

## **Supporting Documents for the Hawaii CZM Program Change Request**

### **Deleted Regulatory Policies**

- 1. Hawaii Administrative Rules (HAR) HAR Chapter 13-51  
Marine Fisheries Management Areas, Kahului Harbor, Maui**

§ 13-51-3 Fisher check station requirements

Amendment and Compilation of Chapter 13-51  
Hawaii Administrative Rules

(date adopted)

1. Chapter 13-51, Hawaii Administrative Rules,  
entitled "Kahului Harbor, Maui", is amended and  
compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 51

KAHULUI HARBOR, MAUI

§13-51-1	Definitions
§13-51-1.1	Boundaries
§13-51-2	Regulated activities
§13-51-3	Repealed
§13-51-4	Penalty
§13-51-5	Severability



**§13-51-1 Definitions.** As used in this chapter, unless the context clearly indicates ~~[otherwise:]~~ or is otherwise provided:

~~["Akule" means any fish identified as *Selar crumenophthalmus* or other recognized synonym. This fish is also known as pa'a'a, halalu, hahalalu, and big-eyed scad.]~~

"Area" means the Kahului Harbor fisheries management area as described in section 13-51-1.1.

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

~~["Crab net" means a type of fishing gear consisting of netting material over a flat, circular hoop frame, specifically designed to entangle or catch crabs as they crawl or swim onto a net set flat on the bottom.]~~

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

~~["Fishing related activities" means actions that take marine life.]~~

~~"Group" means two or more people, including but not limited to members of the same family, who purposefully fish together for at least a portion of their fishing activity.]~~

"Hand net" means a net consisting of a mesh bag attached to a frame to hold the bag open, and a handle. The net is small enough for use with one hand by one person.

"Kahului Harbor" means the harbor situate at Kahului, Wailuku, Maui, Hawaii.

"Landing net" means a hand net that is used to further secure capture of marine life, after the marine life has been first hooked or otherwise detained, to prevent the marine life from ~~[being released.]~~ becoming unhooked or lost.

"Marine life" means any type or species of saltwater fish, shellfish, mollusks, crustaceans, coral, or other marine animals, including any part, product, egg, or offspring thereof; or seaweed or other marine plants, including any part, product, seed, or holdfast thereof.

~~["Mullet" means any fish known as *Mugil cephalus* or any recognized synonym.~~

~~"Nohu" means any fish known as *Engrasicholina purpurea*, *Stolephorus purpureus*, or any recognized synonym.~~

~~"Push net" means a type of fishing gear consisting of netting material in the shape of a flat, rectangular, single panel, with straight handles attached on two opposite sides of the net and designed to be held with both hands.]~~

"Snag" means to hook or attempt to hook a fish ~~[on any portion of its body elsewhere than its mouth.]~~, without first waiting for a bite. Any fish hooked on any portion of its body other than its mouth shall be considered snagged.

"Stretched mesh" means the straight-line distance between two opposite inner edges of each opening (or 'eye') of the net mesh, as measured when the eye is stretched to its maximum length.

"Take" means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, ~~[aquatic]~~ marine life. The use of any gear, equipment, tool, or any means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, ~~[aquatic]~~ marine life by any person who is in the water, or in a vessel on the water, or on or about the shore where ~~[aquatic]~~ marine life can be fished for, caught, captured, confined, or harvested, shall be construed as taking. This term shall not apply to the temporary capture or confinement of any specimen which is returned to the water as soon as possible after landing. [Eff 3/8/84; am and comp 4/30/09; am and comp ] (Auth: HRS §188-53) (Imp: HRS §188-53)

**§13-51-1.1 Boundaries.** The Kahului Harbor fisheries management area shall include that portion of the submerged lands and overlying waters of Kahului Harbor beginning at the upper reaches of the wash of the waves at the shoreline and bounded by an imaginary

§13-51-1.1

straight line drawn between the seaward edges of the two breakwaters forming the harbor entrance channel and further described in the map entitled "Kahului Harbor Fisheries Management Area 10/20/2006" attached at the end of this chapter and made a part of this section. [Eff and comp 4/30/09; comp ]  
(Auth: HRS §188-53) (Imp: HRS §188-53)

**§13-51-2 Regulated activities.** (a) It is unlawful for any person, while within the ~~[area,]~~ Kahului Harbor Fisheries Management Area, to:

- (1) Use any net, except that a person may use:
  - ~~[(A) A bait net to take nehu and other baitfish with a valid nehu bait license issued pursuant to section 13-74-22;~~
  - ~~(B) A net, except lay net, to take only akule with a valid commercial marine license issued pursuant to section 13-74-20 and subject to the provisions of section 13-75-12.2;~~
  - ~~(C)]~~ (A) A landing net with a stretched mesh of two inches or greater to secure hooked or otherwise detained marine life; and
  - ~~[(D)]~~ (B) A [push net or] hand net while on the shore to take shrimp and other marine life, provided that the [push net or hand net, including the handle or handles, is not more than three feet in any dimension;] diameter of the net is equal to or less than eight inches and the handle is equal to or less than fourteen inches in length.
  - ~~[(E) A crab net is not more than two feet in diameter to take crabs, provided that no person may use more than ten such crab nets at any time; and~~
  - ~~(F) A net to take mullet less than three inches fork length and other marine life for the purpose of stocking a licensed aquaculture facility, subject~~

~~to the provisions of a valid  
aquaculture license issued pursuant to  
section 13-74-43.]~~

- (2) Take or possess a total bag limit of more than fifty specimens of marine life per person per day~~[, except that a person may possess more than the total bag limit:~~
  - ~~(A) Of baitfish with a valid nehu bait license issued pursuant to section 13-74-22; and~~
  - ~~(B) Of akule with a valid commercial marine license issued pursuant to section 13-74-20.];~~
- (3) Snag any marine life; and
- (4) Use more than two poles, provided that each pole may have only one line, and each line may have no more than two hooks, with each hook having only one point, while at or near the shoreline~~[,]~~, except that double or treble hooks are allowed when using lures.

(b) It is unlawful for any person to take, attempt to take, or possess any marine life from the area or use any fishing gear while in the area that may otherwise be prohibited by law.

(c) The department may issue permits to engage in activities prohibited by this section for scientific, propagation, or other purposes, in accordance with section 187A-6, Hawaii Revised Statutes, and as may be otherwise authorized by law, provided that:

- (1) The department may impose terms and conditions it deems necessary to conserve and manage the marine life in the area;
  - (2) The board may revoke any permit and assess a fine or other penalty for any infraction of the terms and conditions of the permit; and
  - (3) A person whose permit was revoked shall not be eligible to apply for another permit for up to one year after the date of revocation.
- (d) Unless prohibited in this section, all other legal fishing gears may be used within the area.

§13-51-2

(e) Nothing in this chapter shall be construed as allowing activities within any portion of Kahului Harbor, which may be otherwise prohibited by law or rules adopted by the department of transportation.  
[Eff 3/8/84; am and comp 4/30/09; am and comp  
] (Auth: HRS §§187A-6, 188-53) (Imp:  
HRS §188-44, 188-45, 188-53)

~~[§13-51-3 Fisher check station requirements.~~  
The department is collecting catch per unit effort information through reporting by all those who voluntarily enter the Kahului Harbor Fisheries Management Area for fishing or fishing-related activities.  
(a) ~~To achieve this purpose, all individuals and groups entering the area to take marine life shall sign their names on a departmental form located at a designated fisher check station in the Kahului Harbor Fisheries Management Area. Designated fisher check stations are located near the boat launch ramp at the northwestern end of the harbor and near Pier 2 at the southeastern end of the harbor.~~  
(b) ~~When departing the area or at the end of the bout of fishing activity, all individuals and groups should sign out at the same designated fisher check station at which they signed in. All individuals and groups signing out shall also fill out a departmental report form regarding their fishing activity during the fishing trip, including all marine life taken from the area. The fishing reports shall be confidential and used to monitor and manage fishing activity in the area. Groups may submit one fishing report that details the fishing activity of all members of the group, but each individual member may be responsible for the accuracy of the report as to that individual.~~  
(c) ~~Failure to perform the reporting requirements in the above subsections may result in the assessment of administrative penalties pursuant to chapter 199D, Hawaii Revised Statutes, section 187A-12.5, Hawaii Revised Statutes, or any regulations promulgated in accord with these statutes. Criminal~~

~~penalties will not be assessed for a violation under this section, but shall remain otherwise severable.]~~

[Eff 3/8/84; am and comp 4/30/09; R ]  
(Auth: HRS §§187A-12.5, 188-53, 199D-1) (Imp: HRS §§187A-12.5, 199D-2)

**§13-51-4 Penalty.** Unless specifically provided, any person violating the provisions of this chapter may be punished as provided by sections 187A-12.5, 188-70, or chapter 199D, Hawaii Revised Statutes, and as may be otherwise provided by law. [Eff 3/8/84; am and comp 4/30/09; comp ] (Auth: HRS §§187A-5, 188-53, 199D-1) (Imp: HRS §§187A-12.5, 188-70, 199D-1 to 199D-2)

**§13-51-5 Severability.** The provisions of this chapter 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 or application of the remainder of these rules to other persons or property shall not be affected." [Eff and comp 4/30/09; comp ] (Auth: HRS §188-53) (Imp: HRS §§1-23, 188-53)

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

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

4. The amendments to and compilation of chapter 13-51, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on \_\_\_\_\_, and filed with the Office of the Lieutenant Governor.

\_\_\_\_\_  
SUZANNE D. CASE  
Chairperson, Board of Land  
and Natural Resources

APPROVED FOR PUBLIC HEARING:

\_\_\_\_\_  
Deputy Attorney General

§13-51-1

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 51

KAHULUI HARBOR, MAUI

§13-51-1	Definitions
§13-51-1.1	Boundaries
§13-51-2	Regulated activities
§13-51-3	Repealed
§13-51-4	Penalty
§13-51-5	Severability

**§13-51-1 Definitions.** As used in this chapter, unless the context clearly indicates or is otherwise provided:

"Area" means the Kahului Harbor fisheries management area as described in section 13-51-1.1.

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

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

"Hand net" means a net consisting of a mesh bag attached to a frame to hold the bag open, and a



§13-51-1

handle. The net is small enough for use with one hand by one person.

"Kahului Harbor" means the harbor situate at Kahului, Wailuku, Maui, Hawaii.

"Landing net" means a hand net that is used to further secure capture of marine life, after the marine life has been first hooked or otherwise detained, to prevent the marine life from becoming unhooked or lost.

"Marine life" means any type or species of saltwater fish, shellfish, mollusks, crustaceans, coral, or other marine animals, including any part, product, egg, or offspring thereof; or seaweed or other marine plants, including any part, product, seed, or holdfast thereof.

"Snag" means to hook or attempt to hook a fish, without first waiting for a bite. Any fish hooked on any portion of its body other than its mouth shall be considered snagged.

"Stretched mesh" means the straight-line distance between two opposite inner edges of each opening (or 'eye') of the net mesh, as measured when the eye is stretched to its maximum length.

"Take" means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, marine life. The use of any gear, equipment, tool, or any means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, marine life by any person who is in the water, or in a vessel on the water, or on or about the shore where marine life can be fished for, caught, captured, confined, or harvested, shall be construed as taking. This term shall not apply to the temporary capture or confinement of any specimen which is returned to the water as soon as possible after landing. [Eff 3/8/84; am and comp 4/30/09; am and comp 11/27/21] (Auth: HRS §188-53) (Imp: HRS §188-53)

§13-51-2

**§13-51-1.1 Boundaries.** The Kahului Harbor fisheries management area shall include that portion of the submerged lands and overlying waters of Kahului Harbor beginning at the upper reaches of the wash of the waves at the shoreline and bounded by an imaginary straight line drawn between the seaward edges of the two breakwaters forming the harbor entrance channel and further described in the map entitled "Kahului Harbor Fisheries Management Area 10/20/2006" attached at the end of this chapter and made a part of this section. [Eff and comp 4/30/09; comp 11/27/21]  
(Auth: HRS §188-53) (Imp: HRS §188-53)

**§13-51-2 Regulated activities.** (a) It is unlawful for any person, while within the Kahului Harbor Fisheries Management Area, to:

- (1) Use any net, except that a person may use:
    - (A) A landing net with a stretched mesh of two inches or greater to secure hooked or otherwise detained marine life; and
    - (B) A hand net while on the shore to take shrimp and other marine life, provided that the diameter of the net is equal to or less than eight inches and the handle is equal to or less than fourteen inches in length.
  - (2) Take or possess a total bag limit of more than fifty specimens of marine life per person per day;
  - (3) Snag any marine life; and
  - (4) Use more than two poles, provided that each pole may have only one line, and each line may have no more than two hooks, with each hook having only one point, while at or near the shoreline, except that double or treble hooks are allowed when using lures.
- (b) It is unlawful for any person to take, attempt to take, or possess any marine life from the

§13-51-2

area or use any fishing gear while in the area that may otherwise be prohibited by law.

(c) The department may issue permits to engage in activities prohibited by this section for scientific, propagation, or other purposes, in accordance with section 187A-6, Hawaii Revised Statutes, and as may be otherwise authorized by law, provided that:

- (1) The department may impose terms and conditions it deems necessary to conserve and manage the marine life in the area;
- (2) The board may revoke any permit and assess a fine or other penalty for any infraction of the terms and conditions of the permit; and
- (3) A person whose permit was revoked shall not be eligible to apply for another permit for up to one year after the date of revocation.

(d) Unless prohibited in this section, all other legal fishing gears may be used within the area.

(e) Nothing in this chapter shall be construed as allowing activities within any portion of Kahului Harbor, which may be otherwise prohibited by law or rules adopted by the department of transportation. [Eff 3/8/84; am and comp 4/30/09; am and comp 11/27/21] (Auth: HRS §§187A-6, 188-53) (Imp: HRS §188-44, 188-45, 188-53)

**§13-51-3 REPEALED.** [R 11/27/21]

**§13-51-4 Penalty.** Unless specifically provided, any person violating the provisions of this chapter may be punished as provided by sections 187A-12.5, 188-70, or chapter 199D, Hawaii Revised Statutes, and as may be otherwise provided by law. [Eff 3/8/84; am and comp 4/30/09; comp 11/27/21] (Auth: HRS §§187A-5, 188-53, 199D-1) (Imp: HRS §§187A-12.5, 188-70, 199D-1 to 199D-2)

**UNOFFICIAL COPY**

An official copy can be obtained from DLNR  
(808) 587-0100

§13-51-5

**§13-51-5 Severability.** The provisions of this chapter 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 or application of the remainder of these rules to other persons or property shall not be affected."  
[Eff and comp 4/30/09; comp 11/27/21] (Auth: HRS §188-53) (Imp: HRS §§1-23, 188-53)

DEPARTMENT OF LAND AND NATURAL RESOURCES

The amendments to and compilation of chapter 13-51, Hawaii Administrative Rules, on the Summary page dated August 27, 2021, were adopted on August 27, 2021, following public hearing held on July 14, 2021, after public notice was given in the Honolulu Star-Advertiser on June 6, 2021.

These rules 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

/s/ David Y. Ige

\_\_\_\_\_  
DAVID Y. IGE  
Governor, State of Hawaii

November 17, 2021  
Dated: \_\_\_\_\_

APPROVED AS TO FORM:

/s/ Melissa D. Goldman

\_\_\_\_\_  
Deputy Attorney General

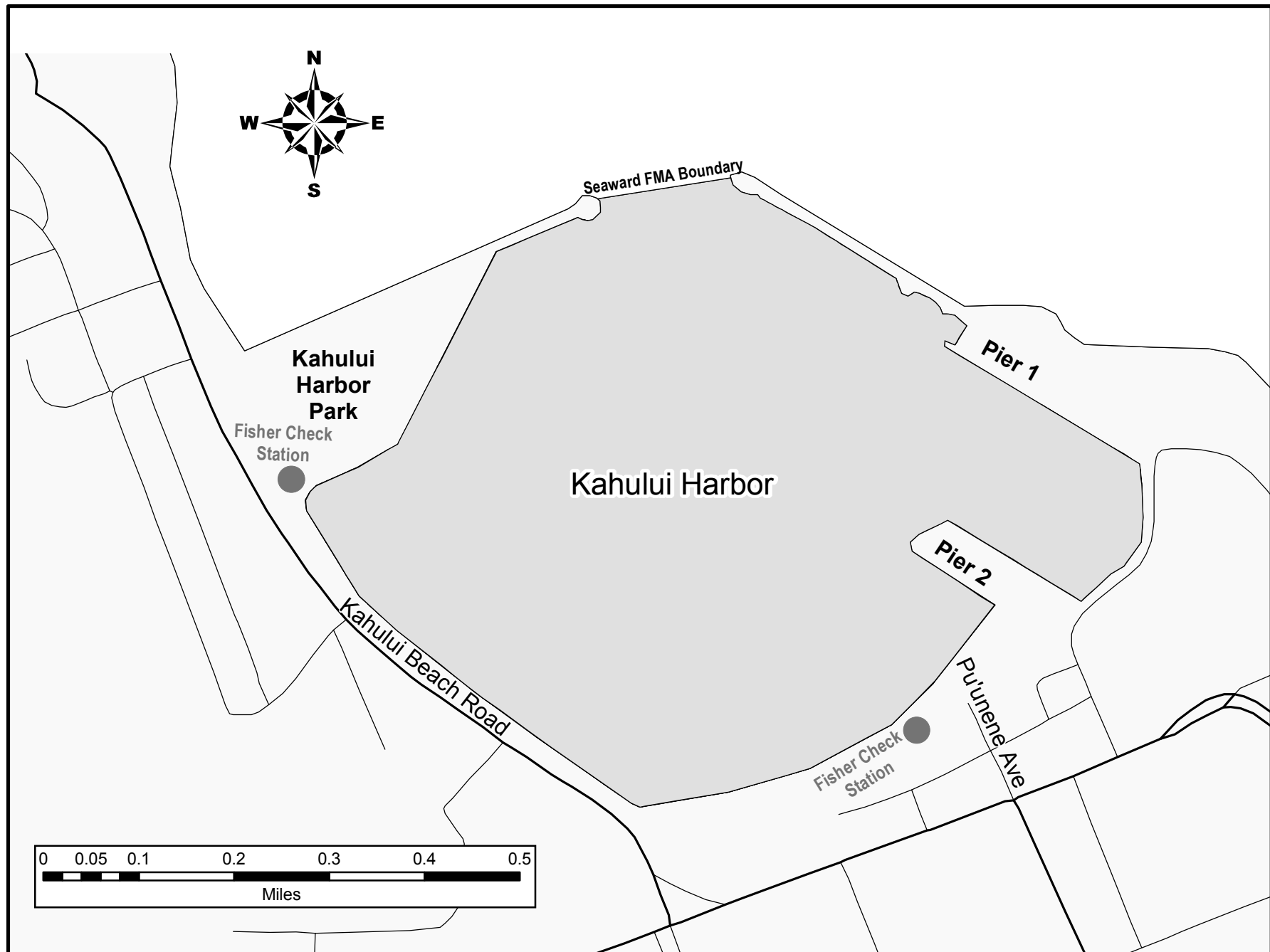
November 17, 2021

\_\_\_\_\_  
Filed

**UNOFFICIAL COPY**

An official copy can be obtained from DLNR  
(808) 587-0100

# Kahului Harbor Fisheries Management Area: 10/20/2006



## **New/Added Statutory and Regulatory Policies**

### **2. HAR Chapter 11-56 Nonpoint Source Pollution Control**



DEPARTMENT OF HEALTH

Adoption of Chapter 11-56  
Hawaii Administrative Rules

June 25, 2021

---

SUMMARY

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



HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-56

NONPOINT SOURCE POLLUTION CONTROL

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

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

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

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

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

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

"Agricultural activity" means an activity primarily involved with agriculture.

"Agricultural land" means land that is used principally for agricultural activities.

"Animal Feeding Operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

- (1) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and
- (2) Crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

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

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

"Best management practices" or "BMPs" means schedules of activities, prohibitions or designations of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of state waters. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Existing activity" means an activity subject to regulation under this chapter that was in operation as of [ JUN 25 2021 ].

"Existing animal feeding operation" means a facility that meets the definition of "animal feeding operation" in this chapter and that was in operation as of [ JUN 25 2021 ].

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

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

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

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

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

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

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

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

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



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

"General permit" means an NPDES permit issued as a rule or document that authorizes a category of discharges into State waters from a category of sources within a geographical area.

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

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

"HAR" means Hawaii Administrative Rules.

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

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

"HRS" means Hawaii Revised Statutes.

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

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

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

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

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

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

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

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

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

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

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

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

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318, and 405 of the Clean Water Act.

"New activity" means an activity subject to regulation under this chapter which commenced regulated activities after [ JUN 25 2021 ].

"New animal feeding operation" means a facility that meets the definition of "animal feeding operation" in this chapter and that began operation after [ JUN 25 2021 ].

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

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

"NPDES permit" means an authorization, license, or equivalent control document issued by the EPA or the director to implement the requirements of 40 CFR Parts 122, 123, and 124. NPDES permit includes an NPDES general permit according to 40 CFR §122.28 and a notice of general permit coverage (NGPC), as the context requires. NPDES permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit.

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

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

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

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

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

"Point source" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or any other floating craft, from which pollutants are or may be discharged. Point source does not include agricultural storm water discharges and return flows from irrigated agriculture.

"Pollution" means water pollution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

withdrawn from timber utilization by statute or administrative regulation.

"Total maximum daily load" or "TMDL" is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges, load allocations (LAs) for nonpoint sources and/or natural background, and must include a margin of safety (MOS) and account for seasonal variations.

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

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

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

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

"Waste" means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive substance, whether treated or not, which may pollute or tend to pollute state waters.

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

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

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

"Water pollution" means:

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

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

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

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



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

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

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

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

"Yarding" means a method of transport of felled trees from harvest area to storage landing. [Eff

JUN 25 2021 (Auth: HRS §§342E-1, 342E-2, 342E-3) (Imp: HRS §§342E-1, 342E-2, 342E-3)

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

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

- (C) For marine, estuarine and fresh water research;
  - (D) For the conservation of natural aquatic ecosystems such as coral reefs and streams; and
  - (E) For domestic, agricultural, industrial, and other legitimate uses.
- (3) To provide for the prevention, abatement, and control of new and existing nonpoint sources of pollution;
  - (4) To cooperate with county, state, and federal agencies in carrying out these objectives;
  - (5) To encourage and facilitate implementation of holistic water quality improving management measures and best management practices for the benefit of Hawaii; and
  - (6) To consider compliance with plans or requirements developed or implemented pursuant to this chapter, as compliance with Hawaii water pollution control programs.
- [Eff **JUN 25 2021**] (Auth: HRS §§205A-2, 342D-1, 342D-4, 342D-50, 342E-2, 342E-3; 16 U.S.C. §§1455b et seq.; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)

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

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

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

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

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

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

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

[Eff **JUN 25 2021** ] (Auth: HRS §§205A-2, 342D-4, 342D-5, 342E-2, 342E-3; 16 U.S.C. §§1455b et seq.; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)

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

§11-56-4

chapter shall not apply to that discharge. [Eff  
JUN 25 2021 ] (Auth: HRS §§342D-4, 342D-5, 342E-  
2, 342E-3; 33 U.S.C. §§1251, 1329, 1342, 1370) (Imp:  
HRS §§342E-2, 342E-3)

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

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

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

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

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

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

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

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

(f) A person submitting a registration shall submit a filing fee of \$500. This filing fee shall be submitted with the registration and shall not be refunded. Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.

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

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

Honolulu, Hawaii 96801-3378

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

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

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

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

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

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

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

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

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

(k) The director shall make available to the public for inspection copies of registrations submitted in accordance with this chapter. Release of information to the public under this subsection shall be done in accordance with the provisions in section 11-56-10. [Eff **JUN 25 2021** ] (Auth: HRS §§342D-4, 342D-5, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)

**§11-56-6 Water pollution prevention plans.**

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



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

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

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

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

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

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

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

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

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

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

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

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

(b) The director shall make available to the public for inspection copies of Water Pollution Prevention Plans, Nonpoint Source Orders, and associated documents submitted in accordance with the requirements of this chapter. Release of information to the public under this subsection shall be done in accordance with the provisions in section 11-56-10.

[Eff **JUN 25 2021**] (Auth: HRS §§342D-4, 342D-5, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)

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

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

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

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

(c) The director shall make available to the public for inspection copies of Water Pollution Prevention Plan annual reports and associated documents submitted in accordance of this chapter. Release of information to the public under this subsection shall be done in accordance the provisions in section 11-56-10. [Eff JUN 25 2021 ] (Auth: HRS §§342D-4, 342D-5, 342D-55, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)



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

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

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

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

(c) Records documenting all monitoring activities shall be kept on-site or at a nearby office and made available for review and inspection by the director. [Eff **JUN 25 2021**] (Auth: HRS §§342D-4, 342D-5, 342D-55, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)

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

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

§11-56-9

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

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

(c) Monitoring strategies required by this chapter shall be designed to assess compliance with the requirements in this section. [Eff **JUN 25 2021** ]  
(Auth: HRS §§342D-4, 342D-5, 342E-2, 342E-3) (Imp: HRS §§342E-2, 342E-3)

**§11-56-10 Public access to information.** (a) In accordance with chapter 92F, HRS, the director shall ensure that any Water Pollution Prevention Plan developed under section 11-56-6 or information required, kept, or submitted under this chapter shall be available to the public for inspection and copying during established office hours. The director, at the director's discretion, may also make available to the public any other records, reports, plans, or information obtained by the department.

(b) The director shall protect any information (other than environmental data) as confidential upon a request and showing by any person at the time of submission that the information, if made public, would divulge methods or processes entitled to protection as trade secrets of a person. Any information obtained by the director and subject to a claim of confidentiality

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

(c) The director shall provide facilities for the inspection of information submitted in accordance with this chapter and shall ensure that state employees honor requests for inspection with due regard for the dispatch of other public duties. The director shall either:

- (1) Ensure that a machine or device for the copying of papers and documents is available for a reasonable fee; or
- (2) Otherwise provide for or coordinate with copying facilities or services so that requests for copies of nonconfidential documents may be honored promptly. [Eff  
JUN 25 2021 ] (Auth: HRS §§92F, 342D-4, 342-5, 342D-14, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, HRS 342E-3)

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

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

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

(b) Any person who denies, obstructs, or hampers the entrance to and inspection by any duly authorized officer or employee of the department of any building, place, or vehicle shall be fined not more than \$5,000 for each day of such a denial, obstruction, or hampering. Any action taken to impose or collect the penalty provided for in this section shall be considered a civil action. [Eff **JUN 25 2021**]  
(Auth: HRS §§342D-4, 342D-8, 342E-2, 342E-3, 342E-4; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3, 342E-4)

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

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

conspicuously posted on the property, if appropriate;

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

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

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

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

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

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

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

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

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

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

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

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

[Eff **JUN 25 2021**] (Auth: HRS Ch. 91, §§342D-4, 342D-9, 342E-2, 342E-3, 342E-4; 33 U.S.C. §§1251, 1329, 1370; HAR §11-1) (Imp: HRS §§342E-2, 342E-3, 342E-4)

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

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

§11-56-13

Order will not be stayed on appeal unless specifically ordered by the director or an environmental court of competent jurisdiction. [Eff ~~JUN 25 2021~~ ] (Auth: HRS Ch. 91, §§342D-4, 342D-12, 342E-2, 342E-3) (Imp: HRS §§342E-2, 342E-3)

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

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

(b) This chapter does not limit the authority of any federal, other state, or county agency. [Eff

~~JUN 25 2021~~ ] (Auth: HRS §§342D-4, 342D-5, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §342E-3)

**§11-56-15 Severability clause.** If any provision of this chapter, or its application to any person or circumstance, is held invalid, the application of the provision to other persons or circumstances, and the remainder of this chapter, shall not be affected.

[Eff ~~JUN 25 2021~~ ] (Auth: HRS §§342D-4, 342D-5, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)

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

(1) Offer to settle; penalties.

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



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

- (i) Any person who causes or allows a discharge of pollutants into State waters from a nonpoint source;
  - (ii) Any person required to register under section 11-56-5, who fails to register as required;
  - (iii) Any person who fails to correctly install, implement, maintain, or repair management measures as called for in their Water Pollution Prevention Plan, including implementation of the associated monitoring plan; and
  - (iv) Any person who fails to retain a copy of the Water Pollution Prevention Plan and associated monitoring plan on-site or at a nearby office.
- (B) A field citation shall assess the following penalties for violations:
- (i) Any person who violates paragraph (1)(A)(i) shall be fined \$500 for first violation and \$1,000 for a subsequent violation;
  - (ii) Any person who violates paragraph (1)(A)(ii) shall be fined \$500 for first violation and \$1,000 for a subsequent violation;
  - (iii) Any person who violates paragraph (1)(A)(iii) shall be fined \$500 for first violation and \$1,000 for a subsequent violation; and
  - (iv) Any person who violates paragraph (1)(A)(iv) shall be fined \$100 for first violation and \$200 for a subsequent violation.

- (2) Resolution of field citation.
  - (A) A person issued a field citation may accept the citation by:
    - (i) Signing the field citation;
    - (ii) Paying the full amount assessed by the field citation. Payment shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director;
    - (iii) Mailing or delivering the signed citation and full payment to the department in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty days after the person receives the field citation; and
    - (iv) Correction within seven days, or as otherwise specified on the field citation, of any violation of this chapter;
  - (B) By signing the field citation, the person to whom it was issued agrees to:
    - (i) Give up the right to a contested case hearing under chapter 91, HRS, or otherwise challenge the field citation;
    - (ii) Pay the penalty assessed; and
    - (iii) Correct the violation.
- (3) If the field citation is not accepted in compliance with paragraph (2)(A), the director may seek for that cited violation any remedies available under this chapter or any other law. For all other violations the director retains authority to seek any available remedies.

- (4) Form of citation. The department shall prescribe a field citation form. [Eff  
JUN 25 2021] (Auth: HRS §§321-11, 342D-1, 342D-4, 342D-5, 342E-2, 342E-3, 342E-4) (Imp: HRS §§342E-2, 342E-3, 342E-4)

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

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

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

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

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

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

§11-56-17

considered. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for the public notification, as deemed appropriate by the director, is basis to delay authorization of discharges or may be considered a violation of this chapter. [Eff

JUN 25 2021 ] (Auth: HRS §§342D-4, 342E-2, 342E-3) (Imp: HRS §§342E-2, 342E-3)

**§11-56-18 Signatories.** (a) Any certifications associated with submissions to the director under this chapter shall be signed as follows:

- (1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
  - (A) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or
  - (B) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for

- registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
- (2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively;
  - (3) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:
    - (A) The chief executive officer of the agency, or
    - (B) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA);
  - (4) For a trust. By a trustee; or
  - (5) For a limited liability company (LLC). By a manager or a member authorized to make management decisions for the LLC and who is in charge of a principal business function, or who performs similar policy- or decision-making functions for the LLC.
- (b) All other reports or information required under this chapter shall be signed by a person designated in subsection (a) or by a duly authorized representative of that person. A person is a duly authorized representative only if:
- (1) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be

either a named individual or any individual occupying a named position);

- (2) The authorization is made in writing by a person designated under subsection (a); and
- (3) The written authorization is submitted to the director.

(c) If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or registrations to be signed by an authorized representative. [Eff **JUN 25 2021** ]

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

DEPARTMENT OF HEALTH

Chapter 11-56, Hawaii Administrative Rules, on the Summary Page dated June 25, 2021, was adopted on June 25, 2021, following a public hearing held on February 1, 2021, after public notice was given in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island on December 16, 2020.

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

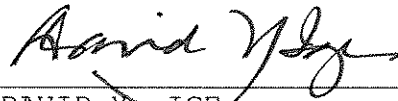
LT. GOVERNOR'S  
OFFICE

21 JUN 15 P 2:40



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

APPROVED:



DAVID Y. IGE  
Governor  
State of Hawaii

Dated: 6/15/21

APPROVED AS TO FORM:



Deputy Attorney General

Filed





**CHAPTER 11-56 APPENDIX A**

**NONPOINT SOURCE POLLUTION CONTROL REQUIREMENTS FOR  
AGRICULTURE**

**1. General Applicability**

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

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

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

## **2. Incorporation of Management Measures into Water Pollution Prevention Plans**

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

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

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

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

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

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

**3. Management Measures Required for Specific Sources of Pollution**

(a) Erosion and Sediment Control Management Measure

(1) Specific Applicability. This management measure applies to agricultural activities that may cause erosion, including, but not limited to:

- (A) Crop production, including specialty crops and nursery crops;
- (B) Agricultural irrigation;
- (C) Grazing and pasturing;
- (D) Developing and/or maintaining orchards;
- (E) Permanent hayland maintenance; and
- (F) Agroforestry.

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

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

- (4) Authorized Management Practices

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

(b) Animal Feeding Operations Wastewater and Runoff Management Measure

(1) Specific Applicability

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

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

Animal Type	Head
Swine	100

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

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

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

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

including average monthly precipitation and evaporation rates.

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

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

(4) Authorized Management Practices

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

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

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

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



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

(c) Nutrient Management Measure

(1) Specific Applicability

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

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

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

(3) General Requirements

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

(i) Containment of wastewater and waste products;

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

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

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

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

- (vii) Identification of timing and application methods for nutrients to provide nutrients at rates necessary to achieve realistic crop yields, to reduce nutrient losses to the environment, and to avoid nutrient applications as much as possible during periods of leaching or runoff.
- (viii) Provisions for the proper calibration and operation of nutrient application equipment.
- (ix) Schedule for soil testing and/or plant tissue testing to estimate phosphorous, nitrogen, and potassium concentrations.

(4) Authorized Management Practices

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

- (iii) Nutrient management methods and practices identified in *Plant Nutrient Management in Hawaii's Soils: Approaches for Tropical and Subtropical Agriculture* (James A. Silva and Raymond S. Uchida (Eds.), University of Hawaii at Manoa, College of Tropical Agriculture and Human Resources, 2000).
- (d) Grazing Management Measure
  - (1) Specific Applicability. The management measure applies to activities on range, irrigated and non-irrigated pasture, and other grazing lands used by domestic livestock. Other grazing lands include woodlands, native pastures, and croplands producing forages.
  - (2) Purpose. The purpose of this management measure is to prevent improper livestock grazing and equipment use that may damage streambanks and shores, riparian vegetation, channels, and the water column. Application of this management measure will reduce the physical disturbance to sensitive areas and reduce the discharge of sediment, animal waste, nutrients, and chemicals to surface waters.
  - (3) General Requirements
    - (A) Implement one or more of the following, as necessary to protect sensitive areas (such as streambanks, wetlands, estuaries, ponds, lake shores, near coastal waters/shorelines, and riparian zones):

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

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

(4) Authorized Management Practices

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

(e) Irrigation Water Management Measure

- (1) Specific Applicability. This management measure applies to activities on irrigated agricultural land, including agricultural crop and pasture land (except for isolated fields of less than 10 acres in size that are not contiguous to other irrigated lands), orchard land, specialty cropland, and nursery cropland.
- (2) Purpose
  - (A) The goal of this management measure is to reduce nonpoint source pollution of

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

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

(3) General Requirements

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



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

## Chapter 11-56

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

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



**CHAPTER 11-56 APPENDIX B**

**NONPOINT SOURCE POLLUTION CONTROL REQUIREMENTS FOR  
FORESTRY**

**1. General Applicability**

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

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

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

## **2. Incorporation of Management Measures into Water Pollution Prevention Plans**

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

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

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

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

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

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

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

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

**4. Management Measures Required for Specific Sources of Pollution**

(a) Preharvest Planning Management Measure

(1) Specific Applicability

(A) This management measure applies to commercial harvesting on areas greater

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

(B) This management measure does not apply to harvesting conducted for precommercial thinnings or noncommercial firewood cutting.

(2) Purpose. The objective of this management measure is to ensure that silvicultural activities, including timber harvesting, site preparation, and associated road construction, are conducted without significant nonpoint source pollutant delivery to streams and coastal areas.

(3) General Requirements

(A) Perform advance planning for forest harvesting that includes the following elements, where appropriate:

- (i) Identify the area to be harvested including location of waterbodies and sensitive areas such as wetlands, threatened or endangered aquatic species habitats, or high erosion hazard areas (landslide-prone areas) within the harvest unit.
- (ii) Time the activity for the season or moisture conditions when the least impact occurs.
- (iii) Consider potential water quality impacts and erosion and sedimentation control in the selection of silvicultural and regeneration systems, especially



for harvesting and site preparation.

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

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

- (iii) Ensure that the design of road prism and the road surface drainage are appropriate to the terrain and that road surface design is consistent with the road drainage structures.
- (iv) Use suitable materials to surface roads planned for all-weather use to support intended vehicle use.
- (v) Design road systems to avoid high erosion or landslide hazard areas. Identify these areas and consult a qualified specialist for design of any roads that must be constructed through these areas.

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

- (A) Best management practices for pre-harvest planning and forest roads identified in *Best Management Practices for Maintaining Water Quality in Hawaii* (DOFAW, February 1996); and
- (B) Best management practices for preharvest planning identified in *National Management Measures to Control Nonpoint Source Pollution from Forestry* (EPA, EPA-841-B-05-001, April 2005).

(b) Streamside Management Zones (SMZs) Management Measure

(1) Specific Applicability

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

Chapter 11-56

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

(3) General Requirements

- (A) Follow preharvest planning requirements as described in subsection 0(a) of this Appendix when constructing or reconstructing the roadway.
- (B) Follow design requirements for road surfacing and shaping as described in subsection 0(a) of this Appendix.
- (C) Install road drainage structures according to designs planned under subsection 0(a) of this Appendix and regional storm return period and installation specifications. Match these drainage structures with terrain features and with road surface and prism designs.
- (D) Guard against the production of sediment when installing stream crossings.
- (E) Protect surface waters from slash and debris material from roadway clearing.
- (F) Use straw bales, silt fences, mulching, or other favorable practices on disturbed soils on unstable cuts and fills.
- (G) Avoid constructing new roads in SMZs, to the extent practicable.

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

- (A) Best management practices for forest roads identified in *Best Management*

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

- (B) Best management practices for road construction/reconstruction identified in *National Management Measures to Control Nonpoint Source Pollution from Forestry* (EPA, EPA-841-B-05-001, April 2005).
- (d) Road Maintenance Management Measure
  - (1) Specific Applicability. This management measure applies to active and inactive roads constructed or used for silvicultural activities.
  - (2) Purpose. The objective of this management measure is to manage existing roads to maintain stability and utility and to minimize sedimentation and pollution from runoff-transported materials.
  - (3) General Requirements
    - (A) Avoid using roads, where possible, for timber hauling or heavy traffic during wet periods on roads not designed and constructed for these conditions.
    - (B) Evaluate the future need for a road and close roads that will not be needed. Leave closed roads and drainage channels in a stable condition to withstand storms.
    - (C) Remove drainage crossings and culverts if there is a reasonable risk of plugging or failure from lack of maintenance.

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

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

(e) Timber Harvesting Management Measure

(1) Specific Applicability

(A) This management measure applies to all harvesting, yarding, and hauling conducted as part of normal silvicultural activities on harvest units larger than five (5) acres.

(B) This management measure does not apply to harvesting conducted for precommercial thinnings or noncommercial firewood cutting.

(2) Purpose. The purpose of this management measure is to minimize sedimentation resulting from the siting and operation of timber harvesting, and to manage petroleum products properly.

(3) General Requirements

(A) The timber harvesting management measure consists of implementing the following:

(i) Timber harvesting operations with skid trails or cable yarding shall follow layouts determined under subsection 0(a) of this Appendix.

(ii) Install landing drainage structures to avoid sedimentation, to the extent practicable. Disperse landing drainage over side slopes.



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

endline trees to avoid sedimentation.

- (ii) Use improved stream crossings for skid trails which cross flowing drainages. Construct skid trails with adequate drainage structures to disperse runoff.
- (iii) On steep slopes, use cable systems rather than groundskidding where groundskidding may cause excessive sedimentation.
- (iv) Groundskidding shall not be done across perennial or intermittent streams, except at improved stream crossings.

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

- (A) Best management practices for timber harvesting and forest roads (temporary access roads and landings) identified in *Best Management Practices for Maintaining Water Quality in Hawaii* (DOFAW, February 1996); and
- (B) Best management practices for timber harvesting identified in *National Management Measures to Control Nonpoint Source Pollution from Forestry* (EPA, EPA-841-B-05-001, April 2005).

(f) Site Preparation and Forest Regeneration Management Measure

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

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

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

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

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

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

(h) Revegetation of Disturbed Areas Management  
Measure

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

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

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



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



**CHAPTER 11-56 APPENDIX C**

**NONPOINT SOURCE POLLUTION CONTROL REQUIREMENTS FOR  
MARINAS AND RECREATIONAL BOATING**

**1. General Applicability**

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

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

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

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

## **2. Incorporation of Management Measures into Water Pollution Prevention Plans**

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

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

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

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

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

### **3. Management Measures Required for Specific Sources of Pollution**

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

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

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

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

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

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



(3) General Requirements

(A) Implement effective runoff control strategies which include the use of pollution prevention activities and the proper design of vessel maintenance areas to minimize storm water contact with water pollutants.

(B) Reduce the average annual loadings of total suspended solids and other water pollutants in runoff from vessel maintenance areas to the maximum extent practicable.

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

(f) Fueling Station Design Management Measure

(1) Specific Applicability. This management measure applies to all marinas where fueling stations are to be added or moved.

(2) Purpose. The purpose of this management measure is to prevent and control petroleum and other chemicals associated with fuel spillage.

(3) General Requirements

(A) Design fueling stations to allow for ease in cleanup of spills.

(B) Maintain adequate spill containment and mitigation measures.

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

- (B) Marinas that do not provide services for vessels that have marine sanitation devices (MSDs) do not need to have pumpouts, although dump stations for portable toilets and restrooms shall be available.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to sewage facility BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).
- (h) Maintenance of Sewage Facilities Management Measure
  - (1) Specific Applicability. This management measure applies to marinas where marine sewage disposal facilities exist.
  - (2) Purpose. The purpose of this measure is to eliminate the release of untreated sewage into marina and surface waters.
  - (3) General Requirements. Ensure that sewage pumpout facilities are maintained in operational condition and encourage their use.
  - (4) Authorized Management Practices. Authorized management practices include but are not limited to maintenance of sewage facilities BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).
- (i) Solid Waste Management Measure

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

restrictions and proper disposal of fish waste.

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

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

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

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

Chapter 11-56

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

56-C-14

3399



**3. HAR Chapter 13-60.10 Miloli'i Community-Based Subsistence  
Fishing Area, Hawai'i**

**UNOFFICIAL COPY**

An official copy can be obtained from DLNR  
(808) 587-0100  
§13-60.10-1

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 60.10

MILOLI'I COMMUNITY-BASED SUBSISTENCE FISHING AREA,  
HAWAI'I

§13-60.10-1	Purpose
§13-60.10-2	Definitions
§13-60.10-3	Boundaries
§13-60.10-4	Permitted and prohibited activities
§13-60.10-5	Activities prohibited within selected areas
§13-60.10-6	Transit through Miloli'i CBSFA with restricted gear and species
§13-60.10-7	Penalty
§13-60.10-8	Asset forfeiture
§13-60.10-9	Severability

**§13-60.10-1 Purpose.** The purpose of this chapter regarding the Miloli'i Community-Based Subsistence Fishing Area is to:

- (1) Sustainably support the consumptive needs of communities along the southwest coast of Hawai'i Island through culturally-rooted, community-based fisheries management;
- (2) Ensure the sustainability of nearshore ocean resources in the area through effective management practices, including the establishment of limits on the harvest of aquatic life;

§13-60.10-1

- (3) Recognize and protect customary and traditional native Hawaiian fishing practices that are exercised for subsistence, cultural, and religious purposes in the area;
- (4) Facilitate the substantive involvement of the community in fisheries resource management decisions for the area through dialogue with community residents and resource users;
- (5) Establish the Pu'uhonua Pāpā, Pu'uhonua Honomalino, Pu'uhonua Kapu'a, and Pu'uhonua Manukā to reduce fishing pressure in these areas in order to replenish populations of important fish species while also allowing for sustainable harvest;
- (6) Establish the Pāku'iku'i Rest Area for the preservation and protection of this nursery habitat for pāku'iku'i as an important food fish for community families;
- (7) Establish Puakai'a Miloli'i as an ocean classroom where the community can continue to impart intergenerational knowledge of traditional cultural ocean practices to future generations while maintaining crucial ocean entrypoints for the community; and
- (8) Establish the 'Ōpelu Traditional Management Zone to ensure local 'ōpelu fish stocks are maintained according to traditional practices as an essential resource for the Miloli'i community and to honor the rich heritage and generational practice of 'ōpelu fishing in Miloli'i. [Eff 8/13/22] (Auth: HRS §§188-22.6, 188-22.7, 188-53, 190-3) (Imp: HRS §§188-22.6, 188-22.7 188-53, 190-3, Haw. Const. art. XI, §6)

(9) **13-60.10-2 Definitions.** As used in this chapter, unless otherwise provided:

**UNOFFICIAL COPY**

An official copy can be obtained from DLNR  
(808) 587-0100  
§13-60.10-2

"'A'ama crab" means a black, edible intertidal crab species that runs over shore rocks, known as *Grapsus tenuicrustatus* or any recognized synonym.

"Akule" means any fish identified as *Selar crumenophthalmus* or other recognized synonyms. This fish is also known as pā'ā'ā, halalū, hahalalū, and big-eyed scad.

"'Ālinalina" means any limpet known as *Cellana sandwicensis* or any recognized synonym. 'Ālinalina are also known as yellow foot 'opihi.

"Aquarium fishing" means taking marine life for aquarium purposes.

"Aquarium purposes" means to hold marine life alive in a state of captivity, whether as pets, for scientific study, for public exhibition, for public display, or for sale for these purposes.

"Area" means the Miloli'i Community-Based Subsistence Fishing Area (Miloli'i CBSFA), as encompassed within the boundaries described in section 13-60.10-3(a).

"Commercial purpose" means the taking of marine life for profit or gain or as a means of livelihood where the marine life is taken in or outside of the State, or where the marine life is sold, offered for sale, landed, or transported for sale anywhere in the State.

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

"Diving" means any activity conducted in the water involving the use of a mask, goggles, or any other device that assists a person to see underwater while the person's face is submerged and can involve an underwater breathing apparatus. Diving includes both extractive and non-extractive activities, such as SCUBA diving, free diving, and snorkeling.

"Fish" means any species of marine life with a backbone, gills, and with limbs that are fins, if any.

"Fishing" or "to fish" means catching, taking, or harvesting, or attempting to catch, take, or harvest, aquatic life. The use of a pole, line, hook, net, trap, spear, or other gear which is designed to catch, take, or harvest aquatic life, by any person who is in

§13-60.10-2

the water, or in a vessel on the water, or on or about the shore where aquatic life can be caught, taken, or harvested, shall be deemed to be fishing.

"Hook-and-line" means a fishing line to which one or more hooks or other tackle are attached. A hook-and-line may include a fishing rod or reel or both to cast and retrieve the line.

"Initial-phase uhu" means any uhu characterized by a dull red, brown, or gray body coloration and the absence of bright green or blue markings.

"Kō'ele" means any limpet known as *Cellana talcosa* or any recognized synonym. Kō'ele are also known as giant 'opihi, talc limpet, or turtle limpet.

"Kole" means any fish known as *Ctenochaetus strigosus* or any recognized synonym. Kole are also known as goldring surgeonfish or goldring bristletooth.

"Kūmū" means any fish known as *Parupeneus porphyreus* or any recognized synonym. Kūmū are also known as whitesaddle goatfish.

"Lay net" means a panel of net mesh that is suspended vertically in the water with the aid of a float line that supports the top edge of the net upward towards the water surface and a lead line that keeps the bottom edge of the net downward towards the ocean bottom.

"Lay net fishing" or to "lay net fish" means deploying or attempting to deploy a lay net in a set location and in an open configuration, and retrieving the lay net from the same location after a certain time period has passed. This fishing method is also known as set netting, cross netting, pa'ipa'i, and moemoe netting. This term does not apply to the use of a lay net to completely encircle a pre-identified school of fish, where the net is constantly attended at all times while in the water, such as in the practice of surround netting.

"Limu" means marine algae, including any alga in the intertidal zone, commonly known as seaweed.

