Village Rainbow Tower; then along the mean high water mark in the Diamond Head direction to the mauka Ewa side of the natatorium; then seaward along the Ewa wall of the natatorium to the outer edge of the reef at 21°15'52.26"N, 157°49'31.67"W; then along the reef in the north direction to the seaward end of the wall at Kapahulu; then in a straight line eastward ending at the starting point;

(1) Restrictions:

(A) No person shall navigate or moor a vessel in or on the Waikiki ocean waters, except that outrigger canoes operated by a duly organized canoe club, or a sailing catamaran, or a manually propelled outrigger canoe may be navigated, moored, or anchored in those waters if the vessel has been issued a permit by the department to navigate in the waters.

Notwithstanding this subsection, a sailing catamaran may temporarily operate in Zone D as a power-driven catamaran when necessary to protect life or property and is that vessel is registered by the department to operate in Waikiki ocean waters and under the

immediate control of an operator who has been issued a valid permit by the department;

- (B) No person shall navigate or moor a catamaran in or on the waters of Zone B or on the shore below the mean high water mark if four catamarans are navigating or moored in such zone;
- (C) The minimum distance separating any two catamarans moored in Zone B shall be eighty feet; and
- (D) For this subchapter, surfboards are not considered to be a vessel.

(c) Zone C is described as follows: Beginning at the end of the Ewa groin at the Duke Kahanamoku statue; then following the groin shoreward and along the Kuhio Beach shoreline to the mauka end of the wall at Kapahulu; then to the end of the wall; then following the seawall in a northward direction to the point of beginning.

- (1) Restrictions: Zone C is designated as a swimming, bathing and wading zone. No person shall engage in fishing by any means or device from the Kuhio seawall to the shoreline between the wall at Kapahulu and the Ewa groin.

(d) Zone D is described as follows:

Beginning at the makai-Ewa corner of the wall at Kapahulu; then 160 yards in the Diamond Head direction on a straight line perpendicular to the beach to 21°16'11.35"N, 157°49'24.49"W; then 100 yards seaward on a straight line ending at 21°16'10.43"N, 157°49'27.89"W; then 310 yards in the Ewa direction on a straight line ending at 21°16'19.32"N, 157°49'30.27"W; then 100 yards shoreward to 21°16'20.27"N, 157°49'26.90"W; then in a straight line back to the point of beginning.

- (1) Restrictions: No person shall navigate or moor a vessel or navigate or otherwise use a surfboard in or on the waters of Zone D, except that paipo boards not in excess of

four feet in length and without skegs or any other fin-like projections protruding from the bottom of the boards are permitted to be used on the waters.

(e) Zone E is described as follows:

Beginning at a point where the Diamond Head wall of the Natatorium intersects the mean high water mark at 21°15'50.66"N, 157°49'18.30"W; then following the mean high water mark in a Diamond Head direction to the Colony Surf Hotel at 21°15'44.76"N, 157°49'17.45"W; then in a seaward direction to 21°15.44.16"N, 157°49'19.32"W; then north to the makai-Diamond Head corner of the Natatorium; then in a straight line to the point of beginning.

(1) Restrictions: No person shall navigate or moor a vessel in or on the waters of Zone E, except that a manually propelled outrigger canoe operated by a duly organized canoe club, or a commercially operated manually propelled outrigger canoe may be navigated in these waters if the vessel has been registered in accordance with this chapter and is under immediate control of an operator who has a valid permit issued by the department in accordance with subchapter 1. [Eff 2/24/94; am and comp **SEP 25 2014**]
(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-58 Kaanapali beach and ocean waters.

(a) This section shall not apply in the event of an emergency, to law enforcement or rescue craft, to vessels participating under a valid ocean waters permit issued by the department, or to Hawaiian design canoes engaged in crew training. The Kaanapali beach and ocean waters are shown on Exhibit "2", dated May 1, 2012, located at the end of this subchapter and incorporated herein. The boundaries are as follows:

Beginning at a point on the northern end of Kaanapali Beach and ocean waters located at 20°57'8.86"N, 156°41'33.68"W; then shoreward to the mean high water mark at 20°57'2.72"N, 156°41'25.33"W; then southward to the mean high water mark of the extended centerline of Wahikuli Road at 20°53'42.57"N, 156°41'6.44"W; then seaward to 20°53'42.75"N, 156°41'16.44"W; then north generally running parallel to the beach at 20°54'2.64"N, 156°41'16.43"W; then to 20°54'31.48"N, 156°41'32.99"W; then to 20°54'42.94"N, 156°41'51.26"W; then to 20°54'58.87"N, 156°41'58.32"W; then seaward of Black Rock at 20°55'40.15"N, 156°41'58.14"W; then to 20°56'11.79"N, 156°41'44.21"W; then to 20°56'52.51"N, 156°41'41.88"W; then to the point of beginning.