"Makaiauli" means any limpet known as *Cellana exarata* or any recognized synonym. Makaiauli are also known as black foot 'opihi or Hawaiian blackfoot.

**UNOFFICIAL COPY**

An official copy can be obtained from DLNR  
(808) 587-0100  
§13-60.10-2

"Marine life" means any type or species of saltwater fish, shellfish, mollusks, crustaceans, coral, algae, or other marine animals, including any part, product, egg, or offspring thereof; or any type or species of seaweeds or other marine plants or algae, including any part, product, seed, holdfast, or root thereof.

"Moano kea" means any fish known as *Parupeneus cyclostomus* or any recognized synonym. Moano kea are also known as moano kali, moano ukali, moano ukali ulua, moana kali, blue goatfish, or goldsaddle goatfish.

"Night" means the period between sunset and the following sunrise.

"`Ōpelu" means any fish of the genus *Decapterus*. `Ōpelu are also known as mackerel scad.

"`Ōpihi" means any mollusk of the genus *Cellana* or any recognized synonym. `Ōpihi are also known as kō'ele, `ālinalina, makaiauli, or limpets.

"Pāku'iku'i" means any fish known as *Acanthurus achilles* or any recognized synonym. Pāku'iku'i are also known as Achilles tang.

"Pole spear" means a spear consisting of a straight shaft terminating in up to three pointed prongs, and to which up to two elastic bands used to propel the spear remain attached when the spear is deployed. A pole spear is deployed solely by hand and without the aid of any trigger mechanism as characteristic of a speargun or hinge gun.

"Scoop net" means a net consisting of a bag of mesh material attached to a frame to hold the bag open, and a handle. The net is small enough to use with one hand by one person. This gear is also known as a hand net.

"Spear" means any device or implement which is designed or used for impaling marine life. Spears may include but are not limited to spear gun shafts, arbaletes, arrows, bolts, Hawaiian slings, tridents, or three-prong spears. A dive knife is not considered to be a spear.

"State" means the state of Hawai'i.

\$13-60.10-2

"Subsistence" means the customary and traditional native Hawaiian uses of renewable ocean resources for direct personal or family consumption or sharing.

"Take" means to fish for, catch, injure, kill, remove, capture, confine, or harvest, or to attempt to fish for, catch, injure, kill, remove, capture, confine, or harvest.

"Terminal-phase uhu" means any uhu characterized by the presence of bright green or blue markings or a predominantly green or blue body coloration, often with bright pink, orange, or yellow patches.

"Throw net" means a circular net with a weighted outer perimeter designed to be deployed by manually casting or throwing the net over fish or other aquatic life. This gear is also known as a cast net.

"Uhu" means any fish belonging to the family Scaridae or any recognized synonyms. Uhu is a general term for fish with large scales and fused, beak-like teeth, known as parrotfish.

"Uhu 'ahu'ula" means any fish known as *Chlorurus perspicillatus* or any recognized synonym. Uhu 'ahu'ula are also known as spectacled parrotfish. The terminal phase of these fish is known as uhu uliuli.

"Uhu 'ele'ele" means any *Scarus rubroviolaceus* which has reached its terminal phase, indicated by a change in coloration from brownish-red and yellowish-gray, to green and blue. A predominantly green or blue-green body color and a green beak on a specimen of *Scarus rubroviolaceus* is prima facie evidence that the specimen is an uhu 'ele'ele. Both uhu 'ele'ele and uhu pālukaluka are known as redlip or ember parrotfish.

"Uhu pālukaluka" means any fish known as *Scarus rubroviolaceus* or any recognized synonym. Uhu pālukaluka are also known as redlip or ember parrotfish. The terminal phase of these fish is known as uhu 'ele'ele.

"Uhu uliuli" means any *Chlorurus perspicillatus* which has reached its terminal phase, indicated by a change in coloration from a grayish brown body with a broad white band at the base of the tail, to a blue green body with a dark band across the top of the

**UNOFFICIAL COPY**

An official copy can be obtained from DLNR  
(808) 587-0100  
§13-60.10-3

snout. A predominantly blue-green body color and the lack of a white tail band on a specimen of *Chlorurus perspicillatus* is prima facie evidence that the specimen is an uhu uliuli. Both uhu uliuli and uhu 'ahu'ula are known as spectacled parrotfish.

"Ula" means a spiny lobster in the decapod crustacean family Palinuridae. These animals are also known as lobster, Hawaiian spiny lobster, red lobster, or green lobster.

"'Ū'ū" means any fish of the genus *Myripristis*. 'Ū'ū are also known as soldierfish or menpachi.

"Vessel" means any craft used or capable of being used as a means of transportation on or in the water.

"Weke 'ula" means any fish known as *Mulloidichthys vanicolensis* or any recognized synonym. Weke 'ula are also known as yellowfin goatfish or red weke. [Eff 8/13/22] (Auth: HRS §§187A-5, 188-22.6, 188-22.7, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-22.7, 188-53, 190-3)

**§13-60.10-3 Boundaries.** (a) The Miloli'i Community-Based Subsistence Fishing Area (Miloli'i CBSFA) includes that portion of the southwestern coast of Hawai'i Island consisting of all state waters and submerged lands bounded by a shoreline boundary consisting of a line drawn along the highwater mark at the shoreline between Pa'akai Point at Kīpāhoehoe in the north at 19.250944°N, -155.899417°W (Point A) to Kaunā in the south at 19.033639°N, -155.878791°W (Point M); a north boundary consisting of a straight line that extends seaward from the shoreline boundary at Pa'akai Point at Point A to a depth of 100 fathoms at 19.250943°N, -155.912689°W (Point AA); a seaward boundary consisting of a line that follows the 100-fathom depth contour along the southwest coast of Hawai'i Island from Point AA in the north to 19.027376°N, -155.883067°W (Point MM) in the south; and a south boundary consisting of a straight line that connects the shoreline boundary at Kaunā (Point M) to the seaward boundary at Point MM; as shown on



§13-60.10-3

Exhibit A entitled "Map of the Miloli'i Community-Based Subsistence Fishing Area, Hawai'i", dated 1/31/22, located at the end of this chapter.

(b) The following sub-zones are established within the Miloli'i CBSFA:

- (1) The "'Ōpelu Traditional Management Zone", which includes all state waters and submerged lands bounded by the shoreline boundary of the Miloli'i CBSFA from Nāpōhakuloloa (also known as 2-Stone) in the north at 19.234444°N, -155.901000°W (Point B) to Kāki'o Point (also known as Kaupō) in the south at 19.134422°N, -155.917339°W (Point J); the seaward boundary of the Miloli'i CBSFA from 19.234176°N, -155.911939°W (Point BB) in the north to 19.134699°N, -155.929158°W (Point JJ) in the south; a straight line in the north from Nāpōhakuloloa at Point B to the seaward boundary of the Miloli'i CBSFA at Point BB; and a straight line in the south from Kāki'o Point at Point J to the seaward boundary of the Miloli'i CBSFA at Point JJ; as shown on Exhibit B entitled "Map of the 'Ōpelu Traditional Management Zone", dated 1/31/22, located at the end of this chapter.
- (2) The "Pu'u'honua Pāpā", which includes all state waters and submerged lands bounded by the shoreline boundary of the Miloli'i CBSFA from Lae o Kamimi in Pāpā Bay at 19.226028°N, -155.902694°W (Point C) in the north to Makahiki Point at 19.202940°N, -155.906161°W (Point D) in the south; the seaward boundary of the Miloli'i CBSFA from 19.226079°N, -155.911577°W (Point CC) in the north to 19.203068°N, -155.914627°W (Point DD) in the south; a straight line in the north from Lae o Kamimi at Point C to the seaward boundary of the Miloli'i CBSFA at Point CC; and a straight line in the south from Makahiki Point at Point D to the seaward boundary of the Miloli'i CBSFA at

**UNOFFICIAL COPY**

An official copy can be obtained from DLNR  
(808) 587-0100  
§13-60.10-3

Point DD; as shown on inset 2 of Exhibit C entitled "Map of Miloli'i CBSFA Pu'uhoŋua Areas", dated 1/31/22, located at the end of this chapter.

- (3) The "Pāku'iku'i Rest Area", which includes all state waters and submerged lands bounded by the shoreline boundary of the Miloli'i CBSFA from Makahiki Point at Point D in the north to Kapulau (also known as Honomalino Point) at 19.172940°N, -155.908801°W (Point G) in the south; the seaward boundary of the Miloli'i CBSFA from Point DD in the north to 19.176530°N, -155.926281°W (Point GG) in the south; a straight line in the north from Makahiki Point at Point D to the seaward boundary of the Miloli'i CBSFA at Point DD; and a straight line in the south from Honomalino Point at Point G to the seaward boundary of the Miloli'i CBSFA at Point GG; as shown on Exhibit D entitled "Map of the Pāku'iku'i Rest Area and Puakai'a Miloli'i", dated 1/31/22, located at the end of this chapter.
- (4) "Puakai'a Miloli'i", which includes all state waters and submerged lands bounded by the shoreline boundary of the Miloli'i CBSFA from Kapukawa'aiki (also known as the Miloli'i Lighthouse) at 19.187033°N, -155.908020°W (Point E) in the north to Lae Loa at 19.181003°N, -155.908853°W (Point F) in the south; the seaward boundary of the Miloli'i CBSFA from 19.187989°N, -155.918099°W (Point EE) in the north to 19.183264°N, -155.920992°W (Point FF) in the south; a straight line in the north from Kapukawa'aiki at Point E to the seaward boundary of the Miloli'i CBSFA at Point EE; and a straight line in the south from Lae Loa Point at Point F to the seaward boundary of the Miloli'i CBSFA at Point FF; as shown on Exhibit D entitled "Map of the Pāku'iku'i

§13-60.10-3

- Rest Area and Puakai'a Miloli'i", dated 1/31/22, located at the end of this chapter.
- (5) The "Pu'uhonua Honomalino", which includes all state waters and submerged lands bounded by the shoreline boundary of the Miloli'i CBSFA from Kapulau (also known as Honomalino Point) at Point G in the north to Pūke'oke'o (also known as Pōhaku Ke'oke'o) at 19.161944°N, -155.912903°W (Point H) in the south; the seaward boundary of the Miloli'i CBSFA from Point GG in the north to 19.163768°N, -155.929541°W (Point HH) in the south; a straight line in the north from Kapulau at Point G to the seaward boundary of the Miloli'i CBSFA at Point GG; and a straight line in the south from Pūke'oke'o at Point H to the seaward boundary of the Miloli'i CBSFA at Point HH; as shown on inset 1 of Exhibit C entitled "Map of Miloli'i CBSFA Pu'uhonua Areas", dated 1/31/22, located at the end of this chapter.
- (6) The "Pu'uhonua Kapu'a", which includes all state waters and submerged lands bounded by the shoreline boundary of the Miloli'i CBSFA from Kalapili (Okoe Bay) at 19.147823°N, -155.910996°W (Point I) in the north to Kāki'o Point (also known as Kaupō) at Point J in the south; the seaward boundary of the Miloli'i CBSFA from 19.149582°N, -155.929769°W (Point II) in the north to Point JJ in the south; a straight line in the north from Kalapili at Point I to the seaward boundary of the Miloli'i CBSFA at Point II; and a straight line in the south from Kāki'o Point at Point J to the seaward boundary of the Miloli'i CBSFA at Point JJ; as shown on inset 1 of Exhibit C entitled "Map of Miloli'i CBSFA Pu'uhonua Areas", dated 1/31/22, located at the end of this chapter.
- (7) The "Pu'uhonua Manukā", which includes all state waters and submerged lands bounded by

**UNOFFICIAL COPY**

An official copy can be obtained from DLNR  
(808) 587-0100  
§13-60.10-4

the shoreline boundary of the Miloli'i CBSFA from Kamoi Point (north point of Manukā Bay) at 19.078090°N, -155.905953°W (Point K) to the south point of Manukā Bay at 19.075940°N, -155.900410°W (Point L); the seaward boundary of the Miloli'i CBSFA from 19.074411°N, -155.912682°W (Point KK) in the north to 19.069717°N, -155.909436°W (Point LL) in the south; a straight line from Kamoi Point at Point K to the seaward boundary of the Miloli'i CBSFA at Point KK; and a straight line from the south point of Manukā Bay at Point L to the seaward boundary of the Miloli'i CBSFA at Point LL; as shown on inset 3 of Exhibit C entitled "Map of Miloli'i CBSFA Pu'u honua Areas", dated 1/31/22, located at the end of this chapter.

(c) For the purposes of this chapter, the shoreline shall be determined by the upper reaches of the wash of the waves on shore. Should there be a stream or river flowing into the ocean, the shoreline shall be determined by an imaginary straight line drawn between the upper reaches of the wash of the waves on either side of the stream or river. [Eff 8/13/22] (Auth: HRS §§188-22.6, 188-22.7, 188-53, 190-3) (Imp: HRS §§187A-1.5, 188-22.6, 188-22.7, 190-3)

**§13-60.10-4 Permitted and prohibited activities.**

(a) Nothing in this chapter shall be construed as abridging traditional and customary native Hawaiian rights or as allowing within the Miloli'i CBSFA any activity or fishing gear otherwise prohibited by law or rules adopted by the department of land and natural resources or any other department of the State.

(b) It is unlawful for any person to engage in the act of aquarium fishing or to take marine life for aquarium purposes within the Area.

§13-60.10-4

(c) Except as provided in section 5, the following species-specific restrictions apply within the Miloli'i CBSFA:

- (1) It is unlawful to take or possess any female 'a'ama crab with eggs.
- (2) It is unlawful to take or possess:
  - (A) Any kole during the months of March through June;
  - (B) More than twenty kole per person per day; or
  - (C) Any kole less than five inches in length.
- (3) It is unlawful to take or possess any kō'ele.
- (4) It is unlawful to take or possess more makaiauli and 'ālinalina (with shell attached) than can fit in a one-gallon size bag per person per day.
- (5) At any time before July 1, 2027, it is unlawful to take or possess any pāku'iku'i.
- (6) Notwithstanding any other more restrictive law applicable to the taking of pāku'iku'i, at any time on or after July 1, 2027, it is unlawful to take or possess:
  - (A) More than five pāku'iku'i per person per day; or
  - (B) Any pāku'iku'i less than five inches in length.
- (7) It is unlawful to:
  - (A) Spear any uhu at night using any gear type;
  - (B) Take or possess any uhu 'ele'ele or any uhu uliuli at any time;
  - (C) Take or possess any uhu 'ahu'ula or uhu pālukaluka during the months of March through May;
  - (D) Take or possess any uhu 'ahu'ula or uhu pālukaluka less than fourteen inches in length or more than twenty inches in length;
  - (E) Take or possess more than one uhu 'ahu'ula or uhu pālukaluka (one fish

**UNOFFICIAL COPY**

An official copy can be obtained from DLNR  
(808) 587-0100  
§13-60.10-5

- total) per person per day during the months of June through February; or
- (F) Take or possess more than three total of any other uhu per person per day, provided that only one may be a terminal-phase uhu.
- (8) It is unlawful to take or possess more than two ula per person per day.
- (9) It is unlawful to take or possess any 'ū'ū from April through June. [Eff 8/13/22]  
(Auth: HRS §§187A-5, 188-22.6, 188-22.7, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-22.7, 188-53, 190-3)

**§13-60.10-5 Activities prohibited within selected areas.** (a) While within the 'Ōpelu Traditional Management Zone as described in section 13-60.10-3(b)(1), it is unlawful to take any 'ōpelu using any method other than hook-and-line fishing from February through August.

(b) While within the four Pu'uhonua as described in section 13-60.10-3(b), paragraphs -(2), -(5), -(6), and -(7), all fishing is prohibited except:

- (1) Fishing from shore using throw net, scoop net, and hook-and-line fishing methods;
- (2) Fishing from a vessel using hook-and-line fishing method;
- (3) Fishing using a pole spear; and
- (4) Fishing for akule using nets in compliance with chapters 13-60.4, 13-75, and 13-95.

(c) While within the four Pu'uhonua as described in section 13-60.10-3(b), paragraphs -(2), -(5), -(6), and -(7), it is unlawful to:

- (1) Harvest any 'opihi; or
- (2) Fish using any gear or method other than specifically allowed in section 5(b).

(d) While within the Pāku'iku'i Rest Area, it is unlawful to take or possess any pāku'iku'i.

(e) While within Puakai'a Miloli'i, it is unlawful to:

§13-60.10-5

- (1) Use or possess any spear except for a pole spear;
- (2) Spear any uhu, pāku`iku`i, weke `ula, moano kea, or `ū`ū; or
- (3) Fish using a lay net at night. [Eff 8/13/22] (Auth: HRS §§187A-5, 188-22.6, 188-22.7, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-22.7, 188-53, 190-3)

**§13-60.10-6 Transit through Miloli`i CBSFA with restricted gear and species.** Prohibited gear and restricted species as described in sections 13-60.10-4 and 13-60.10-5 may be possessed while onboard a vessel in active transit through the areas, provided that no prohibited gear is in the water during the transit. Boats that are adrift, anchored, or moored are not considered to be in active transit with the exception of vessels in line for the boat ramp and vessels actively loading and unloading at the wharf or on shore. [Eff 8/13/22] (Auth: HRS §§187A-5, 188-22.6, 188-22.7, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-22.7, 188-53, 190-3)

**§13-60.10-7 Penalty.** (a) Any person who violates any provision of this chapter shall be subject to:

- (1) Administrative penalties as provided by section 187A-12.5, HRS;
- (2) Criminal penalties as provided by section 188-70, HRS; and
- (3) Any other penalty as provided by law.

(b) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State. [Eff 8/13/22] (Auth: HRS §§187A-5, 188-22.6, 188-22.7, 188-53, 190-3) (Imp: HRS §§187A-5, 187A-12.5, 188-22.6, 188-22.7, 188-70, 190-5)

**UNOFFICIAL COPY**

An official copy can be obtained from DLNR  
(808) 587-0100  
§13-60.10-9

**§13-60.10-8 Asset forfeiture.** Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter, may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS. [Eff 8/13/22] (Auth: HRS §190-3) (Imp: HRS §199-7, ch. 712A)

**§13-60.10-9 Severability.** If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 8/13/22] (Auth: HRS §§187A-5, 188-22.6, 188-22.7, 188-53, 190-3) (Imp: HRS §§1-23, 187A-5, 188-22.6, 188-22.7, 188-53, 190-3)



**UNOFFICIAL COPY**

An official copy can be obtained from DLNR  
(808) 587-0100

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-60.10, Hawaii Administrative Rules, on the Summary Page dated June 9, 2022, was adopted on June 9, 2022, following two public hearings held on April 20, 2022, after public notice was given in the Honolulu Star-Advertiser on March 20, 2022.

The adoption of chapter 13-60.10 shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Suzanne D. Case

---

SUZANNE D. CASE  
Chairperson  
Department of Land and  
Natural Resources

APPROVED:

/s/ David Y. Ige

---

DAVID Y. IGE  
Governor  
State of Hawai'i

8/2/22  
Dated: \_\_\_\_\_

APPROVED AS TO FORM:

/s/ Colin J. Lau

---

COLIN J. LAU  
Deputy Attorney General

8/3/22

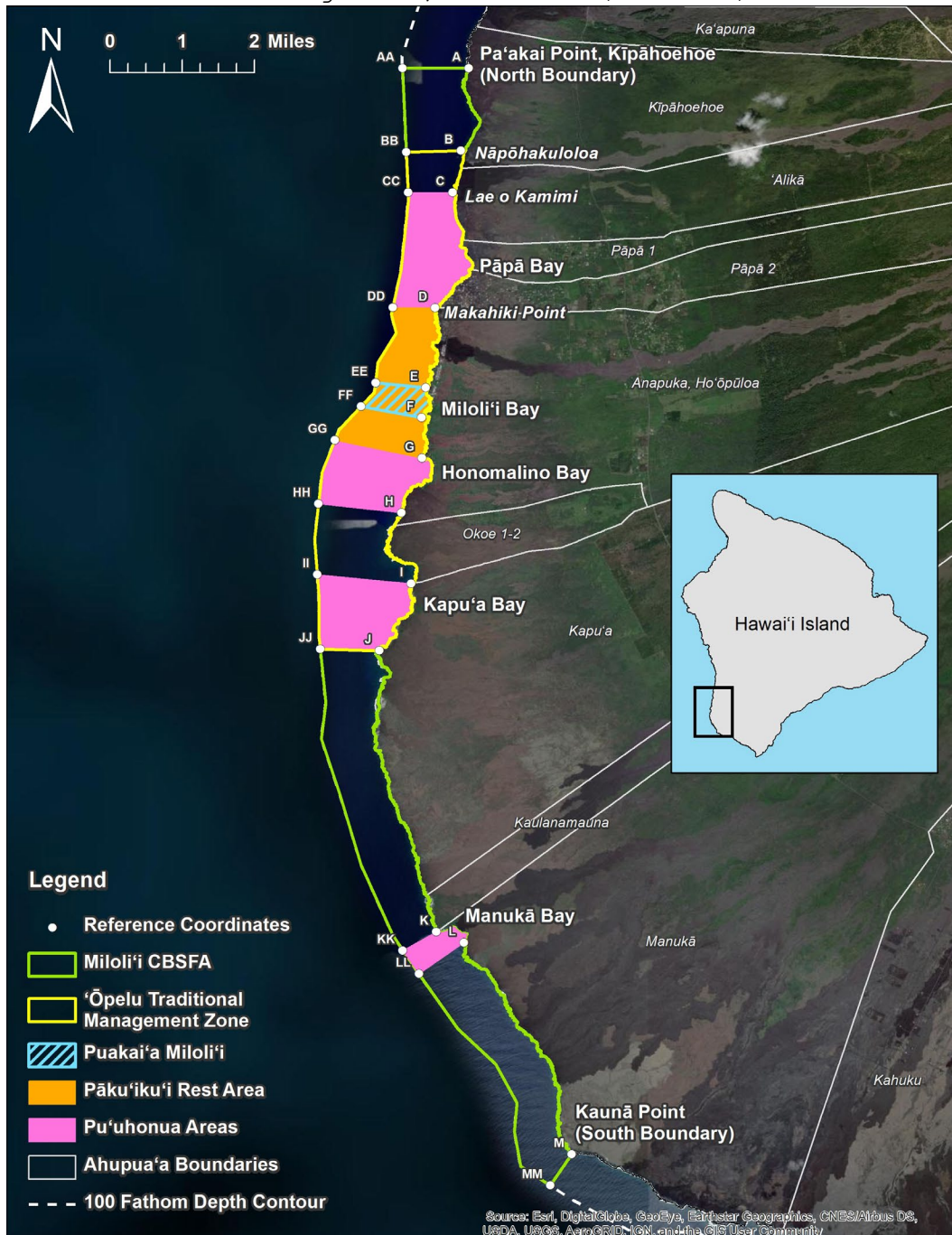
---

Filed

**UNOFFICIAL COPY**

An official copy can be obtained from DLNR  
(808) 587-0100  
Chapter 13-60.10

Exhibit A: Map of the Miloli'i Community-Based  
Subsistence Fishing Area, Hawai'i (1/31/22)



**UNOFFICIAL COPY**

An official copy can be obtained from DLNR  
(808) 587-0100  
Chapter 13-60.10

Exhibit B: Map of the 'Ōpelu Traditional Management Zone (1/31/22)

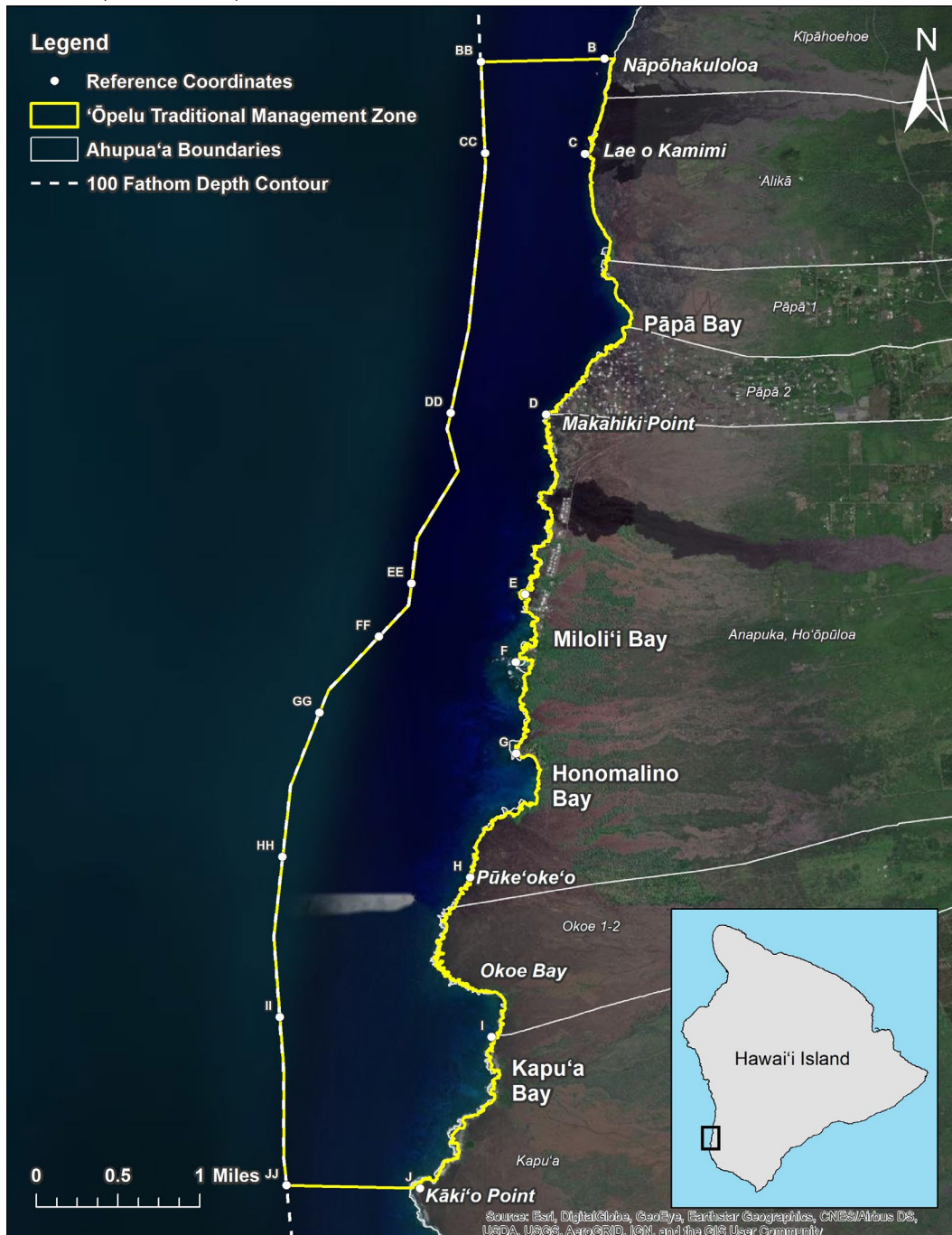
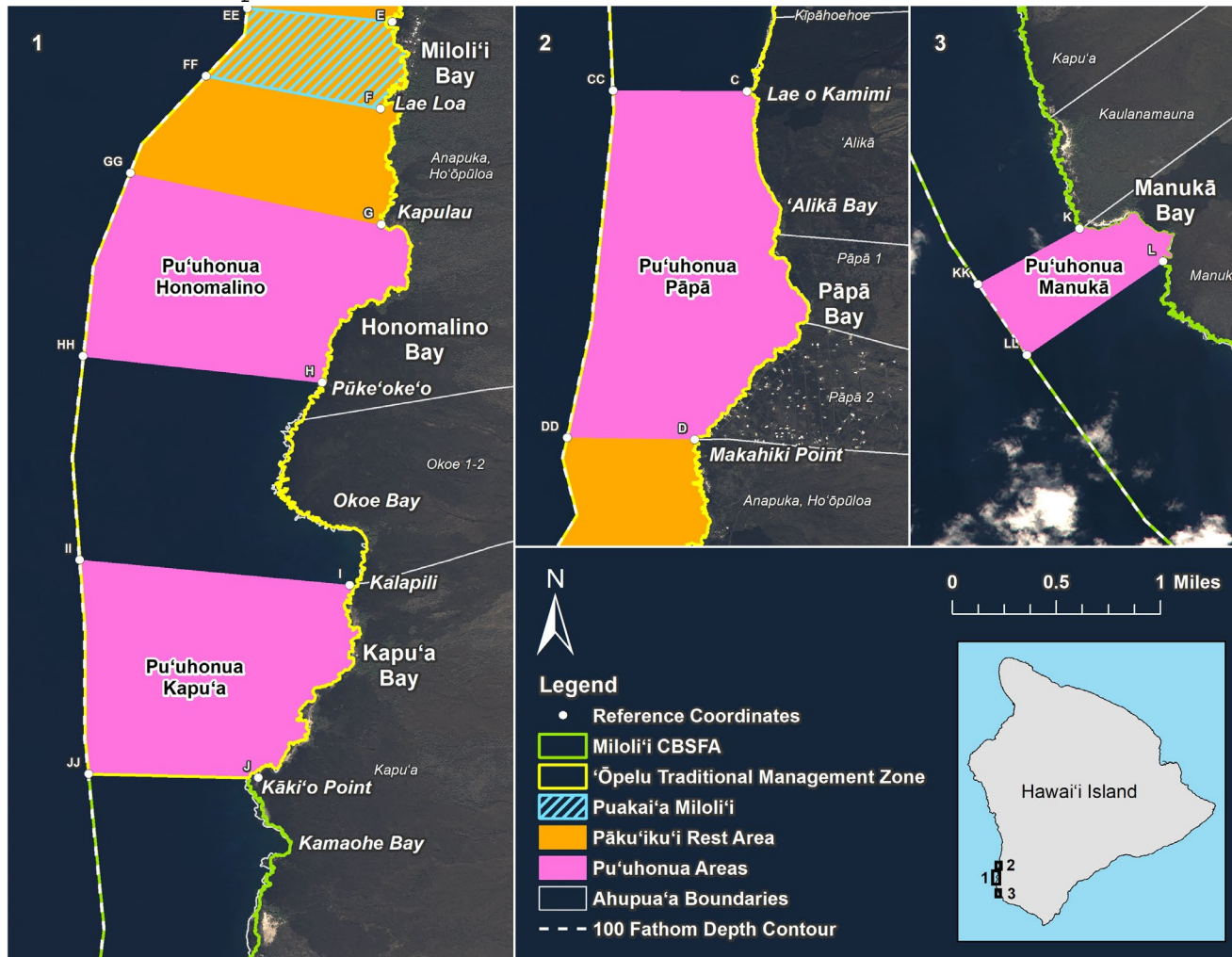


Exhibit C: Map of Miloli'i CBSFA Pu'u'honua Areas (1/31/22)

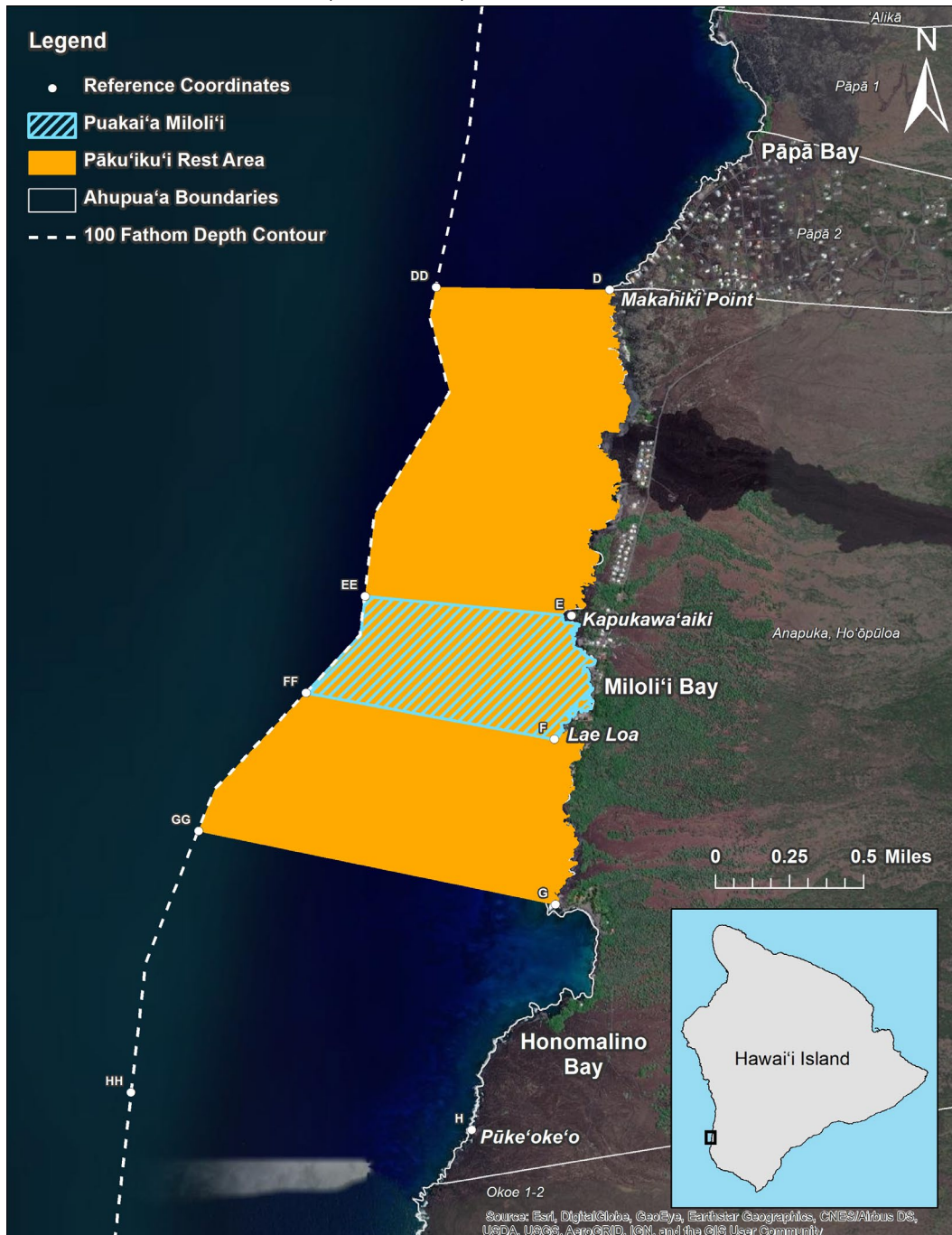




**UNOFFICIAL COPY**

An official copy can be obtained from DLNR  
(808) 587-0100  
Chapter 13-60.10

Exhibit D: Map of the Pāku'iku'i Rest Area and  
Puakai'a Miloli'i (1/31/22)



**4. Ordinance No. 1085, An Ordinance to amend Chapter 8, Kauai County Code 1987, Article 11 Special Treatment Districts**

§ 8-11.1 Purpose

§ 8-11.2 Types of special treatment districts

§ 8-11.3 General permitted uses, structures and development

§ 8-11.4 Uses, structures and development requiring a Use Permit

§ 8-11.5 Applications for use permits

§ 8-11.6 Special planning areas

§ 8-11.7 Scenic corridors and points

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, BY ESTABLISHING A NEW **SPECIAL TREATMENT COASTAL EDGE** (ST-CE) DISTRICT AND AMENDING ZONING MAPS ZM-K100 (KEKAHA), ZM-W100 (WAIMEA), ZM-200, AND ZM-H200 (HANAPEPE)**

---

(County of Kaua'i Planning Department, Applicant) (ZA-2020-09)

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

**SECTION 1.** Findings and Purpose. The coastal communities of the County of Kaua'i must prepare for the impacts of climate change, which include sea level rise, coastal erosion, passive flooding, annual high wave flooding, and increasing intensity and frequency of storms. These impacts threaten housing, infrastructure, jobs, and arable land.

The 2017 Sea Level Rise Vulnerability and Adaptation Report, mandated by the Hawai'i State Legislature pursuant to Act 83, Session Laws of Hawai'i 2014, and Act 32, Session Laws of Hawai'i 2017, found that up to 3.2 feet of global sea level rise is projected to occur within this century, and possibly as early as 2060, causing the State of Hawai'i, including Kaua'i, to be increasingly vulnerable to the effects of coastal hazards.

Development and structures constructed today have a lifespan of 70 to 100 years, which falls within the time horizon of those coastal hazards effects projected in the 2017 Sea Level Rise Vulnerability and Adaptation Report.

The 2018 Hawai'i Sea Level Rise Viewer, which is a companion to the 2017 Sea Level Rise Vulnerability and Adaptation Report and provides hazard and vulnerability data based on observational data and computer-based models, is sufficiently validated to be appropriately used in land management decisions. The 2018 Hawai'i Sea Level Rise Viewer identifies the areas in West Kaua'i projected to be impacted by 3.2 feet of sea level rise and the associated hazards of coastal erosion, passive flooding, and annual high wave flooding.

The coastal edges of communities that are located in areas between public access roadways and the ocean are the frontline of vulnerability to coastal hazards, including but not limited to sea level rise, coastal erosion, high wave run-up, passive flooding, and an increased frequency and intensity of storms.

The purpose of this Ordinance is to establish a new "Special Treatment Coastal Edge (ST-CE) District" that specifies additional performance required for development in particularly vulnerable areas along the coastline.

**SECTION 2.** Chapter 8, Article 11, Kaua'i County Code 1987, as amended (Special Treatment Districts (ST)), is hereby amended to read as follows:

**"Sec. 8-11.1 Purpose.**

The Special Treatment District specifies the additional performance required when critical or valuable social or aesthetic characteristics of the

environment or community exist in the same area as a parcel where particular functions or uses may be developed.

(a) To designate and guide development of County areas which because of unique or critical cultural, physical or locational characteristics have particular significance or value to the general public.

(b) To [insure] ensure that development within those areas recognize, preserve, maintain and contribute to the enhancement of those characteristics which are of particular significance or value to the general public.

(c) To ensure that development within those applicable areas is constructed in a manner that safely mitigates impacts from coastal hazards, including but not limited to sea level rise, coastal erosion, high wave run-up, passive flooding, and an increased frequency and intensity of storms.

[(c)] (d) Any [or all] of these districts may overlap any Use Districts, creating accumulated regulations [which] that more nearly relate to the conditions of the specific location where the development or use may occur.

#### **Sec. 8-11.2 Types of Special Treatment Districts.**

There are [four (4)] five (5) Special Treatment Districts, as follows:

(a) Public Facilities (ST-P). All public and quasi-public facilities, other than commercial, including schools, churches, cemeteries, hospitals, libraries, police and fire stations, government buildings, auditoriums, stadiums, and gymnasiums, which are used by the general public or which tend to serve as gathering places for the general public; and those areas which because of their unique locations are specially suited for such public and quasi-public uses.

(b) Cultural/Historic (ST-C). Communities and land or water areas which have a particular and unique value to the general public because of significant historic background, structures, or land forms.

(c) Scenic/Ecologic Resources (ST-R). Land and water areas which have unique natural forms, biologic systems, or aesthetic characteristics which are of particular significance and value to the general public.

(d) Open Space (ST-O). Areas which, pursuant to Article 9 ("Open Districts"), have been designated as "open space" areas.

(e) Coastal Edge (ST-CE). Areas that are highly vulnerable to coastal hazards, including but not limited to sea level rise, coastal erosion, high wave run-up, passive flooding, and an increased frequency and intensity of storms.



### **Sec. 8-11.3 Generally Permitted Uses, Structures and Development.**

All uses, structures, or development shall require a Use Permit, except repairs or modifications of land and existing structures that do not substantially change the exterior form or appearance of three (3) dimensional structures or land; provided that no uses, structures, or development shall be allowed in Special Treatment-Open Space Districts without express provision to the contrary. In addition, such repairs or modifications do not require a Zoning Permit.

### **Sec. 8-11.4 Uses, Structures and Development Requiring a Use Permit.**

(a) Any use, structure or development permitted with or without a Use Permit in the underlying Use District in which the parcel or lot is located that is consistent with an approved plan for development in accordance with Sec. 8-11.5.

(b) Repairs or modifications of land and existing structures that substantially change the exterior form or appearance of the structures or land in a manner inconsistent with the surrounding area within the Special Treatment District.

(c) No uses, structures, or development shall be allowed by Use Permit in Special Treatment-Open Space Districts without express provision to the contrary.

(d) Any use, structure, or development permitted with or without a Use Permit in the Special Treatment Coastal Edge District shall mitigate impacts from coastal hazards, including but not limited to sea level rise, coastal erosion, high wave run-up, passive flooding, and an increased frequency and intensity of storms.

### **Sec. 8-11.5 Applications for Use Permits.**

(a) The procedures are in addition to those established in Article 3.

(b) Before making an application, the applicant shall be informed of the particular reasons for the establishment of the Special Treatment District in which the applicant's land is located.

(c) Applications shall be accompanied by plans and three (3) dimensional drawings or models which clearly indicate the relation of the proposed development to other uses and structures within the Special Treatment District and the ways in which the proposed development is consistent with the reasons for the establishment of the District. Plans shall indicate the location of all existing and proposed topography, buildings, walks, driveways, and utilities and plant material within the boundaries of the applicant's parcel and the existing or proposed streets, sidewalks, driveways, trees, buildings, and topography on adjacent lands as required by the Planning Director, but no less than two hundred (200) feet from property lines of the parcel which abut a public thoroughfare, park or facility and one hundred (100) feet from the property lines of the parcel which abut privately owned property. Aerial photography may be utilized to meet these requirements if approved by the Planning Director.

(d) In addition to the foregoing, the applicant may be required to provide:

(1) Cross sections, elevations, perspectives or models of any of the areas defined in this Article in order to illustrate the proposed development's three (3) dimensional relationship to surrounding areas;

(2) Information concerning color, form, mass or shape of the structures in the proposed development and concerning the proposed development's impact on environmental characteristics such as sun and shadow, wind, noise, ecology, traffic and visual appearance; and

(3) Information concerning the impact of the proposed development on public services or utilities and social and economic structure or cultural characteristics.

(e) The Planning Director may waive any of the requirements established in this Section for proposals involving parcels of less than one (1) acre in the Residential, Agriculture, or Open Districts, except in the Special Treatment-Open Space District, or less than ten thousand (10,000) square feet in the Commercial or Industrial Districts.

#### **Sec. 8-11.6 Special Planning Areas.**

(a) The Planning Commission may formulate development plans for any Special Treatment District or for any regional or subregional areas which are of particular County, State or Federal value because of unique physical, ecologic or cultural characteristics or are determined to be critical areas of concern to the general economic, social or physical development of the County.

(b) The District or areas shall be designated as Special Planning Areas. The boundaries of the areas shall be established by the Planning Commission and recorded on the Zoning Maps.

(c) Development plans for Special Planning Areas shall include, whenever appropriate and practical, the following:

(1) A review of existing physical characteristics, including public and private improvements, ownership, use and factors concerning geographic, ecologic, scenic, and resources features;

(2) A review of the social, economic, cultural and historic characteristics of the area;

(3) A statement concerning community goals, values, and objectives and the methods for involving the community in the planning process;

(4) A statement of the goals and objectives of the development plan and their relationship to the goals and objectives established in the General Plan, and an analysis of the specific problems inhibiting the accomplishment of the goals and objectives based on an analysis of existing conditions;

(5) A program of specific activities, improvements and modifications necessary to accomplish the stated goals and objectives;

(6) A physical development plan at scale of detail appropriate to the existing conditions and to feasible methods of implementation, that indicates the location and nature of programmed activities and improvements, including:

(A) Housing by density and type of dwelling units,

(B) Transportation and circulation by type, including pedestrian, bicycle, parking and related facilities,

(C) Recreation and open space by activity and function,

(D) Agricultural uses and structures,

(E) Commercial, industrial and resort uses and structures;

(7) The establishment of specific subdivision and development criteria, including setbacks, heights, permitted uses, and other design standards necessary for the implementation of the physical plan. The criteria may be more detailed than, or may vary from the requirements of the Use, Special Treatment and Constraint Districts within which a Special Planning Area has been located;

(8) A phasing and action priority program in four (4) five (5) year increments with an Estimated Capital Improvement Program decreasing in detail with each increment.

(d) The Planning Department shall review each development plan formulated under this Article no less than every five (5) years after its adoption and shall revise and update all plan elements consistent with the conditions that prevail at the time of the review.

(e) Upon adoption by the Council, the provisions of the development plan shall constitute regulations and shall supersede conflicting regulations applicable in the Use, Special Treatment and Constraint Districts within which the Special Planning Area is located. Regulations and requirements not so superseded shall remain in force.

(f) After the Council adopts a development plan for a Special Planning Area, no development, use or activity may be undertaken in the area that is contrary to the development plan.

#### **Sec. 8-11.7 Scenic Corridors and Points.**

(a) Purpose. To preserve, maintain and improve visual access and quality from major public thoroughfares or areas of public value and to define criteria and procedures necessary to achieve those ends.

(b) Land Included. Scenic corridors shall be as indicated on the General Plan and the Zoning maps and shall include by reference all land and water areas visible from the center line of the corridor or the scenic point, or to a lesser distance as the Planning Director shall determine.

(c) Requirements of Development and Structures Within a Scenic Corridor.

(1) The Planning Director may require the applicant to furnish graphic or pictorial material sufficient to indicate the nature of the proposed use, development or structure and its relation to the view from that portion of the corridor or point which may be affected.

(2) The Planning Director or designee shall ascertain whether the proposed development, structure, or use proposed will block, disrupt, or significantly change the visual accessibility or quality of the scenic corridor.

(3) The Planning Director may approve, approve with conditions, or refer the application to the Planning Commission with recommendations. Upon reference, the Planning Commission shall, in such case, approve, with conditions, or deny the permit.

(4) The Planning Director and the Planning Commission shall not deny an application if the denial would create undue hardship on the applicant, but shall nevertheless impose constructive and reasonable requirements on the development to protect the scenic quality of the corridor.

(d) The Planning Commission may require that visually disruptive or offensive activities, facilities, or structures that are within three hundred (300) feet of the public right-of-way be screened from view from the thoroughfare by an acceptable structural or plant screen."

SECTION 3. Designation of Zoning Maps for Special Treatment Coastal Edge District. The zoning maps ZM-K100 (Kekaha), ZM-W100 (Waimea), ZM-200, and ZM-H200 (Hanapēpē), attached to this Ordinance as Exhibits 1-4, respectively, and on file with the Planning Department, County of Kaua'i, shall carry out the purposes of this Ordinance, and are by reference incorporated herein and made a part hereof.

SECTION 4. The Planning Department is directed to note the changes on the official zoning maps on file with the Department.

SECTION 5. Severability. 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 6. Material to be deleted is bracketed. New 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 need not be included.

SECTION 7. This Ordinance shall take effect upon its approval.

Introduced by:



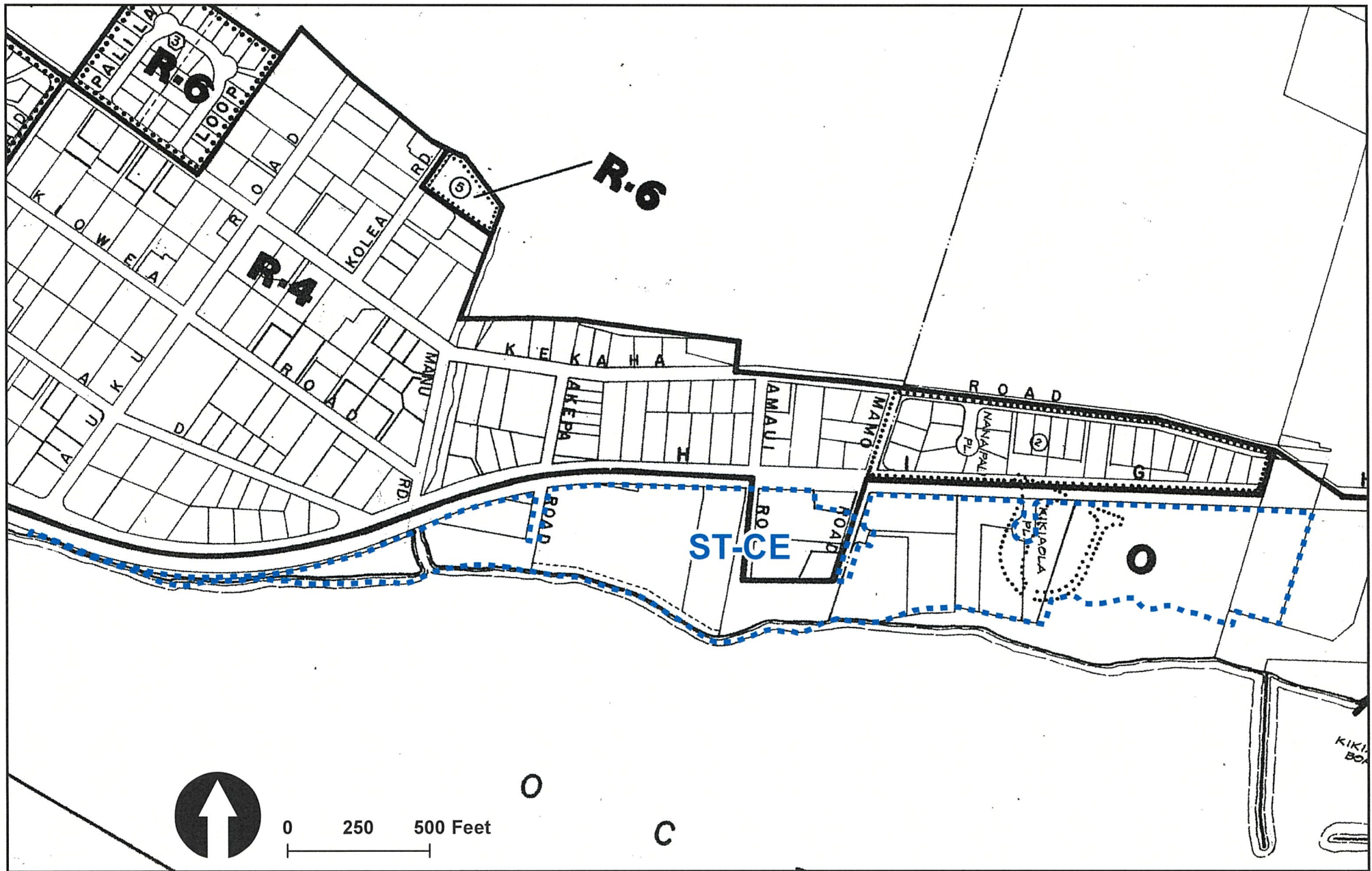
MASON K. CHOCK  
(By Request)

DATE OF INTRODUCTION

**August 5, 2020**


Līhu'e, Kaua'i, Hawai'i

V:\BILLS\2018-2020 TERM\West Kauai Community Plan\Bill 3 of 6 WKCP Special Treatment Coastal Edge District  
MC\_JA\_jy.doc

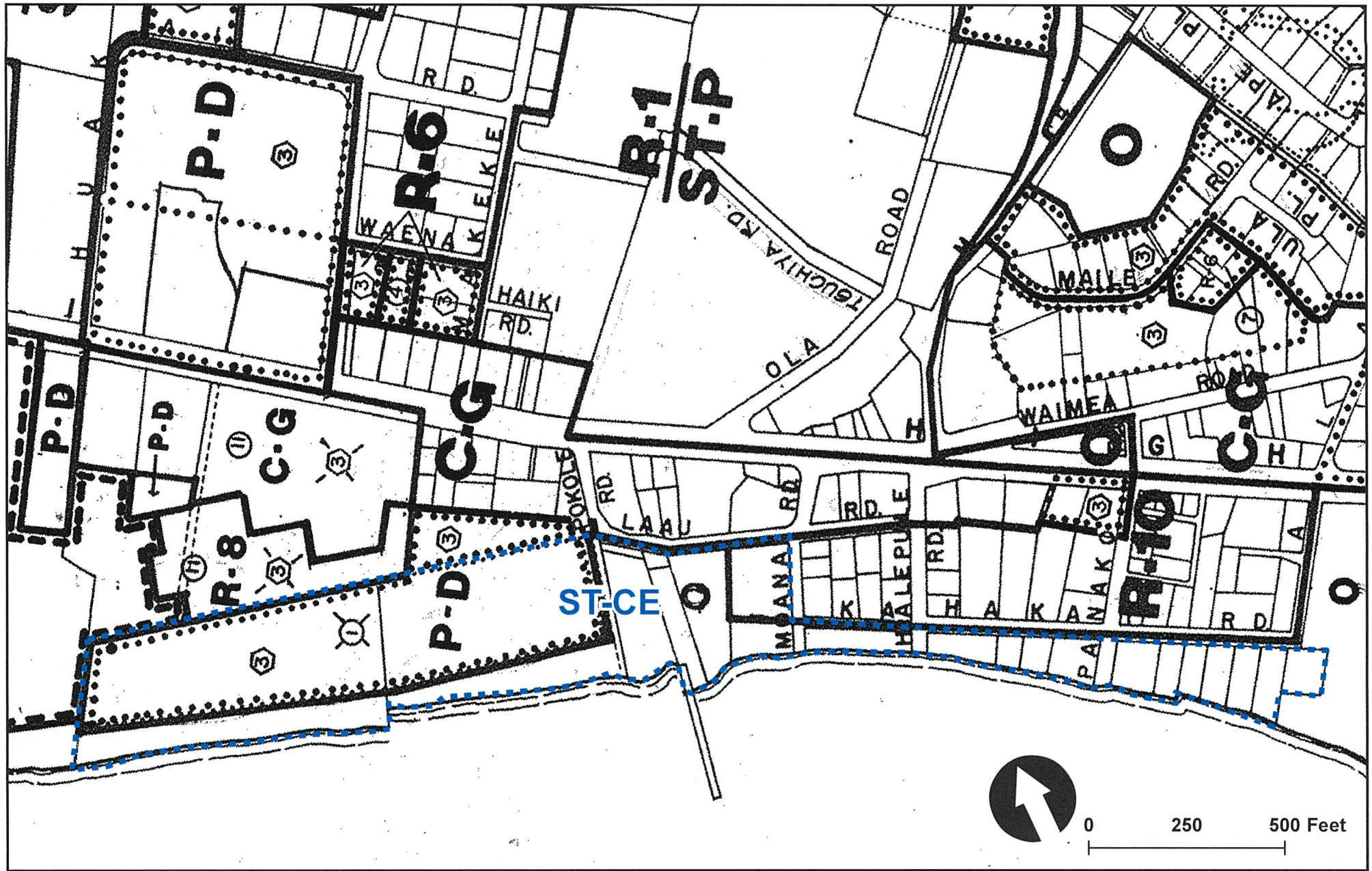


Map showing proposed amendment to Zoning Map ZM-K-100 from Open District (O) and Residential District (R-4) to Special Treatment Coastal Edge District (ST-CE)

Kekaha, Kaua'i, Hawai'i

 ST-CE Boundary



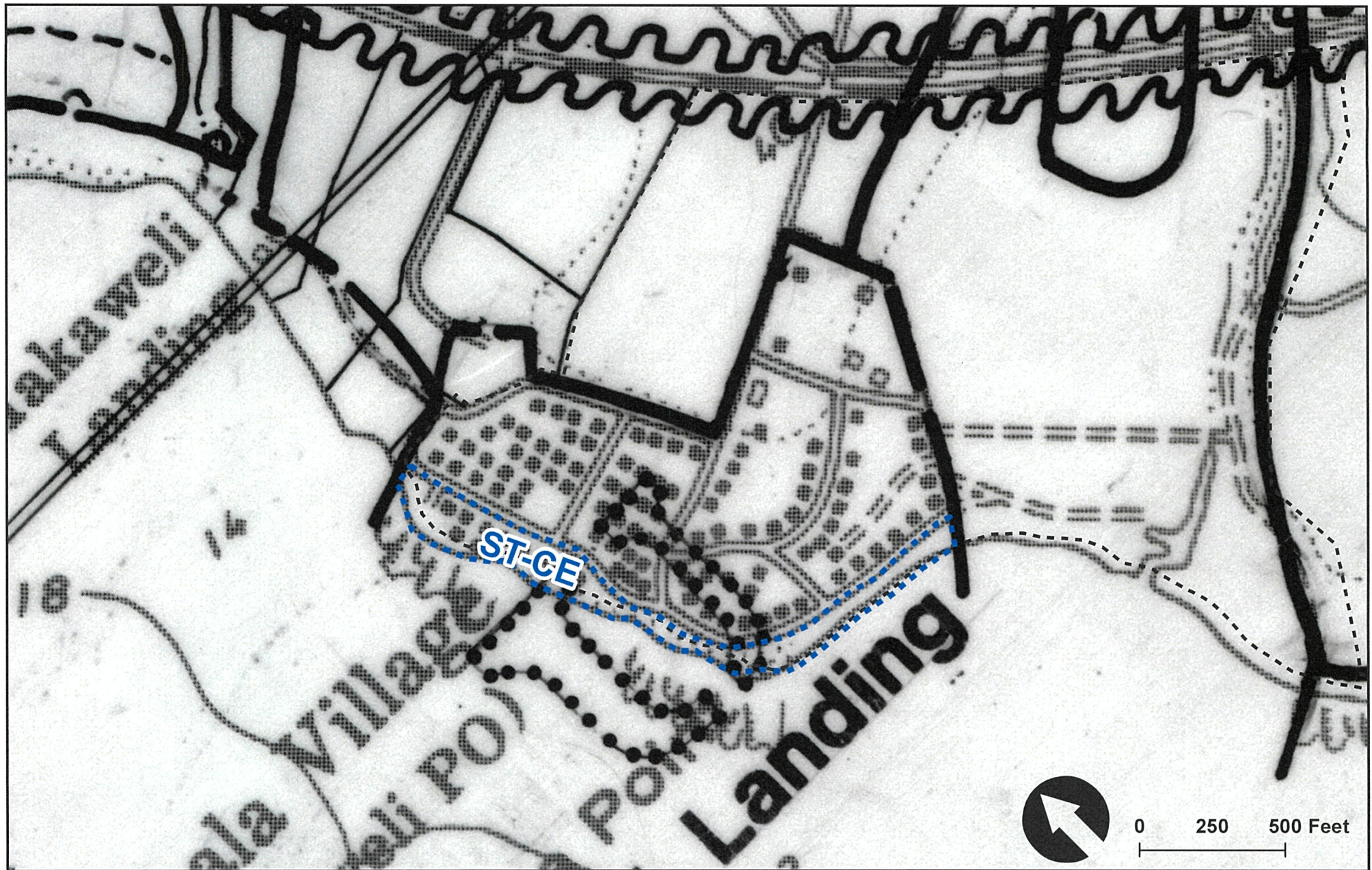


Map showing proposed amendment to Zoning Map ZM-W-100 from Open District (O) and Project District (PD) to Special Treatment Coastal Edge District (ST-CE)

Waimea, Kaua'i, Hawai'i

 ST-CE Boundary



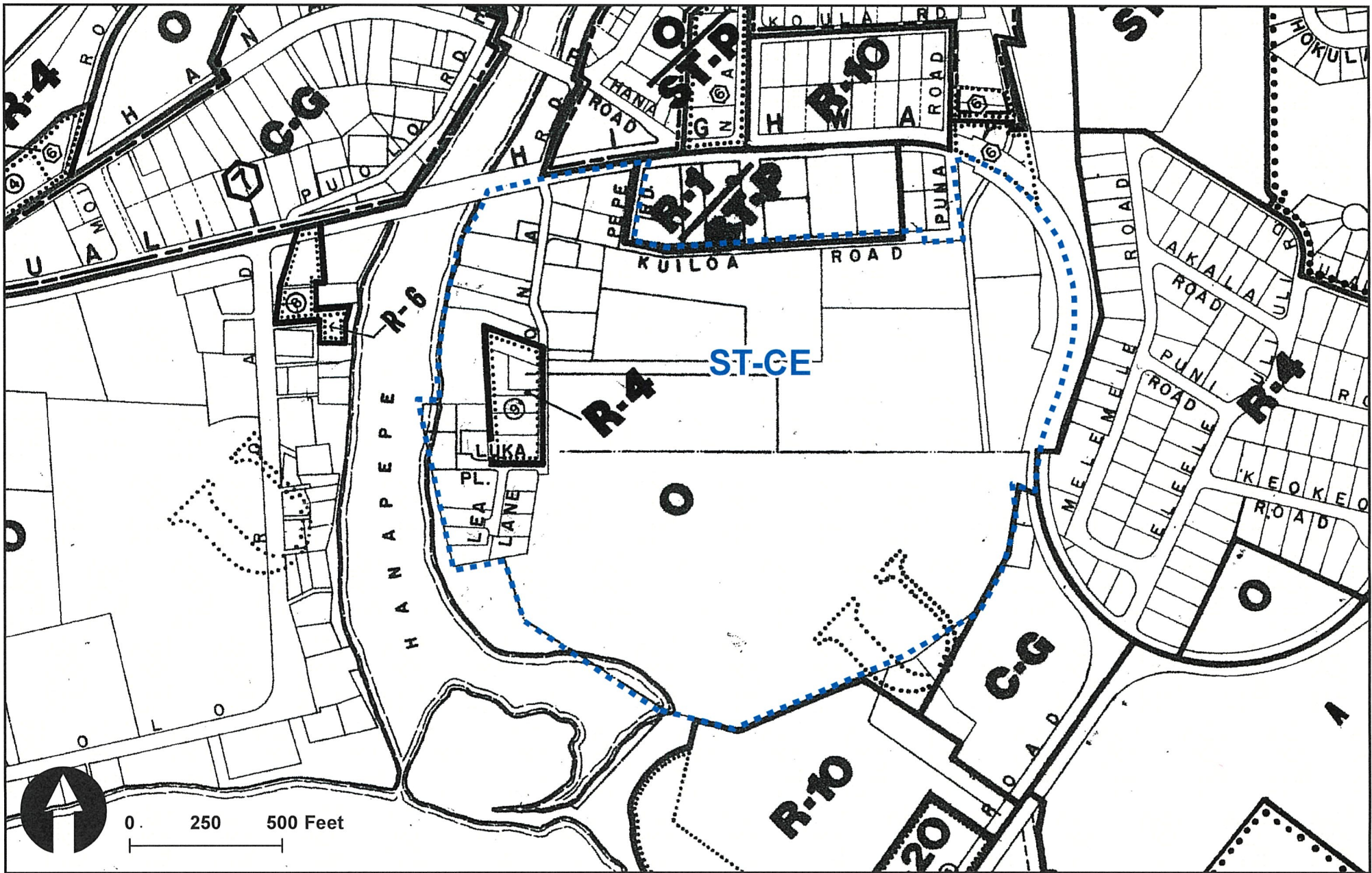


Map showing proposed amendment to Zoning Map ZM-200 from  
Agriculture District (A) to Special Treatment Coastal Edge District (ST-CE)

Pakala, Kaua'i, Hawai'i

 ST-CE Boundary





Map showing proposed amendment to Zoning Map ZM-H-200 from Open District (O) and Residential District (R-4) to Special Treatment Coastal Edge District (ST-CE)

Hanapepe, Kaua'i, Hawai'i

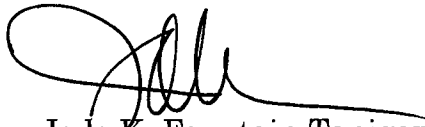
 ST-CE Boundary

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2799, which was adopted on second and final reading by the Council of the County of Kaua'i at its meeting held on November 25, 2020, by the following vote:

FOR ADOPTION:	Chock, Cowden, Evslin, Kagawa, Kualii, Kaneshiro	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Brun	TOTAL – 1*,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Lihu'e, Hawai'i  
November 25, 2020

  
Jade K. Fountain-Tanigawa  
County Clerk, County of Kaua'i

\*Beginning with the March 11, 2020 Council Meeting and until further notice, Councilmember Arthur Brun will not be present due to U.S. v. Arthur Brun et al., Cr. No. 20-00024-DKW (United States District Court), and therefore will be noted as excused (i.e., not present).

ATTEST:

  
Arryl Kaneshiro  
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

November 25, 2020

Approved this 3rd day of

December, 2020.

  
Derek S.K. Kawakami,  
Mayor  
County of Kaua'i

## **5. HAR Chapter 13-104 Rules Regulating Activities within Forest Reserves**

- § 13-104-5.5 Abandoned and unattended property
- § 13-104-7.5 Closing of areas
- § 13-104-25 General statement
- § 13-104-26 Payment
- § 13-104-27 Camping and cabin rental fees
- § 13-104-28 Commercial use permit fees
- § 13-104-29 Kiln fees
- § 13-104-30 Permit processing fees
- § 13-104-31 Parking and entrance fees

## **Revised Statutory and Regulatory Policies**

### **6. HAR Chapter 13-104 Rules Regulating Activities within Forest Reserves**

- § 13-104-2 Definitions
- § 13-104-3 Penalty
- § 13-104-11 Vehicles and transportation
- § 13-104-16 Camping
- § 13-104-18 General provisions for permits
- § 13-104-19 Camping permits
- § 13-104-20 Special use permits
- § 13-104-21 Collecting permits
- § 13-104-22 Commercial permits
- § 13-104-23 Access permits

Amendment and Compilation of Chapter 13-104  
Hawaii Administrative Rules

January 10, 2010

1. Chapter 13-104, Hawaii Administrative Rules, entitled "Rules Regulating Activities Within Forest Reserves", 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 1 FORESTRY

CHAPTER 104

RULES REGULATING ACTIVITIES WITHIN FOREST RESERVES

Subchapter 1 General Provisions

§13-104-1 Purpose and applicability  
§13-104-2 Definitions  
§13-104-3 Penalty

Subchapter 2 Public Use

§13-104-4 Preservation of public property and  
resources  
§13-104-5 Litter and sanitation  
§13-104-5.5 Abandoned and unattended property  
§13-104-6 Report of injury or damage  
§13-104-7 Fire use restrictions  
§13-104-7.5 Closing of areas  
§13-104-8 Hunting and fishing

§13-104-9 Firearms or other weapons  
§13-104-10 Swimming and bathing  
§13-104-11 Vehicles and transportation  
§13-104-12 Animals  
§13-104-13 Audio devices and noise  
§13-104-14 Explosives  
§13-104-15 Disorderly conduct  
§13-104-16 Camping  
§13-104-17 Compliance with laws

### Subchapter 3 Permits

§13-104-18 General provisions for permits  
§13-104-19 Camping permits  
§13-104-20 Special use permits  
§13-104-21 Collecting permits  
§13-104-22 Commercial permits  
§13-104-23 Access permits  
§13-104-24 Commercial activities

### Subchapter 4 Fees and Charges

§13-104-25 General statement  
§13-104-26 Payment  
§13-104-27 Camping and cabin rental fees  
§13-104-28 Commercial use permit fees  
§13-104-29 Kiln fees  
§13-104-30 Permit processing fees  
§13-104-31 Parking and entrance fees  
§13-104-32 Fee for copies of rules

Historical Note: Chapter 104 of Title 13, Administrative Rules, is based substantially upon Regulation 1 [Eff 12/9/43; am 8/12/76; R 9/28/81] and Regulation 10 [Eff 12/12/59; R 9/28/81] of the Division of Forestry, Department of Land and Natural Resources.

## SUBCHAPTER 1

## GENERAL PROVISIONS

~~[§13-104-1 Purpose and applicability.]~~ **§13-104-1 Purpose and applicability.** (a) The purpose of ~~[these rules]~~ this chapter is to regulate activity within forest reserves established pursuant to sections 183-11 and 183-15, Hawaii Revised Statutes.

(b) These rules shall apply to all persons entering the boundaries and jurisdiction of a forest reserve. All persons shall observe and abide by officially posted signs within forest reserves. Everyone using the forest reserves should conduct themselves in a safe and courteous manner. Users of the forest reserves should be aware that there are ~~[certain]~~ certain inherent risks involved due to other users and the environment and should use caution at all times. [Eff 9/28/81; am and comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §§183-1.5, 183-2)

~~[§13-104-2 Definitions.]~~ **§13-104-2 Definitions.** As used in ~~[these rules,]~~ this chapter, unless the context requires otherwise:

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

"Administrator" means the administrator of the division of forestry and wildlife.

"Authorized representative" means the administrator, foresters, conservation enforcement officers, and other persons authorized by the board

~~[of land and natural resources]~~ to act for the board.

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

"Camping" or "to camp" means ~~[being in possession of a backpack, tents, blankets, tarpaulins, or other obvious camping paraphernalia,]~~ a person's physical presence any time [after] one hour after sundown until sunrise in a forest reserve[-] and indicia of camping includes the use of a forest reserve one hour after sundown until sunrise for living accommodation purposes, including, but not limited to: sleeping activities or making preparations to sleep (including the laying down of bedding for the purpose of sleeping); storing personal belongings; making any fire; the presence or use of any tents, temporary shelters, unauthorized structures or vehicles; or digging or breaking ground without proper authorization.

"Commercial activity" means the use of or activity in the forest reserve for which compensation is received by any person for goods or services or both rendered to customers or participants in that use or activity. Soliciting, demanding, or requesting gifts, money, or services shall be considered commercial activity. Commercial activities include activities ~~[whose]~~ with base of operations ~~[are]~~ outside the boundaries of the forest reserve, display of merchandise, or activities which provide transportation to or from the forest reserve.

"Commercial use" is any type of commercial activity which is considered compatible with the functions and purposes of each individual area, facility, or unit within a forest reserve.

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

~~["Division" means the division of forestry and wildlife.]~~

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

"Division" means the division of forestry and wildlife.



"Forest product" means any natural material from a forest reserve, including but not limited to timber, seedlings, seeds, fruits, greenery, tree fern, cinder, lava rock, ti leaves, and bamboo.

"Forest reserve" means those lands designated as forest reserves by the department pursuant to sections 183-11 and 183- 15, Hawaii Revised Statutes, and other lands for plant sanctuaries, facilities, nurseries, and baseyards under the custody and control of the division.

"Motorized vehicle" means a vehicle of any shape or form that depends on a motor (gas, electric, or other fuels) for propulsion.

"Non-motorized vehicle" means a vehicle of any shape or form that depends on human, animal, wind, spring, and other non-motorized means for propulsion.

~~["Residing" means being in the same forest reserve for more than seven (7) continuous days.]~~

~~["Spark arrester" means a device constructed of nonflammable materials specifically for the purpose of removing and retaining carbon and other flammable particles over 0.0232 of an inch in size from the exhaust flow of an internal combustion engine that is operated by hydrocarbon fuels.]~~

"Structure" means any object or improvement constructed, installed, or placed on state lands, including but not limited to buildings, sheds, lean-tos, picnic tables, memorials, hunting blinds, tree stands, mobile homes, campers, trailers; provided that tents, campers, vehicles, and other temporary objects related to authorized activities shall not be considered structures for the purposes of this definition; provided further that the objects are in compliance with rules and regulations governing those activities on state lands.

"Tree harvesting" means the removal of live trees from a forest reserve. [Eff 9/28/81; am and comp 10/15/93; am 12/9/02; am and comp ]  
(Auth: HRS §183-2) (Imp: HRS §183-2)

~~[\$13-104-3 Penalty.]~~ **§13-104-3 Penalty.** (a) Any person violating any of the provisions of ~~[these rules]~~ this chapter shall be ~~[guilty of a misdemeanor and shall be penalized]~~ subject to penalty as provided by law. All revenues generated from fines or penalties imposed pursuant to this section shall be deposited into the forest stewardship fund. Any equipment, article, instrument, aircraft, vehicle, 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 section 199-7, Hawaii Revised Statutes, and chapter 712A, Hawaii Revised Statutes.

(b) Restrictions and prohibitions imposed by this chapter shall not apply to state employees or their agents acting in the scope of their employment while within the forest reserve. Any penalty imposed may take into account emergency situations, such as fire or other disasters or where necessary to protect life or property. [Eff 9/28/81; am and comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §§183-4, 183-5, 183-16, 195D-8, 199-7)

## SUBCHAPTER 2

### PUBLIC USE

~~[\$13-104-4 Preservation of public property and resources.]~~ **§13-104-4 Preservation of public property and resources.** The following activities are prohibited within a forest reserve:

- (1) To remove, injure, or kill any form of plant or animal life, either in whole or in part, except as authorized by the ~~[Board]~~ board or authorized representative or as provided by the rules of the [Board,] board;
- (2) To remove, damage, or disturb any natural feature or resource (e.g., natural stream beds) except as authorized by the board or

- its authorized representative;
- (3) To remove, damage, or disturb any historic or prehistoric remains;
- (4) To remove, damage, or disturb any notice, marker, or structure;
- (5) To enter, occupy, or use any building, structure, facility, motorized vehicle, machine, equipment, or tool within ~~[or on]~~ a forest reserve except as authorized by the board or its representative;
- (6) To engage in any construction or improvement except as authorized by the board~~[-]~~;
- (7) To sell, peddle, solicit, or offer for sale any merchandise or service except with written authorization from the board~~[-]~~;
- (8) To distribute or post handbills, circulars, or other notices~~[-]~~;
- (9) To introduce any plant or animal except as approved by the ~~[Board.]~~ board; and
- (10) To enter or remain within a forest ~~[reserves when]~~ reserve while under the influence of alcohol, narcotics, or drugs, to a degree that may ~~[endanger oneself or]~~ endanger or cause annoyance to other persons, or endanger oneself or property. The use or possession of narcotics, drugs, or alcohol within forest reserves is prohibited. [Eff 9/28/81; am and comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §§183-2, 183-17)

~~[\$13-104-5 Litter and sanitation.]~~ **§13-104-5**  
**Litter and sanitation.** The following acts are prohibited within a forest reserve:

- (1) To drain, dump, or leave any litter, animal waste or remains, or any other material which pollutes or is likely to cause pollution in the forest reserve, including streams and other water sources;
- (2) To deposit any body waste in areas without

- comfort stations, without digging a hole and covering all signs of the waste;
- (3) To deposit any body waste within 150 feet of a spring, stream, lake, or reservoir; and
  - (4) To leave or abandon ~~[a vehicle or]~~ any ~~[other]~~ large refuse, such as refrigerators or stoves, household garbage or trash, or other forms of waste or debris. [Eff 9/28/81; am and comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-5.5 Abandoned and unattended property.**

No person shall abandon or leave personal property unattended within a forest reserve for any purpose not otherwise authorized or inconsistent with the purposes of the forest reserve. All such property may be seized, impounded, or otherwise confiscated by the board or any authorized representative.

- (1) If unattended personal property, including but not limited to motor vehicles, interferes with the safe or orderly management of a forest reserve or is stored on the publicly-managed lands, the personal property may be seized or impounded by the board or its authorized representative. Any article or instrument that is dangerous, noxious, hazardous, or considered as contraband under the laws of the State of Hawaii, which could endanger the health, safety, or welfare of the public, or public property, may be immediately seized and disposed of by any authorized representative of the department if found abandoned or unattended in the forest reserve.
- (2) All impounded vehicles shall be towed to a place of storage. Owners of towed vehicles shall contact the division or the division of conservation and resource enforcement branch office for information on towed

- vehicles. Towing, storage, and other related costs shall be assessed pursuant to section 290-11, Hawaii Revised Statutes.
- (3) All impounded or confiscated property, other than vehicles, shall be moved to a place of storage, and the owner shall be assessed moving, storage, and other related costs. Additionally, the owner of this property shall bear the responsibility for the risk of any loss or damage to their property.
- (4) Abandoned vehicles may be sold at public auction pursuant to section 290-11, Hawaii Revised Statutes. All other impounded or confiscated property shall be disposed of pursuant to section 171-31.5, Hawaii Revised Statutes. [Eff and comp ]  
 (Auth: HRS §183-2) (Imp: HRS §§171-31.5, 183-2, 290-11)

~~[§13-104-6 Report of injury or damage.]~~ **§13-104-6 Report of injury or damage.** All incidents resulting in injury or death to persons or damage to property shall be reported by the person or persons involved as soon as possible to the board or its authorized representative. This report does not relieve persons from the responsibility of making any other accident reports which may be required under federal, state, or county statutes, ordinances, and rules. [Eff 9/28/81; comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

~~[§13-104-7 Fire use restrictions.]~~ **§13-104-7 Fire use restrictions.** The following acts are prohibited within a forest reserve:

- (1) To build any fire on the ground or in any structure~~[+]~~ not otherwise authorized by this section;

- (2) To build any fire without using a portable stove or other self-contained unit;
- (3) To leave a fire unattended without extinguishing all traces of heat;
- (4) To deposit or discard any potential fire-producing material, such as embers, coals, or ashes that are too hot to touch;
- (5) To set on fire or cause to be set on fire any live or dead vegetation except for department fire control measures; and
- (6) To start a fire in windy conditions in a place or manner that is likely to cause live or dead vegetation to be set on fire[; and
- ~~(7) To use any motor vehicle, motorized equipment, internal combustion engines, or electric motors unless equipped with efficiently operating fire or spark arresting equipment].~~ [Eff 9/28/81; am and comp 10/15/93; am and comp ]  
(Auth: HRS §183-2) (Imp: HRS §§183-2, 185-7)

**§13-104-7.5 Closing of areas.** (a) The board, or its chairperson, may close or restrict the public use of all or any portion of a forest reserve in the event of an emergency or when deemed necessary for:

- (1) The protection of the biological, geological, or cultural resources of the area;
- (2) Health, safety, or welfare reasons;
- (3) The protection of property; or
- (4) Management activities, by the posting of appropriate signs indicating the duration, extent, and scope of closure.

(b) The chairperson is authorized to effect a given closure or restriction under subsection (a) for a period of not more than ninety days. The board is authorized to effect a closure or restriction for any period as deemed necessary to accommodate the condition or conditions indicated under subsection

(a). [Eff and comp ] (Auth: HRS §183-2)  
(Imp: HRS §§183-1.5, 183-2, 185-3)

~~[§13-104-8 Hunting and fishing.]~~ **§13-104-8**  
**Hunting and fishing.** The hunting, fishing, trapping, or disturbing of any fish, animal, or bird is prohibited except as permitted by department hunting or fishing rules. [Eff 9/28/81; comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

~~[§13-104-9 Firearms or other weapons.]~~ **§13-104-9**  
**Firearms or other weapons.** Firearms and other weapons, including those discharging projectiles by air or gas ~~[operated,]~~ operation; or bow and arrow, ~~[and other weapons]~~ are prohibited except as permitted by department hunting rules and are subject to all applicable federal, state, and county statutes, ordinances, and rules. [Eff 9/28/81; comp 10/15/93; am and comp ] (Auth: HRS §183-2)  
(Imp: HRS §183-2)

~~[§13-104-10 Swimming and bathing.]~~ **§13-104-10**  
**Swimming and bathing.** Swimming and bathing in all waters within a forest reserve are permitted at an individual's own risk except in waters and at times where the activities are prohibited by the board or its authorized representative in the interest of public health and safety. The ~~[excepted]~~ prohibited waters and times shall be designated by posted signs. [Eff 9/28/81; am and comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

~~§13-104-11 Vehicles and transportation.~~ **§13-104-11 Vehicles and transportation.** ~~[(a)]~~ The following acts are prohibited while under the jurisdiction of the state within a forest reserve:

- (1) To drive, operate, or use any motorized or non-motorized land vehicle, glider, hang glider, aircraft, unmanned aircraft system, balloon, or parachute carelessly and without due caution for the rights or safety of others and in a manner that endangers any person or property;
- (2) To launch or land ~~[airplanes,]~~ aircraft, gliders, helicopters, balloons, parachutes, or other similar means of transportation without a [special-use] permit for that purpose from the board or its authorized representative; provided[~~, however,~~] that landing is authorized without a permit in case of any emergency;
- (3) To drive, operate, or use any motorized vehicle in any area or trails not designated for that purpose~~[+]~~, including areas requiring four-wheel drive only;
- (4) To park any motorized or non-motorized vehicle or trailer except in designated areas;
- (5) To drive, lead, or ride a horse, mule, other animal, or non-motorized land vehicle in areas and on roads or trails that are posted against such activity; ~~[and]~~
- (6) To drive, operate, or use any motorized ~~[ground]~~ land vehicle without a functioning street legal muffler, and without a valid vehicle license plate, registration and safety sticker if required by [each] the appropriate respective county[-]; and
- (7) To launch, land, or operate any unmanned aircraft system without a permit for that purpose from the board or its authorized representative.

~~[(b) Any vehicle or property left unattended within a forest reserve for longer than forty-eight hours without prior written permission from the board~~



~~or its authorized representative shall be considered abandoned. Any abandoned vehicle or property may be impounded or towed away by the board or its authorized representative at the expense of the owner.] [Eff 9/28/81; am and comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §§183-1.5, 183-2)~~

~~[§13-104-12 Animals.]~~ **§13-104-12 Animals.** (a) Dogs, cats, and other animals are prohibited within a forest reserve unless crated, caged, or on a leash, at all times except for hunting dogs when permitted by chapters ~~[122 and 123, Administrative Rules.]~~ 13-122 and 13-123.

(b) All dogs used for hunting shall be crated, caged, or leashed or otherwise under restrictive control during transportation while in transit at all times, to and from hunting areas within the forest reserve.

(c) Dogs, cats, or other domestic animals, observed by an authorized representative of the board to be running at large or in the act of killing, injuring, or molesting humans, wildlife, or property, may be disposed of in the interest of public safety and the protection of the forest reserve. [Eff 9/28/81; am and comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

~~[§13-104-13 Audio devices and noise.]~~ **§13-104-13 Audio devices and noise.** Creating noise or sound within a forest reserve, either vocally or otherwise (~~[i.e.]~~ e.g., public address systems, radios, television sets, musical instruments) or use of any noise producing devices (~~[i.e.]~~ e.g., electric generating plants or other equipment driven by motors or engines) in a manner and at times which creates a nuisance is prohibited. [Eff 9/28/81; comp 10/15/93;

am and comp ] (Auth: HRS §183-2)  
(Imp: HRS §183-2)

~~[§13-104-14 Explosives.]~~ **§13-104-14 Explosives.**  
The use or possession of fireworks, firecrackers, or  
explosive devices within a forest reserve is  
prohibited. [Eff 9/28/81; comp 10/15/93; am and  
comp ] (Auth: HRS §183-2) (Imp: HRS  
§183-2)

~~[§13-104-15 Disorderly conduct.]~~ **§13-104-15**  
**Disorderly conduct.** Disorderly conduct, as defined in  
section 711-1101, Hawaii Revised ~~[Statues,]~~ Statutes,  
is prohibited within a forest reserve. [Eff 9/28/81;  
comp 10/15/93; am and comp ] (Auth:  
HRS §183-2) (Imp: HRS §§183-2, 711-1101)

~~[§13-104-16 Residence on forest reserve lands.~~  
~~Residing within a forest reserve is prohibited except~~  
~~with written permission from the board.]~~ **§13-104-16**  
**Camping.** No person shall camp, or use recreational  
trailers or other camper units within any forest  
reserve, except with the prior written authorization  
of the board or its authorized representative and as  
permitted by the rules of the department. [Eff  
9/28/81; comp 10/15/93; am and comp ]  
(Auth: HRS §183-2) (Imp: HRS §183-2)

~~[§13-104-17 Compliance with laws.]~~ **§13-104-17**  
**Compliance with laws.** All persons entering the  
boundaries of a forest reserve shall comply with all  
federal, state, and county laws, ordinances, and  
rules. [Eff 9/28/81; comp 10/15/93; am and  
comp ] (Auth: HRS §183-2) (Imp: HRS  
§183-2)

### SUBCHAPTER 3

#### PERMITS

~~[§13-104-18 General provisions for permits.]~~

**§13-104-18 General provisions for permits.** (a) The board or its authorized representative may issue the following types of permits:

- (1) Camping;
- (2) Special use;
- (3) Collecting;
- (4) ~~[Commercial harvest;]~~ Commercial; and
- (5) Access.

(b) All permits are subject to the following provisions:

- (1) Permits are subject to denial, cancellation, or termination at any time by the board or its authorized representative upon violation of these rules or any conditions of the permit or any federal, state, or county statutes, ordinances, and rules or for danger to the public or because of natural causes. Persons who have violated permit conditions or the rules may be ordered by the department to leave the forest reserve. Permittees who have violated permit conditions or the rules may be denied future permits for forest reserves or subject to the imposition of additional permit restrictions;
- (2) Permits shall not be transferable~~[-]~~;
- (3) Persons or organizations to whom permits are issued shall be held responsible for all conditions ~~[stipulated]~~ on the permit~~[-]~~;
- (4) All persons eighteen years of age or older shall be eligible to secure a permit and all minors shall be allowed use of the premises; provided that they are under the direct supervision of one adult for every ten

- minors~~[-]~~;
- (5) The size of groups as well as the length of time any permit may be in effect may be limited by the board or its authorized representative~~[-]~~;
  - (6) The board or its authorized representative may require the permittee, at the permittee's own cost, to provide police protection in the interest of the public safety and welfare and for the protection of property when the number of persons using the forest reserve is one hundred or more~~[-]~~;
  - (7) Fees and charges as set by the board may be assessed when permits are granted for the exclusive use of areas or facilities, or when charges are necessary to defray the cost of special facilities, services, or supplies provided by the State, or as otherwise determined by the board or its authorized representative when necessary to carry out the provisions of chapter 183, Hawaii Revised Statutes. [Charges] Fees and charges contained in this chapter may be waived or reduced by the board or its authorized representative if the waiver or reduction is in the public interest~~[-]~~;
  - (8) The board may set and approve a forest product price list. Charges may be assessed when permits are granted for forest products. The forest product price list shall reasonably reflect fair market value and be periodically updated by the board;
  - (9) All permittees ~~[shall]~~, upon request, shall show the permit to any law enforcement officer, the board, or its authorized representative~~[-]~~;
  - (10) By signing the permit and entering into the forest reserve, all persons included on the permit agree to comply with all the terms and conditions of the permit, as well as applicable laws and regulations; and consent

to present the permit to a duly authorized representative of the department upon request; and

- (11) Persons applying for a permit shall provide, if requested, identification for all persons included on a permit, satisfactory to the board or its authorized representative. The board or its authorized representative may require the names, addresses, and telephone numbers of all persons included on a permit.  
 [Eff 9/28/81; comp 10/15/93; am and comp ] (Auth: HRS §183-2)  
 (Imp: HRS §§183-1.5, 183-2)

~~[§13-104-19 Camping permits.]~~ **§13-104-19**

**Camping permits.** (a) All persons, groups, organizations, or associations wishing to camp within a forest reserve shall obtain a camping permit authorizing the use of the specific area and facilities for camping purposes~~[.]~~ for the stated date or dates.

~~[(b)]~~ ~~Camping permits shall be obtained from the district offices of the division during regular working hours of the department.~~

~~(c) Persons applying for a permit shall provide, if requested, identification for all persons included on a permit, satisfactory to the board or its authorized representative.~~

~~(d)]~~ (b) Each camping permit will reserve the use of a designated area for the stated date or dates of use. Camping is permitted only in designated areas or sites.

~~[(e)]~~ (c) No person, group, organization, or association shall remain at any one specific camping site for longer than seven days; provided that the board or its authorized representative may extend the length of stay for good cause~~[; provided further that the length of stay (including the extension as well as the permitted stay) shall not exceed fourteen days].~~

~~[(f)]~~ (d) After ~~[the expiration]~~ issuance of a camping permit, a period of at least thirty days shall

pass before another camping permit for the same designated area may be issued to ~~[the same person for the same designated area.]~~ any person listed on any previously valid or current camping permit. ~~[This restriction shall apply to all persons named on the expired permit.]~~ The board or its authorized representative may waive a portion of the thirty-day period for good cause.

~~[(g)]~~ (e) ~~[Permits]~~ Camping permits may be denied, canceled, or terminated for the following reasons:

- (1) When the size of the group will exceed or exceeds the capacity of the existing site or facilities;
- (2) When there are inadequate facilities to meet the immediate needs of the camper or campers;
- (3) When repairs or improvements are being made at the campsite; or
- (4) When a state of emergency is declared or for other reasons involving the health, safety, and welfare of the applicants or permittees; ~~[by the board or its authorized representative]~~

upon the declaration of the board or its authorized representative. [Eff 9/28/81; am and comp 10/15/93; am and comp ] (Auth: HRS §183-2)  
(Imp: HRS §183-2)

~~[\$13-104-20 Special use permits.]~~ **§13-104-20**  
**Special use permits.** (a) Special ~~[uses are permitted within a forest reserve only by a permit]~~ use permits are only issued by the board or its authorized representative. Special uses are ~~[all types of uses other than]~~ those provided for ~~[herein]~~ in this section and which are considered compatible with the functions and purposes of each individual area, facility, or unit within a forest reserve. Special uses include but are not limited to community activities, such as meetings, weddings, concerts, shows, and other community events; ~~[or activities]~~ and

the scientific collection of plants and animals.

(b) Applications for special use permits shall be received by the board or its authorized representative at least fifteen working days in advance of the date the permit is to be in effect, ~~[unless otherwise received and accepted by the board or its authorized representative.]~~ however, the deadline may be waived by the board or its authorized representative upon a showing of good cause.

(c) A request for a special use permit shall be considered on its own merits, including its potential effect on [the premises, facilities,] forest reserve resources and the public's use and enjoyment of the forest reserve. [Eff 9/28/81; am and comp 10/15/93; am and comp ] (Auth: HRS §183-2)  
(Imp: HRS §183-2)

~~[§13-104-21 Collecting permits.]~~ **§13-104-21 Collecting permits.** (a) Persons wishing to collect forest ~~[items]~~ products ~~[(e.g. ti leaves, bamboo)]~~ for personal use and at no charge shall obtain a collecting permit authorizing the collection in a specific area.

~~[(b) Collecting permits shall be obtained from the district offices of the division during regular working hours of the department.]~~

~~(c) Persons applying for a permit shall provide, their names and addresses and shall produce if requested, identification of all persons named on a permit, satisfactory to the board or its authorized representative.~~

~~(d)]~~ (b) Each application for a collecting permit shall be considered on its own merits, including its potential effect on forest reserve resources and the public's use and enjoyment of the forest reserve.

(c) Collecting permits shall specify:

- (1) The date or dates of collection;
- (2) The quantities and ~~[items]~~ products to be collected;

- (3) The areas of collection; and
- (4) Any other terms and conditions deemed necessary by the board or its authorized representative.

~~[(+e)]~~ (d) Permits shall not be issued for collecting ~~[items]~~ products for sale.

~~[(+f)]~~ (e) No permits shall be issued for the collection of endangered or threatened wildlife or plants except as provided by chapter ~~[124, Administrative Rules.]~~ 13-124.

(f) No more than one permit within a seven-day period may be issued to the same person or persons, group, organization, or association listed on the permit for collecting any of the same forest products.  
[Eff 9/28/81; am and comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

~~[§13-104-22 Commercial harvest permits.]~~ **§13-104-22 Commercial permits.** (a) Commercial use permits. The board or its authorized representative may issue commercial use permits.

- (1) Applications for commercial use permits shall be received by the board or its authorized representative at least thirty working days in advance of the date the permit is to be in effect; however, the deadline may be waived by the board or its authorized representative upon a showing of good cause.
- (2) A request for a commercial use permit shall be considered on its own merits, including its potential effect on forest reserve resources and the public's use and enjoyment of the forest reserve.
- (3) The value of the commercial activity shall be decided by the board or its authorized representative and shall not exceed \$10,000.
- (4) The time of entry for the commercial activity shall not exceed thirty days,



except that the board or its authorized representative may extend this time for good cause.

~~[(a)]~~ (b) Commercial harvest permits. The board or its authorized representative may issue permits for the purpose of purchasing~~[,]~~ and harvesting~~[, and removing]~~ forest products from a forest reserve ~~[(e.g., timber, seedlings, greenery, tree fern, einder, and lava rock)]~~.

~~[(b)]~~ Permits shall be obtained from the district offices of the division during regular working hours of the department.

~~[(c)]~~ (1) Each application for a commercial harvest permit shall be considered on its own merits, including its potential effect on ~~[the premises]~~ forest reserve resources and the public's use and enjoyment of the forest reserve~~[-]~~; provided further that tree harvesting shall be done in accordance with a management plan as required by section 183-16.5, Hawaii Revised Statutes.

~~[(d)]~~ Permits will not be issued for harvesting material for direct resale.

~~[(e)]~~ (2) The value of the raw material to be harvested shall not exceed \$10,000. The quantity to be harvested shall be decided by the board or its authorized representative.

~~[(f)]~~ (3) The time of entry for harvesting shall not exceed ~~[14]~~ fourteen days for permits with designated raw material value not in excess of \$1,000, or ~~[30]~~ thirty days for permits with designated raw material the value of which exceeds \$1,000 but does not exceed \$10,000, except that the board or its authorized representative may extend this time for good cause.

~~[(g)]~~ (4) No more than one permit within a thirty day period or six permits within a calendar year may be issued to the same person, group, organization, or association for harvesting the same product.

~~[(h)]~~ (5) Each permit shall specify:

- ~~[(1)]~~ (A) The products to be harvested;
- ~~[(2)]~~ (B) The amount to be harvested;
- ~~[(3)]~~ (C) The dollar value of the products;
- ~~[(4)]~~ (D) The designated area to be harvested;
- ~~[(5)]~~ (E) The date or dates the harvesting may take place; and
- ~~[(6)]~~ (F) Any other terms or conditions deemed necessary by the board or its authorized representative.

(c) Commercial salvage permits. The board or its authorized representative may issue commercial salvage permits for the purpose of purchasing and removing dead or hazardous trees.

- (1) A request for a commercial salvage permit shall be considered on its own merits, including its potential effect on forest reserve resources and the public's use and enjoyment of the forest reserve.
- (2) The value of the raw material to be salvaged shall not exceed \$10,000. The quantity to be salvaged shall be decided by the board or its authorized representative.
- (3) The time of entry for salvaging shall not exceed fourteen days for permits with designated raw material value not in excess of \$1,000, or thirty days for permits with designated raw material the value of which exceeds \$1,000 but does not exceed \$10,000, except that the board or its authorized representative may extend this time for good cause. [Eff 9/28/81; comp 10/15/93; am 10/4/05; am and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

~~[\$13-104-23 Access permits.]~~ **§13-104-23 Access permits.** ~~[(a)]~~ Permits for access to or entry into forest reserves may be required by the board or its authorized representative for the following ~~[purpose:]~~ purposes:

- (1) To comply with the requirements of private

- landowners or lessees who permit access to forest reserves through their land;
- (2) To control the number of people using a forest reserve or an area within a forest reserve in order to minimize ~~[the]~~ any impact upon environmentally sensitive ~~[area;]~~ areas;
  - (3) To control the types of uses of a forest reserve or an area within a forest reserve in order to minimize the dangers of incompatible uses in the same area (e.g., horseback riding and motorcycle riding); ~~[and]~~
  - (4) To control ~~[periods of use]~~ uses of a forest reserve, ~~[especially during periods when fire danger levels are high.]~~ or any portion thereof, which may be under closure or otherwise restricted; and
  - (5) ~~[To collect plants or animals for scientific purposes.]~~ For scientific research activities that are otherwise prohibited by this chapter.

~~[(b) Access permits shall be obtained from the district offices of the division during regular working hours of the department.]~~

~~[(c) Persons applying for an access permit shall provide their names and addresses and shall produce identification satisfactory to the board or its authorized representative. The board or its authorized representative may require the names, addresses, and telephone numbers of all persons~~

~~included on a permit.]~~ [Eff  
 §13-104-24 9/28/81; am and comp 10/15/93;  
 am and comp ]

(Auth: HRS §183-2) (Imp: HRS §183-2)

~~[\$13-104-24 Commercial activities.]~~ **§13-104-24**  
**Commercial activities.** No person shall engage in commercial activities of any kind in a forest reserve without a written permit from the board or its

authorized representative. [Eff 12/9/02; am and  
comp ] (Auth: HRS §183-2) (Imp: HRS  
§183-2)

#### SUBCHAPTER 4

#### FEES AND CHARGES

**§13-104-25 General statement.** (a) This subchapter establishes user fees and charges for services, facilities, and activities for forestry and recreational purposes, where applicable under the jurisdiction of the division.

(b) The fees and charges are:

(1) Collected to offset the expenses of operating, maintaining, and managing the facilities and services;

(2) Fixed with due regard to the primary purposes of providing public outdoor recreational facilities and promoting an appreciation and connection with Hawaii's forests; and

(3) Set by categories.

(c) The acceptance of payment or billings shall not waive the nature of trespass or ratify or permit illegal camping. [Eff and comp ]  
(Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-26 Payment.** (a) Method of payment of fees and charges shall be online by credit card or by business check, cashier's check, money order, or cash at division branch offices or the administration office.