(b) Restrictions.

- (1) No person shall navigate any vessel at a speed in excess of "slow no wake" (five (5) miles per hour) within 500 feet of the shoreline;
- (2) No person shall navigate a motorboat within 200 feet of the shoreline, or designated swimming area, or within one hundred feet of a diver's flag, nor shall any person navigate a commercial motorized vessel within 500 feet of the shoreline except within a designated ingress/egress corridor. Notwithstanding this paragraph, vessels engaged in fishing outside the designated ingress/egress corridors are exempt from the 200-foot shoreline restriction, provided that designated swimming areas are approached with caution and due care;
- (3) No person shall navigate a motorized vessel within 300 feet of a vessel engaged in fishing;
- (4) A vessel engaged in fishing shall not impede the passage of any vessel passing through a designated ingress/egress corridor;

- (5) No person shall anchor or moor a vessel, barge, platform, or raft within 200 feet of the shoreline or a designated ingress/egress corridor; and
 - (6) No person shall navigate or moor a vessel engaged in commercial use unless the vessel has been registered and the owner has a valid permit issued in accordance with this chapter; however, commercial vessels solely transiting through the Kaanapali ocean waters shall not be required to be registered or have a commercial permit.
 - (7) Vessels holding a valid ocean recreation management area commercial use permit may use a state small boat harbor or boat launching ramp when winds are in excess of 25 miles per hour and/or during periods of high surf warnings as indicated by the National Weather Service would prevent safe access to the shoreline through a designated ingress or egress zone;
 - (8) The vessel operator or master shall afford the department prior notice of the presence or threat of such conditions and shall be subject to local direction and control as necessary to avoid conflict with other users of the facility; and
 - (9) Use of a state boating facility in accordance with this section shall not affect the permittee's right to use such boating facilities in the absence of such conditions as permitted by law.
- (c) Zone A, designated primarily for swimming, bathing, snorkeling and diving, is described as follows:

Beginning at a point 300 feet south of Leialii Parkway; then 200 feet seaward; then northward to seaward prolongation of Kaanapali Beachwalk at the north end of Hanakao Beach Park; then shoreward to the high water mark; then southward along the high water mark to the point of beginning.

- (1) No person shall navigate or moor a vessel, surfboard, sailboard or any other water recreational device in or on the waters of Zone A, provided that this restriction shall not apply to:
 - (A) Paipo boards not in excess of four feet in length and without skegs or any other fin-like projections protruding from the bottom of the boards; and
 - (B) Vessels engaged in fishing during periods of low use of the beach.
- (d) Zone B, designated primarily for swimming, bathing, snorkeling and diving, is described as follows:

Beginning at a point on the high water mark on the seaward prolongation of the Kaanapali Beach Public Access Trail south of Kekaa Point at 20°55'29.70"N, 156°41'42.70"W; then seaward to 20°55'29.79"N, 156°41'49.40"W; then northward to 20°55'39.12"N, 156°41'52.40"W; then to 20°55'43.58"N, 156°41'48.89"W; then shoreward to the high water mark; then following Black Rock southward along the high water mark to the point of beginning.

- (1) The same restrictions and exceptions applicable to Zone A are applicable to Zone B.
- (e) Ingress/egress zones;
 - (1) Zone 1 begins at the seaward prolongation of Kaanapali Beachwalk at the north end of Hanakaoo Beach Park; then northward along the vegetation line for a distance of 500 feet;
 - (2) Zone 2 begins at a point on the vegetation line on the ocean-side of the Marriott's Maui Ocean Club Hotel; then northward along the vegetation line for a distance of 500 feet;
 - (3) Zone 3 begins at a point on the vegetation line located north of the Westin Maui Hotel; then northward along the vegetation line for a distance of 500 feet;

- (4) Zone 4 begins at a point on the vegetation line located 575 feet south from the southernmost tip of Black Rock shoreline and south of the Kaanapali Beach Public Access Trail; then southward along the vegetation line for a distance of 500 feet; and
- (5) Zone 5 begins at a point on the vegetation line located north of the Black Rock shoreline, then northward along the vegetation line for a distance of 500 feet.

(f) These zones shall be established at intervals along the shoreline to provide beach access for all vessels governed by this chapter. Each zone shall be 500 feet wide at the shoreline and shall extend seaward for a distance of 500 feet.

(g) Users of the ingress/egress zones determine the best direction for approach to or departure from the shoreline under existing wind and sea conditions.

(h) No person shall:

- (1) Navigate a commercial vessel or noncommercial motorized vessel to or from the beach area unless using a designated ingress/egress zone;
- (2) Beach a catamaran, registered for carrying passengers for hire in an ingress/egress zone in excess of 30 minutes; and
- (3) Navigate a vessel within an ingress/egress zone at a speed exceeding slow-no-wake. [Eff 2/24/94; am 6/16/03; am and comp **SEP 25 2014**]
(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24, 200-37) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24, 200-37)

§§13-251-59 to 13-251-60 REPEALED. [R
SEP 25 2014]

§§13-251-61 to 13-251-65 (Reserved)

SUBCHAPTER 7

SPECIAL OPERATING RESTRICTIONS

§13-251-66 Canoe operation; required crew. (a) No person shall operate nor shall any owner authorize or permit a canoe carrying passengers for hire to engage in canoe surfing unless the canoe meets all requirements of these rules and a canoe captain and canoe second captain, each having a valid permit issued by the department, are aboard; provided, that a two-man canoe shall have either a canoe captain or second captain on board.

(b) No person shall operate nor shall any owner authorize or permit a canoe to transport passengers for hire unless the canoe meets all requirements of these rules and a canoe captain or second captain, each having a valid permit issued by the department, is on board. In these instances the senior crew member aboard shall not permit the vessel to be utilized for canoe surfing unless a minimum crew as provided in subsection (a) is on board. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-67 Catamaran crews. No person shall operate nor shall any owner authorize or permit a catamaran to transport passengers for hire, except cruising catamarans as described in section 13-251-1, unless the catamaran meets all requirements of these rules and a catamaran captain, having a permit issued by the department, and at least one other crew member are aboard. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-68 REPEALED. [R **SEP 25 2014**]

§13-251-69 Learner steersperson. (a) A learner steersperson shall steer an outrigger canoe engaged in canoe surfing only on a wave which is not carrying another canoe.

(b) A learner steersperson shall not steer an outrigger canoe carrying passengers for hire. [Eff 2/24/94; am and comp SEP 25 2014] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§§13-251-70 to 13-251-75 (Reserved)

SUBCHAPTER 8

SOLICITING PROHIBITED IN OR ON WAIKIKI AND KAA NAPALI OCEAN WATERS

§13-251-76 Commercial Activities. (a) No person shall engage in commercial activities of any kind in or on Waikiki or Kaanapali ocean waters and beach without a written permit or registration certificate from the board or its authorized representatives.

(b) "Kaanapali beach" means the area within Kaanapali ocean waters that is situated between the shoreline and the mean high tide mark along the shores.

(c) Kaanapali beach is designated for public use for sunbathing, foot traffic, swimming, and other activities which, when engaged in, shall not unduly disrupt others from enjoying the beach.

(d) Constructing or placing any building or structure or storing any property, whether temporary, portable, or permanent, at Kaanapali beach shall be prohibited, except where authorized by the department, and, in addition to any other remedies, unauthorized buildings, structures, or property may be removed by the department at the sole risk and cost of the owner.

(e) Vessel owners shall be prohibited from storing any vessel or associated equipment on Kaanapali beach, unless authorized by the department.

(f) The following activities shall be prohibited on Kaanapali beach:

- (1) Kite flying; and
- (2) Kite surfing equipment.

(g) The maximum number of Kaanapali commercial permits that may be issued for monohull vessels to embark and disembark passengers at Kaanapali beach shall not be greater than five, but small craft used to shuttle passengers to and from a monohull vessel in the Kaanapali ocean waters may be included under that vessel's commercial activity permit.

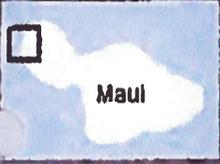
(h) Law enforcement and rescue vessels are exempt from the provisions of this section. [Eff 2/24/94; am 6/16/03; am and comp **SEP 25 2014**]
(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)



EXHIBIT 1: WAIKIKI OCEAN WATERS
Ocean Recreation Management Area

Zones A - E: Swimming, Wading, and other recreational and commercial uses. For a complete list, see §13-251-57 HAR. Zone locations are approximate. Map Date: May 1, 2012