(b) All fees shall be paid in advance of issuance of a permit, except as specified by chapter 13-104. [Eff and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-27 Camping and cabin rental fees.** The camping and cabin rental fees shall be set according to the amounts in Schedule A - Camping and Cabin Rental Fees - 12/28/16. [Eff and comp ]  
 (Auth: HRS §183-2) (Imp: HRS §183-2)

<b>Schedule A</b> <b>Camping and Cabin Rental Fees</b> <b>12/28/16</b>				
	<b>Maximum No. Campsites</b>	<b>Maximum No. Persons per campsite</b>	<b>Resident Fee (\$/night/ campsite)</b>	<b>Nonresident Fee (\$/night/ campsite)</b>
Category 1	Up to 5	Up to 15	\$12*	\$18**
<i>Unimproved campsite or improved campsite with minimal amenities (i.e., trailside camping or a campsite with picnic table and shelter and clivus toilet)</i>				
Category 2	1 Cabin	Up to 6	\$30/night per cabin ***	\$50/night per cabin ***
<i>Improved campsite or small cabin that houses no more than 6 persons</i>				
Category 3	1 Cabin	Up to 20	\$60/night per cabin ***	\$90/night per cabin ***
<i>Improved campsite or large cabin that houses 7 or more persons</i>				
* A resident camping permit for up to 6 persons is \$12. Additional persons will cost \$2 per person. ** A nonresident camping permit for up to 6 persons is \$18. Additional persons will cost \$3 per person. ***Fee reflects total cost for cabin rental regardless of number of persons staying overnight.				

**§13-104-28 Commercial use permit fees.**

Commercial use permit fees are listed in Schedule B - Commercial Use Permit Fees - 12/28/16 and shall apply depending on the applicable commercial activity or activities; provided that the requested recreational facility is approved for commercial use by the forestry and wildlife manager. [Eff and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

<b>Schedule B</b> <b>Commercial Use Permit Fees</b> <b>12/28/16</b>	
Base commercial use permit processing fee	\$10
Price per pedestrian	\$5
Price per non-motorized bicycle or horseback rider	\$7
Price per motorized vehicle up to 5 people	\$25
Price per motorized vehicle up to 8 people	\$50
Price per motorized vehicle up to 12 people	\$75
Price per motorized vehicle up to 15+ people	\$100
Price per operator and/or passenger of aerial craft launching from and/or landing in a forest reserve	\$5
Price per campsite, facility, or cabin per day	\$100
Price per commercial film permit	\$100
Price per item/activity (miscellaneous)	\$20

**§13-104-29 Kiln fees.** Kiln fees are listed in Schedule C - Kiln Fees - 12/28/16 and shall be paid no later than fifteen days after kiln services are rendered. [Eff and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

<b>Schedule C</b> <b>Kiln Fees</b> <b>12/28/16</b>	
<b>Unit</b>	<b>Unit Cost</b>
1 - 900 Board Feet	\$0.70 each
901 - 1000 Board Feet	\$0.60 each
1001 - 1500 Board Feet	\$0.50 each
1501 and up Board Feet	\$0.40 each

**§13-104-30 Permit processing fees.** The fee for the processing of an access permit for scientific research purposes shall be \$50. The fee for processing any other permit shall be \$10. [Eff and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-31 Parking and entrance fees.** The fee for parking a vehicle may be assessed at \$5 per vehicle, per day. [Eff and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-32 Fee for copies of rules.** The fee per copy of these rules shall be 10 cents per page. No fee shall be charged for copies furnished to federal, state, or local governmental agencies. The fee may be waived in other instances at the discretion of the administrator or the administrator's authorized representative when a waiver is in the public interest." [Eff and comp ] (Auth: HRS §183-2) (Imp: HRS §§91-2.5, 183-2)

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

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

4. These amendments to and compilation of chapter 13-104, 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 January 10, 2010, and filed with the Office of the Lieutenant Governor.

---

SUZANNE D. CASE  
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 13-104  
Hawaii Administrative Rules

January 10, 2020

SUMMARY

1. §§13-104-1 to 13-104-5 are amended.
2. A new §13-104-5.5 is added.
3. §§13-104-6 to 13-104-7 are amended.
4. A new §13-104-7.5 is added.
5. §§13-104-8 to 13-104-24 are amended.
6. A new subchapter 4, consisting of §§13-104-25 through 13-104-32, is added.
7. Chapter 13-104 is compiled.



HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 5 FORESTRY AND WILDLIFE

PART 1 FORESTRY

CHAPTER 104

RULES REGULATING ACTIVITIES WITHIN FOREST RESERVES

Subchapter 1 General Provisions

- §13-104-1 Purpose and applicability
- §13-104-2 Definitions
- §13-104-3 Penalty

Subchapter 2 Public Use

- §13-104-4 Preservation of public property and resources
- §13-104-5 Litter and sanitation
- §13-104-5.5 Abandoned and unattended property
- §13-104-6 Report of injury or damage
- §13-104-7 Fire use restrictions
- §13-104-7.5 Closing of areas
- §13-104-8 Hunting and fishing
- §13-104-9 Firearms or other weapons
- §13-104-10 Swimming and bathing
- §13-104-11 Vehicles and transportation
- §13-104-12 Animals
- §13-104-13 Audio devices and noise
- §13-104-14 Explosives
- §13-104-15 Disorderly conduct
- §13-104-16 Camping
- §13-104-17 Compliance with laws

### Subchapter 3 Permits

- §13-104-18 General provisions for permits
- §13-104-19 Camping permits
- §13-104-20 Special use permits
- §13-104-21 Collecting permits
- §13-104-22 Commercial permits
- §13-104-23 Access permits
- §13-104-24 Commercial activities

### Subchapter 4 Fees and Charges

- §13-104-25 General statement
- §13-104-26 Payment
- §13-104-27 Camping and cabin rental fees
- §13-104-28 Commercial use permit fees
- §13-104-29 Kiln fees
- §13-104-30 Permit processing fees
- §13-104-31 Parking and entrance fees
- §13-104-32 Fee for copies of rules

Historical Note: Chapter 104 of Title 13, Administrative Rules, is based substantially upon Regulation 1 [Eff. 12/9/43; am 8/12/76; R 9/28/81] of the Division of Forestry, Board of Commissioners of Agriculture and Forestry; and Regulation 10 [Eff. 12/12/59; R 9/28/81] of the Division of Forestry, Department of Land and Natural Resources.

SUBCHAPTER 1

GENERAL PROVISIONS

**§13-104-1 Purpose and applicability.** (a) The purpose of this chapter is to regulate activity within forest reserves established pursuant to sections 183-11 and 183-15, Hawaii Revised Statutes.

(b) These rules shall apply to all persons entering the boundaries and jurisdiction of a forest reserve. All persons shall observe and abide by officially posted signs within forest reserves. Everyone using the forest reserves should conduct themselves in a safe and courteous manner. Users of the forest reserves should be aware that there are certain inherent risks involved due to other users and the environment and should use caution at all times.

[Eff 9/28/81; am and comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §§183-1:5, 183-183-2021

**§13-104-2 Definitions.** As used in this chapter, unless the context requires otherwise:

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

"Administrator" means the administrator of the division of forestry and wildlife.

"Authorized representative" means the administrator, foresters, conservation enforcement officers, and other persons authorized by the board to act for the board.

"Board" means the board of land and natural

resources.

"Camping" or "to camp" means a person's physical presence any time one hour after sundown until sunrise in a forest reserve and indicia of camping includes the use of a forest reserve one hour after sundown until sunrise for living accommodation purposes, including, but not limited to: sleeping activities or making preparations to sleep (including the laying down of bedding for the purpose of sleeping); storing personal belongings; making any fire; the presence or use of any tents, temporary shelters, unauthorized structures or vehicles; or digging or breaking ground without proper authorization.

"Commercial activity" means the use of or activity in the forest reserve for which compensation is received by any person for goods or services or both rendered to customers or participants in that use or activity. Soliciting, demanding, or requesting gifts, money, or services shall be considered commercial activity. Commercial activities include activities with base of operations outside the boundaries of the forest reserve, display of merchandise, or activities which provide transportation to or from the forest reserve.

"Commercial use" is any type of commercial activity which is considered compatible with the functions and purposes of each individual area, facility, or unit within a forest reserve.

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

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

"Division" means the division of forestry and wildlife.

"Forest product" means any natural material from a forest reserve, including but not limited to timber, seedlings, seeds, fruits, greenery, tree fern, cinder, lava rock, ti leaves, and bamboo.

"Forest reserve" means those lands designated as forest reserves by the department pursuant to sections 183-11 and 183-15, Hawaii Revised Statutes, and other lands for plant sanctuaries, facilities, nurseries,

and baseyards under the custody and control of the division.

"Motorized vehicle" means a vehicle of any shape or form that depends on a motor (gas, electric, or other fuels) for propulsion.

"Non-motorized vehicle" means a vehicle of any shape or form that depends on human, animal, wind, spring, and other non-motorized means for propulsion.

"Structure" means any object or improvement constructed, installed, or placed on state lands, including but not limited to buildings, sheds, lean-tos, picnic tables, memorials, hunting blinds, tree stands, mobile homes, campers, trailers; provided that tents, campers, vehicles, and other temporary objects related to authorized activities shall not be considered structures for the purposes of this definition; provided further that the objects are in compliance with rules and regulations governing those activities on state lands.

"Tree harvesting" means the removal of live trees from a forest reserve. [Eff 9/28/81; am and comp 10/15/93; am 12/9/02; am and comp JAN 16 2021 ]  
(Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-3 Penalty.** (a) Any person violating any of the provisions of this chapter shall be subject to penalty as provided by law. All revenues generated from fines or penalties imposed pursuant to this section shall be deposited into the forest stewardship fund. Any equipment, article, instrument, aircraft, vehicle, 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 section 199-7, Hawaii Revised Statutes, and chapter 712A, Hawaii Revised Statutes.

(b) Restrictions and prohibitions imposed by this chapter shall not apply to state employees or their agents acting in the scope of their employment while within the forest reserve. Any penalty imposed may take into account emergency situations, such as

fire or other disasters or where necessary to protect life or property. [Eff 9/28/81; am and comp 10/15/93; am and comp **JAN 16 2021** ] (Auth: HRS §183-2) (Imp: HRS §§183-4, 183-5, 183-16, 195D-8, 199-7)

## SUBCHAPTER 2

### PUBLIC USE

**§13-104-4 Preservation of public property and resources.** The following activities are prohibited within a forest reserve:

- (1) To remove, injure, or kill any form of plant or animal life, either in whole or in part, except as authorized by the board or authorized representative or as provided by the rules of the board;
- (2) To remove, damage, or disturb any natural feature or resource (e.g., natural stream beds) except as authorized by the board or its authorized representative;
- (3) To remove, damage, or disturb any historic or prehistoric remains;
- (4) To remove, damage, or disturb any notice, marker, or structure;
- (5) To enter, occupy, or use any building, structure, facility, motorized vehicle, machine, equipment, or tool within a forest reserve except as authorized by the board or its representative;
- (6) To engage in any construction or improvement except as authorized by the board;
- (7) To sell, peddle, solicit, or offer for sale any merchandise or service except with written authorization from the board;
- (8) To distribute or post handbills, circulars, or other notices;
- (9) To introduce any plant or animal except as approved by the board; and
- (10) To enter or remain within a forest reserve



while under the influence of alcohol, narcotics, or drugs, to a degree that may endanger or cause annoyance to other persons, or endanger oneself or property. The use or possession of narcotics, drugs, or alcohol within forest reserves is prohibited. [Eff 9/28/81; am and comp 10/15/93; am and comp **JAN 16 2021** ] (Auth: HRS §183-2) (Imp: HRS §§183-2, 183-17)

**§13-104-5 Litter and sanitation.** The following acts are prohibited within a forest reserve:

- (1) To drain, dump, or leave any litter, animal waste or remains, or any other material which pollutes or is likely to cause pollution in the forest reserve, including streams and other water sources;
- (2) To deposit any body waste in areas without comfort stations, without digging a hole and covering all signs of the waste;
- (3) To deposit any body waste within 150 feet of a spring, stream, lake, or reservoir; and
- (4) To leave or abandon any large refuse, such as refrigerators or stoves, household garbage or trash, or other forms of waste or debris. [Eff 9/28/81; am and comp 10/15/93; am and comp **JAN 16 2021** ] (Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-5.5 Abandoned and unattended property.** No person shall abandon or leave personal property unattended within a forest reserve for any purpose not otherwise authorized or inconsistent with the purposes of the forest reserve. All such property may be seized, impounded, or otherwise confiscated by the board or any authorized representative.

- (1) If unattended personal property, including but not limited to motor vehicles, interferes with the safe or orderly management of a forest reserve or is stored on the publicly-managed lands, the personal property may be seized or impounded by the board or its authorized representative. Any article or instrument that is dangerous, noxious, hazardous, or considered as contraband under the laws of the State of Hawaii, which could endanger the health, safety, or welfare of the public, or public property, may be immediately seized and disposed of by any authorized representative of the department if found abandoned or unattended in the forest reserve.
- (2) All impounded vehicles shall be towed to a place of storage. Owners of towed vehicles shall contact the division or the division of conservation and resource enforcement branch office for information on towed vehicles. Towing, storage, and other related costs shall be assessed pursuant to section 290-11, Hawaii Revised Statutes.
- (3) All impounded or confiscated property, other than vehicles, shall be moved to a place of storage, and the owner shall be assessed moving, storage, and other related costs. Additionally, the owner of this property shall bear the responsibility for the risk of any loss or damage to their property.
- (4) Abandoned vehicles may be sold at public auction pursuant to section 290-11, Hawaii Revised Statutes. All other impounded or confiscated property shall be disposed of pursuant to section 171-31.5, Hawaii Revised Statutes. [Eff and comp **JAN 16 2021** ]  
(Auth: HRS §183-2) (Imp: HRS §§171-31.5, 183-2, 290-11)

**§13-104-6 Report of injury or damage.** All incidents resulting in injury or death to persons or damage to property shall be reported by the person or persons involved as soon as possible to the board or its authorized representative. This report does not relieve persons from the responsibility of making any other accident reports which may be required under federal, state, or county statutes, ordinances, and rules. [Eff 9/28/81; comp 10/15/93; am and comp **JAN 16 2021**] (Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-7 Fire use restrictions.** The following acts are prohibited within a forest reserve:

- (1) To build any fire on the ground or in any structure not otherwise authorized by this section;
- (2) To build any fire without using a portable stove or other self-contained unit;
- (3) To leave a fire unattended without extinguishing all traces of heat;
- (4) To deposit or discard any potential fire-producing material, such as embers, coals, or ashes that are too hot to touch;
- (5) To set on fire or cause to be set on fire any live or dead vegetation except for department fire control measures; and
- (6) To start a fire in windy conditions in a place or manner that is likely to cause live or dead vegetation to be set on fire. [Eff 9/28/81; am and comp 10/15/93; am and comp **JAN 16 2021**] (Auth: HRS §183-2) (Imp: HRS §§183-2, 185-7)

**§13-104-7.5 Closing of areas.** (a) The board, or its chairperson, may close or restrict the public use of all or any portion of a forest reserve in the event of an emergency or when deemed necessary for:

§13-104-7.5

- (1) The protection of the biological, geological, or cultural resources of the area;
- (2) Health, safety, or welfare reasons;
- (3) The protection of property; or
- (4) Management activities, by the posting of appropriate signs indicating the duration, extent, and scope of closure.

(b) The chairperson is authorized to effect a given closure or restriction under subsection (a) for a period of not more than ninety days. The board is authorized to effect a closure or restriction for any period as deemed necessary to accommodate the condition or conditions indicated under subsection

(a). [Eff and comp **JAN 16 2021**] (Auth: HRS §183-2)  
2) (Imp: HRS §§183-1.5, 183-2, 185-3)

**§13-104-8 Hunting and fishing.** The hunting, fishing, trapping, or disturbing of any fish, animal, or bird is prohibited except as permitted by department hunting or fishing rules. [Eff 9/28/81; comp 10/15/93; am and comp **JAN 16 2021**] (Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-9 Firearms or other weapons.** Firearms and other weapons, including those discharging projectiles by air or gas operation; or bow and arrow, are prohibited except as permitted by department hunting rules and are subject to all applicable federal, state, and county statutes, ordinances, and rules. [Eff 9/28/81; comp 10/15/93; am and comp **JAN 16 2021**] (Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-10 Swimming and bathing.** Swimming and bathing in all waters within a forest reserve are

permitted at an individual's own risk except in waters and at times where the activities are prohibited by the board or its authorized representative in the interest of public health and safety. The prohibited waters and times shall be designated by posted signs. [Eff 9/28/81; am and comp 10/15/93; am and comp **JAN 16 2021**] (Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-11 Vehicles and transportation.** The following acts are prohibited while under the jurisdiction of the state within a forest reserve:

- (1) To drive, operate, or use any motorized or non-motorized land vehicle, glider, hang glider, aircraft, unmanned aircraft system, balloon, or parachute carelessly and without due caution for the rights or safety of others and in a manner that endangers any person or property;
- (2) To launch or land aircraft, gliders, helicopters, balloons, parachutes, or other similar means of transportation without a permit for that purpose from the board or its authorized representative; provided that landing is authorized without a permit in case of any emergency;
- (3) To drive, operate, or use any motorized vehicle in any area or trails not designated for that purpose, including areas requiring four-wheel drive only;
- (4) To park any motorized or non-motorized vehicle or trailer except in designated areas;
- (5) To drive, lead, or ride a horse, mule, other animal, or non-motorized land vehicle in areas and on roads or trails that are posted against such activity;
- (6) To drive, operate, or use any motorized land vehicle without a functioning street legal muffler, and without a valid vehicle license plate, registration and safety sticker if

required by the appropriate respective county; and

- (7) To launch, land, or operate any unmanned aircraft system without a permit for that purpose from the board or its authorized representative. [Eff 9/28/81; am and comp 10/15/93; am and comp ]  
(Auth: HRS §183-2) (Imp: HRS §183-1.5, 183-2)

**§13-104-12 Animals.** (a) Dogs, cats, and other animals are prohibited within a forest reserve unless crated, caged, or on a leash, at all times except for hunting dogs when permitted by chapters 13-122 and 13-123.

(b) All dogs used for hunting shall be crated, caged, or leashed or otherwise under restrictive control during transportation while in transit at all times, to and from hunting areas within the forest reserve.

(c) Dogs, cats, or other domestic animals, observed by an authorized representative of the board to be running at large or in the act of killing, injuring, or molesting humans, wildlife, or property, may be disposed of in the interest of public safety and the protection of the forest reserve. [Eff 9/28/81; am and comp 10/15/93; am and comp ]  
(Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-13 Audio devices and noise.** Creating noise or sound within a forest reserve, either vocally or otherwise (e.g., public address systems, radios, television sets, musical instruments) or use of any noise producing devices (e.g., electric generating plants or other equipment driven by motors or engines) in a manner and at times which creates a nuisance is prohibited. [Eff 9/28/81; comp 10/15/93; am and

comp **JAN 16 2021** ] (Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-14 Explosives.** The use or possession of fireworks, firecrackers, or explosive devices within a forest reserve is prohibited. [Eff 9/28/81; comp 10/15/93; am and comp **JAN 16 2021** ] (Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-15 Disorderly conduct.** Disorderly conduct, as defined in section 711-1101, Hawaii Revised Statutes, is prohibited within a forest reserve. [Eff 9/28/81; comp 10/15/93; am and comp **JAN 16 2021** ] (Auth: HRS §183-2) (Imp: HRS §§183-2, 711-1101)

**§13-104-16 Camping.** No person shall camp, or use recreational trailers or other camper units within any forest reserve, except with the prior written authorization of the board or its authorized representative and as permitted by the rules of the department. [Eff 9/28/81; comp 10/15/93; am and comp **JAN 16 2021** ] (Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-17 Compliance with laws.** All persons entering the boundaries of a forest reserve shall comply with all federal, state, and county laws, ordinances, and rules. [Eff 9/28/81; comp 10/15/93; am and comp **JAN 16 2021** ] (Auth: HRS §183-2) (Imp: HRS §183-2)

SUBCHAPTER 3

PERMITS

**§13-104-18 General provisions for permits. (a)**

The board or its authorized representative may issue the following types of permits:

- (1) Camping;
- (2) Special use;
- (3) Collecting;
- (4) Commercial; and
- (5) Access.

(b) All permits are subject to the following provisions:

- (1) Permits are subject to denial, cancellation, or termination at any time by the board or its authorized representative upon violation of these rules or any conditions of the permit or any federal, state, or county statutes, ordinances, and rules or for danger to the public or because of natural causes. Persons who have violated permit conditions or the rules may be ordered by the department to leave the forest reserve. Permittees who have violated permit conditions or the rules may be denied future permits for forest reserves or subject to the imposition of additional permit restrictions;
- (2) Permits shall not be transferable;
- (3) Persons or organizations to whom permits are issued shall be held responsible for all conditions on the permit;
- (4) All persons eighteen years of age or older shall be eligible to secure a permit and all minors shall be allowed use of the premises; provided that they are under the direct supervision of one adult for every ten minors;
- (5) The size of groups as well as the length of time any permit may be in effect may be



- limited by the board or its authorized representative;
- (6) The board or its authorized representative may require the permittee, at the permittee's own cost, to provide police protection in the interest of the public safety and welfare and for the protection of property when the number of persons using the forest reserve is one hundred or more;
  - (7) Fees and charges as set by the board may be assessed when permits are granted for the exclusive use of areas or facilities, or when charges are necessary to defray the cost of special facilities, services, or supplies provided by the State, or as otherwise determined by the board or its authorized representative when necessary to carry out the provisions of chapter 183, Hawaii Revised Statutes. Fees and charges contained in this chapter may be waived or reduced by the board or its authorized representative if the waiver or reduction is in the public interest;
  - (8) The board may set and approve a forest product price list. Charges may be assessed when permits are granted for forest products. The forest product price list shall reasonably reflect fair market value and be periodically updated by the board;
  - (9) All permittees, upon request, shall show the permit to any law enforcement officer, the board, or its authorized representative;
  - (10) By signing the permit and entering into the forest reserve, all persons included on the permit agree to comply with all the terms and conditions of the permit, as well as applicable laws and regulations; and consent to present the permit to a duly authorized representative of the department upon request; and
  - (11) Persons applying for a permit shall provide, if requested, identification for all persons included on a permit, satisfactory to the

board or its authorized representative. The board or its authorized representative may require the names, addresses, and telephone numbers of all persons included on a permit. [Eff 9/28/81; comp 10/15/93; am and comp **JAN 16 2021** ] (Auth: HRS §183-2) (Imp: HRS §§183-1.5, 183-2)

**§13-104-19 Camping permits.** (a) All persons, groups, organizations, or associations wishing to camp within a forest reserve shall obtain a camping permit authorizing the use of the specific area and facilities for camping purposes for the stated date or dates.

(b) Each camping permit will reserve the use of a designated area for the stated date or dates of use. Camping is permitted only in designated areas or sites.

(c) No person, group, organization, or association shall remain at any one specific camping site for longer than seven days; provided that the board or its authorized representative may extend the length of stay for good cause.

(d) After issuance of a camping permit, a period of at least thirty days shall pass before another camping permit for the same designated area may be issued to any person listed on any previously valid or current camping permit. The board or its authorized representative may waive a portion of the thirty-day period for good cause.

(e) Camping permits may be denied, canceled, or terminated for the following reasons:

- (1) When the size of the group will exceed or exceeds the capacity of the existing site or facilities;
- (2) When there are inadequate facilities to meet the immediate needs of the camper or campers;
- (3) When repairs or improvements are being made at the campsite; or

(4) When a state of emergency is declared or for other reasons involving the health, safety, and welfare of the applicants or permittees; upon the declaration of the board or its authorized representative. [Eff 9/28/81; am and comp 10/15/93; am and comp **JAN 16 2021**] (Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-20 Special use permits.** (a) Special use permits are only issued by the board or its authorized representative. Special uses are those provided for in this section and which are considered compatible with the functions and purposes of each individual area, facility, or unit within a forest reserve. Special uses include but are not limited to community activities, such as meetings, weddings, concerts, shows, and other community events; and the scientific collection of plants and animals.

(b) Applications for special use permits shall be received by the board or its authorized representative at least fifteen working days in advance of the date the permit is to be in effect, however, the deadline may be waived by the board or its authorized representative upon a showing of good cause.

(c) A request for a special use permit shall be considered on its own merits, including its potential effect on forest reserve resources and the public's use and enjoyment of the forest reserve. [Eff 9/28/81; am and comp 10/15/93; am and comp **JAN 16 2021**] (Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-21 Collecting permits.** (a) Persons wishing to collect forest products for personal use and at no charge shall obtain a collecting permit authorizing the collection in a specific area.

(b) Each application for a collecting permit

shall be considered on its own merits, including its potential effect on forest reserve resources and the public's use and enjoyment of the forest reserve.

(c) Collecting permits shall specify:

- (1) The date or dates of collection;
- (2) The quantities and products to be collected;
- (3) The areas of collection; and
- (4) Any other terms and conditions deemed necessary by the board or its authorized representative.

(d) Permits shall not be issued for collecting products for sale.

(e) No permits shall be issued for the collection of endangered or threatened wildlife or plants except as provided by chapter 13-124.

(f) No more than one permit within a seven-day period may be issued to the same person or persons, group, organization, or association listed on the permit for collecting any of the same forest products.

[Eff 9/28/81; am and comp 10/15/93; am and

comp **JAN 16 2021** ] (Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-22 Commercial permits.** (a) Commercial use permits. The board or its authorized representative may issue commercial use permits.

- (1) Applications for commercial use permits shall be received by the board or its authorized representative at least thirty working days in advance of the date the permit is to be in effect; however, the deadline may be waived by the board or its authorized representative upon a showing of good cause.
- (2) A request for a commercial use permit shall be considered on its own merits, including its potential effect on forest reserve resources and the public's use and enjoyment of the forest reserve.
- (3) The value of the commercial activity shall

be decided by the board or its authorized representative and shall not exceed \$10,000.

- (4) The time of entry for the commercial activity shall not exceed thirty days, except that the board or its authorized representative may extend this time for good cause.

(b) Commercial harvest permits. The board or its authorized representative may issue permits for the purpose of purchasing and harvesting forest products from a forest reserve.

- (1) Each application for a commercial harvest permit shall be considered on its own merits, including its potential effect on forest reserve resources and the public's use and enjoyment of the forest reserve; provided further that tree harvesting shall be done in accordance with a management plan as required by section 183-16.5, Hawaii Revised Statutes.
- (2) The value of the raw material to be harvested shall not exceed \$10,000. The quantity to be harvested shall be decided by the board or its authorized representative.
- (3) The time of entry for harvesting shall not exceed fourteen days for permits with designated raw material value not in excess of \$1,000, or thirty days for permits with designated raw material the value of which exceeds \$1,000 but does not exceed \$10,000, except that the board or its authorized representative may extend this time for good cause.
- (4) No more than one permit within a thirty day period or six permits within a calendar year may be issued to the same person, group, organization, or association for harvesting the same product.
- (5) Each permit shall specify:
  - (A) The products to be harvested;
  - (B) The amount to be harvested;
  - (C) The dollar value of the products;

- (D) The designated area to be harvested;
- (E) The date or dates the harvesting may take place; and
- (F) Any other terms or conditions deemed necessary by the board or its authorized representative.

(c) Commercial salvage permits. The board or its authorized representative may issue commercial salvage permits for the purpose of purchasing and removing dead or hazardous trees.

- (1) A request for a commercial salvage permit shall be considered on its own merits, including its potential effect on forest reserve resources and the public's use and enjoyment of the forest reserve.
- (2) The value of the raw material to be salvaged shall not exceed \$10,000. The quantity to be salvaged shall be decided by the board or its authorized representative.
- (3) The time of entry for salvaging shall not exceed fourteen days for permits with designated raw material value not in excess of \$1,000, or thirty days for permits with designated raw material the value of which exceeds \$1,000 but does not exceed \$10,000, except that the board or its authorized representative may extend this time for good cause. [Eff 9/28/81; comp 10/15/93; am 10/4/05; am and comp **JAN 16 2021** ] (Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-23 Access permits.** Permits for access to or entry into forest reserves may be required by the board or its authorized representative for the following purposes:

- (1) To comply with the requirements of private landowners or lessees who permit access to forest reserves through their land;
- (2) To control the number of people using a forest reserve or an area within a forest

- reserve in order to minimize any impact upon environmentally sensitive areas;
- (3) To control the types of uses of a forest reserve or an area within a forest reserve in order to minimize the dangers of incompatible uses in the same area (e.g., horseback riding and motorcycle riding);
  - (4) To control uses of a forest reserve, or any portion thereof, which may be under closure or otherwise restricted; and
  - (5) For scientific research activities that are otherwise prohibited by this chapter. [Eff 9/28/81; am and comp 10/15/93; am and comp **JAN 16 2021** ] (Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-24 Commercial activities.** No person shall engage in commercial activities of any kind in a forest reserve without a written permit from the board or its authorized representative. [Eff 12/9/02; am and comp **JAN 16 2021** ] (Auth: HRS §183-2) (Imp: HRS §183-2)

#### SUBCHAPTER 4

#### FEES AND CHARGES

**§13-104-25 General statement.** (a) This subchapter establishes user fees and charges for services, facilities, and activities for forestry and recreational purposes, where applicable under the jurisdiction of the division.

- (b) The fees and charges are:
  - (1) Collected to offset the expenses of operating, maintaining, and managing the facilities and services;
  - (2) Fixed with due regard to the primary purposes of providing public outdoor

§13-104-25

recreational facilities and promoting an appreciation and connection with Hawaii's forests; and

(3) Set by categories.

(c) The acceptance of payment or billings shall not waive the nature of trespass or ratify or permit illegal camping. [Eff and comp JAN 16 2021 ]  
(Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-26 Payment.** (a) Method of payment of fees and charges shall be online by credit card or by business check, cashier's check, money order, or cash at division branch offices or the administration office.

(b) All fees shall be paid in advance of issuance of a permit, except as specified by chapter 13-104. [Eff and comp JAN 16 2021 ] (Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-27 Camping and cabin rental fees.** The camping and cabin rental fees shall be set according to the amounts in Schedule A - Camping and Cabin Rental Fees - 12/28/16. [Eff and comp JAN 16 2021 ]  
(Auth: HRS §183-2) (Imp: HRS §183-2)



<b>Schedule A</b> <b>Camping and Cabin Rental Fees</b> <b>12/28/16</b>				
	<b>Maximum No. Campsites</b>	<b>Maximum No. Persons per campsite</b>	<b>Resident Fee (\$/night/ campsite)</b>	<b>Nonresident Fee (\$/night/ campsite)</b>
Category 1	Up to 5	Up to 15	\$12*	\$18**
<i>Unimproved campsite or improved campsite with minimal amenities (i.e., trailside camping or a campsite with picnic table and shelter and clivus toilet)</i>				
Category 2	1 Cabin	Up to 6	\$30/night per cabin ***	\$50/night per cabin ***
<i>Improved campsite or small cabin that houses no more than 6 persons</i>				
Category 3	1 Cabin	Up to 20	\$60/night per cabin ***	\$90/night per cabin ***
<i>Improved campsite or large cabin that houses 7 or more persons</i>				
* A resident camping permit for up to 6 persons is \$12. Additional persons will cost \$2 per person. ** A nonresident camping permit for up to 6 persons is \$18. Additional persons will cost \$3 per person. ***Fee reflects total cost for cabin rental regardless of number of persons staying overnight.				

**§13-104-28 Commercial use permit fees.**

Commercial use permit fees are listed in Schedule B - Commercial Use Permit Fees - 12/28/16 and shall apply depending on the applicable commercial activity or activities; provided that the requested recreational facility is approved for commercial use by the forestry and wildlife manager. [Eff and comp **JAN 16 2021** ] (Auth: HRS §183-2) (Imp: HRS §183-2)

<b>Schedule B</b> <b>Commercial Use Permit Fees</b> <b>12/28/16</b>	
Base commercial use permit processing fee	\$10
Price per pedestrian	\$5
Price per non-motorized bicycle or horseback rider	\$7
Price per motorized vehicle up to 5 people	\$25
Price per motorized vehicle up to 8 people	\$50
Price per motorized vehicle up to 12 people	\$75
Price per motorized vehicle up to 15+ people	\$100
Price per operator and/or passenger of aerial craft launching from and/or landing in a forest reserve	\$5
Price per campsite, facility, or cabin per day	\$100
Price per commercial film permit	\$100
Price per item/activity (miscellaneous)	\$20

**§13-104-29 Kiln fees.** Kiln fees are listed in Schedule C - Kiln Fees - 12/28/16 and shall be paid no later than fifteen days after kiln services are rendered. [Eff and comp **JAN 16 2021** ] (Auth: HRS §183-2) (Imp: HRS §183-2)

<b>Schedule C</b> <b>Kiln Fees</b> <b>12/28/16</b>	
<b>Unit</b>	<b>Unit Cost</b>
1 - 900 Board Feet	\$0.70 each
901 - 1000 Board Feet	\$0.60 each
1001 - 1500 Board Feet	\$0.50 each
1501 and up Board Feet	\$0.40 each

**§13-104-30 Permit processing fees.** The fee for the processing of an access permit for scientific research purposes shall be \$50. The fee for processing any other permit shall be \$10. [Eff and comp **JAN 16 2021** ] (Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-31 Parking and entrance fees.** The fee for parking a vehicle may be assessed at \$5 per vehicle, per day. [Eff and comp **JAN 16 2021** ]  
(Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-32 Fee for copies of rules.** The fee per copy of these rules shall be 10 cents per page. No fee shall be charged for copies furnished to federal, state, or local governmental agencies. The fee may be waived in other instances at the discretion of the administrator or the administrator's authorized representative when a waiver is in the public interest. [Eff and comp **JAN 16 2021** ] (Auth: HRS §183-2) (Imp: HRS §§91-2.5, 183-2)

21 JAN -6 AM 14

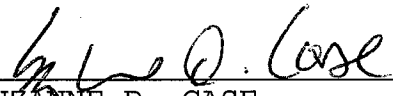
LIEUTENANT GOVERNOR'S  
OFFICE


104-25

5382

Amendments to and compilation of chapter 13-104, Hawaii Administrative Rules, on the Summary page dated January 10, 2020, were adopted on January 10, 2020, following public hearings held on, April 18, 19, 23, 24 and 25, 2018, after public notices are given in the Honolulu Star-Advertiser, Hawaii Tribune Herald, West Hawaii Today, Maui News and The Garden Isle on March 18, 2018, and in the Molokai Dispatch on March 21, 2018.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

  
SUZANNE D. CASE  
Chairperson, Board of  
Land and Natural  
Resources

  
DAVID Y. IGE  
Governor  
State of Hawaii

Dated: JAN 4 2021

APPROVED AS TO FORM:

  
Deputy Attorney General

Filed

**7. Ordinance No. 1088, An Ordinance to Amend Chapter 8, Kauai  
County Code 1987, Article 27 Shoreline Setback and Coastal Erosion**

§ 8-27.1 Applicability

§ 8-27.2 Definitions

§ 8-27.3 Shoreline setback determination: establishment of the  
shoreline setback line

§ 8-27.4 Minimum shoreline setback requirements

§ 8-27.5 Applicable laws

§ 8-27.6 Prohibited activities in the shoreline setback area

§ 8-27.7 Permitted structures within the shoreline setback area

§ 8-27.8 Procedures for obtaining shoreline setback determinations

§ 8-27.9 Variance application

§ 8-27.10 Criteria for approval of a variance

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

---

(County of Kaua'i Planning Department, ZA-2020-14)

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, 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.

Prior to the adoption of Kaua'i's Shoreline Setback Ordinance in 2008, development and other improvements on coastal lands occurred without regard to erosion and coastal 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 Kaua'i Shoreline Erosion Management Study (September, 1990).

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. In 2014, the Council adopted Ordinance No. 949, which updated the 2010 study with new historical erosion data. This study was again recently updated in December 2018, and there is a clear need to update Kaua'i's official Coastal Erosion Study maps with the new data.

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) 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) 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) Update the Kaua'i Coastal Erosion Study to include the updated erosion rates and updated data completed by the University of Hawai'i Coastal Geology Group in 2018.

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 No. 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. 8-27.0 Purpose.** The purpose of this Article is to protect life and property, provide access to and along the shoreline, protect and preserve Native Hawaiian cultural resources and communities threatened by sea level rise, 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:] where structures and/or prohibited activities are proposed within five hundred (500) feet of the shoreline.

[(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 Kauaʻi fronted by a sandy beach from the Kauaʻi Planning Department. These rates were calculated by the University of Hawaiʻi’s Coastal Geology Group for the Kauaʻi Coastal Erosion [Study (2010).] Study, and it was last updated in 2018. 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 Hawaiʻi.

“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.

“Coastal hazard disclosure statement” means a statement prescribed by the department disclosing the potential for coastal hazards and the potential for further restrictions and limitations on development of the respective property in the future. This statement is an addendum to the shoreline setback determination application, and it must be signed by the property owner prior to acceptance of the determination application.

“Commission” means the Planning Commission of the County of Kauaʻi.

“Department” means the Planning Department of the County of Kauaʻi.



“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] the 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.] Kaua‘i, and it was last updated in 2018. 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, public park facilities (excluding restrooms, wastewater systems, and shoreline armoring structures or improvements), portable or removable walkways for public access, or, as determined by the director, a structure primarily benefitting the public that will not impact or be impacted by coastal erosion processes; 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.

“Public Park Facilities” means recreational facilities owned and operated by state or county park agencies for the benefit and use of the general public.

“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] reconstruction or renewal of any part of a lawfully existing structure, but not the entire structure, solely for the purpose of its maintenance and does not result in an addition to, or enlargement or expansion of, the lawfully existing structure[.], such as alterations of floors, roofs, walls, or the supporting structure of a building or the rearrangement of any of its component parts. A “substantial improvement” as defined herein shall not be considered a repair. Repair shall be

consistent with the definition of “repair” under Sec. 8-1.5, Kaua‘i County Code 1987, as amended.

“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 Certification” means a signed statement by the chairperson of the Board of Land and Natural Resources that the shoreline is as located and shown on the map as of a certain date.

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

“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.] means that inland line established by Section 8-27.3 that runs parallel to the shoreline.

“Storm buffer zone” is the first forty [feet (40’)] (40) feet 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] A shoreline setback determination shall be required for all structures and subdivisions proposed on lands covered by this [Article.] Article, except in the following two cases:

[(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.]

(1) As permitted in Section 8-27.7;

(2) [In cases where] 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 (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 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.

Average Lot Depth	Setback Line
Less than 140 feet	40 feet plus (70 X annual coastal erosion rate) plus 20 feet
140 feet to 220 feet	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
Greater than 220 feet	Greater of: 40 feet plus (70 X annual coastal erosion rate) plus 20 feet -or- 100 feet from the certified shoreline

(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,  $(\text{Average Lot Depth} - 100)/2 + 40$ , subject to the following:

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

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

[(3) For all lots, the] (2) 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)] five hundred (500) 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.] sixty (60) feet, except as determined by the Planning Commission pursuant to Section 8-27.10.

#### **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.

In case of a conflict between the requirements of any other state law or county ordinance regarding shoreline setback lines, the more restrictive requirements shall apply.

#### **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 shoreline 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.] prior to December 2, 2009.

(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] or legally nonconforming [structures/activities.] structures.

(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] that results 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.] and is ancillary or associated with one of the following sites:

(A) A Hawaiian fish pond;

(B) A publicly owned and legal boating, maritime, or water sports recreational facility.

(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.] law; and

(D) The Planning Director determines that the proposal complies with the definition of "repair" under Sec. 8-1.5, Kaua'i County Code 1987, as amended.

(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.
  - (15) Repair and/or rebuilding of existing public park facilities, excluding shoreline armoring structures or improvements.
- (b) The following conditions shall apply to any new structure or any substantial improvement 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')] (40) feet 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, (v) adversely impact neighboring property, or [(v)] (vi) 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 Shoreline Setback Determinations.**

(a) Unless as otherwise provided in this Article, any structure proposed [in the shoreline setback area] within five hundred (500) feet of the shoreline shall first obtain a shoreline setback determination from the Director in accordance with this Article.

(b) A proposed structure in the shoreline setback area or within five hundred [feet (500')] (500) feet 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] five hundred thousand dollars (\$500,000.00) 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)] five hundred thousand dollars (\$500,000.00) 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] A list of 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] 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.

(11) All applications for Shoreline Setback Determinations shall include a Coastal Hazard Disclosure Statement signed by the property owner.

(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), and the proposed development's impacts to neighboring properties.

(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 all owners of real property [which abut] within three hundred (300) feet of 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 twenty thousand dollars (\$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] 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] that 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)] sixty (60) 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 and neighboring properties;

(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/ MASON K. CHOCK  
(By Request)

DATE OF INTRODUCTION:

**November 12, 2020**

Līhu'e, Kaua'i, Hawai'i


V:\BILLS\2020-2022 TERM\2813d1 MC\_AMK\_jy.docx

CERTIFICATE OF THE COUNTY CLERK

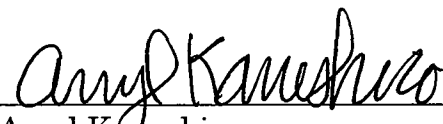
I hereby certify that heretofore attached is a true and correct copy of Bill No. 2813, Draft 1, which was adopted on second and final reading by the Council of the County of Kaua'i at its meeting held on January 27, 2021, by the following vote:

FOR ADOPTION:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Lihu'e, Hawai'i  
January 27, 2021

  
Jade K. Fountain-Tanigawa  
County Clerk, County of Kaua'i

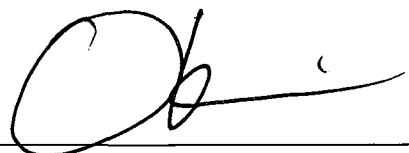
ATTEST:

  
Arryl Kaneshiro  
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

January 27, 2021

Approved this 4<sup>th</sup> day of  
February, 2021.

  
Derek S.K. Kawakami,  
Mayor  
County of Kaua'i

**8. Ordinance No. 21-27 Relating to Special Management Area Use Permits**

Revised Ordinances of Honolulu (ROH) § 25-5.1 Required materials



## A BILL FOR AN ORDINANCE

RELATING TO SPECIAL MANAGEMENT AREA USE PERMITS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to require an applicant for a special management area use permit to present the proposed project to the applicable neighborhood board or appropriate community association prior to submitting an application to the Department of Planning and Permitting.

SECTION 2. Section 25-5.1, Revised Ordinances of Honolulu 1990, as amended by Ordinance 20-18, is amended by amending subsection (b) to read as follows:

"(b) When a proposed development requires a special management area use permit, an applicant for development within the special management area will be responsible for ~~[submitting]~~ the following ~~[to the agency]~~:

(1) Prior to submitting an application to the agency, presenting the project to the neighborhood board of the district where the project is located, or, if no such neighborhood board exists, an appropriate community association. The applicant shall provide written notice of such presentation to owners of all properties adjoining the proposed project. The requirements of this subdivision will be deemed satisfied if the applicant makes a written request to present the project to the neighborhood board or community association and:

(A) The neighborhood board or community association fails to provide the applicant with an opportunity to present the project at a meeting held within 60 days of the date of the written request; or

(B) The neighborhood board or community association provides the applicant with written notice that it has no objection to the project or that no presentation of the project is necessary; and

(2) Submitting to the agency:

~~[(4)]~~(A) A completed application form (to be obtained from the agency);

~~[(2)]~~(B) The items set forth in subsections (a)(2) through (7);



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE 21-27  
BILL 27(2021)

---

**A BILL FOR AN ORDINANCE**

---

~~[(3)]~~(C) A written description of the affected environment which addresses the development's technical and environmental characteristics;

~~[(4)]~~(D) Additional information that may be needed by the agency for determining the impacts of the proposed development on special wetland areas; and

~~[(5)-(A)]~~(E) (i) If the director allows concurrent processing of the assessment required by Section 25-3.3(c)(1) and the application for the permit, a copy of either a draft environmental assessment or a draft environmental impact statement preparation notice.

~~[(B)]~~ (ii) If the director does not allow concurrent processing of the assessment required by Section 25-3.3(c)(1) and the application for the permit, a copy of either the final environmental assessment for which a finding of no significant impact has been issued, or a completed and accepted EIS."

SECTION 3. Ordinance material to be repealed is bracketed and stricken. New material is underscored. When revising, compiling, or printing this Ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the bracketed and stricken material, or the underscoring.



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE 21-27  
BILL 27(2021)

**A BILL FOR AN ORDINANCE**

SECTION 4. This ordinance takes effect upon its approval.

INTRODUCED BY:

Hinda Tsunoyoshi  
Esther Uiaaine

DATE OF INTRODUCTION:

MAY 24 2021

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Tom Spurlin  
Deputy Corporation Counsel **DAWN D. M. SPURLIN**

APPROVED this 25 day of August, 20 21.

Rick Blangiardi  
**RICK BLANGIARDI**, Mayor  
City and County of Honolulu



CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
CERTIFICATE

BILL 27 (2021)

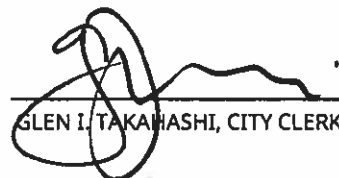
Introduced: 05/24/21 By: HEIDI TSUNEYOSHI  
ESTHER KIA'ĀINA Committee: ZONING AND PLANNING (ZP)


Title: RELATING TO SPECIAL MANAGEMENT AREA USE PERMITS.

Voting Legend: \* = Aye w/Reservations

05/24/21	INTRO	Introduced.
06/02/21	CCL	Passed first reading.
		9 AYES: CORDERO, ELEFANTE, FUKUNAGA, KIA'ĀINA, SAY, TSUNEYOSHI, TULBA, TUPOLA, WATERS
06/17/21	ZP	Reported out for passage on second reading and scheduling of a public hearing.
		CR-194
		4 AYES: CORDERO, ELEFANTE, KIA'ĀINA, SAY
06/25/21	PUBLISH	Public hearing notice published in the Honolulu Star-Advertiser.
07/07/21	CCL/PH	Committee report adopted. Bill passed second reading, public hearing closed and referred to committee.
		9 AYES: CORDERO, ELEFANTE, FUKUNAGA, KIA'ĀINA, SAY, TSUNEYOSHI, TULBA, TUPOLA, WATERS
07/12/21	PUBLISH	Second reading notice published in the Honolulu Star-Advertiser.
07/22/21	ZP	Reported out for passage on third reading.
		CR-223
		4 AYES: CORDERO, ELEFANTE, KIA'ĀINA, SAY
08/11/21	CCL	Committee report adopted and Bill passed third reading.
		8 AYES: CORDERO, ELEFANTE, FUKUNAGA, SAY, TSUNEYOSHI, TULBA, TUPOLA, WATERS
		1 ABSENT: KIA'ĀINA

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.

  
GLEN I. TAKAHASHI, CITY CLERK

  
TOMMY WATERS, CHAIR AND PRESIDING OFFICER

**9. Act 223, Session Laws of Hawaii (SLH) 2022 Relating to  
Development Rights**

HRS § 46-161 Findings and purpose

HRS § 46-163 Conditions for the transfer of development rights



GOV. MSG. NO. 1324

EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

June 27, 2022

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

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

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

This is to inform you that on June 27, 2022, the following bill was signed into law:

HB1436 HD1 SD2 CD1

RELATING TO DEVELOPMENT RIGHTS.  
**ACT 223**

Sincerely,

DAVID Y. IGE  
Governor, State of Hawai'i

Approved by the Governor  
JUN 27 2022  
on \_\_\_\_\_

ACT 223

HOUSE OF REPRESENTATIVES  
THIRTY-FIRST LEGISLATURE, 2022  
STATE OF HAWAII

H.B. NO. 1436  
H.D. 1  
S.D. 2  
C.D. 1

---

## A BILL FOR AN ACT

---

RELATING TO DEVELOPMENT RIGHTS.

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

1       SECTION 1. The legislature finds that climate change is  
2 real. Rising sea levels throughout the State will erode  
3 beaches, damage habitats, and disrupt ecological processes and  
4 cause saline intrusion into freshwater ecosystems and  
5 groundwater, flooding or inundation of low-lying areas, and  
6 damage to private and public property and infrastructure.

7       The purpose of this Act is to expand the authority of the  
8 counties to regulate the transfer of development rights to help  
9 protect areas vulnerable to sea level rise, coastal erosion,  
10 storm surge, and flooding, thereby facilitating the potential  
11 movement of development away from at-risk areas to locations  
12 more appropriate for development.