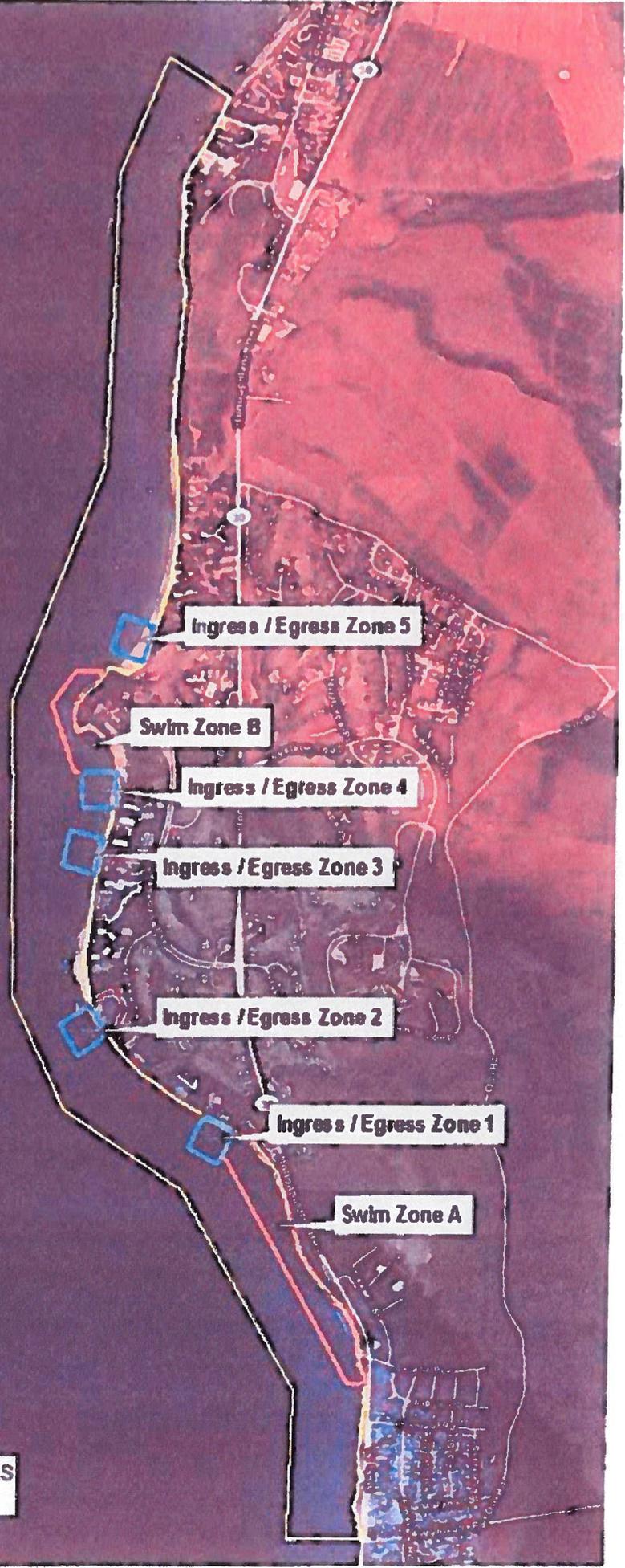
D. J. MOORE
 JULY 12



Maui



KA'ANAPALI BEACH AND OCEAN WATERS
 INGRESS / EGRESS CHANNEL
 SWIMMING AREA
 Zone location is approximate
 Map Date May 1, 2012
 513-251-58 HAR



Ingress / Egress Zone 5

Swim Zone B

Ingress / Egress Zone 4

Ingress / Egress Zone 3

Ingress / Egress Zone 2

Ingress / Egress Zone 1

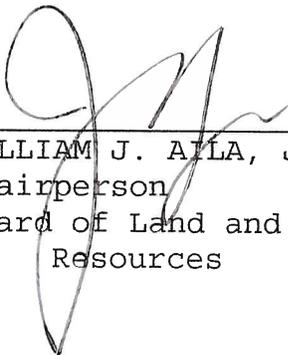
Swim Zone A

**EXHIBIT 2 KĀ'ANAPALI BEACH AND OCEAN WATERS
Ocean Recreation Management Area**

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to and compilation of chapter 251, title 13, Hawaii Administrative Rules, on the Summary Page dated April 25, 2014 were adopted on April 25, 2014, following public hearings held on April 2 and 3, 2014, after public notice was given in the Honolulu Star-Advertiser, The Garden Island News, The Maui News, The Hawaii Tribune-Herald, and West Hawaii Today on March 2, 2014.

These amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.


WILLIAM J. ATLA, JR.
Chairperson
Board of Land and Natural
Resources

APPROVED AS TO FORM:


Deputy Attorney General


NEIL ABERCROMBIE
Governor
State of Hawaii

Date: 9.9.14

SEP15 1:25PM
Filed LT GOVERNOR
STATE OF HAWAII

Modified

29) HAR §§ 13-256-3 and 13-256-4

**Relating to Commercial operator permit requirements;
Commercial vessel and water sports equipment registration
requirements**

Amendments to Title 13
Chapter 13-256
Hawaii Administrative Rules

SUMMARY

1. Sections 13-256-3 and 13-256-4 are amended.

1. Section 13-256-3, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-3 Commercial [operator] use permit requirements. (a) All operators of commercial vessels, water craft or water sports equipment shall apply for a commercial [operator] use permit to be issued by the department. The applicant for such permit shall comply with the applicable provisions stated in [~~Hawaii Administrative Rules, and Ocean Waters, Navigable Streams and Beaches, Sections 13-251-1 through 13-251-20~~] sections 13-231-50 to 13-231-70. [~~A valid commercial use permit issued to the owner of a vessel to operate from state harbor or launching ramp facilities shall satisfy the commercial operator permit requirement of this section for the operation of that particular vessel.~~]

(b) The department [~~shall~~] may establish and maintain a Recreation Advisory Committee of not less than three for each recreation management area as defined in this chapter to review and make recommendations for commercial [~~operator permit~~] use permits to be issued by the department [~~as required by this section~~]. The department shall consider the recommendations of the Advisory Committee, but is not bound by the recommendations. Members of the Recreation Advisory Committee shall have not less than three years of experience in their area of specialty." [Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

2. Section 13-256-4, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-4 Commercial [Vessel] vessel and water sports equipment registration requirements. (a) All commercial vessels, water craft or water sports equipment shall be registered with the department for commercial use in compliance with [~~Sections 13-251-36 to 13-251-52~~] sections 13-231-50 to 13-231-70.

(b) Commercial use permits issued by the department for commercial vessels operating from state harbors or boating facilities are exempt from the requirements of this section. [Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

3. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

4. These amendments to sections 13-256-3 and 13-256-4, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

WILLIAM J. AILA, JR.,
Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Chapter 13-256
Hawaii Administrative Rules

April 25, 2014

SUMMARY

1. §13-256-3 is amended.
2. §13-256-4 is amended.

§13-256-3 Commercial use permit or catamaran registration certificate requirements. (a) All operators of commercial vessels, water craft or water sports equipment shall apply for a commercial use permit or where applicable a catamaran registration certificate to be issued by the department, except for those operating out of a state commercial harbor or Kewalo Basin. The applicant for such permit shall comply with the applicable provisions stated in sections 13-231-50 to 13-231-70.

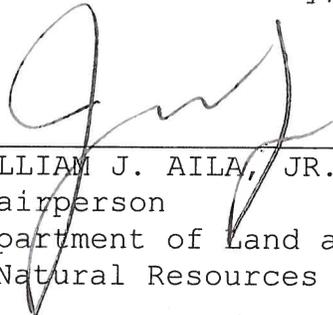
(b) The department may establish and maintain a Recreation Advisory Committee of not less than three for each recreation management area as defined in this chapter to review and make recommendations for commercial use permits or catamaran registration certificate to be issued by the department. The department shall consider the recommendations of the Advisory Committee, but is not bound by the recommendations. Members of the Recreation Advisory Committee shall have not less than three years of experience in their area of specialty. [Eff 2/24/94; am **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-256-4 Commercial vessel and water sports equipment registration requirements. (a) All commercial vessels, water craft or water sports equipment shall be registered with the department for commercial use in compliance with sections 13-231-50 to 13-231-70.

(b) Commercial use permits issued by the department for commercial vessels operating from state harbors or boating facilities are exempt from the requirements of this section. [Eff 2/24/94; am **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to sections 13-256-3 and 13-256-4, Hawaii Administrative Rules, on the Summary page dated April 25, 2014 were adopted on April 25, 2014, following a public hearing held on April 3 and 4, 2014, after public notice was given in the Honolulu Star Advertiser, The Garden Island, The Maui News, Hawaii Tribune-Herald, and West Hawaii Today, on March 2, 2014.


WILLIAM J. AILA, JR.
Chairperson
Department of Land and
Natural Resources


NEIL ABERCROMBIE
Governor
State of Hawaii

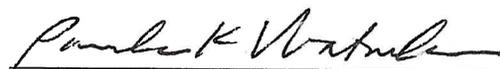
Date: 9.9.14

SEP15 1:22PM
LI GOVERNOR

Filed

STATE OF HAWAII

APPROVED AS TO FORM:


Deputy Attorney General

Modified

30) HAR § 13-256-73.13

Relating to Ahu O Laka Saftey Zone

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

Amendments to Chapter 13-256
Hawaii Administrative Rules

1. Chapter 13-256, Hawaii Administrative Rules, by amending subsection 13-256-73.13(e) to read as follows:

"§13-256-73.13 Ahu o Laka safety zone. (a) The Ahu o Laka safety zone is the area encompassed within the boundaries designated as Zone [~~H-2~~] J shown on Exhibit [~~"X-2,"~~] O-9 "Kaneohe Bay Ocean Waters" dated [~~June 8, 2011~~] April 21, 2015, and located at the end of this subchapter. The boundaries of Zone [~~H-2~~] J are as follows:

Beginning at a point in the water at 21°28.462'N 157°49.203'W, then by straight lines drawn to a point at 21°27.9647'N 157°49.140'W, then to 21°27.514'N 157°48.115'W, then to 21°28.030'N 157°47.940'W, then back to the starting point.