13       SECTION 2. Section 46-161, Hawaii Revised Statutes, is  
14 amended to read as follows:

15       "~~46-161~~ **Findings and purpose.** The legislature  
16 finds that there is a need to clarify the authority of the



1 counties to exercise the power to transfer development rights  
2 within a comprehensive planning program to:

- 3 (1) Protect the natural, scenic, recreational, and  
4 agricultural qualities of open lands including  
5 critical resource areas; [and]  
6 (2) Enhance sites and areas of special character or  
7 special historical, cultural, aesthetic, or economic  
8 interest or value[-]; and  
9 (3) Protect from development lands that are vulnerable to  
10 impacts and hazards from sea level rise, coastal  
11 erosion, storm surge, and flooding associated with  
12 climate change.

13 The legislature finds that transfer of development rights  
14 programs can help to ensure proper growth, while protecting open  
15 and distinctive areas and spaces of varied size and character,  
16 including many areas that have significant agricultural,  
17 ecological, scenic, historical, aesthetic, or economic value.  
18 These areas, if preserved and maintained in their present state,  
19 would constitute important physical, social, aesthetic, or  
20 economic assets to existing or impending urban and metropolitan  
21 development. The legislature further finds that the transfer of



1 development rights from lands vulnerable to or adversely  
2 affected by sea level rise, coastal erosion, storm surge, or  
3 flooding to lands that are not at risk from these hazards would  
4 reduce property losses and result in long-term economic and  
5 fiscal benefits to communities and government. The legislature  
6 ~~[further]~~ also finds that transferring development rights is a  
7 useful technique to achieve community objectives. Properly  
8 utilized, the concept can be fully consistent with comprehensive  
9 planning requirements. The legislature further finds and  
10 declares that the concept, utilizing the normal market in land,  
11 can provide a mechanism of just compensation to owners of  
12 property to be protected or preserved."

13 SECTION 3. Section 46-163, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "~~[§46-163]~~ **Conditions for the transfer of development**  
16 **rights.** In addition to any existing power, duty, and authority  
17 of the counties to regulate land uses by planning or zoning, the  
18 counties are hereby authorized to transfer and regulate the  
19 transfer of development rights, subject to the conditions set  
20 forth under this part, as well as planning laws, zoning laws,  
21 and any other conditions as the legislative body of each county



1 deems necessary and appropriate. The purpose of providing for  
2 transfer of development rights shall be to:

- 3 (1) Protect the natural, scenic, and agricultural  
4 qualities of open lands;  
5 (2) Enhance sites and areas of special character or  
6 special historical, cultural, aesthetic, or economic  
7 interest or value; [and]  
8 (3) Protect lands at risk from sea level rise, coastal  
9 erosion, storm surge, or flooding; and  
10 ~~[+3+]~~ (4) Enable and encourage flexibility of design and  
11 careful management of land in recognition of land as a  
12 basic and valuable natural resource."

13 SECTION 4. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 5. This Act shall take effect upon its approval.

APPROVED this 27th day of June , 2022

*David Y. Ige*

GOVERNOR OF THE STATE OF HAWAII



HB No. 1436, HD 1, SD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 3, 2022  
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2022.



Scott K. Saiki  
Speaker  
House of Representatives



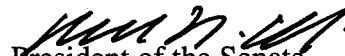
Brian L. Takeshita  
Chief Clerk  
House of Representatives

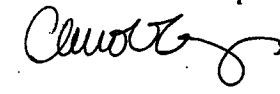


**THE SENATE OF THE STATE OF HAWAII**

Date: May 3, 2022  
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate  
of the Thirty-First Legislature of the State of Hawai'i, Regular Session of 2022.

  
President of the Senate

  
Clerk of the Senate

## **10. Act 209, SLH 2022 Relating to Permits**

HRS § 171-55 Permits



**GOV. MSG. NO. 1310**

EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

June 27, 2022

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

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

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

This is to inform you that on June 27, 2022, the following bill was signed into law:

HB2006 HD1 SD1

RELATING TO PERMITS.  
**ACT 209**

Sincerely,

DAVID Y. IGE  
Governor, State of Hawai'i

Approved by the Governor

on JUN 27 2022HOUSE OF REPRESENTATIVES  
THIRTY-FIRST LEGISLATURE, 2022  
STATE OF HAWAII

ACT 209

H.B. NO. 2006  
H.D. 1  
S.D. 1

---

# A BILL FOR AN ACT

---

RELATING TO PERMITS.

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

1       SECTION 1. Section 171-55, Hawaii Revised Statutes, is  
2 amended to read as follows:

3       "§171-55 Permits. (a) Notwithstanding any other law to  
4 the contrary, the board of land and natural resources may issue  
5 permits for the temporary occupancy of state lands or an  
6 interest therein on a month-to-month basis by direct negotiation  
7 without public auction, under conditions and rent which will  
8 serve the best interests of the State, subject, however, to  
9 those restrictions as may from time to time be expressly imposed  
10 by the board. A permit on a month-to-month basis may continue  
11 for a period not to exceed one year from the date of its  
12 issuance; provided that the board may allow the permit to  
13 continue on a month-to-month basis for additional one year  
14 periods.

15       (b) In each emergency permit for the installation of a  
16 sandbag, the board shall include as a condition a requirement  
17 for the attachment of identifying information, including the



1 permittee's contact information and the permit number, to the  
2 sandbag. The board shall specify the form and manner in which  
3 the identifying information shall be attached to the sandbag."

4 SECTION 2. New statutory material is underscored.

5 SECTION 3. This Act shall take effect on July 1, 2022.

APPROVED this 27th day of June , 2022

*David Y. Ige*

GOVERNOR OF THE STATE OF HAWAII



HB No. 2006, HD 1, SD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 21, 2022  
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2022.



Scott K. Saiki  
Speaker  
House of Representatives





Brian L. Takeshita  
Chief Clerk  
House of Representatives

**THE SENATE OF THE STATE OF HAWAI'I**

Date: April 7, 2022  
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the Senate  
of the Thirty-First Legislature of the State of Hawai'i, Regular Session of 2022.

  
President of the Senate

  
Clerk of the Senate

## **11. Act 162, SLH 2021 Relating to Water Quality**

HRS § 342D-6 Permits; procedures for



ACT 162

S.B. NO. 367

A Bill for an Act Relating to Water Quality.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that Hawaii is losing its beaches at an alarming rate due to chronic beach erosion, sediment deficiencies, sea-level rise, and shoreline armoring. According to a 2012 study by the University of Hawaii and United States Geological Survey, seventy per cent of beaches in Hawaii are eroding, with more than thirteen miles of beach already lost to erosion and coastal armoring over the past century.

The legislature further finds that the department of land and natural resources is responsible for the conservation and management of coastal resources, including beaches and dunes. The department of land and natural resources also promotes adaptive ecosystem-based management approaches to mitigate erosion and beach loss in certain areas. Examples of these approaches include beach restoration and maintenance projects that use clean carbonate sand sourced from nearshore deposits and sediment management projects that use existing native sand within the beach environment as an alternative to shoreline armoring. However, to be effective, these restoration and maintenance activities must be authorized in a streamlined manner and on a recurring basis.

The legislature notes that section 401 of the federal Clean Water Act requires a water quality certification for certain licenses and permits. This section 401 certification adds to the cost of beach restoration and maintenance by requiring that native marine sand collected from nearshore deposits be dewatered before being placed on a beach and that strict beach management practices and conditions be met before transferring existing beach sand from one section of a beach to another.

The legislature believes that continued climate warming and accelerating sea level rise will cause the rates of coastal erosion and beach loss to increase in

the coming decades. The legislature also believes that prior legislative endeavors exemplify the willingness and ability of the various governmental, private, and community stakeholders to work together to make the beach restoration permitting process more efficient. For example, Act 230, Session Laws of Hawaii 2015, revised the permitting process for repairing and restoring Hawaiian loko ia, or fishponds, by waiving the section 401 water quality certification requirement.

The legislature further finds that the department of land and natural resources, in conjunction with various state, county, and federal agencies, is currently in the final stages of re-authorizing and extending a small-scale beach restoration program. This program offers beach nourishment and sediment management projects as viable ecosystem-based “soft” management options to address coastal erosion and restore critical beach resources. The department of land and natural resources will accomplish this re-authorization using statewide programmatic conservation district use permits. Additionally, the department will enforce new permit conditions that are consistent with those provisions of section 401 of the federal Clean Water Act pertaining to beach restoration and water quality protection measures.

The legislature finds that waiving the section 401 water quality certification requirement for small-scale beach restoration permit applicants that have met the conditions of the small-scale beach restoration regulations and qualifying criteria, and have received notice of authorization to proceed from the department of land and natural resources, will ensure that the program functions in an efficient and environmentally responsible manner. Waiving the requirement of a section 401 water quality certification in these situations will result in the State more efficiently administering water pollution control during beach conservation and restoration projects. The legislature notes that it is not the intent of this Act to limit or impede state environmental controls on water pollution.

Accordingly, the purpose of this Act is to waive the requirement to obtain a section 401 water quality certification for beach restoration and management projects that have received notice of authorization to proceed from the department of land and natural resources’ small-scale beach restoration program.

SECTION 2. Section 342D-6, Hawaii Revised Statutes, is amended to read as follows:

**“§342D-6 Permits; procedures for.** (a) An application for any permit required under this chapter shall be in a form prescribed by the director.

(b) The department may require that applications for permits shall be accompanied by plans, specifications, and any other information that it deems necessary ~~[in order]~~ to determine whether the proposed installation, alteration, or use will be in accord with applicable rules and standards.

(c) The director shall issue a permit for any term, not exceeding five years, if the director determines that it will be in the public interest; provided that the permit may be subject to any reasonable conditions that the director may prescribe. The director may include conditions in permits or may issue separate permits for management practices for domestic sewage, sewage sludge, and recycled water, regardless of whether ~~[or not]~~ the practices cause water pollution. The director, on application, shall renew a permit from time to time, for a term not exceeding five years, if the director determines that it will be in the public interest. The director shall not grant or deny an application for the issuance or renewal of a permit without affording the applicant and any person who commented on the proposed permit during the public comment period an opportunity for a hearing in accordance with chapter 91. A request for a hearing and any judicial review of the hearing shall not stay the effect of the issuance or renewal

of a permit unless specifically ordered by the director or [an] environmental court.

(d) The director, on the director's own motion or the application of any person, may modify, suspend, revoke, or revoke and reissue any water pollution permit if, after affording the permittee an opportunity for a hearing in accordance with chapter 91, the director determines that:

- (1) There is a violation of any condition of the permit;
- (2) The permit was obtained by misrepresentation[;] or there was failure to disclose fully all relevant facts;
- (3) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge; or
- (4) It is in the public interest.

The public interest excludes any reason less stringent than the causes for permit modification, revocation, and termination, or revocation and reissuance identified in title 40 Code of Federal Regulations section 122.62 or 122.64.

(e) The director, on the director's own motion or the application of any person, may modify, suspend, revoke, or revoke and reissue any sludge permit after affording the permittee an opportunity for a hearing in accordance with chapter 91, and consistent with title 40 Code of Federal Regulations section 501.15(c)(2) and (3) and (d)(2).

(f) The director shall ensure that the public receives notice of each application for a permit to control water pollution. The director may hold a public hearing before ruling on an application for a permit to control water pollution if the director determines the public hearing to be in the public interest. In determining whether a public hearing would be in the public interest, the director shall be guided by title 40 Code of Federal Regulations section 124.12(a).

(g) In determining the public interest regarding permit issuance or renewal, the director shall consider the environmental impact of the proposed action, any adverse environmental effects [which] that cannot be avoided should the action be implemented, the alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, any irreversible and irretrievable commitments of resources [which] that would be involved in the proposed action should it be implemented, and any other factors [which] that the director, by rule, may prescribe; provided that any determination of public interest shall promote the optimum balance between economic development and environmental quality.

(h) No applicant for a modification or renewal of a permit shall be held in violation of this chapter during the pendency of the applicant's application so long as the applicant acts consistently with the permit previously granted, the application and all plans, specifications, and other information submitted as part thereof.

(i) The department shall not require a water quality certification pursuant to section 401 of the federal Clean Water Act under this chapter for any applicant of the small-scale beach restoration program that has received notice of authorization to proceed from the department of land and natural resources' office of conservation and coastal lands."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 1, 2021.)

## **12. HAR 11-280.1 Underground Storage Tanks (UST)**

- § 11-280.1-21 Upgrading of UST systems
- § 11-280.1-25 Under-dispenser containment
- § 11-280.1-34 Notification, reporting and recordkeeping
- § 11-280.1-37 Periodic inspection and maintenance of under-dispenser containment
- § 11-280.1-41 Requirements for petroleum UST systems
- § 11-280.1-52 Release investigation and confirmation steps
- § 11-280.1-53 Reporting and cleanup of spills and overfills
- § 11-280.1-61 Immediate response actions
- § 11-280.1-71 Permanent closure and changes-in-service
- § 11-280.1-110 Reporting by owner or operator
- § 11-280.1-244 Retraining
- § 11-280.1-324 Application for a permit
- § 11-280.1-331 Change in owner or operator for a permit

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-280.1  
Hawaii Administrative Rules

February 18, 2020

1. Chapter 11-280.1, Hawaii Administrative Rules, entitled "Underground Storage Tanks", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-280.1

UNDERGROUND STORAGE TANKS

Subchapter 1    Program Scope and Installation  
Requirements for Partially  
Excluded UST Systems

§§11-280.1-1	to 11-280.1-9	(Reserved)
§11-280.1-10	Applicability	
§11-280.1-11	Installation requirements for partially excluded UST systems	
§11-280.1-12	Definitions	
§11-280.1-13	Installation requirements for partially excluded UST systems--codes of practice	
§§11-280.1-14	to 11-280.1-19	(Reserved)

Subchapter 2    UST Systems: Design, Construction,

## and Installation

- §11-280.1-20 Performance standards for UST systems
- §11-280.1-21 Upgrading of UST systems
- §11-280.1-22 (Reserved)
- §11-280.1-23 Tank and piping design for hazardous substance UST systems
- §11-280.1-24 Secondary containment design
- §11-280.1-25 Under-dispenser containment
- §11-280.1-26 Performance standards and design for UST systems--codes of practice
- §11-280.1-27 to 11-280.1-29 (Reserved)

## Subchapter 3 General Operating Requirements

- §11-280.1-30 Spill and overfill control
- §11-280.1-31 Operation and maintenance of corrosion protection
- §11-280.1-32 Compatibility
- §11-280.1-33 Repairs allowed
- §11-280.1-34 Notification, reporting, and recordkeeping
- §11-280.1-35 Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment
- §11-280.1-36 Periodic operation and maintenance walkthrough inspections
- §11-280.1-37 Periodic inspection and maintenance of under-dispenser containment
- §11-280.1-38 General operating requirements--codes of practice
- §11-280.1-39 (Reserved)

## Subchapter 4 Release Detection

- §11-280.1-40 General requirements for all UST systems

§11-280.1-41 Requirements for petroleum UST systems  
 §11-280.1-42 Requirements for hazardous substance  
                   UST systems  
 §11-280.1-43 Methods of release detection for tanks  
 §11-280.1-44 Methods of release detection for piping  
 §11-280.1-45 Release detection recordkeeping  
 §11-280.1-46 Release detection--codes of practice  
 §§11-280.1-47 to 11-280.1-49 (Reserved)

#### Subchapter 5 Release Reporting, Investigation, and Confirmation

§11-280.1-50 Reporting of suspected releases  
 §11-280.1-51 Investigation of off-site impacts  
 §11-280.1-52 Release investigation and confirmation  
                   steps  
 §11-280.1-53 Reporting and cleanup of spills and  
                   overfills  
 §§11-280.1-54 to 11-280.1-59 (Reserved)

#### Subchapter 6 Release Response Action

§11-280.1-60 General  
 §11-280.1-61 Immediate response actions  
 §11-280.1-61.1 Posting of signs  
 §11-280.1-62 Initial abatement measures and site  
                   assessment  
 §11-280.1-63 Initial site characterization  
 §11-280.1-64 Free product removal  
 §11-280.1-65 Investigations for soil and groundwater  
                   cleanup  
 §11-280.1-65.1 Notification of confirmed releases  
 §11-280.1-65.2 Release response reporting  
 §11-280.1-65.3 Site cleanup criteria  
 §11-280.1-66 Corrective action plan  
 §11-280.1-67 Public participation for corrective  
                   action plans  
 §§11-280.1-68 to 11-280.1-69 (Reserved)

## Subchapter 7 Out-of-Service UST Systems and Closure

§11-280.1-70	Temporary closure
§11-280.1-71	Permanent closure and changes-in-service
§11-280.1-72	Assessing the site at closure or change-in-service
§11-280.1-73	Applicability to previously closed UST systems
§11-280.1-74	Closure records
§11-280.1-75	Closure--codes of practice
§§11-280.1-76	to 11-280.1-89 (Reserved)

## Subchapter 8 Financial Responsibility

§11-280.1-90	Applicability
§11-280.1-91	(Reserved)
§11-280.1-92	Definition of terms
§11-280.1-93	Amount and scope of required financial responsibility
§11-280.1-94	Allowable mechanisms and combinations of mechanisms
§11-280.1-95	Financial test of self-insurance
§11-280.1-96	Guarantee
§11-280.1-97	Insurance and risk retention group coverage
§11-280.1-98	Surety bond
§11-280.1-99	Letter of credit
§§11-280.1-100	to 11-280.1-101 (Reserved)
§11-280.1-102	Trust fund
§11-280.1-103	Standby trust fund
§11-280.1-104	Local government bond rating test
§11-280.1-105	Local government financial test
§11-280.1-106	Local government guarantee
§11-280.1-107	Local government fund
§11-280.1-108	Substitution of financial assurance mechanisms by owner or operator
§11-280.1-109	Cancellation or nonrenewal by a provider of financial assurance
§11-280.1-110	Reporting by owner or operator



§11-280.1-111 Recordkeeping  
§11-280.1-112 Drawing on financial assurance  
mechanisms  
§11-280.1-113 Release from the requirements  
§11-280.1-114 Bankruptcy or other incapacity of owner  
or operator or provider of  
financial assurance  
§11-280.1-115 Replenishment of guarantees, letters of  
credit, or surety bonds  
§§11-280.1-116 to 11-280.1-199 (Reserved)

#### Subchapter 9 Lender Liability

§11-280.1-200 Definitions  
§§11-280.1-201 to 11-280.1-209 (Reserved)  
§11-280.1-210 Participation in management  
§§11-280.1-211 to 11-280.1-219 (Reserved)  
§11-280.1-220 Ownership of an underground storage  
tank or underground storage tank  
system or facility or property on  
which an underground storage tank  
or underground storage tank system  
is located  
§§11-280.1-221 to 11-280.1-229 (Reserved)  
§11-280.1-230 Operating an underground storage tank  
or underground storage tank system  
§§11-280.1-231 to 11-280.1-239 (Reserved)

#### Subchapter 10 Operator Training

§11-280.1-240 General requirement for all UST systems  
§11-280.1-241 Designation of Class A, B, and C  
operators  
§11-280.1-242 Requirements for operator training  
§11-280.1-243 Timing of operator training  
§11-280.1-244 Retraining  
§11-280.1-245 Documentation  
§§11-280.1-246 to 11-280.1-249 (Reserved)

Subchapter 11 (Reserved)

§§11-280.1-250 to 11-280.1-299 (Reserved)

Subchapter 12 Permits and Variances

§§11-280.1-300 to 11-280.1-322 (Reserved)

§11-280.1-323 Permit required

§11-280.1-324 Application for a permit

§11-280.1-325 Permit

§11-280.1-326 Permit renewals

§11-280.1-327 Action on complete permit application

§11-280.1-328 Permit conditions

§11-280.1-329 Modification of permit

§11-280.1-330 Revocation or suspension of permit

§11-280.1-331 Change in owner or operator for a  
permit

§11-280.1-332 Variances allowed

§11-280.1-333 Variance applications

§11-280.1-334 Maintenance of permit or variance

§11-280.1-335 Fees

§§11-280.1-336 to 11-280.1-399 (Reserved)

Subchapter 13 Enforcement

§§11-280.1-400 to 11-280.1-420 (Reserved)

§11-280.1-421 Purpose

§11-280.1-422 Field citations

§§11-280.1-423 to 11-280.1-428 (Reserved)

§11-280.1-429 Delivery, deposit, and acceptance  
prohibition

Historical note: This chapter is based  
substantially upon chapter 11-281. [Eff 1/28/00; am  
and comp 8/09/13; R 7/15/18]

SUBCHAPTER 1

PROGRAM SCOPE AND INSTALLATION REQUIREMENTS FOR  
PARTIALLY EXCLUDED UST SYSTEMS

§§11-280.1-1 to 11-280.1-9 (Reserved) .

**§11-280.1-10 Applicability.** (a) The requirements of this chapter apply to all owners and operators of an UST system as defined in section 11-280.1-12, except as otherwise provided in this section.

- (1) Airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and UST systems that store fuel solely for use by emergency power generators must meet the requirements of this chapter as follows:
  - (A) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks must meet all applicable requirements of this chapter, except that those installed before ~~[the effective date of these rules]~~ July 15, 2018 must meet the applicable requirements of subchapters 4, 8, 10, and 12 no later than ~~[one year after the effective date of these rules.]~~ July 15, 2019.
  - (B) UST systems that store fuel solely for use by emergency power generators must meet all applicable requirements of this chapter, except that those installed before August 9, 2013 must meet the applicable requirements of subchapter 4 no later than ~~[one year after the effective date of these rules.]~~ July 15, 2019.
- (2) Any UST system listed in subsection (c) must

meet the requirements of section  
11-280.1-11.

(b) Exclusions. The following UST systems are excluded from the requirements of this chapter:

- (1) Any UST system holding hazardous wastes listed or identified under chapter 342J, Hawaii Revised Statutes, or the rules adopted thereunder, or Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances;
- (2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under chapter 342D, Hawaii Revised Statutes, or Section 402 or 307(b) of the Clean Water Act;
- (3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;
- (4) Any UST system whose capacity is one hundred ten gallons or less;
- (5) Any UST system that contains a de minimis concentration of regulated substances; and
- (6) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(c) Partial Exclusions. Subchapters 2, 3, 4, 5, 7, 10, and 12 do not apply to:

- (1) Wastewater treatment tank systems not covered under subsection (b) (2);
- (2) Aboveground storage tanks associated with:
  - (A) Airport hydrant fuel distribution systems; and
  - (B) UST systems with field-constructed tanks;
- (3) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following); and
- (4) Any UST system that is part of an emergency generator system at nuclear power generation

facilities licensed by the Nuclear Regulatory Commission and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including but not limited to 10 C.F.R. part 50. [Eff 7/15/18; comp 1/17/20; am and comp ] (Auth: HRS §342L-3)  
(Imp: HRS §342L-3)

**§11-280.1-11 Installation requirements for partially excluded UST systems.** (a) Owners and operators must install an UST system listed in section 11-280.1-10(c)(1), (3), or (4) storing regulated substances (whether of single or double wall construction) that meets the following requirements:

- (1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;
- (2) Is cathodically protected against corrosion, constructed of non-corrodible material, steel clad with a non-corrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and
- (3) Is constructed or lined with material that is compatible with the stored substance.

(b) Notwithstanding subsection (a), an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this subsection for the remaining life of the tank. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-12 Definitions.** When used in this

chapter, the following terms have the meanings given below:

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

"Airport hydrant fuel distribution system" (also called "airport hydrant system") means an UST system which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more tanks from an external source such as a pipeline, barge, rail car, or other motor fuel carrier.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

"Belowground release" means any release to the subsurface of the land and to groundwater. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

"Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic

protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"Class A operator" means the individual who has primary responsibility to operate and maintain the UST system in accordance with applicable requirements established by the department. The Class A operator typically manages resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

"Class B operator" means the individual who has day-to-day responsibility for implementing applicable regulatory requirements established by the department. The Class B operator typically implements in-field aspects of operation, maintenance, and associated recordkeeping for the UST system.

"Class C operator" means the individual responsible for initially addressing emergencies presented by a spill or release from an UST system. The Class C operator typically controls or monitors the dispensing or sale of regulated substances.

"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

"Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

"Consumptive use" with respect to heating oil means consumed on the premises.

"Containment sump" means a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps, and related components in the

containment area. Containment sumps may be single walled or secondarily contained and located at the top of tank (tank top or submersible turbine pump sump), underneath the dispenser (under-dispenser containment sump), or at other points in the piping run (transition or intermediate sump).

"Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"Department" means the state department of health.

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

"Director" means the director of the state department of health.

"Dispenser" means equipment located aboveground that dispenses regulated substances from the UST system.

"Dispenser system" means the dispenser and the equipment necessary to connect the dispenser to the underground storage tank system. The equipment necessary to connect the dispenser to the underground storage tank system includes check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are underneath the dispenser and connect the dispenser to the underground piping.

"Electrical equipment" means underground



equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"EPA" means the United States Environmental Protection Agency.

"Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Exposure assessment" means a determination regarding the extent of exposure of, or potential for exposure of, individuals to regulated substances from a release from an UST or tank system. An exposure assessment shall be based on factors such as the nature and extent of contamination, the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, dermal exposure, soil ingestion, and food chain contamination), the size of the community or communities within the likely pathways of exposure, an analysis of expected human exposure levels with respect to short-term and long-term health effects associated with identified contaminants, and any available recommended exposure or tolerance limits for the contaminants.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. Farm includes fish hatcheries, rangeland, and nurseries with growing operations.

"Field-constructed tank" means a tank constructed in the field. For example, a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field is considered field-constructed.

"Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include

tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Free product" refers to a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water).

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Hazardous substance" means a hazardous substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, except any substance regulated as a hazardous waste under chapter 342J, Hawaii Revised Statutes, or the rules adopted thereunder, or Subtitle C of the Solid Waste Disposal Act.

"Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance or any mixture of such substances and petroleum, and that is not a petroleum UST system.

"Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids

from a gas stream.

"Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

"Motor fuel" means a complex blend of hydrocarbons typically used in the operation of a motor engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any blend containing one or more of these substances (e.g., motor gasoline blended with alcohol).

"Noncommercial purposes" with respect to motor fuel means not for resale.

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under subchapter 7.

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

"Owner" means:

- (1) In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and
- (2) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

"Permit" means written authorization, as provided for in section 342L-4, Hawaii Revised Statutes, from the director to install or operate an UST or tank system. A permit authorizes owners or operators to install and operate an UST or tank system in a manner,

or to do an act, not forbidden by chapter 342L, Hawaii Revised Statutes, or by this chapter, but requiring review by the department.

"Person" means an individual, trust, estate, firm, joint stock company, corporation (including a government corporation), partnership, association, commission, consortium, joint venture, commercial entity, the state or a county, the United States government, federal agency, interstate body, or any other legal entity.

"Petroleum" means petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

"Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

"Pipeline facilities" (including gathering lines) means pipe rights-of-way and any associated equipment, facilities, or buildings.

"Regulated substance" means hazardous substances, petroleum, and any other substance designated by the department that, when released into the environment, may present substantial danger to human health, welfare, or the environment. The term regulated substance includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an UST system into groundwater, surface water, or subsurface soils.

"Release detection" means determining whether a

release of a regulated substance has occurred from the UST system into the environment or a leak has occurred into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

"Repair" means to restore to proper operating condition a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other UST system component that has caused a release of product from the UST system or has failed to function properly.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"Secondary containment" or "secondarily contained" means a release prevention and release detection system for a tank or piping. This system has an inner and outer barrier with an interstitial space that is monitored for leaks. This term includes containment sumps when used for interstitial monitoring of piping.

"Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Storm water collection system" or "wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an

injection well.

"Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

"Temporary closure" or "temporarily closed" means that owners and operators do not deposit regulated substances into the UST or tank system nor dispense regulated substances from the UST or tank system for sixty days or longer, except for UST systems that store fuel solely for use by emergency power generators and UST systems with field-constructed tanks. For UST systems that store fuel solely for use by emergency power generators and UST systems with field-constructed tanks, "temporary closure" or "temporarily closed" means that the UST or tank system is empty, as defined in section 11-280.1-70(a), and owners and operators do not deposit regulated substances into the UST or tank system for sixty days or longer.

"Under-dispenser containment" or "UDC" means containment underneath a dispenser system designed to prevent leaks from the dispenser and piping within or above the UDC from reaching soil, groundwater, and surface water.

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any belowground release.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is ten percent or more beneath the surface of the ground. This term does not include any:

- (1) Farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial

- purposes;
- (2) Tank used for storing heating oil for consumptive use on the premises where stored;
  - (3) Septic tank;
  - (4) Pipeline facility (including gathering lines):
    - (A) Which is regulated under 49 U.S.C. chapter 601; or
    - (B) Which is an intrastate pipeline facility regulated under state laws as provided in 49 U.S.C. chapter 601, and which is determined by the Secretary of Transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;
  - (5) Surface impoundment, pit, pond, or lagoon;
  - (6) Storm water or wastewater collection system;
  - (7) Flow-through process tank;
  - (8) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
  - (9) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term underground storage tank or UST does not include any pipes connected to any tank which is described in paragraphs (1) to (9).

"Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Variance" means a special written authorization

§11-280.1-12

from the director to own, install, or operate an UST or tank system in a manner deviating from, or to do an act that deviates from, the requirements of this chapter that are more stringent than 40 C.F.R. part 280.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

[Eff 7/15/18; comp 1/17/20; comp ]

(Auth: HRS §342L-3) (Imp: HRS §342L-3)

**§11-280.1-13 Installation requirements for partially excluded UST systems--codes of practice.**

The following codes of practice may be used as guidance for complying with section 11-280.1-11:

- (1) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection";
- (2) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems";
- (3) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; or
- (4) Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems". [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§§11-280.1-14 to 11-280.1-19 (Reserved) .**



SUBCHAPTER 2

UST SYSTEMS: DESIGN, CONSTRUCTION, AND INSTALLATION

**§11-280.1-20 Performance standards for UST systems.** (a) In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, owners and operators of UST systems must meet all applicable requirements of this subchapter. UST systems must meet the requirements of this section as follows:

- (1) UST systems installed after December 22, 1988, other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must meet the requirements of this section, except as specified in subsection (g).
- (2) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks installed on or after ~~[the effective date of these rules]~~ July 15, 2018 must meet the requirements of this section.

(b) Tanks. Each tank must be properly designed, constructed, and installed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

- (1) The tank is constructed of fiberglass-reinforced plastic; or
- (2) The tank is constructed of steel and cathodically protected in the following manner:
  - (A) The tank is coated with a suitable dielectric material;
  - (B) Field-installed cathodic protection

systems are designed by a corrosion expert;

- (C) Impressed current systems are designed to allow determination of current operating status as required in section 11-280.1-31(3); and
  - (D) Cathodic protection systems are operated and maintained in accordance with section 11-280.1-31 or according to guidelines established by the department; or
- (3) The tank is constructed of steel and clad or jacketed with a non-corrodible material; or
  - (4) The tank is constructed of metal without additional corrosion protection measures provided that:
    - (A) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and
    - (B) Owners and operators maintain records that demonstrate compliance with the requirements of subparagraph (A) for the remaining life of the tank; or
  - (5) The tank construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than paragraphs (1) to (4).

(c) Piping. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, installed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

- (1) The piping is constructed of a non-corrodible material; or
- (2) The piping is constructed of steel and

cathodically protected in the following manner:

- (A) The piping is coated with a suitable dielectric material;
  - (B) Field-installed cathodic protection systems are designed by a corrosion expert;
  - (C) Impressed current systems are designed to allow determination of current operating status as required in section 11-280.1-31(3); and
  - (D) Cathodic protection systems are operated and maintained in accordance with section 11-280.1-31 or guidelines established by the department; or
- (3) The piping is constructed of metal without additional corrosion protection measures provided that:
- (A) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and
  - (B) Owners and operators maintain records that demonstrate compliance with the requirements of subparagraph (A) for the remaining life of the piping; or
- (4) The piping construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in paragraphs (1) to (3).
- (d) Spill and overfill prevention equipment.
- (1) Except as provided in paragraphs (2) and (3), to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:

- (A) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and
- (B) Overfill prevention equipment that will:
  - (i) Automatically shut off flow into the tank when the tank is no more than ninety-five percent full;
  - (ii) Alert the transfer operator when the tank is no more than ninety percent full by restricting the flow into the tank or triggering a high-level alarm; or
  - (iii) Restrict flow thirty minutes prior to overfilling, alert the transfer operator with a high-level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.
- (2) Owners and operators are not required to use the spill and overfill prevention equipment specified in paragraph (1) if:
  - (A) Alternative equipment is used that is determined by the department to be no less protective of human health and the environment than the equipment specified in paragraph (1) (A) or (B); or
  - (B) The UST system is filled by transfers of no more than twenty-five gallons at one time.
- (3) Flow restrictors used in vent lines may not be used to comply with paragraph (1) (B) when overfill prevention is installed or replaced after ~~[the effective date of these rules.]~~

July 15, 2018.

- (4) Overfill prevention methods that rely on the use of alarms must have the alarms clearly labeled "overfill alarm" and located where the delivery person can clearly see and hear the alarm in order to immediately stop delivery of the product.
- (5) Spill and overfill prevention equipment must be periodically tested or inspected in accordance with section 11-280.1-35.

(e) Installation. The UST system must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

(f) Certification of installation. All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with subsection (e) by providing a certification of compliance on the "Certification of Underground Storage Tank Installation" form prescribed by the director and in accordance with section 11-280.1-325(d).

- (1) The installer has been certified by the tank and piping manufacturers;
- (2) The installer has been certified or licensed by the department;
- (3) The installation has been inspected and certified by a licensed professional engineer with education and experience in UST system installation;
- (4) The installation has been inspected and approved by the department;
- (5) All work listed in the manufacturer's installation checklists has been completed and the checklists maintained; or
- (6) The owner and operator have complied with another method for ensuring compliance with subsection (e) that is determined by the department to be no less protective of human health and the environment.

§11-280.1-20

- (g) Secondary containment.
- (1) UST systems installed on or after August 9, 2013, other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must be provided with secondary containment that meets the requirements of section 11-280.1-24, except for suction piping that meets the requirements of section 11-280.1-41(b)(6).
- (2) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks must be provided with secondary containment that meets the requirements of section 11-280.1-24, except for:
  - (A) Suction piping that meets the requirements of section 11-280.1-41(b)(6);
  - (B) Piping associated with UST systems with field-constructed tanks with a capacity greater than 50,000 gallons; and
  - (C) Piping associated with airport hydrant systems. [Eff 7/15/18; comp 1/17/20; am and comp ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-21 Upgrading of UST systems.** (a) All UST systems must comply with one of the following requirements:

- (1) UST system performance standards in section 11-280.1-20(b) to (d);
- (2) For airport hydrant fuel distribution systems and UST systems with field-constructed tanks installed before ~~[the effective date of these rules:]~~ July 15, 2018:
  - (A) The system performance standards in section 11-280.1-20(b) and (c); and
  - (B) Not later than ~~[one year after the effective date of these rules,]~~ July

15, 2019, the system performance standards under section 11-280.1-20(d);  
or

(3) Closure requirements under subchapter 7.

(b) UST systems other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks: Not later than [~~ten years after the effective date of these rules,~~] July 15, 2028, tanks and piping installed before August 9, 2013 must be provided with secondary containment that meets the requirements of section 11-280.1-24, except for suction piping that meets the requirements of section 11-280.1-41(b)(6).

(c) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks: Not later than [~~twenty years after the effective date of these rules,~~] July 15, 2038, tanks and piping installed before [~~the effective date of these rules~~] July 15, 2018 must be provided with secondary containment that meets the requirements of section 11-280.1-24 or must utilize a design which the director determines is protective of human health and the environment, except for:

- (1) Suction piping that meets the requirements of section 11-280.1-41(b)(6);
- (2) Piping associated with UST systems with field-constructed tanks with a capacity greater than 50,000 gallons; and
- (3) Piping associated with airport hydrant systems. [Eff 7/15/18; comp 1/17/20; am and comp ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-22 (Reserved).**

**§11-280.1-23 Tank and piping design for hazardous substance UST systems.** Owners and operators of hazardous substance UST systems must provide

§11-280.1-23

secondary containment for tanks and underground piping that meets the requirements of section 11-280.1-24.

[Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-24 Secondary containment design. (a)**

Secondary containment systems must be designed, constructed, and installed to:

- (1) Contain regulated substances leaked from the primary containment until they are detected and removed;
- (2) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and
- (3) Be checked for evidence of a release at least every thirty-one days.

(b) Double-walled tanks must be designed, constructed, and installed to:

- (1) Contain a leak from any portion of the inner tank within the outer wall; and
- (2) Detect the failure of the inner wall.

(c) External liners (including vaults) must be designed, constructed, and installed to:

- (1) Contain one hundred percent of the capacity of the largest tank within its boundary;
- (2) Prevent precipitation and groundwater intrusion from interfering with the ability to contain or detect a leak or release of regulated substances; and
- (3) Surround the UST completely to effectively prevent lateral and vertical migration of regulated substances. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-25 Under-dispenser containment. (a)**

Dispenser systems installed on or after August 9,



2013, other than for airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must have under-dispenser containment that meets the requirements in subsection (c).

(b) Dispenser systems installed on or after [~~the effective date of these rules~~] July 15, 2018 must have under-dispenser containment that meets the requirements in subsection (c).

(c) Under-dispenser containment required by subsection (a) or (b) must:

- (1) Be liquid-tight on its sides, bottom, and at any penetrations;
- (2) Be compatible with the substance conveyed by the piping; and
- (3) Meet one of the following requirements:
  - (A) Allow for visual inspection and access to the components in the containment system; [~~and~~] or
  - [~~(4)~~] (B) Be monitored for leaks from the dispenser system with a sensing device that signals the operator of the presence of regulated substances. [Eff 7/15/18; comp 1/17/20; am and comp ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-26 Performance standards and design for UST systems--codes of practice.** (a) The following codes of practice may be used to comply with section 11-280.1-20(b)(1):

- (1) Underwriters Laboratories Standard 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures"; or
- (2) Underwriter's Laboratories of Canada S615, "Standard for Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids".

(b) The following codes of practice may be used to comply with section 11-280.1-20(b)(2):

- (1) Steel Tank Institute "Specification STI-P3<sup>®</sup> Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks";
  - (2) Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks";
  - (3) Underwriters Laboratories of Canada S603, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids", and S603.1, "Standard for External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids", and S631, "Standard for Isolating Bushings for Steel Underground Tanks Protected with External Corrosion Protection Systems";
  - (4) Steel Tank Institute Standard F841, "Standard for Dual Wall Underground Steel Storage Tanks"; or
  - (5) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection", and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids".
- (c) The following codes of practice may be used to comply with section 11-280.1-20(b)(3):
- (1) Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks";
  - (2) Steel Tank Institute ACT-100<sup>®</sup> Specification F894, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks";
  - (3) Steel Tank Institute ACT-100-U<sup>®</sup> Specification F961, "Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks"; or
  - (4) Steel Tank Institute Specification F922, "Steel Tank Institute Specification for

Permatank®".

(d) The following codes of practice may be used to comply with section 11-280.1-20(c)(1):

- (1) Underwriters Laboratories Standard 971, "Nonmetallic Underground Piping for Flammable Liquids"; or
- (2) Underwriters Laboratories of Canada Standard S660, "Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids".

(e) The following codes of practice may be used to comply with section 11-280.1-20(c)(2):

- (1) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems";
- (2) Underwriters Laboratories Subject 971A, "Outline of Investigation for Metallic Underground Fuel Pipe";
- (3) Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems";
- (4) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems"; or
- (5) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection".

(f) Tank and piping system installation practices and procedures described in the following codes of practice may be used to comply with the requirements of section 11-280.1-20(e):

- (1) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System";
- (2) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage

§11-280.1-26

Systems"; or

- (3) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" and Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages".

(g) When designing, constructing, and installing airport hydrant systems and UST systems with field-constructed tanks, owners and operators may use military construction criteria, such as Unified Facilities Criteria (UFC) 3-460-01, "Petroleum Fuel Facilities". [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-32)  
(Imp: HRS §§342L-3, 342L-32)

**§§11-280.1-27 to 11-280.1-29 (Reserved) .**

### SUBCHAPTER 3

#### GENERAL OPERATING REQUIREMENTS

**§11-280.1-30 Spill and overfill control.** (a)

Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

(b) The owner and operator must report, investigate, and clean up any spills and overfills in accordance with section 11-280.1-53. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-31 Operation and maintenance of corrosion protection.** All owners and operators of metal UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented until the UST system is permanently closed or undergoes a change-in-service pursuant to section 11-280.1-71:

- (1) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.
- (2) All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:
  - (A) Frequency. All cathodic protection systems must be tested within six months of installation and at least every three years thereafter; and
  - (B) Inspection criteria. The criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with a code of practice developed by a nationally recognized association.
- (3) UST systems with impressed current cathodic protection systems must also be inspected every sixty days to ensure the equipment is operating properly.
- (4) For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained, in accordance with section 11-280.1-34, to demonstrate compliance with the performance standards in this section. These records must provide the following:
  - (A) The results of the last three inspections required in paragraph (3);

and

- (B) The results of testing from the last two inspections required in paragraph (2). [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-32 Compatibility.** (a) Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.

(b) Owners and operators must notify the department at least thirty days prior to switching to a regulated substance containing greater than ten percent ethanol, greater than twenty percent biodiesel, or any other regulated substance identified by the department. In addition, owners and operators with UST systems storing these regulated substances must meet one of the following:

- (1) Demonstrate compatibility of the UST system (including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment). Owners and operators may demonstrate compatibility of the UST system by using one of the following options:
  - (A) Certification or listing of UST system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or
  - (B) Equipment or component manufacturer approval. The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer; or
- (2) Use another option determined by the

department to be no less protective of human health and the environment than the options listed in paragraph (1).

(c) Owners and operators must maintain records in accordance with section [~~11-280.1-34(d)~~] 11-280.1-34 documenting compliance with subsection (b) for as long as the UST system is used to store the regulated substance. [Eff 7/15/18; comp 1/17/20; am and comp ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-33 Repairs allowed.** (a) Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must meet the following requirements:

- (1) Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory;
- (2) Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory;
- (3) Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Non-corrodible pipes and fittings may be repaired in accordance with the manufacturer's specifications;
- (4) Prior to the return to use of a repaired UST system, any repaired USTs must pass a tank tightness test in accordance with section 11-280.1-43(3);
- (5) Prior to the return to use of a repaired UST system, any repaired piping that routinely

contains product must pass a line tightness test in accordance with section 11-280.1-44(2);

- (6) Prior to return to use of a repaired UST system, repairs to secondary containment areas of tanks and piping used for interstitial monitoring, containment sumps used for interstitial monitoring of piping, and containment walls must have the secondary containment tested for integrity using vacuum, pressure, or liquid methods in accordance with requirements developed by the manufacturer, a code of practice developed by a nationally recognized association or independent testing laboratory, or requirements established by the department;
- (7) Within six months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with section 11-280.1-31(2) and (3) to ensure that it is operating properly; and
- (8) Prior to the return to use of repaired spill or overfill prevention equipment, the repaired spill or overfill prevention equipment must be tested or inspected, as appropriate, in accordance with section 11-280.1-35 to ensure it is operating properly.

(b) UST system owners and operators must maintain records, in accordance with section 11-280.1-34, of each repair until the UST system is permanently closed or undergoes a change-in-service pursuant to section 11-280.1-71. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-34 Notification, reporting, and recordkeeping.** (a) Notification. Owners and



operators shall notify the department of any of the following changes in information relating to an UST or tank system by submitting the "Notification for Underground Storage Tanks" form prescribed by the director:

- (1) [~~Planned permanent closure or change-in-service, scheduled excavation work for permanent closure or change-in-service, or completed~~] Completed closure or change-in-service;
- (2) Temporary closure or the return to currently-in-use status;
- (3) Changes in product dispensing method, [~~dispenser,~~] dispenser system, or under dispenser containment;
- (4) Changes in financial responsibility mechanism;
- (5) Changes in [~~leak~~] release detection method;
- (6) Changes in spill and overfill prevention method;
- (7) Changes in piping;
- (8) Changes in type of regulated substances stored;
- (9) Changes in corrosion protection mechanism; and
- (10) Installation of or changes in secondary containment.

(b) Intent to close notification. Owners and operators shall notify the department of planned permanent closure or change-in-service of an UST or tank system and scheduled excavation work for permanent closure or change-in-service by submitting the "Notice of Intent to Close Underground Storage Tanks" form prescribed by the director.

(c) Timing of notification. Owners and operators shall submit the notifications required in subsection (a) and (b) within thirty days following any of the changes requiring notification, except that:

- (1) Notification of planned permanent closure or change-in-service must be received by the department at least thirty days before commencement of excavation work for closure

- or change-in-service;
- (2) Notification of scheduled excavation work for permanent closure or change-in-service must be received by the department at least seven days before the scheduled work date;
- (3) Notification of change in type of regulated substance stored to a regulated substance containing greater than ten percent ethanol or greater than twenty percent biodiesel must be received by the department at least thirty days before the change; and
- (4) Notification of temporary closure must be received by the department within thirty days of the UST system having met the definition of temporary closure in section 11-280.1-12.

~~[(e)]~~ (d) Reporting. Owners and operators must submit the following information to the department:

- (1) Reports of all releases including suspected releases (sections 11-280.1-50 and 11-280.1-52), spills and overfills (section 11-280.1-53), and confirmed releases (section 11-280.1-61);
- (2) Release response actions planned or taken, including initial abatement measures (section 11-280.1-62), initial site characterization (section 11-280.1-63), free product removal (section 11-280.1-64), investigation ~~[of]~~ for soil and groundwater cleanup (section 11-280.1-65), and corrective action plan (section 11-280.1-66);
- (3) Quarterly release response reports (section 11-280.1-65.2);
- (4) Current evidence of financial responsibility as required in section 11-280.1-110; and
- (5) Notice of changes in Designated Class A or B Operators (section 11-280.1-241(c)).

~~[(d)]~~ (e) Recordkeeping. Owners and operators must maintain the following information:

- (1) A corrosion expert's analysis of site corrosion potential if corrosion protection

- equipment is not used (section 11-280.1-20(b)(4); section 11-280.1-20(c)(3));
- (2) Documentation of operation of corrosion protection equipment (section 11-280.1-31(4));
  - (3) Documentation of compatibility for UST systems (section 11-280.1-32(c));
  - (4) Documentation of UST system repairs (section 11-280.1-33(b));
  - (5) Documentation of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping (section 11-280.1-35(b));
  - (6) Documentation of periodic walkthrough inspections (section 11-280.1-36(b));
  - (7) Documentation of compliance with under-dispenser containment sensing device requirements (section 11-280.1-37(b));
  - (8) Documentation of compliance with release detection requirements (section 11-280.1-45);
  - (9) Results of the site investigation conducted at permanent closure or change-in-service (section 11-280.1-74);
  - (10) Documentation of operator training (section 11-280.1-245);
  - (11) Permits or variances or both, including all documentation, as specified in section 11-280.1-334(a); and
  - (12) Evidence of current financial assurance mechanisms used to demonstrate financial responsibility (section 11-280.1-111).
- ~~[(e)]~~ (f) Availability and maintenance of records.
- (1) Owners and operators must keep the required records at the UST site or an alternative location approved by the department.
  - (2) Owners and operators must make the records immediately available for inspection by the department at the UST site.
  - (3) Permanent closure records required under

section 11-280.1-74 may be maintained or submitted to the department as provided in section 11-280.1-74.

~~[(f)]~~ (g) Owners and operators of UST systems must cooperate fully with inspections, monitoring, and testing conducted by the department, as well as requests by the department for document submission, testing, and monitoring by the owner or operator pursuant to chapter 342L, Hawaii Revised Statutes.