(b) For Memorial Day, Independence Day, and Labor Day holidays as designated in section 8-1, Hawaii Revised Statutes, if any of these three designated holidays involves a three-day weekend, Zone [~~H-2~~] J is subject to the following restrictions during the time period of 12:00 a.m. to 11:59 p.m. on each day of the three-day weekend:

- (1) No person shall possess, use, or consume alcohol within Zone [~~H-2~~] J;
- (2) No person shall enter or remain in Zone [~~H-2~~] J while under the influence of alcohol, narcotics, or drugs; provided that a person may use or possess drugs legally prescribed by that person's physician; and
- (3) No person within Zone [~~H-2~~] J shall:
 - (A) engage in fighting or threatening, or violent or tumultuous behavior;
 - (B) make unreasonable noise;

- (C) subject another person to offensively coarse behavior or abusive language which is likely to provoke a violent response; or
- (D) create a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit.

Noise is unreasonable, within the meaning of subparagraph (3)(B), if considering the nature and purpose of the person's conduct and the circumstances known to the person, including the time of day or night, the person's conduct involves a gross deviation from the standard of conduct that a law-abiding citizen would follow in the same situation; or the failure to heed the admonition of a law enforcement officer that the noise is unreasonable and should be stopped or reduced.

(c) In addition to any other penalty authorized by law, a violation of any of the restrictions described in subsection (b) shall be subject to penalties as provided in sections 200-14 and 200-14.5, Hawaii Revised Statutes.

(d) If any term or provision of this section, or the application thereof to any person or circumstance is found unenforceable or invalid to any extent, the remainder of this section or the application of such term or provision to persons or circumstances other than those to which it is held unenforceable or invalid, shall not be affected thereby, and each remaining term and provision of this section shall be valid and enforceable to the fullest extent permitted by law.

~~[(c) This rule shall take effect ten days after the filing date with the Office of the Lieutenant Governor and shall be repealed three years from its effective date unless this provision is sooner repealed or otherwise amended.]~~" [Eff

] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4, 200-14, 200-14.5)



Zone locations are approximate
Map Date: April 21, 2015
HAR §§ 19-256-73, 13-256-73.13

ZONE D



ZONE J

KAPAPA ISLAND

KAHALU'U POND



ZONE I



ZONE C



ZONE B



ZONE E



ZONE H



ZONE F



ZONE A



ZONE G

HE'EIA KEA
SMALL BOAT HARBOR

EXHIBIT O-9: KĀNE'ŌHE BAY OCEAN WATERS
Ocean Recreation Management Area

Exhibit A

2. New material is underscored.

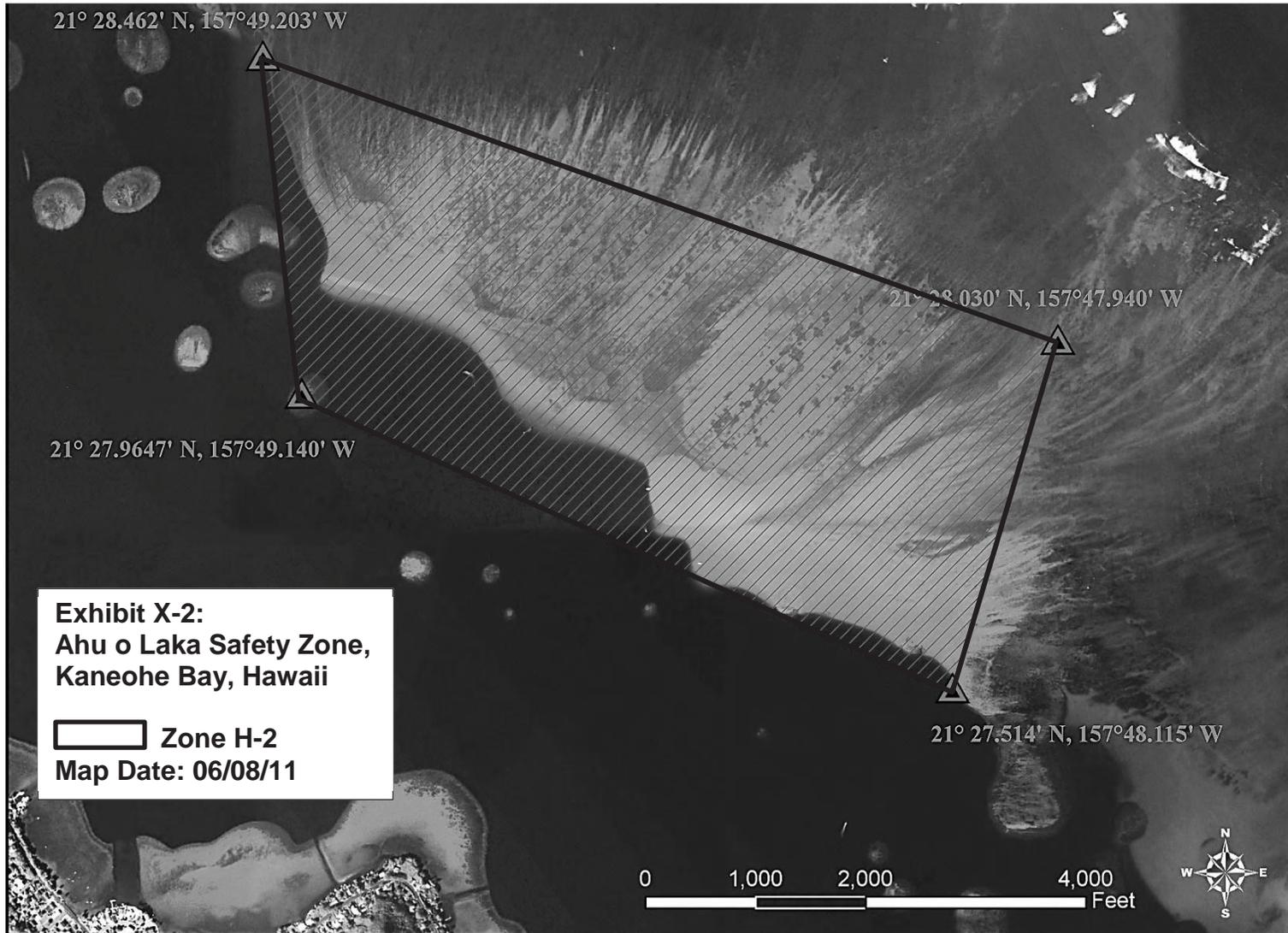
3. These amendments to chapter 13-256, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rule, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which was adopted on _____, by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