[Eff 7/15/18; comp 1/17/20; am and comp

] (Auth: HRS §§342L-3, 342L-7.5)

(Imp: HRS §§342L-3, 342L-7, 342L-7.5, 342L-30)

**§11-280.1-35 Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment.** (a)

Owners and operators of UST systems with spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping must meet these requirements to ensure the equipment is operating properly and will prevent releases to the environment:

- (1) Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) must prevent releases to the environment by meeting one of the following:

- (A) The equipment is double walled and the integrity of both walls is periodically monitored at a frequency not less than once every thirty-one days. Owners and operators must begin meeting the requirements of subparagraph (B) and conduct a test within thirty days of discontinuing periodic monitoring of this equipment; or
- (B) The spill prevention equipment is tested at least once every three hundred sixty-five days to ensure the

equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

- (i) Requirements developed by the manufacturer. (Note: Owners and operators may use this option only if the manufacturer has developed requirements.);
  - (ii) Code of practice developed by a nationally recognized association or independent testing laboratory; or
  - (iii) Requirements determined by the department to be no less protective of human health and the environment than the requirements listed in clauses (i) and (ii).
- (2) Containment sumps used for interstitial monitoring of piping must prevent releases to the environment by meeting one of the following:
- (A) The equipment is double walled and the integrity of both walls is periodically monitored at a frequency not less than annually. Owners and operators must begin meeting the requirements of subparagraph (B) and conduct a test within thirty days of discontinuing periodic monitoring of this equipment; or
  - (B) The containment sumps used for interstitial monitoring of piping are tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the criteria in paragraph (1) (B) (i) to (iii).
- (3) Overfill prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure

that overfill prevention equipment is set to activate at the correct level specified in section 11-280.1-20(d) and will activate when regulated substance reaches that level. Inspections must be conducted in accordance with one of the criteria in paragraph (1)(B)(i) to (iii).

(b) Owners and operators must maintain records as follows (in accordance with section 11-280.1-34) for spill prevention equipment, containment sumps used for interstitial monitoring of piping, and overfill prevention equipment:

- (1) All records of testing or inspection must be maintained for three years; and
- (2) For spill prevention equipment not tested every three hundred sixty-five days and containment sumps used for interstitial monitoring of piping not tested every three years, documentation showing that the prevention equipment is double walled and the integrity of both walls is periodically monitored must be maintained for as long as the equipment is periodically monitored.  
[Eff 7/15/18; comp 1/17/20; comp  
] (Auth: HRS §§342L-3,  
342L-7.5, 342L-32) (Imp: HRS §§342L-3,  
342L-7.5, 342L-32)

**§11-280.1-36 Periodic operation and maintenance walkthrough inspections.** (a) To properly operate and maintain UST systems, beginning not later than ~~[one year after the effective date of these rules,]~~ July 15, 2019, owners and operators must conduct walkthrough inspections that, at a minimum, check the following equipment as specified below:

- (1) Every thirty-one days:
  - (A) Spill prevention equipment:
    - (i) Visually check for damage;
    - (ii) Remove liquid or debris;
    - (iii) Check for and remove obstructions

- in the fill pipe;
    - (iv) Check the fill cap to make sure it is securely on the fill pipe; and
    - (v) For double walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area; and
  - (B) Release detection equipment:
    - (i) Check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present; and
    - (ii) Ensure records of release detection testing are reviewed and current;
- (2) Annually:
  - (A) Containment sumps:
    - (i) Visually check for damage, leaks to the containment area, or releases to the environment;
    - (ii) Remove liquid (in contained sumps) or debris; and
    - (iii) For double walled sumps with interstitial monitoring, check for a leak in the interstitial area; and
  - (B) Hand held release detection equipment: Check devices such as tank gauge sticks or groundwater bailers for operability and serviceability;
- (3) For UST systems receiving deliveries at intervals greater than every thirty-one days, spill prevention equipment may be checked in accordance with paragraph (1) (A) prior to each delivery; and
- (4) For airport hydrant systems, at least once every thirty-one days if confined space entry according to the Occupational Safety and Health Administration is not required or at least annually if confined space entry is required (see 29 C.F.R. part 1910):
  - (A) Hydrant pits:

- (i) Visually check for any damage;
  - (ii) Remove any liquid or debris; and
  - (iii) Check for any leaks; and
- (B) Hydrant piping vaults: Check for any hydrant piping leaks.

(b) Owners and operators must maintain records, in accordance with section 11-280.1-34, of operation and maintenance walkthrough inspections for three years. Records must include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every thirty-one days due to infrequent deliveries. [Eff 7/15/18; comp 1/17/20; am and comp ]  
(Auth: HRS §§342L-3, 342L-7.5, 342L-32) (Imp: HRS §§342L-3, 342L-7.5, 342L-32)

**§11-280.1-37 Periodic inspection and maintenance of under-dispenser ~~[containment sensing devices.]~~**

**containment.** (a) Under-dispenser containment that allows for visual inspection and access to the components in the containment system to meet the requirements of section 11-280.1-25 must be visually inspected for damage and have any liquid or debris removed every thirty-one days.

(b) Sensing devices for under-dispenser containment ~~[required by]~~ used to meet the requirements of section 11-280.1-25 must:

- (1) Be operated and maintained in accordance with one of the following:
  - (A) The manufacturer's instructions;
  - (B) A code of practice developed by a nationally recognized association or independent testing laboratory; or
  - (C) Requirements determined by the department to be no less protective of human health and the environment than those in subparagraphs (A) and ~~[(B).]~~ (B); and



- (2) Be inspected for proper operation, and electronic and mechanical components tested, at least annually.

~~[(b)]~~ (c) UST system owners and operators must maintain records in accordance with section 11-280.1-34 demonstrating compliance with subsection ~~[(a)-]~~ (a) or (b). Written documentation of all inspection, testing, and maintenance must be maintained for at least three years. All records that the UDC sensor and connected equipment are designed to produce must be maintained for at least three years after the record is generated. [Eff 7/15/18; comp 1/17/20; am and comp ] (Auth: HRS §§342L-3, 342L-7.5, 342L-32) (Imp: HRS §§342L-3, 342L-7.5, 342L-32)

**§11-280.1-38 General operating requirements-- codes of practice.** (a) The following codes of practice may be used to comply with section 11-280.1-30(a): the transfer procedures described in National Fire Protection Association Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids" or American Petroleum Institute Recommended Practice 1007, "Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles". Further guidance on spill and overfill prevention appears in American Petroleum Institute Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets".

(b) The following codes of practice may be used to comply with section 11-280.1-31(2):

- (1) NACE International Test Method TM 0101, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems";
- (2) NACE International Test Method TM0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems";

- (3) Steel Tank Institute Recommended Practice R051, "Cathodic Protection Testing Procedures for STI-P3® USTs";
- (4) NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection"; or
- (5) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".

(c) The following code of practice may be useful in complying with section 11-280.1-32: American Petroleum Institute Recommended Practice 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Filling Stations".

(d) The following codes of practice may be used to comply with section 11-280.1-33(a)(1):

- (1) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";
- (2) American Petroleum Institute Recommended Practice RP 2200, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines";
- (3) American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks";
- (4) National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair";
- (5) National Leak Prevention Association Standard 631, Chapter A, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks";
- (6) Steel Tank Institute Recommended Practice R972, "Recommended Practice for the Addition of Supplemental Anodes to STI-P3® Tanks";

**§11-280.1-39 (Reserved) .**

## RELEASE DETECTION

**§11-280.1-40 General requirements for all UST systems.**

(a) Owners and operators of UST systems must provide a method, or combination of methods, of release detection that:

- (1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;
- (2) Utilizes equipment compatible with the regulated substances being stored;
- (3) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions;
- (4) Is operated and maintained, and electronic and mechanical components are tested for proper operation, in accordance with one of the following: manufacturer's instructions; a code of practice developed by a nationally recognized association or independent testing laboratory; or requirements determined by the department to be no less protective of human health and the environment than the requirements of paragraphs (1) to (3). All maintenance and service of the release detection equipment must be conducted by a technician with current certification or training appropriate to the equipment serviced. A test of the proper operation must be performed at least every three hundred sixty-five days, or in a time frame recommended by the equipment manufacturer, whichever is more frequent. Beginning ~~[one year after the effective date of these rules,~~ July 15, 2019, as applicable to the facility, the test must cover at a minimum the following components and criteria:
  - (A) Automatic tank gauge and other controllers: test alarm; verify system configuration; test battery backup;

- (B) Probes and sensors: inspect for residual buildup; ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks and breaks; test alarm operability and communication with controller;
  - (C) Automatic line leak detector: test operation to meet criteria in section 11-280.1-44(1) by simulating a leak;
  - (D) Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller; and
  - (E) Hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation; and
- (5) Meets the performance requirements in section 11-280.1-43 or 11-280.1-44, as applicable, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, the methods listed in section 11-280.1-43(2), (3), (4), (8), (9), and (10) and section 11-280.1-44(1), (2), and (4) must be capable of detecting the leak rate or quantity specified for that method in the corresponding section of the rule with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(b) When a release detection method operated in accordance with the performance standards in section 11-280.1-43 or 11-280.1-44 indicates a release may have occurred, owners and operators must notify the department in accordance with subchapter 5.

(c) Any UST system that cannot apply a method of release detection that complies with the requirements of this subchapter must complete the change-in-service or closure procedures in subchapter 7. [Eff 7/15/18; comp 1/17/20; am and comp ] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

**§11-280.1-41 Requirements for petroleum UST systems.** (a) Tanks. Owners and operators of petroleum UST systems must provide release detection for tanks as follows:

(1) ~~[UST systems other than]~~ Tanks that are neither part of an airport hydrant fuel distribution [systems and UST systems] system nor a UST system with field-constructed tanks:

(A) Tanks installed before August 9, 2013 must be monitored for releases at least every thirty-one days using one of the methods listed in section 11-280.1-43(4) to (9), except that:

- (i) UST systems that meet the performance standards in section 11-280.1-20, and the monthly inventory control requirements in section 11-280.1-43(1) or (2), may use tank tightness testing (conducted in accordance with section 11-280.1-43(3)) at least every five years until ten years after the tank was installed; and
- (ii) Tanks with capacity of 550 gallons or less and tanks with a capacity of 551 to 1,000 gallons that meet the tank diameter criteria in section 11-280.1-43(2) may use manual tank gauging (conducted in accordance with section 11-280.1-43(2)).

(B) Not later than ~~[ten years after the effective date of these rules,]~~ July 15, 2028, tanks installed before August 9, 2013 must be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7).

(C) Tanks installed on or after August 9, 2013 must be monitored for releases at

- least every thirty-one days in accordance with section 11-280.1-43(7).
- (2) ~~[Airport hydrant fuel distribution systems and UST systems with field-constructed tanks with a capacity less than or equal to 50,000 gallons:]~~ Tanks that are part of an airport hydrant fuel distribution system or a UST system with field-constructed tanks, except field-constructed tanks with a capacity greater than 50,000 gallons:
- (A) Tanks installed before ~~[the effective date of these rules]~~ July 15, 2018 must be monitored for releases at least every thirty-one days using one of the methods listed in section 11-280.1-43(4) to (9), except that:
- (i) UST systems that meet the performance standards in section 11-280.1-20, and the monthly inventory control requirements in section 11-280.1-43(1) or (2), may use tank tightness testing (conducted in accordance with section 11-280.1-43(3)) at least every five years until ten years after the tank was installed; and
- (ii) Tanks with capacity of 550 gallons or less and tanks with a capacity of 551 to 1,000 gallons that meet the tank diameter criteria in section 11-280.1-43(2) may use manual tank gauging (conducted in accordance with section 11-280.1-43(2)).
- (B) Tanks installed on or after ~~[the effective date of these rules]~~ July 15, 2018 must be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7).
- (3) ~~[UST systems with field-constructed]~~ Field-constructed tanks with a capacity greater than 50,000 gallons:

- (A) Tanks installed before ~~[the effective date of these rules]~~ July 15, 2018 must be monitored for releases at least every thirty-one days using one of the methods listed in section 11-280.1-43(4), (7), (8), and (9) or use one or a combination of the methods of release detection listed in section ~~[11-280.1-43(10); and]~~ 11-280.1-43(10).
  - (B) Tanks installed on or after ~~[the effective date of these rules]~~ July 15, 2018 must be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7).
- (b) Piping. Underground piping that routinely contains regulated substances must be monitored for releases as follows:
- (1) Piping installed before August 9, 2013, for UST systems other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must meet one of the following:
    - (A) Pressurized piping. Underground piping that conveys regulated substances under pressure must:
      - (i) Be equipped with an automatic line leak detector conducted in accordance with section 11-280.1-44(1); and
      - (ii) Have an annual line tightness test conducted in accordance with section 11-280.1-44(2) or have monthly monitoring conducted in accordance with section 11-280.1-44(3).
    - (B) Suction piping. Underground piping that conveys regulated substances under suction must:
      - (i) Have a line tightness test conducted at least every three years and in accordance with section 11-280.1-44(2);



- (ii) Use a monthly monitoring method conducted in accordance with section 11-280.1-44(3); or
  - (iii) Meet the standards in paragraph (6) (A) to (E).
- (2) Not later than ~~[ten years after the effective date of these rules,]~~ July 15, 2028, piping installed before August 9, 2013, for UST systems other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must meet one of the following:
  - (A) Pressurized piping. Underground piping that conveys regulated substances under pressure must:
    - (i) Be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7); and
    - (ii) Be equipped with an automatic line leak detector in accordance with section 11-280.1-44(1).
  - (B) Suction piping. Underground piping that conveys regulated substances under suction must:
    - (i) Be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7); or
    - (ii) Meet the standards in paragraph (6) (A) to (E).
- (3) Piping installed on or after August 9, 2013, for UST systems other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must meet the technical specifications in paragraph (2) (A) or (B).
- (4) Piping for UST systems with field-constructed tanks with a capacity less than or equal to 50,000 gallons and not part of an airport hydrant fuel distribution system:
  - (A) Piping installed before ~~[the effective~~

- ~~date of these rules~~] July 15, 2018 must meet the technical specifications in paragraph (1)(A) or (B).
- (B) Not later than ~~[twenty years after the effective date of these rules,]~~ July 15, 2038, piping installed before ~~[the effective date of these rules]~~ July 15, 2018 must meet the technical specifications in paragraph (2)(A) or (B), unless an alternative design is approved by the director under section 11-280.1-21(c).
- (C) Piping installed on or after ~~[the effective date of these rules]~~ July 15, 2018 must meet the technical specifications in paragraph (2)(A) or (B).
- (5) Piping for airport hydrant fuel distribution systems and UST systems with field-constructed tanks with a capacity greater than 50,000 gallons must meet one of the following:
- (A) Pressurized piping. Underground piping that conveys regulated substances under pressure must:
- (i) Be equipped with an automatic line leak detector conducted in accordance with section 11-280.1-44(1); and
- (ii) Have an annual line tightness test conducted in accordance with section 11-280.1-44(2) or have monthly monitoring conducted in accordance with any of the methods in section 11-280.1-43(7) to (9) designed to detect a release from any portion of the underground piping that routinely contains regulated substances; or
- (iii) Use one or a combination of the methods of release detection listed in section 11-280.1-44(4).

- (B) Suction piping. Underground piping that conveys regulated substances under suction must:
  - (i) Have a line tightness test conducted at least every three years and in accordance with section 11-280.1-44(2);
  - (ii) Use a monthly monitoring method conducted in accordance with section 11-280.1-43(7) to (9) designed to detect a release from any portion of the underground piping that routinely contains regulated substances;
  - (iii) Use one or a combination of the methods of release detection listed in section 11-280.1-44(4); or
  - (iv) Meet the standards in paragraph (6) (A) to (E).
- (6) No release detection is required for suction piping that is designed and constructed to meet the following standards:
  - (A) The below-grade piping operates at less than atmospheric pressure;
  - (B) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;
  - (C) Only one check valve is included in each suction line;
  - (D) The check valve is located directly below and as close as practical to the suction pump; and
  - (E) A method is provided that allows compliance with subparagraphs (B) to (D) to be readily determined. [Eff 7/15/18; comp 1/17/20; am and comp ] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

**§11-280.1-42 Requirements for hazardous substance UST systems.** Owners and operators of hazardous substance UST systems must monitor these systems in accordance with section 11-280.1-43(7) at least every thirty-one days. In addition, underground piping that conveys hazardous substances under pressure must be equipped with an automatic line leak detector in accordance with section 11-280.1-44(1).  
[Eff 7/15/18; comp 1/17/20; comp ]  
(Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

**§11-280.1-43 Methods of release detection for tanks.** Each method of release detection for tanks used to meet the requirements of sections 11-280.1-40 to 11-280.1-42 must be conducted in accordance with the following:

- (1) Inventory control. Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least one percent of flow-through plus one hundred thirty gallons on a monthly basis in the following manner:
  - (A) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;
  - (B) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
  - (C) If a manual measuring device is used (e.g., a gauge stick), the measurements must be made through a drop tube that extends to within one foot of the tank bottom. Level measurements shall be to the nearest one-eighth of an inch;

- (D) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;
  - (E) Deliveries are made through a drop tube that extends to within one foot of the tank bottom;
  - (F) Product dispensing is metered and recorded within the state standards for meter calibration or an accuracy of six cubic inches for every five gallons of product withdrawn, and the meter is calibrated every three hundred sixty-five days; and
  - (G) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.
- (2) Manual tank gauging. Manual tank gauging must meet the following requirements:
- (A) Tank liquid level measurements are taken at the beginning and ending of a period using the appropriate minimum duration of test value in the table below during which no liquid is added to or removed from the tank;
  - (B) If a manual measuring device is used (e.g., a gauge stick), the measurements must be made through a drop tube that extends to within one foot of the tank bottom. Level measurements shall be to the nearest one-eighth of an inch;
  - (C) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;
  - (D) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
  - (E) A release is suspected and subject to the requirements of subchapter 5 if the

variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal tank capacity	Minimum duration of test	Weekly standard (one test)	Monthly standard (four test average)
550 gallons or less .....	36 hours .....	10 gallons .....	5 gallons
551-1,000 gallons (when tank diameter is 64 inches) .....	44 hours .....	9 gallons .....	4 gallons
551-1,000 gallons (when tank diameter is 48 inches) .....	58 hours .....	12 gallons .....	6 gallons
551-1,000 gallons (also requires periodic tank tightness testing) .....	36 hours .....	13 gallons .....	7 gallons
1,001-2,000 gallons (also requires periodic tank tightness testing) ..	36 hours .....	26 gallons .....	13 gallons

- (F) Tanks of five hundred fifty gallons or less nominal capacity and tanks with a nominal capacity of five hundred fifty-one to one thousand gallons that meet the tank diameter criteria in the table in subparagraph (E) may use manual tank gauging as the sole method of release detection. All other tanks with a nominal capacity of five hundred fifty-one to two thousand gallons may use manual tank gauging in place of inventory control in paragraph (1), combined with tank tightness testing as indicated in the table. Tanks of greater than two thousand gallons nominal capacity may not use this method to meet the requirements of this subchapter.
- (3) Tank tightness testing. Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

- (4) Automatic tank gauging. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:
  - (A) The automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product;
  - (B) The automatic tank gauging equipment must meet the inventory control (or other test of equivalent performance) requirements of paragraph (1); and
  - (C) The test must be performed with the system operating in one of the following modes:
    - (i) In-tank static testing conducted at least once every thirty-one days; or
    - (ii) Continuous in-tank leak detection operating on an uninterrupted basis or operating within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every thirty-one days.
- (5) Vapor monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:
  - (A) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;
  - (B) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the

- tank;
  - (C) The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than thirty-one days;
  - (D) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;
  - (E) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;
  - (F) In the UST excavation zone, the site is assessed to ensure compliance with the requirements in subparagraphs (A) to (D) and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product; and
  - (G) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
- (6) Groundwater monitoring. Testing or monitoring for liquids on the groundwater must meet the following requirements:
- (A) The regulated substance stored is immiscible in water and has a specific gravity of less than one;
  - (B) Groundwater is never more than twenty feet from the ground surface and the hydraulic conductivity of the soils between the UST system and the



- monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);
- (C) The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions;
  - (D) Monitoring wells shall be sealed from the ground surface to the top of the filter pack;
  - (E) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;
  - (F) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the groundwater in the monitoring wells;
  - (G) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in subparagraphs (A) to (E) and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product; and
  - (H) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
- (7) Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed, and installed to detect a leak from any portion of the tank that routinely contains product

and also meets one of the following requirements:

- (A) For double walled UST systems, the sampling or testing method can detect a leak through the inner wall in any portion of the tank that routinely contains product;
- (B) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a leak between the UST system and the secondary barrier;
  - (i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least  $10^{-6}$  cm/sec for the regulated substance stored) to detect a leak to the monitoring point and permit its detection;
  - (ii) The barrier is compatible with the regulated substance stored so that a leak from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;
  - (iii) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;
  - (iv) The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than thirty-one days;
  - (v) The site is assessed to ensure that the secondary barrier is always above the groundwater and

- not in a twenty-five-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and,
- (vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
- (C) For tanks with an internally fitted liner, an automated device can detect a leak between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.
- (8) Statistical inventory reconciliation. Release detection methods based on the application of statistical principles to inventory data similar to those described in paragraph (1) must meet the following requirements:
  - (A) Report a quantitative result with a calculated leak rate;
  - (B) Be capable of detecting a leak rate of 0.2 gallon per hour or a release of one hundred fifty gallons within thirty-one days; and
  - (C) Use a threshold that does not exceed one-half the minimum detectible leak rate.
- (9) Other methods. Any other type of release detection method, or combination of methods, can be used if:
  - (A) It can detect a 0.2 gallon per hour leak rate or a release of one hundred fifty gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or
  - (B) The owner and operator can demonstrate to the department that the method can detect a release as effectively as any of the methods allowed in paragraphs (3) to (8), and the department approves the method. In comparing methods, the department shall consider the size of

release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the department on its use to ensure the protection of human health and the environment.

- (10) Methods of release detection for field-constructed tanks. One or a combination of the following methods of release detection for tanks may be used when allowed by section 11-280.1-41.
- (A) Conduct an annual tank tightness test that can detect a 0.5 gallon per hour leak rate;
  - (B) Use an automatic tank gauging system to perform release detection at least every thirty-one days that can detect a leak rate less than or equal to one gallon per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every three years;
  - (C) Use an automatic tank gauging system to perform release detection at least every thirty-one days that can detect a leak rate less than or equal to two gallons per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every two years;
  - (D) Perform vapor monitoring (conducted in accordance with paragraph (5) for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;
  - (E) Perform inventory control (conducted in accordance with Department of Defense

Directive 4140.25, ATA Airport Fuel Facility Operations and Maintenance Guidance Manual, or equivalent procedures) at least every thirty-one days that can detect a leak equal to or less than 0.5 percent of flow-through; and

- (i) Perform a tank tightness test that can detect a 0.5 gallon per hour leak rate at least every two years; or
  - (ii) Perform vapor monitoring or groundwater monitoring (conducted in accordance with paragraph (5) or (6), respectively, for the stored regulated substance) at least every thirty-one days; or
- (F) Another method approved by the department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subparagraphs (A) to (E). In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability of detection. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

**§11-280.1-44 Methods of release detection for piping.** Each method of release detection for piping used to meet the requirements of sections 11-280.1-40 to 11-280.1-42 must be conducted in accordance with the following:

- (1) Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping may be

used only if they detect leaks of three gallons per hour at ten pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector must be conducted in accordance with section 11-280.1-40(a)(4).

- (2) Line tightness testing. A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.
- (3) Applicable tank methods. Any of the methods in section 11-280.1-43(5) to (9) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.
- (4) Methods of release detection for piping associated with airport hydrant systems and field-constructed tanks. One or a combination of the following methods of release detection for piping may be used when allowed by section 11-280.1-41.
  - (A) (i) Perform a semiannual or annual line tightness test at or above the piping operating pressure in accordance with the table below.

MAXIMUM LEAK DETECTION RATE PER TEST SECTION VOLUME

Test section volume (gallons)	Semiannual test—leak detection rate not to exceed (gallons per hour)	Annual test— leak detection rate not to exceed (gallons per hour)
<50,000 .....	1.0	0.5
≥50,000 to <75,000 .....	1.5	0.75
≥75,000 to <100,000 .....	2.0	1.0
≥100,000 .....	3.0	1.5

- (ii) Piping segment volumes ≥100,000 gallons not capable of meeting the maximum 3.0 gallon per hour leak rate for the semiannual test may

be tested at a leak rate up to 6.0 gallons per hour according to the following schedule:

PHASE IN FOR PIPING SEGMENTS  
≥100,000 GALLONS IN VOLUME

First test .....	Not later than <del>[three years after the effective date of these rules]</del> <u>July 15, 2021</u> (may use up to 6.0 gph leak rate).
Second test .....	Between <del>[three and six years after the effective date of these rules]</del> <u>July 15, 2021 and July 15, 2024</u> (may use up to 6.0 gph leak rate).
Third test .....	Between <del>[six and seven years after the effective date of these rules]</del> <u>July 15, 2024 and July 15, 2025</u> (must use 3.0 gph for leak rate).
Subsequent tests ..	Not later than <del>[seven years after the effective date of these rules;]</del> <u>July 15, 2025</u> begin using semiannual or annual line testing according to the Maximum Leak Detection Rate Per Test Section Volume table above.

- (B) Perform vapor monitoring (conducted in accordance with section 11-280.1-43(5) for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;
- (C) Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25, ATA Airport Fuel Facility Operations and Maintenance Guidance Manual, or equivalent procedures) at least every thirty-one days that can detect a leak equal to or less than 0.5 percent of flow-through; and
  - (i) Perform a line tightness test (conducted in accordance with subparagraph (A) using the leak rates for the semiannual test) at least every two years; or
  - (ii) Perform vapor monitoring or groundwater monitoring (conducted in accordance with section 11-280.1-43(5) or (6),

- respectively, for the stored regulated substance) at least every thirty-one days; or
- (D) Another method approved by the department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subparagraphs (A) to (C). In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability of detection. [Eff 7/15/18; comp 1/17/20; am and comp ] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

**§11-280.1-45 Release detection recordkeeping.**

All UST system owners and operators must maintain records in accordance with section 11-280.1-34 demonstrating compliance with all applicable requirements of this subchapter. These records must include the following:

- (1) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for the operating life of the UST system. Records of site assessments required under section 11-280.1-43(5)(F) and (6)(G) must be maintained for as long as the methods are used. Records of site assessments developed after ~~[the effective date of these rules]~~ July 15, 2018 must be signed by a professional engineer or professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline



- acceptable to the department;
- (2) The results of any sampling, testing, or monitoring must be maintained for at least three years, except as follows:
    - (A) The results of annual operation tests conducted in accordance with section 11-280.1-40(a)(4) must be maintained for three years. At a minimum, the results must list each component tested, indicate whether each component tested meets criteria in section 11-280.1-40(a)(4) or needs to have action taken, and describe any action taken to correct an issue;
    - (B) The results of tank tightness testing conducted in accordance with section 11-280.1-43(3) must be retained until the next test is conducted; and
    - (C) The results of tank tightness testing, line tightness testing, and vapor monitoring using a tracer compound placed in the tank system conducted in accordance with section 11-280.1-43(10) or section 11-280.1-44(4) must be retained until the next test is conducted;
  - (3) All records that the equipment being utilized to monitor or maintain the UST system is designed to produce must be maintained for at least three years after the record is generated; and
  - (4) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least three years. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for five years from the date of installation. [Eff 7/15/18; comp 1/17/20; am and comp ] (Auth: HRS §§342L-3, 342L-7.5, 342L-33) (Imp: HRS

§11-280.1-46

§§342L-3, 342L-7.5, 342L-33)

**§11-280.1-46 Release detection--codes of practice.** (a) The following code of practice may be used to comply with section 11-280.1-40(a)(4): Petroleum Equipment Institute Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".

(b) Practices described in the American Petroleum Institute Recommended Practice RP 1621, "Bulk Liquid Stock Control at Retail Outlets" may be used, where applicable, as guidance in meeting the requirements of section 11-280.1-43(1). [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-33) (Imp: HRS §§342L-3, 342L-33)

**§§11-280.1-47 to 11-280.1-49 (Reserved) .**

## SUBCHAPTER 5

### RELEASE REPORTING, INVESTIGATION, AND CONFIRMATION

**§11-280.1-50 Reporting of suspected releases.** Owners and operators of UST systems must notify the department within twenty-four hours and follow the procedures in section 11-280.1-52 for any of the following conditions:

- (1) The discovery by any person of evidence of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water).

- (2) Unusual UST or tank system operating conditions observed or experienced by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, an unexplained presence of water in the tank, or liquid in the interstitial space of secondarily contained systems), unless:
  - (A) The system equipment or component is found not to be releasing regulated substances to the environment;
  - (B) Any defective system equipment or component is immediately repaired or replaced; and
  - (C) For secondarily contained systems, except as provided for in section 11-280.1-43(7)(B)(iv), any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed.
- (3) Monitoring results, including investigation of an alarm, from a release detection method required under sections 11-280.1-41 and 11-280.1-42 that indicate a release may have occurred unless:
  - (A) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result;
  - (B) The leak is contained in the secondary containment and:
    - (i) Except as provided for in section 11-280.1-43(7)(B)(iv), any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed; and
    - (ii) Any defective system equipment or component is immediately repaired

§11-280.1-50

- or replaced;
- (C) In the case of inventory control described in section 11-280.1-43(1), a second month of data does not confirm the initial result or the investigation determines no release has occurred; or
  - (D) The alarm was investigated and determined to be a non-release event (for example, from a power surge or caused by filling the tank during release detection testing). [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-34) (Imp: HRS §§342L-3, 342L-34)

**§11-280.1-51 Investigation of off-site impacts.**

When required by the department, owners and operators of UST systems must follow the procedures in section 11-280.1-52 to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that has been observed by the department or brought to the department's attention by any person. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-52 Release investigation and confirmation steps.** (a) Unless release response action is initiated in accordance with subchapter 6, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under section 11-280.1-50 within seven days following the discovery of the suspected release, unless a written request for extension of time is granted by the director.

(b) Investigations and confirmations required in subsection (a) must use the following steps or another procedure approved by the department:

- (1) System test. Owners and operators must conduct tests (according to the requirements for tightness testing in sections 11-280.1-43(3) and 11-280.1-44(2) [~~or,~~] and, as appropriate, secondary containment testing described in section ~~[11-280.1-33(a)(6)].~~ 11-280.1-33(a)(6)).
  - (A) The test must determine whether:
    - (i) A leak exists in that portion of the tank that routinely contains product, or the attached delivery piping; or
    - (ii) A breach of either wall of the secondary containment has occurred.
  - (B) If the system test confirms a leak into the interstice or a release, owners and operators must repair, replace, or close the UST system. In addition, owners and operators must begin release response action in accordance with subchapter 6 if the test results for the system, tank, or delivery piping indicate that a release exists.
  - (C) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a release exists and if environmental contamination is not the basis for suspecting a release.
  - (D) Owners and operators must conduct a site assessment as described in paragraph (2) if the test results for the system, tank, and delivery piping do not indicate that a release exists but environmental contamination is the basis for suspecting a release.
- (2) Site assessment. Owners and operators must measure for the presence of a release where

contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill and surrounding soil, the depth and flow of groundwater, and other factors as appropriate for identifying the presence and source of the release.

- (A) If the test results for the excavation zone or the UST site indicate that a release has occurred, owners and operators must begin release response action in accordance with subchapter 6;
- (B) If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.

(c) If it is determined that a release has not occurred, owners and operators must report the results of the investigation in writing to the department within thirty days following discovery of the suspected release. The report shall include, but not be limited to, results of the tests required by subsection (b) as well as performance claims pursuant to section 11-280.1-40(a)(5). [Eff 7/15/18; comp 1/17/20; am and comp ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-53 Reporting and cleanup of spills and overfills.** (a) Owners and operators of UST systems must contain and immediately clean up all spills and overfills in a manner which is protective of human health and the environment as set forth in section 11-280.1-65.3.

(b) Owners and operators must notify the

department within twenty-four hours and begin release response action in accordance with subchapter 6 in the following cases:

- (1) Spill or overfill of petroleum that results in a release to the environment that exceeds twenty-five gallons or that causes a sheen on nearby surface waters; and
- (2) Spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity, as determined in compliance with section 11-451-6.

(c) Owners and operators ~~[of UST systems must contain and immediately clean up]~~ must immediately notify the department of a spill or overfill of petroleum that is less than 25 gallons or a spill or overfill of a hazardous substance that is less than [the] its reportable quantity, as determined in compliance with section [11-451-6. If] 11-451-6, and comply with section 11-280.1-62(b) if cleanup cannot be accomplished within twenty-four [hours, then the owners and operators must immediately notify the department of the incident and continue cleaning up the spill or overfill. Owners and operators must also complete and submit to the department a written report of the actions taken in response to the spill or overfill within twenty days.] hours.

(d) An owner or operator must submit the appropriate forms listed in section 11-280.1-111(b) documenting current evidence of financial responsibility to the director within thirty days after identifying a release from an underground storage tank or tank system required to be reported under this section. [Eff 7/15/18; comp 1/17/20; am and comp ] (Auth: HRS §§342L-3, 342L-34, 342L-35) (Imp: HRS §§342L-3, 342L-34, 342L-35)

**§§11-280.1-54 to 11-280.1-59 (Reserved) .**

SUBCHAPTER 6

RELEASE RESPONSE ACTION

**§11-280.1-60 General.** Owners and operators of petroleum or hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this subchapter, except for USTs excluded under section 11-280.1-10(b) and UST systems subject to RCRA Subtitle C corrective action requirements under section 3004(u) of the Resource Conservation and Recovery Act, as amended, or under section 342J-36, Hawaii Revised Statutes. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-61 Immediate response actions.** (a) Upon confirmation of a release in accordance with section 11-280.1-52 or after a release from the UST system is identified in any other manner, owners and operators must perform the following response actions within twenty-four hours:

- (1) Report the release to the department by telephone;
- (2) Take necessary actions to prevent any further release of the regulated substance into the environment, including removal of as much of the regulated substance from the UST or tank system as possible;
- (3) Identify and mitigate any safety hazards (such as fire, explosion, and vapor hazards) posed by the release of the regulated substance; and
- (4) Take necessary action to minimize the spread of contamination.

(b) Within seven days of confirmation, owners and operators must accurately complete and submit to



the department [~~a written notice of confirmation. The notice shall include, but not be limited to, the following information: source of the release, method of discovery and confirmation, estimated quantity of substance released, type of substance released, immediate hazards, release impact, migration pathways, and actions taken.~~] the "Confirmed Release Notification" form prescribed by the director.

(c) An owner or operator must submit the appropriate forms listed in section 11-280.1-111(b) documenting current evidence of financial responsibility to the director within thirty days after identifying a release from an underground storage tank or tank system required to be reported under this section. [Eff 7/15/18; comp 1/17/20; am and comp ] (Auth: HRS §§342L-3, 342L-34, 342L-35) (Imp: HRS §§342L-3, 342L-34, 342L-35)

**§11-280.1-61.1 Posting of signs.** (a) If the department determines that posting of signs is appropriate, owners and operators shall post signs around the perimeter of the site informing passersby of the potential hazards. In this instance, "site" means an area where contamination poses an immediate health risk or an area where contaminated media is exposed to the surface.

(b) Signs shall be placed at each entrance to the site and at other locations in sufficient numbers to be seen from any approach to the site.

(c) Signs shall be legible and readable from a distance of at least twenty-five feet. The sign legend shall read, "Caution - Petroleum/Hazardous Substance Contamination - Unauthorized Personnel Keep Out". Other sign legends may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the site and that entry onto the site may be dangerous. A contact person and telephone number shall be listed on the sign.

(d) The sign may be removed upon determination

§11-280.1-61.1

by the department that no further release response action is necessary or that posting of signs is no longer appropriate. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-35)  
(Imp: HRS §§342L-3, 342L-35)

**§11-280.1-62 Initial abatement measures and site assessment.** (a) Unless directed to do otherwise by the department, owners and operators must perform the following abatement measures:

- (1) Continue to remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;
- (2) Visually inspect the area around the UST or tank system for evidence of any aboveground releases or exposed belowground releases and continue to take necessary actions to minimize the spread of contamination and to prevent further migration of the released substance into surrounding soils, air, surface water, and groundwater;
- (3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);
- (4) Remedy hazards (such as dust and vapors and the potential for leachate generation) posed by contaminated soils and debris that are excavated or exposed as a result of release confirmation, site investigation, abatement, or release response action activities;
- (5) Conduct an assessment of the release by measuring for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site

assessment required by section 11-280.1-52(b) or the site assessment required for change-in-service or permanent closure in section 11-280.1-72(a). In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill and surrounding soil, depth and flow of groundwater and other factors as appropriate for identifying the presence and source of the release;

- (6) Investigate to determine the possible presence of free product, and begin free product removal in accordance with section 11-280.1-64;
- (7) Remove or remediate contaminated soil at the site to the extent necessary to prevent the spread of free product; and
- (8) If any of the remedies in this section include treatment or disposal of contaminated soils, owners or operators must comply with all applicable local, state, and federal requirements.

(b) Within twenty days after release confirmation, or within another reasonable period of time determined by the department, owners and operators must submit a report to the department summarizing the initial abatement steps taken under subsection (a) and any resulting information or data.  
[Eff 7/15/18; comp 1/17/20; comp ]

(Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-63 Initial site characterization.**

(a) Owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in sections 11-280.1-60 and 11-280.1-61. This

information must include, but is not necessarily limited to the following:

- (1) Data on the nature and estimated quantity of release;
- (2) Data from available sources and all previous site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;
- (3) Results of the site assessment required under section 11-280.1-62(a)(5); and
- (4) Results of the free product investigations required under section 11-280.1-62(a)(6), to be used by owners and operators to determine whether free product must be recovered under section 11-280.1-64.

(b) Within forty-five days of release confirmation, or another reasonable period of time determined by the department, owners and operators must submit the information collected in compliance with subsection (a) to the department in a manner that demonstrates its applicability and technical adequacy. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-7.5, 342L-35) (Imp: HRS §§342L-3, 342L-7.5, 342L-35)

**§11-280.1-64 Free product removal.** (a) At sites where investigations under section 11-280.1-62(a)(6) indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the department while continuing, as necessary, any actions initiated under sections 11-280.1-61 to 11-280.1-63, or preparing for actions required under sections 11-280.1-65 to 11-280.1-66. In meeting the requirements of this section, owners and operators must:

- (1) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, state, and federal regulations;
- (2) Use abatement of free product migration as a minimum objective for the design of the free product removal system;
- (3) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and
- (4) Prepare and submit to the department, within forty-five days after confirming a release, or within another reasonable period of time determined by the department, a free product removal report that provides at least the following information:
  - (A) The name of the person responsible for implementing the free product removal measures;
  - (B) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;
  - (C) The type of free product recovery system used;
  - (D) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;
  - (E) The type of treatment applied to, and the effluent quality expected from, any discharge;
  - (F) All actions already performed or currently underway to remove free product, including steps that have been or are being taken to obtain necessary permits for any

discharge;

(G) The disposition of the recovered free product; and

(H) Schedule for completion of free product removal.

(b) Owners and operators shall initiate free product removal as soon as practicable but no later than thirty days following confirmation of a release, or sooner if directed by the department. [Eff 7/15/18; comp 1/17/20; am and comp ]  
(Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-65 Investigations for soil and groundwater cleanup.** (a) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the groundwater and surface water, owners and operators must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

- (1) There is evidence that groundwater wells have been affected by the release (e.g., as found during release confirmation or previous release response actions);
- (2) Free product is found to need recovery in compliance with section 11-280.1-64;
- (3) There is evidence that contaminated soils may be in contact with groundwater (e.g., as found during conduct of the initial response measures or investigations required under sections 11-280.1-60 to 11-280.1-64); and
- (4) The department requests an investigation, based on the potential effects of contaminated soil or groundwater on nearby surface water and groundwater resources.

(b) Owners and operators must include information collected in accordance with this section with each quarterly report required pursuant to

section 11-280.1-65.2. [Eff 7/15/18; comp 1/17/20;  
comp ] (Auth: HRS §§342L-3, 342L-35)  
(Imp: HRS §§342L-3, 342L-35)

**§11-280.1-65.1 Notification of confirmed releases.** (a) Within ninety days following confirmation of a release, the owner and operator shall notify those members of the public directly affected by the release in writing of the release and the proposed response to the release, including a historical account of actions performed since the discovery of the release. Members of the public directly affected by the release shall include:

- (1) Persons who own, hold a lease for, or have easements at, any property on which the regulated substance released from the UST was discovered; and
- (2) Other persons identified by the director.

(b) The owner and operator shall send a letter to all members of the public directly affected by the release. Model language for the letter shall be provided by the department and shall include at least the following information:

- (1) Name and address of the UST or UST system;
- (2) Statement that a release of regulated substance has been confirmed at the UST or UST system;
- (3) Name of a contact person at the department; and
- (4) Reference to an attached factsheet pursuant to subsection (c).

(c) The letter to the members of the public directly affected by the release shall include a factsheet which contains the following information:

- (1) Name and address of the UST or UST system;
- (2) Name and address of the owner and operator of the UST or UST system;
- (3) Name, address, and telephone contact of the party performing the cleanup activities;
- (4) Date of the confirmed release;

§11-280.1-65.1

- (5) Nature and extent of the confirmed release;
- (6) Summary of measures taken to assess the release and extent of contamination; and
- (7) Summary of the proposed response to the release.

(d) The factsheet shall be updated on a quarterly basis and sent to all members of the public directly affected by the release. If additional members of the public directly affected by the release are identified in the course of release response actions, then the owner and operator shall provide those persons with all previous and future letters and factsheets.

(e) The owner and operator shall include in the quarterly report required pursuant to section 11-280.1-65.2 the following information:

- (1) Copy of the letter pursuant to subsection (b);
- (2) List of the members of the public directly affected by the release and to whom the letter was sent; and
- (3) Copies of the factsheet and amended factsheets pursuant to subsections (c) and (d). [Eff 7/15/18; comp 1/17/20; comp  
] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-65.2 Release response reporting.** (a)

No later than ninety days following the confirmation of a release, owners and operators must submit to the department a written report in the format specified by the department. The report must include:

- (1) All release response actions taken pursuant to this subchapter during the first ninety-day period (first quarter); and
- (2) A plan for future release response actions to be taken.

(b) Beginning one hundred eighty days following confirmation of a release, owners and operators must submit to the department written quarterly progress reports and an electronic copy of the written report



in a format specified by the department. The reports must document:

- (1) All response actions taken pursuant to this subchapter after the last reported date;
  - (2) A plan for future release response actions to be taken; and
  - (3) Information required pursuant to section 11-280.1-65.1.
- (c) Quarterly progress reports are not required

if:

- (1) Response actions have met the requirements of section 11-280.1-65.3; and
- (2) A final quarterly report has been submitted. [Eff 7/15/18; comp 1/17/20; comp  
] (Auth: HRS §§342L-3,  
342L-7.5, 342L-35) (Imp: HRS §§342L-3,  
342L-7.5, 342L-35)

§11-280.1-65.3 Site cleanup criteria. (a)

Owners and operators must remediate soil, surface water, and groundwater, and materials contaminated by releases from USTs or tank systems in a manner that is protective of human health and the environment and achieves cleanup as described in subsection (b).

(b) Owners and operators must remediate contaminated soil, groundwater, and surface water at the site to residual concentrations that meet one of the following criteria:

- (1) Default Tier 1 Screening Levels as presented in Table 1 in subsection (e); or
- (2) Site-specific action levels as approved by the department. Owners and operators should consult with the department on how the standards in this paragraph can be met. Site-specific action levels must take into account the following factors:
  - (A) For systemic toxicants, acceptable levels shall represent concentration levels to which the human population may be exposed without adverse effect

during a lifetime or part of a lifetime, and incorporating an adequate margin of safety;

- (B) For known or suspected carcinogens, acceptable levels are generally concentration levels in soil, groundwater and vapor that represent an excess upper bound lifetime cancer risk to an individual of between  $10^{-4}$  and  $10^{-6}$  using information on the relationship between dose and response. The  $10^{-6}$  excess risk level shall be used as the point of departure for determining acceptable levels for alternatives when chemical-specific state or federal requirements are not available or are not sufficiently protective because of the presence of multiple contaminants at the site or multiple pathways of exposure;
- (C) Impacts to ecological receptors, including but not limited to plants and animals; and
- (D) Other applicable requirements, including but not limited to nuisance concerns for odor and taste, if applicable.

(c) The department may require the owners and operators to modify cleanup activities being performed at a site if the department determines that the activities are not being carried out in accordance with this subchapter, or are not achieving cleanup levels that are protective of human health and the environment. The department may impose modifications to cleanup activities by written notice to the owners and operators, and the owners and operators must implement necessary changes to the cleanup activities in response to the department's notice by a time schedule established by the department.

(d) A schedule for estimated completion of site cleanup shall be included in each fourth quarter report required pursuant to section 11-280.1-65.2(b).

(e) The figure labeled "Table 1. Tier 1 Screening Levels of Soil and Groundwater" is made a part of this subsection.

Table 1. Tier 1 Screening Levels for Soil and Groundwater

Contaminant	DRINKING WATER SOURCE THREATENED				DRINKING WATER SOURCE NOT THREATENED			
	Groundwater (ug/l)	Basis <sup>1</sup>	Soil (mg/kg)	Basis <sup>2</sup>	Groundwater (ug/l)	Basis <sup>3</sup>	Soil (mg/kg)	Basis <sup>2</sup>
Acenaphthene	N/A <sup>4</sup>	-	120	L/VI	N/A <sup>4</sup>	-	120	L/VI
Benzene	5.0	DWP	0.30	L	71	CAT	0.77	VI
Benzo(a)pyrene	N/A <sup>4</sup>	-	3.6	DE	N/A <sup>4</sup>	-	3.6	DE
Dichloroethylene, cis 1,2-	70	DWP	0.36	VI	620	CAT	0.36	VI
Dichloroethylene, trans 1,2-	100	DWP	3.6	VI	560	CAT	3.6	VI
Ethylbenzene	7.3	CAT	0.90	L	7.3	CAT	0.90	L
Fluoranthene	N/A <sup>4</sup>	-	87	L	N/A <sup>4</sup>	-	87	L
Lead	5.6	CAT	200	DE	5.6	CAT	200	DE
Methyl Tert Butyl Ether (MTBE)	5.0	DWS	0.028	L	730	CAT	2.3	VI
Naphthalene	12	CAT	3.1	L	12	CAT	3.1	L
Polychlorinated Biphenyls (PCBs)	N/A <sup>4</sup>	-	1.2	DE	N/A <sup>4</sup>	-	1.2	DE
Tetrachloroethylene (PCE)	5.0	DWP	0.098	VI	53	CAT	0.098	VI
Toluene	9.8	CAT	0.78	L	9.8	CAT	0.78	L
TPH-gasolines	300	DWP	100	GC	500	CAT	100	GC
TPH-middle distillates	400	DWP	220	DE	640	CAT	220	DE
TPH-residual fuels	500	DWS	500	GC	640	CAT	500	GC
Trichloroethylene	5.0	DWP	0.089	VI	47	CAT	0.089	VI
Vinyl Chloride	2.0	DWP	0.036	VI	18	VI	0.036	VI
Xylenes	13	CAT	1.4	L	13	CAT	1.4	L

Notes to Table 1.

1. Drinking water screening levels are the lowest of screening levels for: drinking water primary maximum contaminant levels based on toxicity ("DWP"), drinking water secondary maximum contaminant levels based on taste and odor concerns ("DWS"), vapor intrusion ("VI"), and chronic aquatic toxicity ("CAT").
2. Soil screening levels are the lowest of screening levels for: direct exposure ("DE"), vapor intrusion ("VI"), leaching ("L"), and gross contamination ("GC").
3. Non-drinking water screening levels are the lowest of screening levels vapor intrusion ("VI"), chronic aquatic toxicity ("CAT"), and gross contamination ("GC").
4. Testing for acenaphthene, benzo(a)pyrene, fluoranthene, and PCBs in groundwater is not necessary due to low solubility and low mobility. Cleanup of contaminated soil will be adequate to address potential groundwater concerns.

[Eff 7/15/18; comp 1/17/20; comp ]  
(Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-66 Corrective action plan.** (a) The department may require that the owner and operator submit a written corrective action plan for responding to a release, if one or more of the following minimum threshold criteria is met:

- (1) Actual or probable release to groundwater which is a drinking water supply;
- (2) Actual or probable release to surface water which is a drinking water supply;
- (3) Actual or probable release to air that poses

- a threat to public health;
- (4) Actual or probable release to and extensive contamination of soil that poses a direct contact hazard due to uncontrolled access;
- (5) Actual or probable existence of uncontrolled regulated substances that pose a direct contact hazard due to uncontrolled access;
- (6) Actual or probable adverse impact to natural resources;
- (7) Actual or probable imminent danger of fire or explosion; or
- (8) A determination by the director that a release poses a substantial endangerment to public health or welfare, the environment, or natural resources.