CARTY S. CHANG
Interim Chairperson
Board of Land and Natural
Resources

APPROVED AS TO FORM:

Deputy Attorney General



UNCERTIFIED COPY

A certified copy of the official rules can be
obtained from DLNR at: (808) 587-1970

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

Amendments to Chapter 13-256
Hawaii Administrative Rules

May 8, 2015

SUMMARY

1. Section 13-256-73.13, Hawaii
Administrative Rules, is amended.

§13-256-73.13 Ahu o Laka safety zone. (a) The Ahu o Laka safety zone is the area encompassed within the boundaries designated as Zone J, shown on Exhibit "O-9", "Kaneohe Bay Ocean Waters" dated April 21, 2015, and located at the end of this subchapter. The boundaries of Zone J are as follows:

Beginning at a point in the water at 21°28.462'N 157°49.203'W, then by straight lines drawn to a point at 21°27.9647'N 157°49.140'W, then to 21°27.514'N 157°48.115'W, then to 21°28.030'N 157°47.940'W, then back to the starting point.

(b) For Memorial Day, Independence Day, and Labor Day holidays as designated in section 8-1, Hawaii Revised Statutes, if any of these three designated holidays involves a three-day weekend, Zone J is subject to the following restrictions during the time period of 12:00 a.m. to 11:59 p.m. on each day of the three-day weekend:

- (1) No person shall possess, use, or consume alcohol within Zone J;
- (2) No person shall enter or remain in Zone J while under the influence of alcohol, narcotics, or drugs; provided that a person may use or possess drugs legally prescribed by that person's physician; and
- (3) No person within Zone J shall:
 - (A) engage in fighting or threatening, or violent or tumultuous behavior;
 - (B) make unreasonable noise;
 - (C) subject another person to offensively coarse behavior or abusive language which is likely to provoke a violent response; or
 - (D) create a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit.

Noise is unreasonable, within the meaning of subparagraph (3)(B), if considering the nature and purpose of the person's conduct and the circumstances known to the person, including the time of day or night, the

person's conduct involves a gross deviation from the standard of conduct that a law-abiding citizen would follow in the same situation; or the failure to heed the admonition of a law enforcement officer that the noise is unreasonable and should be stopped or reduced.

(c) In addition to any other penalty authorized by law, a violation of any of the restrictions described in subsection (b) shall be subject to penalties as provided in sections 200-14 and 200-14.5, Hawaii Revised Statutes.

(d) If any term or provision of this section, or the application thereof to any person or circumstance is found unenforceable or invalid to any extent, the remainder of this section or the application of such term or provision to persons or circumstances other than those to which it is held unenforceable or invalid, shall not be affected thereby, and each remaining term and provision of this section shall be valid and enforceable to the fullest extent permitted by law. [Eff 8/18/12; am _____] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4, 200-14, 200-14.5)

The amendments to Section 13-256-73.13, Hawaii Administrative Rules, on the Summary Page dated May 8, 2015, were adopted on May 8, 2015, following a public hearing held on Oahu on April 7, 2015, after public notice was given in the Honolulu Star-Advertiser on March 2, 2015.

These amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Suzanne D. Case
SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

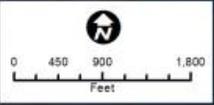
APPROVED AS TO FORM:

/s/ Colin Lau
Deputy Attorney General

/s/ David Y. Ige
DAVID Y. IGE
Governor
State of Hawaii

Date: 07/13/2015

Filed: 07/15/2015



Zone locations are approximate
Map Date: April 21, 2015
HAR §§ 13-256-73, 13-256-73.13

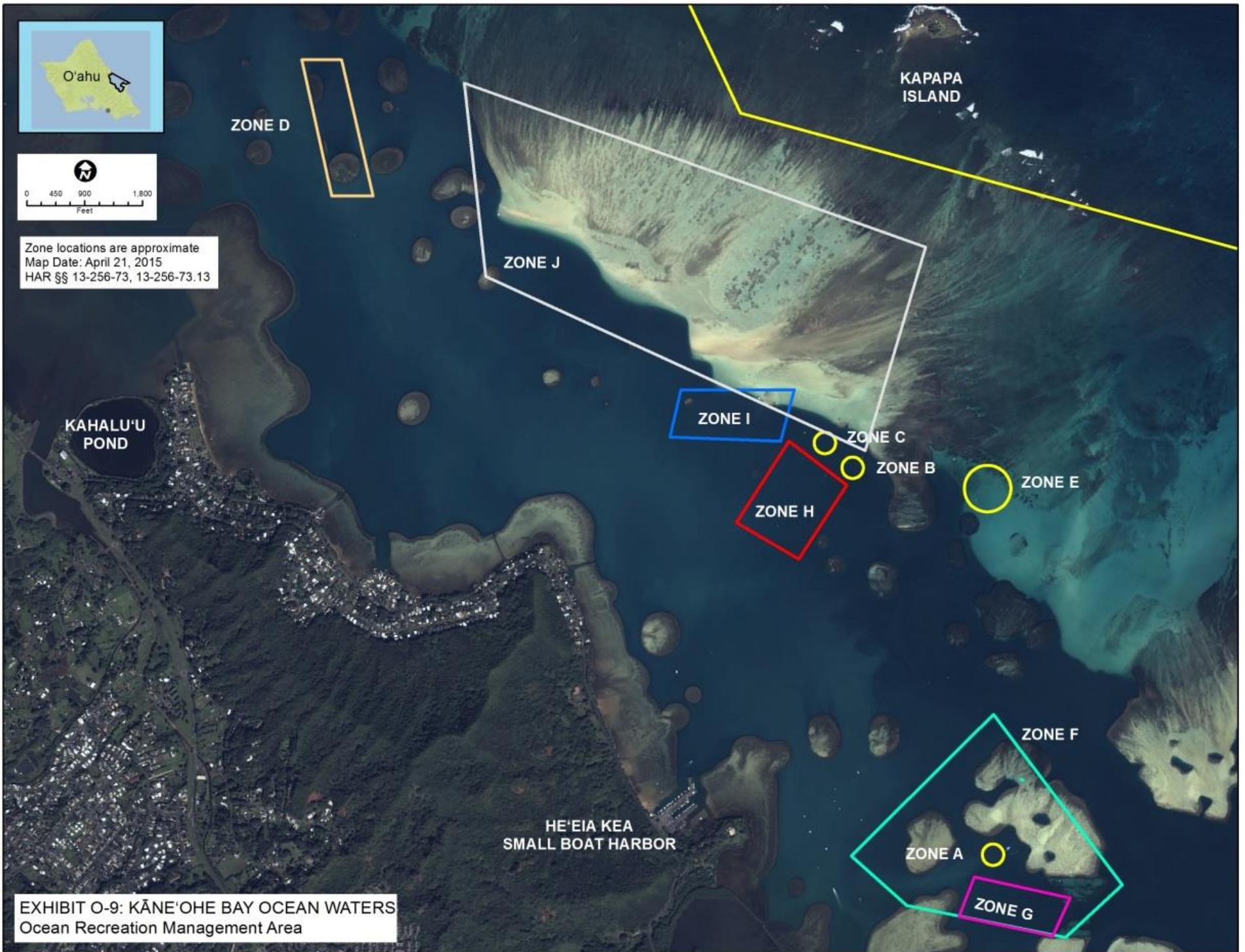


EXHIBIT O-9: KĀNE'OHE BAY OCEAN WATERS
Ocean Recreation Management Area