(b) If a plan is required, owners and operators must submit the plan to the department in a format established by the department within thirty days of the department's request, unless an extension of time is granted by the department.

(c) Corrective action plans which are required to be submitted to the department shall be subject to the review and discretionary approval of the department in accordance with the procedures set forth in this section. Owners and operators are responsible for submitting a corrective action plan that provides for adequate protection of human health and the environment as determined by the department and must make necessary modifications to the plan when directed to do so by the department.

(d) The department will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the department will consider the following factors as appropriate:

- (1) Physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;
- (2) Hydrogeologic characteristics of the facility and the surrounding area;
- (3) Proximity, quality, and current and future

uses of nearby surface water and groundwater;

- (4) Potential effects of residual contamination on nearby surface water and groundwater;
- (5) An exposure assessment; and
- (6) All other information assembled in compliance with this subchapter.

(e) The public participation procedures set forth in section 11-280.1-67 apply to all corrective action plans submitted under this section.

(f) Upon approval of a corrective action plan, owners and operators must implement the plan, including any modifications to the plan made by the department. Owners and operators must monitor, evaluate, and report quarterly to the department the results of implementing the corrective action plan pursuant to this section and section 11-280.1-65.2.

(g) Owners and operators who have been requested by the department to submit a corrective action plan are encouraged to begin cleanup of contaminated soils, surface water, groundwater, and materials before the plan is approved by the department provided that they:

- (1) Notify the department of their intention to begin cleanup;
- (2) Ensure that cleanup measures undertaken are consistent with the cleanup actions required pursuant to section 11-280.1-65.3;
- (3) Comply with any conditions imposed by the department, including halting cleanup or mitigating adverse consequences from cleanup activities; and
- (4) Incorporate self-initiated cleanup measures in the corrective action plan that is submitted to the department for approval.

[Eff 7/15/18; comp 1/17/20; comp  
] (Auth: HRS §§342L-3,  
342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-67 Public participation for corrective action plans.** (a) The department shall

conduct public participation activities in accordance with subsections (c) through (h) when:

- (1) A corrective action plan required pursuant to section 11-280.1-66(a) has been submitted and the department has made a tentative decision concerning the proposed plan; or
- (2) Implementation of any previously approved corrective action plan has not achieved the cleanup levels established in the plan and termination of the plan is under consideration by the department.

(b) The department will provide notice to the public of the release and the applicable response as required in subsections (c) and (d). Costs for all public participation activities described in subsections (c) through (h) shall be borne by the owner and operator of the UST or UST system, including the costs of making copies of materials to the public under subsection (f).

(c) Notice to members of the public directly affected by the release, as defined in section 11-280.1-65.1(a), shall be given in the form of a letter from the department and shall include at least the following information:

- (1) Name and address of the UST or UST system;
  - (2) Name and address of the owner and operator of the UST or UST system;
  - (3) Summary of the release information and the proposed or previously approved corrective action plan;
  - (4) The department's tentative decision concerning the proposed corrective action plan or concerning the termination of the previously approved corrective action plan;
  - (5) Announcement that an informational meeting will be held in accordance with subsection (g);
  - (6) Request for comments on the corrective action plan and the department's tentative decision; and
  - (7) Availability of information on the release and the department's tentative decision.
- (d) Notice to the general public shall be given



in the form of a notice in a local newspaper and shall include at least the information required in subsection (c)(1) to (7).

(e) Comments shall be received by the department no later than thirty days after the notice provided in subsections (c) and (d) or after the end of the public meeting held pursuant to subsection (g), if any, whichever occurs later.

(f) Information on the release, the proposed corrective action plan, and the department's tentative decision on the plan shall be made available to the public for inspection upon request.

(g) Before approving a corrective action plan, the department may conduct a public meeting to provide information and receive comments on the proposed plan. A meeting will be held if there is sufficient public interest. Public interest shall be indicated by written request to the department.

(h) At the director's discretion, a notice of final decision may be issued. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§§11-280.1-68 to 11-280.1-69 (Reserved) .**

## SUBCHAPTER 7

### OUT-OF-SERVICE UST SYSTEMS AND CLOSURE

**§11-280.1-70 Temporary closure.** (a) When an UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with section 11-280.1-31, and applicable release detection in accordance with subchapter 4. Subchapters 5 and 6 must be complied with if a release is suspected or confirmed. Spill and

overfill operation and maintenance testing and inspections in subchapter 3 are not required during temporary closure. If the UST system is empty, release detection and release detection operation and maintenance testing and inspections in subchapters 3 and 4 are not required. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.

(b) When an UST system is temporarily closed for ninety days or more, owners and operators must also comply with the following requirements:

- (1) Leave vent lines open and functioning; and
- (2) Cap and secure all other lines, pumps, manways, and ancillary equipment.

(c) When an UST system is temporarily closed for more than twelve months, owners and operators must permanently close the UST system if it does not meet the applicable design, construction, and installation requirements in subchapter 2, except that the spill and overfill equipment requirements do not have to be met. Owners and operators must permanently close the substandard UST systems at the end of this twelve-month period in accordance with sections 11-280.1-71 to 11-280.1-74, unless the department provides an extension of the twelve-month temporary closure period. Owners and operators must complete a site assessment in accordance with section 11-280.1-72 before such an extension can be applied for. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-37)

**§11-280.1-71 Permanent closure and changes-in-service.** (a) At least thirty days before beginning either permanent closure or a change-in-service of an UST or tank system under subsections (c) and (d), owners and operators must notify the department [~~in writing~~] of their intent to permanently close or make

the change-in-service, as required in section 11-280.1-34, unless such action is in response to a confirmed release. The required assessment of the excavation zone under section 11-280.1-72 must be performed after notifying the department but before completion of the permanent closure or change-in-service.

(b) At least seven days before excavation work for a permanent closure or change-in-service, owners or operators must notify the department of the exact date that the work will ~~[occur.]~~ occur, as required in section 11-280.1-34.

(c) To permanently close an UST or tank system, owners and operators must:

- (1) Empty and clean the UST and tank system by removing all liquids and accumulated sludges;
- (2) Remove the UST or tank system from the ground, fill the UST or tank system with an inert solid material, or close the tank in place in a manner approved by the department; and
- (3) Conduct a site assessment in accordance with section 11-280.1-72.

(d) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators must:

- (1) Empty and clean the UST and tank system by removing all liquids and accumulated sludges; and
- (2) Conduct a site assessment in accordance with section 11-280.1-72.

(e) Within thirty days of completing a permanent closure or change-in-service, owners and operators must ~~[submit a]~~ submit to the department:

- (1) A notification [to the department indicating completion of the closure or change-in-service.] as required in section 11-280.1-34; and
- (2) A UST closure report, including the results of the site assessment conducted in

accordance with section 11-280.1-72. [Eff  
7/15/18; comp 1/17/20; am and comp  
] (Auth: HRS §§342L-3,  
342L-37) (Imp: HRS §§342L-3, 342L-37)

**§11-280.1-72 Assessing the site at closure or change-in-service.** (a) Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the types of backfill and surrounding soil, the depth and flow of groundwater, and other factors appropriate for identifying the presence of a release. The requirements of this section are satisfied if one of the external release detection methods allowed in section 11-280.1-43(5) and (6) is operating in accordance with the requirements in section 11-280.1-43 at the time of closure, and indicates no release has occurred.

(b) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered under subsection (a), or by any other manner, owners and operators must begin release response action in accordance with subchapter 6. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-372)

**§11-280.1-73 Applicability to previously closed UST systems.** (a) When directed by the department, the owner and operator of an UST system permanently closed before December 22, 1988 must assess the excavation zone and close the UST system in accordance with this subchapter if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment.

(b) When directed by the department, the owner and operator of an UST system with field-constructed tanks or an airport hydrant fuel distribution system permanently closed before August 9, 2013 must assess the excavation zone and close the UST system in accordance with this subchapter if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-37)

**§11-280.1-74 Closure records.** Owners and operators must maintain records in accordance with section 11-280.1-34 that are capable of demonstrating compliance with closure requirements under this subchapter. The results of the excavation zone assessment required in section 11-280.1-72 must be maintained for at least three years after completion of permanent closure or change-in-service in one of the following ways:

- (1) By the owners and operators who took the UST system out of service;
- (2) By the current owners and operators of the UST system site; or
- (3) By mailing these records to the department if they cannot be maintained at the closed facility. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-7.5, 342L-37) (Imp: HRS §§342L-3, 342L-7.5, 342L-37)

**§11-280.1-75 Closure--codes of practice.** The following cleaning and closure procedures may be used to comply with section 11-280.1-71:

- (1) American Petroleum Institute Recommended Practice RP 1604, "Closure of Underground Petroleum Storage Tanks";

- (2) American Petroleum Institute Standard 2015, "Safe Entry and Cleaning of Petroleum Storage Tanks, Planning and Managing Tank Entry From Decommissioning Through Recommissioning";
- (3) American Petroleum Institute Recommended Practice 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks";
- (4) American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks", may be used as guidance for compliance with this section;
- (5) National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair"; and
- (6) National Institute for Occupational Safety and Health Publication 80-106, "Criteria for a Recommended Standard...Working in Confined Space", may be used as guidance for conducting safe closure procedures at some tanks containing hazardous substances. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-37)

**§§11-280.1-76 to 11-280.1-89 (Reserved) .**

## SUBCHAPTER 8

### FINANCIAL RESPONSIBILITY

**§11-280.1-90 Applicability.** (a) This subchapter applies to owners and operators of all petroleum underground storage tank (UST) systems except as otherwise provided in this section.

(b) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this subchapter.

(c) The requirements of this subchapter do not apply to owners and operators of any UST system described in section 11-280.1-10(b), (c) (1), (c) (3), or (c) (4).

(d) If the owner and operator of a petroleum underground storage tank system are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-91 (Reserved) .**

**§11-280.1-92 Definition of terms.** When used in this subchapter, the following terms have the meanings given below:

"Accidental release" means any sudden or nonsudden release of petroleum arising from operating an underground storage tank system that results in a need for release response action and/or compensation for bodily injury or property damage neither expected nor intended by the tank system owner or operator.

"Bodily injury" shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Chief financial officer" in the case of local

government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

"Controlling interest" means direct ownership of at least fifty percent of the voting stock of another entity.

"Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared:

- (1) A 10-K report submitted to the U.S. Securities and Exchange Commission;
- (2) An annual report of tangible net worth submitted to Dun and Bradstreet; or
- (3) Annual reports submitted to the Energy Information Administration or the Rural Utilities Service.

"Financial reporting year" may thus comprise a fiscal or a calendar year period.

"Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:

- (1) By EPA or the state to require release response action or to recover the costs of release response action;
- (2) By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or
- (3) By any person to enforce the terms of a financial assurance mechanism.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank system. This definition is intended to assist in the understanding of these regulations and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence".

"Owner or operator", when the owner or operator are separate parties, refers to the party that is



obtaining or has obtained financial assurances.

"Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Property damage" shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include response actions associated with releases from USTs or tank systems which are covered by the policy.

"Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank system through one of the financial mechanisms listed in sections 11-280.1-95 through 11-280.1-107, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

"Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

"Substantial governmental relationship" means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an UST or tank system release such as coterminous boundaries, overlapping constituencies, common groundwater aquifer, or other relationship other than monetary compensation that provides a motivation for the

guarantor to provide a guarantee.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Termination" under section 11-280.1-97(b)(1) and (2) means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-93 Amount and scope of required financial responsibility.** (a) Owners or operators of petroleum USTs or tank systems must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs or tank systems in at least the following per-occurrence amounts:

- (1) For owners or operators of petroleum USTs or tank systems that are located at petroleum marketing facilities, or that handle an average of more than ten thousand gallons of petroleum per month based on annual throughput for the previous calendar year: \$1,000,000; and
  - (2) For all other owners or operators of petroleum USTs or tank systems: \$500,000.
- (b) Owners or operators of petroleum USTs or tank systems must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage

caused by accidental releases arising from the operation of petroleum USTs or tank systems in at least the following annual aggregate amounts:

- (1) For owners or operators of one to one hundred petroleum USTs: \$1,000,000; and
  - (2) For owners or operators of one hundred one or more petroleum USTs: \$2,000,000.
- (c) For the purposes of subsections (b) and (f) only, "a petroleum underground storage tank" or "a petroleum UST" means a single containment unit and does not mean combinations of single containment units.

(d) Except as provided in subsection (e), if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

- (1) Taking corrective action;
- (2) Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or
- (3) Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in subsections (a) and (b).

(e) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

(f) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks for which assurance must be provided exceeds one hundred, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2,000,000 of annual aggregate assurance by the anniversary of the date on which the mechanism

demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2,000,000 of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

(g) The amounts of assurance required under this section exclude legal defense costs.

(h) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-94 Allowable mechanisms and combinations of mechanisms.** (a) Subject to the limitations of subsections (b) and (c):

- (1) An owner or operator, including a local government owner or operator, may use any one or combination of the mechanisms listed in sections 11-280.1-95 through 11-280.1-103 to demonstrate financial responsibility under this subchapter for one or more USTs or tank systems; and
- (2) A local government owner or operator may use any one or combination of the mechanisms listed in sections 11-280.1-104 through 11-280.1-107 to demonstrate financial responsibility under this subchapter for one or more USTs or tank systems.

(b) An owner or operator may use a guarantee under section 11-280.1-96 or surety bond under section 11-280.1-98 to establish financial responsibility only if the State Attorney General has submitted a written statement to the director that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in the State.

(c) An owner or operator may use self-insurance

in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-95 Financial test of self-insurance.**

(a) An owner or operator, and/or guarantor, may satisfy the requirements of section 11-280.1-93 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, and/or guarantor, must meet the criteria of subsection (b) or (c) based on year-end financial statements for the latest completed fiscal year.

(b) (1) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:

(A) The total of the applicable aggregate amount required by section 11-280.1-93, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the department, to EPA, or to a state implementing agency under a state program approved by EPA under 40 C.F.R. part 281;

(B) The sum of the RCRA subtitle C corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to demonstrate financial responsibility to the department under 40 C.F.R. sections 261.143 and 261.147, as incorporated and amended in section 11-261.1-1, 40 C.F.R. sections 264.101,

- 264.143, 264.145, and 264.147, as incorporated and amended in section 11-264.1-1, and 40 C.F.R. sections 265.143, 265.145, and 265.147, as incorporated and amended in section 11-265.1-1, to EPA under 40 C.F.R. sections 261.143, 261.147, 264.101, 264.143, 264.145, 264.147, 265.143, 265.145, and 265.147, or to a state implementing agency under a state program authorized by EPA under 40 C.F.R. part 271; and
- (C) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 C.F.R. section 144.63 or to a state implementing agency under a state program authorized by EPA under 40 C.F.R. part 145.
- (2) The owner or operator, and/or guarantor, must have a tangible net worth of at least \$10,000,000.
  - (3) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in subsection (d).
  - (4) The owner or operator, and/or guarantor, must either:
    - (A) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Utilities Service; or
    - (B) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.
  - (5) The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of

- opinion, or a "going concern" qualification.
- (c) (1) The owner or operator, and/or guarantor, must meet the financial test requirements of 40 C.F.R. section 264.147(f)(1), as incorporated and amended in chapter 11-264.1, substituting the appropriate amounts specified in section 11-280.1-93(b)(1) and (2) for the "amount of liability coverage" each time specified in that section.
  - (2) The fiscal year-end financial statements of the owner or operator, and/or guarantor, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.
  - (3) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
  - (4) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in subsection (d).
  - (5) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Utilities Service, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:
    - (A) The accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in such financial statements; and
    - (B) In connection with that comparison, no matters came to the accountant's

attention which caused the accountant to believe that the specified data should be adjusted.

(d) To demonstrate that it meets the financial test under subsection (b) or (c), the chief financial officer of the owner or operator, or guarantor, must sign, within one hundred twenty days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance" or "guarantee" or both] to demonstrate financial responsibility for [insert: "taking corrective action" or "compensating third parties for bodily injury and property damage" or both] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test, or a corresponding financial test under EPA or another authorized state program, by this [insert: "owner or operator" or "guarantor"]:

[List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test or a corresponding financial test under EPA or under a state program approved under 40 C.F.R. part 281. If separate mechanisms or combinations of mechanisms are being used to assure any of the



tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326.]

A [insert: "financial test" and/or "guarantee"] is also used by this [insert: "owner or operator" or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 C.F.R. parts 271 and 145:

	Amount
EPA Regulations:	
Closure (§§261.143, 264.143, and 265.143)	\$
Post-Closure Care (§§264.145 and 265.145)	\$
Liability Coverage (§§261.147, 264.147, and 265.147)	\$
Corrective Action (§264.101(b))	\$
Plugging and Abandonment (§144.63)	\$
Authorized State Programs:	
Closure	\$
Post-Closure Care	\$
Liability Coverage	\$
Corrective Action	\$
Plugging and Abandonment	\$
TOTAL	\$

This [insert: "owner or operator" or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his or her financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the

criteria of subsection (b) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of subsection (c) are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

	Amount		
1. Amount of annual UST aggregate coverage being assured by a financial test, or guarantee or both	\$		
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, or guarantee or both	\$		
3. Sum of lines 1 and 2	\$		
4. Total tangible assets	\$		
5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]	\$		
6. Tangible net worth [subtract line 5 from line 4]	\$		
7. Is line 6 at least \$10,000,000?	Yes	No	
8. Is line 6 at least ten times line 3?	Yes	No	
9. Have financial statements for the latest fiscal year been filed with the U.S. Securities and Exchange Commission?	Yes	No	
10. Have financial statements for the latest fiscal year been filed with the federal Energy Information Administration?	Yes	No	
11. Have financial statements for the latest fiscal year been filed with the federal Rural Utilities Service?	Yes	No	

- |   |     |    |
|---|-----|----|
| 12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.] | Yes | No |
|---|-----|----|

ALTERNATIVE II

- |   | Amount |    |  |
|---|--------|----|--|
| 1. Amount of annual UST aggregate coverage being assured by a financial test, or guarantee or both  | \$     |    |  |
| 2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, or guarantee or both | \$     |    |  |
| 3. Sum of lines 1 and 2   | \$     |    |  |
| 4. Total tangible assets  | \$     |    |  |
| 5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]      | \$     |    |  |
| 6. Tangible net worth [subtract line 5 from line 4]   | \$     |    |  |
| 7. Total assets in the U.S. [required only if less than ninety per cent of assets are located in the U.S.]  | \$     |    |  |
| 8. Is line 6 at least \$10,000,000?   | Yes    | No |  |
| 9. Is line 6 at least six times line 3?   | Yes    | No |  |
| 10. Are at least ninety per cent of assets located in the U.S.? [If "No," complete line 11]   | Yes    | No |  |
| 11. Is line 7 at least six times line 3?  | Yes    | No |  |
- [Fill in either lines 12-15 or lines

\$11-280.1-95

16-18:]

- |   |     |    |
|---|-----|----|
| 12. Current assets  | \$  |    |
| 13. Current liabilities   | \$  |    |
| 14. Net working capital [subtract line 13<br>from line 12]  | \$  |    |
| 15. Is line 14 at least six times line 3?   | Yes | No |
| 16. Current bond rating of most recent<br>bond issue  |     |    |
| 17. Name of rating service  |     |    |
| 18. Date of maturity of bond  |     |    |
| 19. Have financial statements for the<br>latest fiscal year been filed with the<br>U.S. Securities and Exchange<br>Commission, the federal Energy<br>Information Administration, or the<br>federal Rural Utilities Service? | Yes | No |

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in section 11-280.1-95(d), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(e) If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test

based on the year-end financial statements, the owner or operator must obtain alternative coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.

(f) The director may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the director finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of subsections (b) or (c) and (d), the owner or operator must obtain alternate coverage within thirty days after notification of such a finding.

(g) If the owner or operator fails to obtain alternate assurance within one hundred fifty days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within thirty days of notification by the director that he or she no longer meets the requirements of the financial test, the owner or operator must notify the director of such failure within ten days. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-96 Guarantee.** (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

- (1) A firm that:
  - (A) Possesses a controlling interest in the owner or operator;
  - (B) Possesses a controlling interest in a firm described under subparagraph (A); or
  - (C) Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or

- (2) A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

(b) Within one hundred twenty days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of section 11-280.1-95 based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in section 11-280.1-95(d) and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within one hundred twenty days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the director notifies the guarantor that it no longer meets the requirements of the financial test of section 11-280.1-95(b) or (c), and (d), the guarantor must notify the owner or operator within ten days of receiving such notification from the director. In both cases, the guarantee will terminate no less than one hundred twenty days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in section 11-280.1-114(e).

(c) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the State of [name of state], herein referred to as guarantor, to the Hawaii state department of health and to any and all third parties, and obligees, on behalf of [owner or operator] of

[business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of section 11-280.1-95(b) or (c) and (d), Hawaii Administrative Rules, and agrees to comply with the requirements for guarantors as specified in section 11-280.1-96(b), Hawaii Administrative Rules.

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326 and the name and address of the facility.] This guarantee satisfies subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with

owner or operator)] [owner or operator], guarantor guarantees to the Hawaii department of health and to any and all third parties that:

In the event that [owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the Hawaii director of health has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the Hawaii director of health, shall fund a standby trust fund in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, in an amount not to exceed the coverage limits specified above.

In the event that the Hawaii director of health determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, the guarantor, upon written instructions from the Hawaii director of health, shall fund a standby trust in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Hawaii director of health, shall fund a standby trust in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of



section 11-280.1-95(b) or (c) and (d), Hawaii Administrative Rules, guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate one hundred twenty days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within ten days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 11-280.1, Hawaii Administrative Rules.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Hawaii department of health, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in section 11-280.1-96(c), Hawaii Administrative Rules, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(d) An owner or operator who uses a guarantee to satisfy the requirements of section 11-280.1-93 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the Hawaii director of health under section 11-280.1-112. This standby trust fund must meet the requirements specified in section 11-280.1-103. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-97 Insurance and risk retention group coverage.** (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(b) Each insurance policy must be amended by an endorsement worded as specified in paragraph (1) or evidenced by a certificate of insurance worded as specified in paragraph (2), except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

(1) ENDORSEMENT

Name: [name of each covered location]  
Address: [address of each covered location]  
Policy Number:  
Period of Coverage: [current policy period]  
Name of [Insurer or Risk Retention Group]:  
Address of [Insurer or Risk Retention Group]:  
Name of Insured:  
Address of Insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this

instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.] for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage, and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) to (e) of this paragraph are hereby amended

- to conform with subsections (a) to (e);
- a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.
  - b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in sections 11-280.1-95 to 11-280.1-102 and sections 11-280.1-104 to 11-280.1-107, Hawaii Administrative Rules.
  - c. Whenever requested by the Hawaii director of health, the ["Insurer" or "Group"] agrees to furnish to the Hawaii director of health a signed duplicate original of the policy and all endorsements.
  - d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten days after a copy of such written notice is

received by the insured.

[Insert for claims-made policies:

- e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in section 11-280.1-97(b)(1), Hawaii Administrative Rules, and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the State of Hawaii"].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

(2) CERTIFICATE OF INSURANCE

Name: [name of each covered location]

Address: [address of each covered location]  
Policy Number:  
Endorsement (if applicable):  
Period of Coverage: [current policy period]  
Name of [Insurer or Risk Retention Group]:  
Address of [Insurer or Risk Retention Group]:  
Name of Insured:  
Address of Insured:

Certification:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.] for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage

applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

- a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.
- b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in sections 11-280.1-95 to 11-280.1-102 and 11-280.1-104 to 11-280.1-107, Hawaii Administrative Rules.
- c. Whenever requested by the Hawaii director of health, the ["Insurer" or



"Group"] agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

- d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

- e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in section 11-280.1-97(b)(2), Hawaii Administrative Rules, and that the

§11-280.1-97

["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of Hawaii"].

[Signature of authorized representative of Insurer]  
[Type Name]  
[Title], Authorized Representative of [name of Insurer or Risk Retention Group]  
[Address of Representative]

(c) Each insurance policy must be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the State of Hawaii. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-98 Surety bond.** (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

(b) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed:  
Period of coverage:  
Principal: [legal name and business address of owner or operator]  
Type of organization: [insert: "individual", "joint

venture", "partnership", or "corporation"]  
State of incorporation (if applicable):  
Surety(ies): [name(s) and business address(es)]  
Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].  
Penal sums of bond:  
Per occurrence \$  
Annual aggregate \$  
Surety's bond number:

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Hawaii department of health, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, and the Hawaii director of health's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "sudden and nonsudden accidental releases"] arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, within one hundred twenty days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Hawaii director of health that the Principal has failed to ["take corrective action, in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, and the Hawaii director of health's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in accordance with chapter 11-280.1, Hawaii Administrative Rules, and the Hawaii director of health's instructions," and/or "third party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Hawaii director of health under section 11-280.1-112, Hawaii Administrative Rules.

Upon notification by the Hawaii director of health that the Principal has failed to provide alternate financial assurance within sixty days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Hawaii director of health has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate

penal sum into the standby trust fund as directed by the Hawaii director of health under section 11-280.1-112, Hawaii Administrative Rules.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in section 11-280.1-98(b), Hawaii Administrative Rules, as such regulations were constituted on the date this bond was executed.

Principal  
[Signature(s)]  
[Name(s)]  
[Title(s)]  
[Corporate seal]

Corporate Surety(ies)  
[Name and address]  
State of Incorporation:

Liability limit: \$  
[Signature(s)]  
[Name(s) and title(s)]  
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$

(c) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

(d) The owner or operator who uses a surety bond to satisfy the requirements of section 11-280.1-93 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the director under section 11-280.1-112. This standby trust fund must meet the requirements specified in section 11-280.1-103. [Eff 7/15/18; comp 1/17/20; comp  
] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-99 Letter of credit.** (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in the State of Hawaii and whose letter-of-credit operations are regulated and examined by a federal or State of Hawaii agency.

(b) The letter of credit must be worded as follows, except that instructions in brackets are to

be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]

[Name and address of Hawaii director of health]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation of

(1) your sight draft, bearing reference to this letter of credit, No. \_\_\_\_, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of chapter 342L, Hawaii Revised Statutes."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:



- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least one hundred twenty days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for one hundred twenty days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in

§11-280.1-99

accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in section 11-280.1-99(b), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert: "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(c) An owner or operator who uses a letter of credit to satisfy the requirements of section 11-280.1-93 must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the director under section 11-280.1-112. This standby trust fund must meet the requirements specified in section 11-280.1-103.

(d) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least one hundred twenty days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the one hundred twenty days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§§11-280.1-100 to 11-280.1-101 (Reserved) .**

**§11-280.1-102 Trust fund.** (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by establishing a trust fund that conforms to the requirements of this section. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(b) The wording of the trust agreement must be identical to the wording specified in section 11-280.1-103(b) (1), and must be accompanied by a formal certification of acknowledgment as specified in section 11-280.1-103(b) (2) .

(c) The trust fund, when established, must be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

(d) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the director for release of the excess.

(e) If other financial assurance as specified in this subchapter is substituted for all or part of the trust fund, the owner or operator may submit a written request to the director for release of the excess.

(f) Within sixty days after receiving a request from the owner or operator for release of funds as specified in subsection (d) or (e), the director will instruct the trustee to release to the owner or operator such funds as the director specifies in writing. [Eff 7/15/18; comp 1/17/20; comp  
] (Auth: HRS §§342L-3, 342L-36) (Imp:  
HRS §§342L-3, 342L-36)

**§11-280.1-103 Standby trust fund.** (a) An owner or operator using any one of the mechanisms authorized by section 11-280.1-96, 11-280.1-98, or 11-280.1-99 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

- (b) (1) The standby trust agreement, or trust agreement, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert: "corporation", "partnership", "association", or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert: "Incorporated in the State of \_\_\_\_\_" or "a national bank"], the "Trustee".

Whereas, the Hawaii state department of health has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the [insert

"standby" where trust agreement is standby trust agreement] trust agreement;

[Whereas, the Grantor has elected to establish [insert either "a guarantee", "surety bond", or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.)];

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

- (a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism. This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Hawaii state department of health. The Grantor and the Trustee intend that no third

party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the Hawaii director of health's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Hawaii state department of health.

Section 4. Payment for ["Corrective Action" or "Third-Party Liability Claims" or both]. The Trustee shall make payments from the Fund as the Hawaii director of health shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

The Trustee shall reimburse the Grantor, or other persons as specified by the Hawaii director of health, from the Fund for corrective action expenditures and/or third-party liability claims, in such amounts as the director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep

the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any



common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the

same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the

Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Hawaii director of health to the Trustee shall be in writing, signed by the director, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Hawaii director of health, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Hawaii director of health if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Hawaii director of health, if the Grantor ceases to exist. Upon termination

of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Hawaii director of health issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in section 11-280.1-103(b)(1), Hawaii

Administrative Rules, as such regulations  
were constituted on the date written above.

[Signature of Grantor]  
[Name of the Grantor]  
[Title]

Attest:

[Signature of Trustee]  
[Name of the Trustee]  
[Title]  
[Seal]

[Signature of Witness]  
[Name of the Witness]  
[Title]  
[Seal]

- (2) The standby trust agreement, or trust  
agreement, must be accompanied by a formal  
certification of acknowledgment similar to  
the following:

State of \_\_\_\_  
County of \_\_\_\_

On this [date], before me personally  
came [owner or operator] to me known, who,  
being by me duly sworn, did depose and say  
that she/he resides at [address], that  
she/he is [title] of [corporation], the  
corporation described in and which executed  
the above instrument; that she/he knows the  
seal of said corporation; that the seal  
affixed to such instrument is such corporate  
seal; that it was so affixed by order of the  
Board of Directors of said corporation; and  
that she/he signed her/his name thereto by  
like order.

[Signature of Notary Public]  
[Name of Notary Public]

(c) The director will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the director determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

(d) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-104 Local government bond rating test.**

(a) A general purpose local government owner or operator and/or local government serving as a guarantor may satisfy the requirements of section 11-280.1-93 by having a currently outstanding issue or issues of general obligation bonds of \$1,000,000 or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating must be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.

(b) A local government owner or operator or local government serving as a guarantor that is not a general-purpose local government and does not have the legal authority to issue general obligation bonds may satisfy the requirements of section 11-280.1-93 by having a currently outstanding issue or issues of revenue bonds of \$1,000,000 or more, excluding refunded issues and by also having a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of

AAA, AA, A or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard & Poor's, the lower rating for each bond must be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

(c) The local government owner or operator and/or guarantor must maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.

(d) To demonstrate that it meets the local government bond rating test, the chief financial officer of a general purpose local government owner or operator and/or guarantor must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM THE CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being



used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency*

\*[Moody's or Standard & Poor's]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1,000,000. All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last twelve months. Neither rating service has provided notification within the last twelve months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in section 11-280.1-104(d), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

(e) To demonstrate that it meets the local government bond rating test, the chief financial officer of local government owner or operator and/or guarantor other than a general purpose government must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM THE CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test.]

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding revenue bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency*

\*[Moody's or Standard & Poor's]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1,000,000. All outstanding revenue bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least

investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last twelve months. The revenue bonds listed are not backed by third-party credit enhancement or insured by a municipal bond insurance company. Neither rating service has provided notification within the last twelve months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in section 11-280.1-104(e), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Date]  
[Signature]  
[Name]  
[Title]

(f) The director may require reports of financial condition at any time from the local government owner or operator and/or local government guarantor. If the director finds, on the basis of such reports or other information, that the local government owner or operator and/or guarantor no longer meets the local government bond rating test requirements of this section, the local government owner or operator must obtain alternative coverage within thirty days after notification of such a finding.

(g) If a local government owner or operator using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the local government owner or operator must obtain alternative coverage within one hundred fifty days of the change in status.

(h) If the local government owner or operator fails to obtain alternate assurance within one hundred fifty days of finding that it no longer meets the requirements of the bond rating test or within thirty

days of notification by the director that it no longer meets the requirements of the bond rating test, the owner or operator must notify the director of such failure within ten days. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-105 Local government financial test.**

(a) A local government owner or operator may satisfy the requirements of section 11-280.1-93 by passing the financial test specified in this section. To be eligible to use the financial test, the local government owner or operator must have the ability and authority to assess and levy taxes or to freely establish fees and charges. To pass the local government financial test, the owner or operator must meet the criteria of subsection (b) (2) and (3) based on year-end financial statements for the latest completed fiscal year.

(b) (1) The local government owner or operator must have the following information available, as shown in the year-end financial statements for the latest completed fiscal year:

(A) Total Revenues: Consists of the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers

between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt.

- (B) Total Expenditures: Consists of the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).
- (C) Local Revenues: Consists of total revenues (as defined in subparagraph (A)) minus the sum of all transfers from other governmental entities, including all monies received from federal, state, or local government sources.
- (D) Debt Service: Consists of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. Includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest-

bearing warrants. Excludes payments on non-interest-bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

(E) Total Funds: Consists of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. Includes federal securities, federal agency securities, state and local government securities, and other securities such as bonds, notes and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets.

(F) Population consists of the number of people in the area served by the local government.

(2) The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The local government cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.

(3) The local government owner or operator must have a letter signed by the chief financial officer worded as specified in subsection (c).

(c) To demonstrate that it meets the financial test under subsection (b), the chief financial officer of the local government owner or operator, must sign, within one hundred twenty days of the close of each financial reporting year, as defined by the twelve-

month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating [an] underground storage tank[s].

Underground storage tanks at the following facilities are assured by this financial test [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules.]

This owner or operator has not received an adverse opinion, or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A, or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A or Baa and a Standard and Poor's rating

of AAA, AA, A, or BBB.

WORKSHEET FOR MUNICIPAL FINANCIAL TEST

PART I: BASIC INFORMATION

1. Total Revenues
  - a. Revenues (dollars)  
Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and non-operating revenues, as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.
  - b. Subtract interfund transfers (dollars)
  - c. Total Revenues (dollars)
2. Total Expenditures
  - a. Expenditures (dollars)  
Value consists of the sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.
  - b. Subtract interfund transfers (dollars)
  - c. Total Expenditures (dollars)
3. Local Revenues
  - a. Total Revenues (from 1c) (dollars)
  - b. Subtract total intergovernmental transfers (dollars)
  - c. Local Revenues (dollars)
4. Debt Service
  - a. Interest and fiscal charges (dollars)
  - b. Add debt retirement (dollars)
  - c. Total Debt Service (dollars)
5. Total Funds (Dollars)  
(Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee



retirement funds, agency funds, and trust funds)

6. Population (Persons)

PART II: APPLICATION OF TEST

7. Total Revenues to Population
  - a. Total Revenues (from 1c)
  - b. Population (from 6)
  - c. Divide 7a by 7b
  - d. Subtract 417
  - e. Divide by 5,212
  - f. Multiply by 4.095
8. Total Expenses to Population
  - a. Total Expenses (from 2c)
  - b. Population (from 6)
  - c. Divide 8a by 8b
  - d. Subtract 524
  - e. Divide by 5,401
  - f. Multiply by 4.095
9. Local Revenues to Total Revenues
  - a. Local Revenues (from 3c)
  - b. Total Revenues (from 1c)
  - c. Divide 9a by 9b
  - d. Subtract 0.695
  - e. Divide by 0.205
  - f. Multiply by 2.840
10. Debt Service to Population
  - a. Debt Service (from 4c)
  - b. Population (from 6)
  - c. Divide 10a by 10b
  - d. Subtract 51
  - e. Divide by 1,038
  - f. Multiply by -1.866
11. Debt Service to Total Revenues
  - a. Debt Service (from 4c)
  - b. Total Revenues (from 1c)
  - c. Divide 11a by 11b
  - d. Subtract 0.068
  - e. Divide by 0.259
  - f. Multiply by -3.533
12. Total Revenues to Total Expenses
  - a. Total Revenues (from 1c)

§11-280.1-105

- b. Total Expenses (from 2c)
- c. Divide 12a by 12b
- d. Subtract 0.910
- e. Divide by 0.899
- f. Multiply by 3.458
- 13. Funds Balance to Total Revenues
  - a. Total Funds (from 5)
  - b. Total Revenues (from 1c)
  - c. Divide 13a by 13b
  - d. Subtract 0.891
  - e. Divide by 9.156
  - f. Multiply by 3.270
- 14. Funds Balance to Total Expenses
  - a. Total Funds (from 5)
  - b. Total Expenses (from 2c)
  - c. Divide 14a by 14b
  - d. Subtract 0.866
  - e. Divide by 6.409
  - f. Multiply by 3.270
- 15. Total Funds to Population
  - a. Total Funds (from 5)
  - b. Population (from 6)
  - c. Divide 15a by 15b
  - d. Subtract 270
  - e. Divide by 4,548
  - f. Multiply by 1.866
- 16. Add  $7f+8f+9f+10f+11f+12f+13f+14f+15f+4.937$

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in section 11-280.1-105(c), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Date]  
[Signature]  
[Name]  
[Title]

(d) If a local government owner or operator using the test to provide financial assurance finds

that it no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.

(e) The director may require reports of financial condition at any time from the local government owner or operator. If the director finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of subsections (b) and (c), the owner or operator must obtain alternate coverage within thirty days after notification of such a finding.

(f) If the local government owner or operator fails to obtain alternate assurance within one hundred fifty days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within thirty days of notification by the director that it no longer meets the requirements of the financial test, the owner or operator must notify the director of such failure within ten days. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-106 Local government guarantee.** (a) A local government owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be a local government having a "substantial governmental relationship" with the owner or operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor must:

- (1) Demonstrate that it meets the bond rating test requirement of section 11-280.1-104 and deliver a copy of the chief financial officer's letter as contained in section

11-280.1-104(d) and (e) to the local government owner or operator;

- (2) Demonstrate that it meets the worksheet test requirements of section 11-280.1-105 and deliver a copy of the chief financial officer's letter as contained in section 11-280.1-105(c) to the local government owner or operator; or
- (3) Demonstrate that it meets the local government fund requirements of section 11-280.1-107(1), (2), or (3), and deliver a copy of the chief financial officer's letter as contained in section 11-280.1-107 to the local government owner or operator.

(b) If the local government guarantor is unable to demonstrate financial assurance under section 11-280.1-104, 11-280.1-105, or 11-280.1-107(1), (2), or (3), at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than one hundred twenty days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in section 11-280.1-114(e).

(c) The guarantee agreement must be worded as specified in subsection (d) or (e), depending on which of the following alternative guarantee arrangements is selected:

- (1) If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the director, the guarantee shall be worded as specified in subsection (d).
- (2) If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the director for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in subsection (e).

(d) The local government guarantee with standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

LOCAL GOVERNMENT GUARANTEE WITH STANDBY TRUST MADE BY  
A LOCAL GOVERNMENT

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of Hawaii, herein referred to as guarantor, to the Hawaii department of health and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of section 11-280.1-104, Hawaii Administrative Rules, the local government financial test requirements of section 11-280.1-105, Hawaii Administrative Rules, or the local government fund under section 11-280.1-107(1), (2), or (3), Hawaii Administrative Rules.]

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.] This guarantee satisfies subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, requirements for assuring funding for [insert: "taking corrective action" and/or

"compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the Hawaii department of health and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the director of the Hawaii department of health has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the director shall fund a standby trust fund in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, in an amount not to exceed the coverage limits specified above.

In the event that the director determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, the guarantor upon written instructions from the director shall fund a standby trust fund in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"]

accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the director, shall fund a standby trust in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within ten days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 11-280.1, Hawaii Administrative Rules.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or

- operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];
  - (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
  - (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
  - (e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Hawaii department of health, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in section 11-280.1-106(d), Hawaii Administrative Rules, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

- (e) The local government guarantee without



standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

LOCAL GOVERNMENT GUARANTEE WITHOUT STANDBY TRUST MADE  
BY A LOCAL GOVERNMENT

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of Hawaii, herein referred to as guarantor, to the Hawaii department of health and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of section 11-280.1-104, Hawaii Administrative Rules, the local government financial test requirements of section 11-280.1-105, Hawaii Administrative Rules, or the local government fund under section 11-280.1-107(1), (2), or (3), Hawaii Administrative Rules].

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.] This guarantee satisfies subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, requirements for assuring funding for [insert: "taking corrective action" and/or

"compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the Hawaii department of health and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the Hawaii director of health has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the director shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the director determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, the guarantor upon written instructions from the director shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount

agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the director, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within ten days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 11-280.1, Hawaii Administrative Rules.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(8) The guarantor's obligation does not apply to

any of the following:

- (a) Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert: local government owner or operator] arising from and in the course of, employment by [insert: local government owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Hawaii department of health, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in section 11-280.1-106(e), Hawaii Administrative Rules, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

[Eff 7/15/18; comp 1/17/20; comp ] (Auth:  
HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-107 Local government fund.** A local government owner or operator may satisfy the requirements of section 11-280.1-93 by establishing a dedicated fund account that conforms to the requirements of this section. Except as specified in paragraph (2), a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets one of the following requirements:

- (1) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks or tank systems and is funded for the full amount of coverage required under section 11-280.1-93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage; or
- (2) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks or tank systems, and is funded for five times the full amount of coverage required under section 11-280.1-93, or

funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under section 11-280.1-93, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth the amount in the fund; or

- (3) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks or tank systems. A payment is made to the fund once every year for seven years until the fund is fully-funded. This seven-year period is hereafter referred to as the "pay-in-period". The amount of each payment must be determined by this formula:

$$\frac{TF - CF}{Y}$$

Where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in-period, and;

- (A) The local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental

- releases arising from the operation of petroleum underground storage tanks or tank systems, or
- (B) The local government owner or operator has a letter signed by the appropriate state attorney general stating that the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws. The letter must also state that prior voter approval is not necessary before use of the bonding authority.
- (4) To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator and/or guarantor must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor.] This letter is in support of the use of the local government fund mechanism to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s). Underground storage tanks at the following facilities are assured by this local government fund

mechanism: [List for each facility: the name and address of the facility where tanks are assured by the local government fund].

[Insert: "The local government fund is funded for the full amount of coverage required under section 11-280.1-93, Hawaii Administrative Rules, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage." or "The local government fund is funded for five times the full amount of coverage required under section 11-280.1-93, Hawaii Administrative Rules, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage." or "A payment is made to the fund once every year for seven years until the fund is fully-funded and [name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund" or "A payment is made to the fund once every year for seven years until the fund is fully-funded and I have attached a letter signed by the State Attorney General stating that (1) the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws and (2) that prior voter approval is not necessary before use of the bonding authority"].

The details of the local government fund are as follows:

Amount in Fund (market value of fund at close of last fiscal year):

[If fund balance is incrementally funded as specified in section



11-280.1-107(3), Hawaii Administrative Rules, insert:  
Amount added to fund in the most recently completed fiscal year:  
Number of years remaining in the pay-in period: ]

A copy of the state constitutional provision, or local government statute, charter, ordinance or order dedicating the fund is attached.

I hereby certify that the wording of this letter is identical to the wording specified in section 11-280.1-107(4), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Date]  
[Signature]  
[Name]  
[Title]

[Eff 7/15/18; comp 1/17/20; comp  
] (Auth: HRS §§342L-3,  
342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-108 Substitution of financial assurance mechanisms by owner or operator.** (a) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this subchapter, provided that at all times the owner or operator maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of section 11-280.1-93.

(b) After obtaining alternate financial assurance as specified in this subchapter, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance. [Eff 7/15/18; comp 1/17/20; comp  
] (Auth: HRS §§342L-3, 342L-36) (Imp:

§11-280.1-109

HRS §§342L-3, 342L-36)

**§11-280.1-109 Cancellation or nonrenewal by a provider of financial assurance.** (a) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

- (1) Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until one hundred twenty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.
- (2) Termination of insurance or risk retention coverage, except for non-payment or misrepresentation by the insured, may not occur until sixty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of ten days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in section 11-280.1-114, the owner or operator must obtain alternate coverage as specified in this subchapter within sixty days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within sixty days after receipt of the notice of termination, the owner or operator must notify the director of such failure and submit:

- (1) The name and address of the provider of financial assurance;
- (2) The effective date of termination; and

- (3) The evidence of the financial assurance mechanism subject to the termination maintained in accordance with section 11-280.1-111(b). [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-110 Reporting by owner or operator.**

(a) An owner or operator must submit the appropriate forms listed in section 11-280.1-111(b) documenting current evidence of financial responsibility to the director:

- (1) Within thirty days after the owner or operator identifies a release from an underground storage tank or tank system required to be reported under section 11-280.1-53 or 11-280.1-61;
- (2) If the owner or operator fails to obtain alternate coverage as required by this subchapter, within thirty days after the owner or operator receives notice of:
  - (A) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor;
  - (B) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;
  - (C) Failure of a guarantor to meet the requirements of the financial test; or
  - (D) Other incapacity of a provider of financial assurance; or
- (3) As required by sections 11-280.1-95(g) and 11-280.1-109(b).

(b) An owner or operator must certify compliance with the financial responsibility requirements of this subchapter as specified in the notification form

§11-280.1-110

submitted pursuant to section 342L-30, Hawaii Revised Statutes, or section 11-280.1-34, ~~[or]~~ the permit ~~[applications under sections]~~ application submitted pursuant to section 11-280.1-324 [and 11-280.1-326.] or 11-280.1-326, and the certification of installation form submitted pursuant to section 11-280.1-325(d).

(c) The director may require an owner or operator to submit evidence of financial assurance as described in section 11-280.1-111(b) or other information relevant to compliance with this subchapter at any time. [Eff 7/15/18; comp 1/17/20; am and comp ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-111 Recordkeeping.** (a) Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subchapter for an underground storage tank or tank system until released from the requirements of this subchapter under section 11-280.1-113. An owner or operator must maintain such evidence at the underground storage tank or tank system site or the owner's or operator's place of work. Records maintained off-site must be made available upon request of the director.

(b) An owner or operator must maintain the following types of evidence of financial responsibility:

- (1) An owner or operator using an assurance mechanism specified in sections 11-280.1-95 to 11-280.1-99 or section 11-280.1-102 or sections 11-280.1-104 to 11-280.1-107 must maintain a copy of the instrument worded as specified.
- (2) An owner or operator using a financial test or guarantee, or a local government financial test or a local government guarantee supported by the local government financial test must maintain a copy of the chief financial officer's letter based on

year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than one hundred twenty days after the close of the financial reporting year.

- (3) An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
- (4) A local government owner or operator using a local government guarantee under section 11-280.1-106(d) must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
- (5) A local government owner or operator using the local government bond rating test under section 11-280.1-104 must maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.
- (6) A local government owner or operator using the local government guarantee under section 11-280.1-106, where the guarantor's demonstration of financial responsibility relies on the bond rating test under section 11-280.1-104 must maintain a copy of the guarantor's bond rating published within the last twelve months by Moody's or Standard & Poor's.
- (7) An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.
- (8) An owner or operator using a local government fund under section 11-280.1-107 must maintain the following documents:
  - (A) A copy of the state constitutional provision or local government statute,

- charter, ordinance, or order dedicating the fund;
- (B) Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under section 11-280.1-107(3) using incremental funding backed by bonding authority, the financial statements must show the previous year's balance, the amount of funding during the year, and the closing balance in the fund; and
  - (C) If the fund is established under section 11-280.1-107(3) using incremental funding backed by bonding authority, the owner or operator must also maintain documentation of the required bonding authority, including either the results of a voter referendum (under section 11-280.1-107(3) (A), or attestation by the state attorney general as specified under section 11-280.1-107(3) (B)).
- (9) A local government owner or operator using the local government guarantee supported by the local government fund must maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.
  - (10) (A) An owner or operator using an assurance mechanism specified in sections 11-280.1-95 to 11-280.1-107 must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF FINANCIAL

RESPONSIBILITY

[Owner or operator] hereby certifies that it is in compliance with the requirements of subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules.

The financial assurance mechanism(s) used to demonstrate financial responsibility under subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, is (are) as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases".]

[Signature of owner or operator]  
[Name of owner or operator]  
[Title]  
[Date]  
[Signature of witness or notary]  
[Name of witness or notary]  
[Date]

- (B) The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s). [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-7.5, 342L-36) (Imp: HRS §§342L-3, 342L-7.5, 342L-36)

**§11-280.1-112 Drawing on financial assurance mechanisms.** (a) Except as specified in subsection (d), the director shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

- (1) (A) The owner or operator fails to establish alternate financial assurance within sixty days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and
- (B) The director determines or suspects that a release from an underground storage tank or tank system covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the director pursuant to subchapter 5 or 6 of a release from an underground storage tank or tank system covered by the mechanism; or
- (2) The conditions of subsection (b)(1), (b)(2)(A), or (b)(2)(B) are satisfied.

(b) The director may draw on a standby trust fund when:

- (1) The director makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted release response action as required under subchapter 6; or
- (2) The director has received either:
  - (A) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and



the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF A VALID CLAIM

The undersigned, as principals and as legal representatives of [insert: owner or operator] and [insert: name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of \$[\_\_\_\_\_].

[Signatures]  
Owner or Operator  
Attorney for Owner or Operator  
(Notary)  
Date  
[Signatures]  
Claimant(s)  
Attorney(s) for Claimant(s)  
(Notary)  
Date

or;

- (B) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank or tank system covered by financial assurance under this subchapter and the director determines that the owner or operator has not satisfied the

judgment.

(c) If the director determines that the amount of corrective action costs and third-party liability claims eligible for payment under subsection (b) may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The director shall pay third-party liability claims in the order in which the director receives certifications under subsection (b) (2) (A), and valid court orders under subsection (b) (2) (B).

(d) A governmental entity acting as guarantor under section 11-280.1-106(e), the local government guarantee without standby trust, shall make payments as directed by the director under the circumstances described in subsections (a), (b), and (c). [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-113 Release from the requirements.** An owner or operator is no longer required to maintain financial responsibility under this subchapter for an underground storage tank or tank system after the tank or tank system has been permanently closed or undergoes a change-in-service or, if release response action is required, after release response action has been completed and the tank or tank system has been permanently closed or undergoes a change-in-service as required by subchapter 7. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-114 Bankruptcy or other incapacity of owner or operator or provider of financial assurance.**

(a) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the

owner or operator must notify the director by certified mail of such commencement and submit the appropriate forms listed in section 11-280.1-111(b) documenting current financial responsibility.

(b) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in section 11-280.1-96.

(c) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator must notify the director by certified mail of such commencement and submit the appropriate forms listed in section 11-280.1-111(b) documenting current financial responsibility.

(d) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor must notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in section 11-280.1-106.

(e) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit. The owner or operator must obtain alternate financial assurance as specified in this subchapter within thirty days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within thirty days after such notification, the owner or operator must notify the

§11-280.1-114

director. [Eff 7/15/18; comp 1/17/20; comp  
] (Auth: HRS §§342L-3, 342L-36) (Imp:  
HRS §§342L-3, 342L-36)

**§11-280.1-115 Replenishment of guarantees, letters of credit, or surety bonds.** (a) If at any time after a standby trust is funded upon the instruction of the director with funds drawn from a guarantee, local government guarantee with standby trust, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

- (1) Replenish the value of financial assurance to equal the full amount of coverage required; or
- (2) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(b) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by section 11-280.1-93. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms. [Eff 7/15/18; comp 1/17/20; comp  
] (Auth: HRS §§342L-3, 342L-36) (Imp:  
HRS §§342L-3, 342L-36)

**§§11-280.1-116 to 11-280.1-199 (Reserved).**

## SUBCHAPTER 9

### LENDER LIABILITY

**§11-280.1-200 Definitions.** (a) UST technical standards, as used in this subchapter, refers to the UST preventative and operating requirements under subchapters 2, 3, 4, 7, and 10 and section 11-280.1-50.

(b) Petroleum production, refining, and marketing.

- (1) "Petroleum production" means the production of crude oil or other forms of petroleum (as defined in section 11-280.1-12) as well as the production of petroleum products from purchased materials.
- (2) "Petroleum refining" means the cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products.
- (3) "Petroleum marketing" means the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes.

(c) "Indicia of ownership" means evidence of a secured interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter "lease financing transaction"), and legal or equitable title obtained pursuant to foreclosure. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

(d) A "holder" is a person who, upon the effective date of this regulation or in the future, maintains indicia of ownership (as defined in subsection (c)) primarily to protect a security interest (as defined in subsection (f)(1)) in a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located. A holder includes the initial holder (such as a loan originator); any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market); a guarantor of an obligation, surety, or any other person who holds ownership indicia primarily to protect a security interest; or a receiver or other person who acts on behalf or for the benefit of a holder.

(e) A "borrower, debtor, or obligor" is a person whose UST or UST system or facility or property on which the UST or UST system is located is encumbered by a security interest. These terms may be used interchangeably.

(f) "Primarily to protect a security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation.

(1) "Security interest" means an interest in a petroleum UST or UST system or in the facility or property on which a petroleum UST or UST system is located, created or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in an UST or UST system or in the

facility or property on which the UST or UST system is located, for the purpose of securing a loan or other obligation.

- (2) "Primarily to protect a security interest", as used in this subchapter, does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why any ownership indicia are held must be as protection for a security interest.

(g) "Operation" means, for purposes of this subchapter, the use, storage, filling, or dispensing of petroleum contained in an UST or UST system. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§§11-280.1-201 to 11-280.1-209 (Reserved).**

**§11-280.1-210 Participation in management.** (a)

The term "participating in the management of an UST or UST system" means that the holder is engaging in decisionmaking control of, or activities related to, operation of the UST or UST system, as defined in this section. Actions that are participation in management:

- (1) Participation in the management of an UST or UST system means, for purposes of this subchapter, actual participation by the holder in the management or control of decisionmaking related to the operation of an UST or UST system. Participation in management does not include the mere capacity or ability to influence or the unexercised right to control UST or UST

system operations. A holder is participating in the management of the UST or UST system only if the holder either:

- (A) Exercises decisionmaking control over the operational (as opposed to financial or administrative) aspects of the UST or UST system, such that the holder has undertaken responsibility for all or substantially all of the management of the UST or UST system; or
- (B) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decisionmaking of the enterprise with respect to all, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise.

- (2) Operational aspects of the enterprise relate to the use, storage, filling, or dispensing of petroleum contained in an UST or UST system, and include functions such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer. Financial or administrative aspects include functions such as that of a credit manager, accounts payable/receivable manager, personnel manager, controller, chief financial officer, or similar functions. Operational aspects of the enterprise do not include the financial or administrative aspects of the enterprise, or actions associated with environmental compliance, or actions undertaken voluntarily to protect the environment in accordance with applicable requirements in this chapter.

(b) Actions that are not participation in management pre-foreclosure:



- (1) Actions at the inception of the loan or other transaction. No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management within the meaning of this subchapter. A prospective holder who undertakes or requires an environmental investigation (which could include a site assessment, inspection, and/or audit) of the UST or UST system or facility or property on which the UST or UST system is located (in which indicia of ownership are to be held), or requires a prospective borrower to clean up contamination from the UST or UST system or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such action considered to be participating in the management of the UST or UST system or facility or property on which the UST or UST system is located.
- (2) Loan policing and work out. Actions that are consistent with holding ownership indicia primarily to protect a security interest do not constitute participation in management for purposes of this subchapter. The authority for the holder to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations or promises from the borrower. Loan policing and work out activities cover and include all such activities up to foreclosure, exclusive of any activities that constitute participation in management.
  - (A) Policing the security interest or loan.

- (i) A holder who engages in policing activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in section 11-280.1-210(a). Such policing actions include, but are not limited to, requiring the borrower to clean up contamination from the UST or UST system during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the UST or UST system or facility or property on which the UST or UST system is located (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial condition during the term of the security interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower).
- (ii) Policing activities also include undertaking by the holder of UST environmental compliance actions and voluntary environmental actions taken in compliance with this chapter, provided that the

holder does not otherwise participate in the management or daily operation of the UST or UST system as provided in sections 11-280.1-210(a) and 11-280.1-230. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in this chapter. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the UST or UST system.

- (B) Loan work out. A holder who engages in work out activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in section 11-280.1-210(a). For purposes of this rule, "work out" refers to those actions by which a holder, at any time prior to foreclosure, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Work out activities include, but are not limited

to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(c) Foreclosure on an UST or UST system or facility or property on which an UST or UST system is located, and participation in management activities post-foreclosure.

(1) Foreclosure.

(A) Indicia of ownership that are held primarily to protect a security interest include legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. For purposes of this subchapter, the term "foreclosure" means that legal, marketable or equitable title or deed has been issued, approved, and recorded, and that the holder has obtained access to the UST, UST system, UST facility, and property on which the UST or UST system is located, provided that the holder acted diligently to acquire marketable title or deed and to gain access to the UST, UST system, UST facility, and property on which the UST or UST system is located. The indicia of ownership held after foreclosure continue to be

maintained primarily as protection for a security interest provided that the holder undertakes to sell, re-lease an UST or UST system or facility or property on which the UST or UST system is located, held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the UST or UST system or facility or property on which the UST or UST system is located, in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, taking all facts and circumstances into consideration, and provided that the holder does not participate in management (as defined in section 11-280.1-210(a)) prior to or after foreclosure.

- (B) For purposes of establishing that a holder is seeking to sell, re-lease pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or divest in a reasonably expeditious manner an UST or UST system or facility or property on which the UST or UST system is located, the holder may use whatever commercially reasonable means as are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, or may employ the means specified in section 11-280.1-210(c) (2). A holder that outbids, rejects, or fails to act upon

a written, bona fide, firm offer of fair consideration for the UST or UST system or facility or property on which the UST or UST system is located, as provided in section 11-280.1-210(c)(2), is not considered to hold indicia of ownership primarily to protect a security interest.

- (2) Holding foreclosed property for disposition and liquidation. A holder, who does not participate in management prior to or after foreclosure, may sell, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), an UST or UST system or facility or property on which the UST or UST system is located, liquidate, wind up operations, and take measures, prior to sale or other disposition, to preserve, protect, or prepare the secured UST or UST system or facility or property on which the UST or UST system is located. A holder may also arrange for an existing or new operator to continue or initiate operation of the UST or UST system. The holder may conduct these activities without voiding the security interest exemption, subject to the requirements of this subchapter.

- (A) A holder establishes that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest by, within twelve months following foreclosure, listing the UST or UST system or the facility or property on which the UST or UST system is located, with a broker, dealer, or agent who deals with the type of property in question, or by advertising the UST or UST system or facility or property on which the UST or UST system is located, as being for sale or disposition on at least a

monthly basis in either a real estate publication or a trade or other publication suitable for the UST or UST system or facility or property on which the UST or UST system is located, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the location of the UST or UST system or facility or property on which the UST or UST system is located. For purposes of this provision, the twelve-month period begins to run from the date that the marketable title or deed has been issued, approved and recorded, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, provided that the holder acted diligently to acquire marketable title or deed and to obtain access to the UST, UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the twelve-month period begins to run from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

- (B) A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the UST or UST system or the facility or property on which the UST or UST system is located,

establishes by such outbidding, rejection, or failure to act, that the ownership indicia in the secured UST or UST system or facility or property on which the UST or UST system is located are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or state law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

- (i) Fair consideration, in the case of a holder maintaining indicia of ownership primarily to protect a senior security interest in the UST or UST system or facility or property on which the UST or UST system is located, is the value of the security interest as defined in this section. The value of the security interest includes all debt and costs incurred by the security interest holder, and is calculated as an amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure, plus any unpaid interest, rent, or penalties (whether arising before or after foreclosure). The value of the security interest also includes all reasonable and necessary costs, fees, or other charges incurred by the holder incident to



work out, foreclosure, retention, preserving, protecting, and preparing, prior to sale, the UST or UST system or facility or property on which the UST or UST system is located, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), of an UST or UST system or facility or property on which the UST or UST system is located, or other disposition. The value of the security interest also includes environmental investigation costs (which could include a site assessment, inspection, and/or audit of the UST or UST system or facility or property on which the UST or UST system is located), and release response and corrective action costs incurred under sections 11-280.1-51 to 11-280.1-67 or any other costs incurred as a result of reasonable efforts to comply with any other applicable federal, state or local law or regulation; less any amounts received by the holder in connection with any partial disposition of the property and any amounts paid by the borrower (if not already applied to the borrower's obligations) subsequent to the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure. In the case of a holder maintaining indicia of ownership primarily to protect a junior security

- interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth in this subsection.
- (ii) Outbids, rejects, or fails to act upon an offer of fair consideration means that the holder outbids, rejects, or fails to act upon within ninety days of receipt, a written, bona fide, firm offer of fair consideration for the UST or UST system or facility or property on which the UST or UST system is located received at any time after six months following foreclosure, as defined in section 11-280.1-210(c). A "written, bona fide, firm offer" means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed UST or UST system or facility or property on which the UST or UST system is located, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. For purposes of this provision, the six-month period begins to run from the date that marketable title or deed has been issued, approved and recorded to the holder, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, provided that the holder

was acting diligently to acquire marketable title or deed and to obtain access to the UST or UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the six-month period begins to run from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

- (3) Actions that are not participation in management post-foreclosure. A holder is not considered to be participating in the management of an UST or UST system or facility or property on which the UST or UST system is located when undertaking actions under this chapter, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system as provided in sections 11- 280.1-210(a) and 11-280.1-230. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in this chapter. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered

§11-280.1-210

to be participating in the management of the UST or UST system. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§§11-280.1-211 to 11-280.1-219 (Reserved).**

**§11-280.1-220 Ownership of an underground storage tank or underground storage tank system or facility or property on which an underground storage tank or underground storage tank system is located.**

Ownership of an UST or UST system or facility or property on which an UST or UST system is located. A holder is not an "owner" of a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located for purposes of compliance with the UST technical standards as defined in section 11-280.1-200(a), the UST release response and corrective action requirements under sections 11-280.1-51 to 11-280.1-67, and the UST financial responsibility requirements under sections 11-280.1-90 to 11-280.1-111, provided the person:

- (1) Does not participate in the management of the UST or UST system as defined in section 11-280.1-210; and
- (2) Does not engage in petroleum production, refining, and marketing as defined in section 11-280.1-200(b). [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§§11-280.1-221 to 11-280.1-229 (Reserved).**

**§11-280.1-230 Operating an underground storage tank or underground storage tank system. (a)**

Operating an UST or UST system prior to foreclosure. A holder, prior to foreclosure, as defined in section 11-280.1-210(c), is not an "operator" of a petroleum UST or UST system for purposes of compliance with the UST technical standards as defined in section 11-280.1-200(a), the UST corrective action requirements under sections 11-280.1-51 to 11-280.1-67, and the UST financial responsibility requirements under sections 11-280.1-90 to 11-280.1-111, provided that the holder is not in control of or does not have responsibility for the daily operation of the UST or UST system.

(b) Operating an UST or UST system after foreclosure. The following provisions apply to a holder who, through foreclosure, as defined in section 11-280.1-210(c), acquires a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located.

- (1) A holder is not an "operator" of a petroleum UST or UST system for purposes of compliance with this chapter if there is an operator, other than the holder, who is in control of or has responsibility for the daily operation of the UST or UST system, and who can be held responsible for compliance with applicable requirements of this chapter.
- (2) If another operator does not exist, as provided for under paragraph (1), a holder is not an "operator" of the UST or UST system, for purposes of compliance with the UST technical standards as defined in section 11-280.1-200(a), the UST corrective action requirements under sections 11-280.1-51 to 11-280.1-67, and the UST financial responsibility requirements under sections 11-280.1-90 to 11-280.1-111, provided that the holder:
  - (A) Empties all of its known USTs and UST systems within sixty calendar days

- after foreclosure, or another reasonable time period specified by the department, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment; and
- (B) Empties those USTs and UST systems that are discovered after foreclosure within sixty calendar days after discovery, or another reasonable time period specified by the department, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment.
- (3) If another operator does not exist, as provided for under paragraph (1), in addition to satisfying the conditions under paragraph (2), the holder must either:
- (A) Permanently close the UST or UST system in accordance with sections 11-280.1-71 to 11-280.1-74, except section 11-280.1-72(b); or
  - (B) Temporarily close the UST or UST system in accordance with the following applicable provisions of section 11-280.1-70:
    - (i) Continue operation and maintenance of corrosion protection in accordance with section 11-280.1-31;
    - (ii) Report suspected releases to the department; and
    - (iii) Conduct a site assessment in accordance with section

11-280.1-72(a) if the UST system is temporarily closed for more than twelve months and the UST system does not meet the applicable system design, construction, and installation requirements in subchapter 2, except that the spill and overfill equipment requirements do not have to be met. The holder must report any suspected releases to the department. For purposes of this provision, the twelve-month period begins to run from the date on which the UST system is emptied and secured under paragraph (2).

- (4) The UST system can remain in temporary closure until a subsequent purchaser has acquired marketable title to the UST or UST system or facility or property on which the UST or UST system is located. Once a subsequent purchaser acquires marketable title to the UST or UST system or facility or property on which the UST or UST system is located, the purchaser must decide whether to operate or close the UST or UST system in accordance with applicable requirements in this chapter. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§§11-280.1-231 to 11-280.1-239 (Reserved) .**

## SUBCHAPTER 10

### OPERATOR TRAINING

**§11-280.1-240 General requirement for all UST systems.** All owners and operators of UST systems must ensure they have designated Class A, Class B, and Class C operators who meet the requirements of this subchapter. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-241 Designation of Class A, B, and C operators.** (a) UST system owners and operators must designate:

- (1) At least one Class A and one Class B operator for each UST or group of USTs at a facility; and
- (2) Each individual who meets the definition of Class C operator at the UST facility as a Class C operator.

(b) Separate individuals may be designated for each class of operator or an individual may be designated for more than one of the operator classes.

(c) Owners and operators shall submit written notice to the department identifying the Class A and Class B operators for each UST or tank system in use or temporarily out of use no later than thirty days after an operator assumes the operator's responsibilities as a Class A or Class B operator. The notification must include the name of each operator, the date training was completed, the name and address of each facility where the USTs or tank systems for which the operator has been designated is located, and written verification from a training program approved or administered by the department that the Class A and Class B operator for each UST or tank system has successfully completed operator training in the operator's class. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)



**§11-280.1-242 Requirements for operator training.**

UST system owners and operators must ensure Class A, Class B, and Class C operators meet the requirements of this section. Any individual designated for more than one operator class must successfully complete the required training program or comparable examination according to the operator classes in which the individual is designated.

- (1) Class A operators. Each designated Class A operator must either be trained in accordance with subparagraphs (A) and (B) or pass a comparable examination in accordance with paragraph (5).
  - (A) At a minimum, the training must teach the Class A operators about the purpose, methods, and function of:
    - (i) Spill and overfill prevention;
    - (ii) Release detection;
    - (iii) Corrosion protection;
    - (iv) Emergency response;
    - (v) Product and equipment compatibility and demonstration;
    - (vi) Financial responsibility;
    - (vii) Notification and permitting;
    - (viii) Temporary and permanent closure;
    - (ix) Reporting, recordkeeping, testing, and inspections;
    - (x) Environmental and regulatory consequences of releases; and
    - (xi) Training requirements for Class B and Class C operators.
  - (B) At a minimum, the training program must evaluate Class A operators to determine these individuals have the knowledge and skills to make informed decisions regarding compliance and determine whether appropriate individuals are fulfilling the operation, maintenance, and recordkeeping requirements for UST systems in accordance with subparagraph

- (A) .
- (2) Class B operators. Each designated Class B operator must either receive training in accordance with subparagraphs (A) and (B) or pass a comparable examination, in accordance with paragraph (5).
  - (A) At a minimum, the training program for Class B operators must teach the Class B operator about the purpose, methods, and function of:
    - (i) Operation and maintenance, including components of UST systems, materials of UST system components, and methods of release detection and release prevention applied to UST components;
    - (ii) Spill and overfill prevention;
    - (iii) Release detection and related reporting;
    - (iv) Corrosion protection;
    - (v) Emergency response;
    - (vi) Product and equipment compatibility and demonstration;
    - (vii) Reporting, recordkeeping, testing, and inspections;
    - (viii) Environmental and regulatory consequences of releases; and
    - (ix) Training requirements for Class C operators.
  - (B) At a minimum, the training program must evaluate Class B operators to determine these individuals have the knowledge and skills to implement applicable UST regulatory requirements in the field on the components of typical UST systems in accordance with subparagraph (A).
- (3) Class C operators. Each designated Class C operator must either: be trained by a Class A or Class B operator in accordance with subparagraphs (A) and (B); complete a training program in accordance with subparagraphs (A) and (B); or pass a

comparable examination, in accordance with paragraph (5).

- (A) At a minimum, the training program for the Class C operator must teach the Class C operators to take appropriate actions (including notifying appropriate authorities) in response to emergencies or alarms caused by spills or releases resulting from the operation of the UST system.
  - (B) At a minimum, the training program must evaluate Class C operators to determine these individuals have the knowledge and skills to take appropriate action (including notifying appropriate authorities) in response to emergencies or alarms caused by spills or releases from an underground storage tank system.
- (4) Training program requirements. Any training program must meet the minimum requirements of this section, must incorporate an evaluation of operator knowledge through written examination, a practical demonstration, or other reasonable testing methods acceptable to the department, and must be approved or administered by the department. An operator training program may consist of in-class or on-line instruction and may include practical exercises.
- (5) Comparable examination. A comparable examination must, at a minimum, test the knowledge of the Class A, Class B, or Class C operators in accordance with the requirements of paragraph (1), (2), or (3), as applicable. The acceptability of a comparable examination to meet the requirements of this section is determined by the department. The department may accept operator training verification from other states if the operator training is deemed by

§11-280.1-242

the department to be equivalent to the requirements of this section. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-243 Timing of operator training.** (a)

An owner and operator must ensure that designated Class A, Class B, and Class C operators meet the requirements in section 11-280.1-242.

(b) Class A and Class B operators designated on or after ~~[the effective date of these rules]~~ July 15, 2018 must meet requirements in section 11-280.1-242 within thirty days of assuming duties.

(c) Class C operators designated after ~~[the effective date of these rules]~~ July 15, 2018 must be trained before assuming duties of a Class C operator. [Eff 7/15/18; comp 1/17/20; am and comp ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-244 Retraining.** (a) Class A and class B operators shall be retrained every five years. Class C operators shall be retrained every three hundred sixty-five days.

(b) Class A and Class B operators of UST systems determined by the department to be out of compliance must complete a training program or comparable examination in accordance with requirements in section 11-280.1-242. The training program or comparable examination must be developed or administered by the department or an independent organization. At a minimum, the training must cover the area(s) determined to be out of compliance. An UST or tank system is out of compliance if the system:

- (1) Meets any of the delivery prohibition criteria outlined in section 11-280.1-429; or

- (2) Is in significant violation of other requirements, such as temporary or permanent ~~[closure, tank registration, or financial responsibility,~~ closure requirements, as determined by the director.
- (c) UST system owners and operators must ensure Class A and Class B operators are retrained as required in subsection (b) no later than thirty days from the date the department determines the facility is out of compliance, except in one of the following situations:
  - (1) Class A and Class B operators take annual refresher training. Refresher training for Class A and Class B operators must cover all applicable requirements in section 11-280.1-242;
  - (2) The department, at its discretion, waives this retraining requirement for either the Class A or Class B operator or both. [Eff 7/15/18; comp 1/17/20; am and comp  
] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-245 Documentation.** Owners and operators of underground storage tank systems must maintain a list of designated Class A, Class B, and Class C operators and maintain records verifying that training and retraining, as applicable, have been completed, in accordance with section 11-280.1-34 as follows:

- (1) The list must:
  - (A) Identify all Class A, Class B, and Class C operators currently designated for the facility; and
  - (B) Include names, class of operator trained, date assumed duties, date each completed initial training, and any retraining.
- (2) Records verifying completion of training or retraining must be a paper or electronic

record for Class A, Class B, and Class C operators. The records, at a minimum, must identify name of trainee, date trained, operator training class completed, and list the name of the trainer or examiner and the training company name, address, and telephone number. Owners and operators must maintain these records for as long as Class A, Class B, and Class C operators are designated. The following requirements also apply to the following types of training:

- (A) Records from classroom or field training programs (including Class C operator training provided by the Class A or Class B operator) or a comparable examination must, at a minimum, be signed by the trainer or examiner;
  - (B) Records from computer based training must, at a minimum, indicate the name of the training program and web address, if Internet based; and
  - (C) Records of retraining must include those areas on which the Class A or Class B operator has been retrained.
- [Eff 7/15/18; comp 1/17/20; comp  
] (Auth: HRS §§342L-3,  
342L-7.5, 342L-32) (Imp: HRS §§342L-3,  
342L-7.5, 342L-32)

**§§11-280.1-246 to 11-280.1-249 (Reserved) .**

#### SUBCHAPTER 11

(RESERVED) .

**§§11-280.1-250 to 11-280.1-299 (Reserved) .**

SUBCHAPTER 12

PERMITS AND VARIANCES

**§§11-280.1-300 to 11-280.1-322 (Reserved).**

**§11-280.1-323 Permit required.** (a) No person shall install or operate an UST or tank system without first obtaining a permit from the director.

(b) The director shall approve an application for a permit only if the applicant has submitted sufficient information to the satisfaction of the director that the technical, financial, and other requirements of this chapter are or can be met and the installation and operation of the UST or tank system will be done in a manner that is protective of human health and the environment.

(c) A permit shall be issued only in accordance with chapter 342L, Hawaii Revised Statutes, and this chapter, and it shall be the duty of the permittee to ensure compliance with the law in the installation and operation of the UST or tank system.

(d) Issuance of a permit shall not relieve any person of the responsibility to comply fully with all applicable laws. [Eff 7/15/18; comp 1/17/20; comp  
] (Auth: HRS §342L-3) (Imp: HRS  
§§342L-3, 342L-31)

**§11-280.1-324 Application for a permit.** (a) Every application for a permit shall be submitted to the department on the "Application for an Underground Storage Tank Permit" form prescribed by the director.

(b) A permit fee in accordance with section

11-280.1-335 shall accompany each application for a permit.

(c) The applicant shall submit sufficient information to enable the director to make a decision on the application. Information submitted shall include but not be limited to the following:

- (1) General information on involved parties, including the landowner, UST owner, and UST operator; location of the property (including TMK); and basic description of the UST or tank system;
- (2) Age, size, precise location within the property, and use of each UST;
- (3) Description of tanks, piping, ancillary equipment, spill and overfill prevention equipment, and release detection equipment;
- ~~[(3)]~~ (4) Other information required in the form prescribed by the director; and
- ~~[(4)]~~ (5) Other information as the department may require.

(d) Every application shall be signed by the owner and the operator and shall constitute an acknowledgment that the applicants assume responsibility for the installation and operation of the UST or tank system in accordance with this chapter and the conditions of the permit, if issued. Each signatory shall be:

- (1) In the case of a corporation, a principal executive officer of at least the level of vice president, or a duly authorized representative if that representative is responsible for the overall operation of the UST or tank system;
- (2) In the case of a partnership, a general partner;
- (3) In the case of a sole proprietorship, the proprietor; or
- (4) In the case of a county, state, or federal entity, either a principal executive officer, ranking elected official, or other duly authorized employee. [Eff 7/15/18; comp 1/17/20; am and comp ]



(Auth: HRS §§342L-3, 342L-7.5, 342L-14)

(Imp: HRS §§342L-4, 342L-30, 342L-31)

**§11-280.1-325 Permit.** (a) Upon approval of an application for a permit to install and operate an UST or tank system, the director shall issue a permit for a term of five years except as noted in subsection (b).

(b) The owner or operator shall have one year from the issuance of the permit to install an UST or tank system. If the installation is not completed within one year, the permit expires and the owner or operator must apply for a new permit.

(c) The owner or operator must inform the department at least seven days prior to performing the actual installation. The information shall include the permit number, name and address of the UST or tank system, the contact person, the contact person's phone number, and date and time of actual installation.

(d) The owner or operator must notify the department within thirty days after the installation of the UST or tank system. The notification shall be submitted on the "Certification of Underground Storage Tank Installation" form prescribed by the director. If information submitted on the "Application for an Underground Storage Tank Permit" form has changed since the original application, the section of the certification form entitled "Changes to Original Installations Plans" must be completed and submitted. The certification of installation must certify compliance with the following requirements:

- (1) Installation of tanks and piping under section 11-280.1-20(f);
  - (2) Cathodic protection of steel tanks and piping under section 11-280.1-20(b) and (c);
  - (3) Financial responsibility under subchapter 8; and
  - (4) Release detection under sections 11-280.1-41 and 11-280.1-42.
- (e) The department, where practicable and

appropriate, may issue one permit to the owner or operator of an UST system for the purpose of combining all USTs, piping, and any ancillary equipment constituting that UST system under one permit, irrespective of the number of individual USTs, so long as that UST system is part of one reasonably contiguous physical location. [Eff 7/15/18; comp 1/17/20; am and comp ] (Auth: HRS §§342L-3, 342L-7.5) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-326 Permit renewals.** (a) On application, a permit may be renewed for a term of five years.

(b) A renewal fee in accordance with section 11-280.1-335 shall accompany each application for renewal of a permit.

(c) An application for a renewal shall be received by the department at least one hundred eighty days prior to the expiration of the existing permit and shall be submitted on the "Application for Renewal of an Underground Storage Tank Permit" form prescribed by the director. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-7.5, 342L-14) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-327 Action on complete permit application.** (a) The director need not act upon nor consider any incomplete application for a permit. An application shall be deemed complete only when:

- (1) All required and requested information, including the application form, plans, specifications, and other information required by this subchapter have been submitted in a timely fashion;
- (2) All fees have been paid as prescribed in section 11-280.1-335; and
- (3) The director determines that the application is complete.

(b) The director shall approve, approve with conditions, or deny a complete application for a permit to install or operate an UST or tank system or a permit renewal, modification, or transfer, required under this chapter. [Eff 7/15/18; am and comp 1/17/20; comp ] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-328 Permit conditions.** The director may impose conditions on a permit that the director deems reasonably necessary to ensure compliance with this chapter and any other relevant state requirement, including conditions relating to equipment, work practice, or operation. Conditions may include, but shall not be limited to, the requirement that devices for measurement or monitoring of regulated substances be installed and maintained and the results reported to the director, all costs and expenses to be borne by the applicant. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-329 Modification of permit.** (a) The director may modify a permit if there is a change that requires a modification to an existing permit. Changes requiring a permit modification shall include but not be limited to:

- (1) The addition or removal of an UST from an UST system; and
- (2) Any change to or modification of an UST or UST system which would otherwise place the existing UST or UST system out of compliance with this chapter or an existing permit.

(b) An application for modification of a permit shall be made in writing to the department and shall be accompanied by sufficient information on the planned renovation or modification to the UST or tank system to assist the director in making a

determination as to whether the application for modification should be denied or granted.

(c) Applications for a permit modification shall be received by the department no later than sixty days prior to the occurrence of the event that prompted the application except that applications for change-in-service must be received by the department at least thirty days before the owner or operator begins the change-in-service. Applications shall be submitted on the "Application for an Underground Storage Tank Permit" form prescribed by the director.

(d) Owners and operators shall submit a permit application to add USTs or tank systems to an existing permit. If the director approves the addition, the existing permit shall be terminated, and a new permit shall be issued which covers the additional USTs as well as the already-permitted USTs. The term of the new permit shall be for the remaining term of the original permit. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-330 Revocation or suspension of permit.** The director may revoke or suspend a permit if the director finds any one of the following:

- (1) There is a release or threatened release of regulated substances that the department deems to pose an imminent and substantial risk to human health or the environment;
- (2) The permittee violated a condition of the permit; or
- (3) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-331 Change in owner or operator for a**

**permit.** (a) No permit to install, own, or operate an UST or tank system shall be transferable unless approved by the department. ~~[Request for approval]~~ An application to transfer a permit from one owner to another owner must be ~~[made by the]~~ signed by both the current owner and the prospective new owner. ~~[Request for approval]~~ An application to transfer a permit from one operator to another operator must be made by the owner.

(b) The transferred permit will be effective for the remaining life of the original permit.

(c) An application for the transfer shall be received by the department at least thirty days prior to the proposed effective date of the transfer and shall be submitted on the "Application for Transfer of an Underground Storage Tank Permit" form prescribed by the director. [Eff 7/15/18; comp 1/17/20; am and comp ] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-30, 342L-31)

**§11-280.1-332 Variances allowed.** Provisions of chapter 342L, Hawaii Revised Statutes, and this chapter relating to USTs or tank systems which are more stringent than Title 40, part 280 of the Code of Federal Regulations, published by the Office of the Federal Register, as amended as of July 1, 2017, may be varied by the director in accordance with sections 342L-5 and 342L-6, Hawaii Revised Statutes, and this chapter. No variance may be less stringent than the federal requirements. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §342L-3) (Imp: HRS §342L-5)

**§11-280.1-333 Variance applications.** (a) An application for a variance shall be submitted to the department on the "Application for an Underground Storage Tank Variance" form prescribed by the director.

§11-280.1-333

(b) A variance fee in accordance with section 11-280.1-335 shall accompany each application for a variance.

(c) Every application shall be signed by the owner and operator, and the signature shall be by one of the following:

- (1) In the case of a corporation, by a principal executive officer of at least the level of vice president, or a duly authorized representative if that representative is responsible for the overall operation of the UST or tank system;
- (2) In the case of a partnership, by a general partner;
- (3) In the case of a sole proprietorship, by the proprietor; or
- (4) In the case of a county, state, or federal entity, by a principal executive officer, ranking elected official, or other duly authorized employee.

(d) The director shall approve, approve with conditions, or deny a complete application for a variance or variance renewal or modification as required under this chapter and sections 342L-5 and 342L-6, Hawaii Revised Statutes. The director shall notify the applicant of the director's decision, within one hundred eighty days of receipt of a complete application. Otherwise, a complete application is deemed approved on the one hundred eightieth day after it is received by the department.  
[Eff 7/15/18; comp 1/17/20; comp ]

(Auth: HRS §§342L-3, 342L-7.5, 342L-14) (Imp: HRS §§342L-5, 342L-6)

**§11-280.1-334 Maintenance of permit or variance.**

(a) Permits and variances, including application records, shall be maintained at the location of the UST or tank system for which the permit was issued and shall be made available for inspection upon request of any duly authorized representative of the department.

(b) No person shall wilfully deface, alter, forge, counterfeit, or falsify any permit or variance. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-7.5) (Imp: HRS §§342L-4, 342L-7, 342L-31)

**§11-280.1-335 Fees.** (a) Every applicant for a permit or a variance, or applicant for modification or renewal of a permit or variance, or applicant for a transfer of a permit, shall pay the applicable fees as set forth below:

Type of Application	Permit	Variance
Permit or variance application	\$300	\$400
Application to modify	\$200	\$300
Application for renewal	\$100	\$200
Application for transfer	\$50	NA

(b) Fees shall be submitted with the application and are nonrefundable.

(c) Fees shall be made payable to the State of Hawaii.

(d) If more than one type of application is combined, the highest applicable fee will be assessed. However, a permit application and a variance application shall not be combined under one fee. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §342L-3) (Imp: HRS §342L-14)

**§§11-280.1-336 to 11-280.1-399 (Reserved) .**

SUBCHAPTER 13

ENFORCEMENT

**§§11-280.1-400 to 11-280.1-420 (Reserved) .**

**§11-280.1-421 Purpose.** The purpose of this subchapter is to create an enforcement program that facilitates the effective and expeditious resolution of violations of chapter 342L, Hawaii Revised Statutes, and this chapter. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §342L-3) (Imp: HRS §§342L-7, 342L-8, 342L-10)

**§11-280.1-422 Field citations.** (a) Field citations may be issued for violations of chapter 342L, Hawaii Revised Statutes, and this chapter that the department deems appropriate for resolution through the issuance of a field citation. Nothing in this section requires the department to elect one enforcement mechanism over another and the decision to proceed with one course of action over, or in conjunction with, another is within the discretion of the director.

(b) The field citation is an offer to settle an allegation of noncompliance with this chapter. If the owner or operator declines to accept the department's offer to settle within the time period set forth in the field citation, the department may bring administrative or civil enforcement action under chapter 342L, Hawaii Revised Statutes.

(c) The field citation shall set forth sufficient facts to notify the recipient of the alleged violations, the applicable law, the proposed settlement amount, and the time period during which to



respond.

(d) By returning the signed settlement agreement attached to the field citation and payment of the proposed settlement amount to the department, the owner or operator will be deemed to have accepted the terms and conditions of the settlement offer.

(e) By signing the settlement agreement, the owner or operator waives his or her right to a contested case hearing pursuant to chapter 91, Hawaii Revised Statutes. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §342L-3) (Imp: HRS §§342L-7, 342L-8, 342L-10)

**§§11-280.1-423 to 11-280.1-428 (Reserved) .**

**§11-280.1-429 Delivery, deposit, and acceptance prohibition.** (a) No person shall deliver to, deposit into, or accept a regulated substance into an UST or tank system that has been identified by the department as ineligible for delivery, deposit, or acceptance.

(b) An UST or tank system shall be identified by the department as ineligible for delivery, deposit, or acceptance by placement of a tag or other notice of ineligibility onto the fill pipe of the ineligible UST or tank system. If an owner or operator is not present at the facility at the time the underground storage tank is identified as ineligible, the department may notify an employee at the facility at the time of identification in lieu of the owner or operator.

(c) No person shall remove, tamper with, destroy, or damage a tag or other notice of ineligibility affixed to any UST or tank system unless authorized to do so by the department. Removal of a tag or other notice of ineligibility by the department or person authorized by the department shall occur only after the department confirms that the conditions giving rise to the delivery prohibition have been

corrected to the department's satisfaction. The department shall make this determination either at a hearing, if one is requested in accordance with this section, or as soon as practicable.

(d) Pursuant to this section, a tag or other notice of ineligibility may immediately be affixed to the fill pipe of an UST or tank system upon finding by the department of any of the following:

- (1) Operating without a permit issued by the department;
- (2) Operating inconsistently with one or more conditions of a permit issued by the department;
- (3) Required spill prevention equipment is not installed or properly functioning or maintained;
- (4) Required overfill protection equipment is not installed or properly functioning or maintained;
- (5) Required release detection equipment is not installed or properly functioning or maintained;
- (6) Required corrosion protection equipment is not installed or properly functioning or maintained;
- (7) Failure to maintain financial responsibility; or
- (8) Failure to protect a buried metal flexible connector from corrosion.

(e) An owner or operator of an UST or tank system designated by the department to be ineligible shall be provided a hearing to contest the department's determination of ineligibility within forty-eight hours of the department's receipt of a written request for a hearing by the owner or operator of the ineligible UST or tank system. The hearing shall modify or affirm the department's determination of ineligibility and shall be conducted in accordance with chapter 91, Hawaii Revised Statutes, and the department's rules of practice and procedure." [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §342L-3) (Imp: HRS §342L-32.5)

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

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

4. The amendment and compilation of chapter 11-280.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on February 18, 2020, and filed with the Office of the Lieutenant Governor.

  
\_\_\_\_\_  
BRUCE S. ANDERSON, Ph.D.  
Director of Health

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Wade H. Hargrove III  
Deputy Attorney General

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-280.1  
Hawaii Administrative Rules

February 18, 2020

SUMMARY

1. Chapter 11-280.1 is amended and compiled.



## HAWAII ADMINISTRATIVE RULES

TITLE 11

## DEPARTMENT OF HEALTH

## CHAPTER 11-280.1

## UNDERGROUND STORAGE TANKS

Subchapter 1    Program Scope and Installation  
                     Requirements for Partially  
                     Excluded UST Systems

- |               |   |            |
|---------------|---|------------|
| §§11-280.1-1  | to 11-280.1-9   | (Reserved) |
| §11-280.1-10  | Applicability   |            |
| §11-280.1-11  | Installation requirements for partially<br>excluded UST systems                       |            |
| §11-280.1-12  | Definitions   |            |
| §11-280.1-13  | Installation requirements for partially<br>excluded UST systems--codes of<br>practice |            |
| §§11-280.1-14 | to 11-280.1-19  | (Reserved) |

## Subchapter 2 UST Systems: Design, Construction, and Installation

- |               |  |
|---------------|--|
| \$11-280.1-20 | Performance standards for UST systems                                  |
| \$11-280.1-21 | Upgrading of UST systems   |
| \$11-280.1-22 | (Reserved)   |
| \$11-280.1-23 | Tank and piping design for hazardous<br>substance UST systems          |
| \$11-280.1-24 | Secondary containment design   |
| \$11-280.1-25 | Under-dispenser containment  |
| \$11-280.1-26 | Performance standards and design for<br>UST systems--codes of practice |
| \$11-280.1-27 | to 11-280.1-29 (Reserved)  |

### Subchapter 3 General Operating Requirements

- \$11-280.1-30 Spill and overfill control
- \$11-280.1-31 Operation and maintenance of corrosion protection
- \$11-280.1-32 Compatibility
- \$11-280.1-33 Repairs allowed
- \$11-280.1-34 Notification, reporting, and recordkeeping
- \$11-280.1-35 Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment
- \$11-280.1-36 Periodic operation and maintenance walkthrough inspections
- \$11-280.1-37 Periodic inspection and maintenance of under-dispenser containment
- \$11-280.1-38 General operating requirements--codes of practice
- \$11-280.1-39 (Reserved)

### Subchapter 4 Release Detection

- \$11-280.1-40 General requirements for all UST systems
- \$11-280.1-41 Requirements for petroleum UST systems
- \$11-280.1-42 Requirements for hazardous substance UST systems
- \$11-280.1-43 Methods of release detection for tanks
- \$11-280.1-44 Methods of release detection for piping
- \$11-280.1-45 Release detection recordkeeping
- \$11-280.1-46 Release detection--codes of practice
- \$11-280.1-47 to 11-280.1-49 (Reserved)

### Subchapter 5 Release Reporting, Investigation, and Confirmation

§11-280.1-50 Reporting of suspected releases  
 §11-280.1-51 Investigation of off-site impacts  
 §11-280.1-52 Release investigation and confirmation  
                   steps  
 §11-280.1-53 Reporting and cleanup of spills and  
                   overfills  
 §§11-280.1-54 to 11-280.1-59 (Reserved)

#### Subchapter 6 Release Response Action

§11-280.1-60 General  
 §11-280.1-61 Immediate response actions  
 §11-280.1-61.1 Posting of signs  
 §11-280.1-62 Initial abatement measures and site  
                   assessment  
 §11-280.1-63 Initial site characterization  
 §11-280.1-64 Free product removal  
 §11-280.1-65 Investigations for soil and groundwater  
                   cleanup  
 §11-280.1-65.1 Notification of confirmed releases  
 §11-280.1-65.2 Release response reporting  
 §11-280.1-65.3 Site cleanup criteria  
 §11-280.1-66 Corrective action plan  
 §11-280.1-67 Public participation for corrective  
                   action plans  
 §§11-280.1-68 to 11-280.1-69 (Reserved)

#### Subchapter 7 Out-of-Service UST Systems and Closure

§11-280.1-70 Temporary closure  
 §11-280.1-71 Permanent closure and changes-in-  
                   service  
 §11-280.1-72 Assessing the site at closure or  
                   change-in-service  
 §11-280.1-73 Applicability to previously closed UST  
                   systems  
 §11-280.1-74 Closure records  
 §11-280.1-75 Closure--codes of practice  
 §§11-280.1-76 to 11-280.1-89 (Reserved)



## Subchapter 8 Financial Responsibility

\$11-280.1-90	Applicability
\$11-280.1-91	(Reserved)
\$11-280.1-92	Definition of terms
\$11-280.1-93	Amount and scope of required financial responsibility
\$11-280.1-94	Allowable mechanisms and combinations of mechanisms
\$11-280.1-95	Financial test of self-insurance
\$11-280.1-96	Guarantee
\$11-280.1-97	Insurance and risk retention group coverage
\$11-280.1-98	Surety bond
\$11-280.1-99	Letter of credit
\$\$11-280.1-100 to 11-280.1-101	(Reserved)
\$11-280.1-102	Trust fund
\$11-280.1-103	Standby trust fund
\$11-280.1-104	Local government bond rating test
\$11-280.1-105	Local government financial test
\$11-280.1-106	Local government guarantee
\$11-280.1-107	Local government fund
\$11-280.1-108	Substitution of financial assurance mechanisms by owner or operator
\$11-280.1-109	Cancellation or nonrenewal by a provider of financial assurance
\$11-280.1-110	Reporting by owner or operator
\$11-280.1-111	Recordkeeping
\$11-280.1-112	Drawing on financial assurance mechanisms
\$11-280.1-113	Release from the requirements
\$11-280.1-114	Bankruptcy or other incapacity of owner or operator or provider of financial assurance
\$11-280.1-115	Replenishment of guarantees, letters of credit, or surety bonds
\$\$11-280.1-116 to 11-280.1-199	(Reserved)

## Subchapter 9 Lender Liability



§11-280.1-10

§11-280.1-328 Permit conditions  
§11-280.1-329 Modification of permit  
§11-280.1-330 Revocation or suspension of permit  
§11-280.1-331 Change in owner or operator for a  
                    permit  
§11-280.1-332 Variances allowed  
§11-280.1-333 Variance applications  
§11-280.1-334 Maintenance of permit or variance  
§11-280.1-335 Fees  
§§11-280.1-336 to 11-280.1-399 (Reserved)

### Subchapter 13 Enforcement

§§11-280.1-400 to 11-280.1-420 (Reserved)  
§11-280.1-421 Purpose  
§11-280.1-422 Field citations  
§§11-280.1-423 to 11-280.1-428 (Reserved)  
§11-280.1-429 Delivery, deposit, and acceptance  
                    prohibition

Historical note: This chapter is based  
substantially upon chapter 11-281. [Eff 1/28/00; am  
and comp 8/09/13; R 7/15/18]

### SUBCHAPTER 1

#### PROGRAM SCOPE AND INSTALLATION REQUIREMENTS FOR PARTIALLY EXCLUDED UST SYSTEMS

**§§11-280.1-1 to 11-280.1-9 (Reserved).**

**§11-280.1-10 Applicability.** (a) The  
requirements of this chapter apply to all owners and

operators of an UST system as defined in section 11-280.1-12, except as otherwise provided in this section.

- (1) Airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and UST systems that store fuel solely for use by emergency power generators must meet the requirements of this chapter as follows:
  - (A) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks must meet all applicable requirements of this chapter, except that those installed before July 15, 2018 must meet the applicable requirements of subchapters 4, 8, 10, and 12 no later than July 15, 2019.
  - (B) UST systems that store fuel solely for use by emergency power generators must meet all applicable requirements of this chapter, except that those installed before August 9, 2013 must meet the applicable requirements of subchapter 4 no later than July 15, 2019.
- (2) Any UST system listed in subsection (c) must meet the requirements of section 11-280.1-11.
  - (b) Exclusions. The following UST systems are excluded from the requirements of this chapter:
    - (1) Any UST system holding hazardous wastes listed or identified under chapter 342J, Hawaii Revised Statutes, or the rules adopted thereunder, or Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances;
    - (2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under chapter 342D, Hawaii Revised Statutes, or Section 402 or 307(b) of the Clean Water Act;

- (3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;
  - (4) Any UST system whose capacity is one hundred ten gallons or less;
  - (5) Any UST system that contains a de minimis concentration of regulated substances; and
  - (6) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.
- (c) Partial Exclusions. Subchapters 2, 3, 4, 5, 7, 10, and 12 do not apply to:
- (1) Wastewater treatment tank systems not covered under subsection (b)(2);
  - (2) Aboveground storage tanks associated with:
    - (A) Airport hydrant fuel distribution systems; and
    - (B) UST systems with field-constructed tanks;
  - (3) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following); and
  - (4) Any UST system that is part of an emergency generator system at nuclear power generation facilities licensed by the Nuclear Regulatory Commission and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including but not limited to 10 C.F.R. part 50. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §342L-3) (Imp: HRS §342L-3)

**§11-280.1-11 Installation requirements for partially excluded UST systems.** (a) Owners and operators must install an UST system listed in section 11-280.1-10(c)(1), (3), or (4) storing regulated substances (whether of single or double wall

construction) that meets the following requirements:

- (1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;
- (2) Is cathodically protected against corrosion, constructed of non-corrodible material, steel clad with a non-corrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and
- (3) Is constructed or lined with material that is compatible with the stored substance.

(b) Notwithstanding subsection (a), an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this subsection for the remaining life of the tank. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-12 Definitions.** When used in this chapter, the following terms have the meanings given below:

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

"Airport hydrant fuel distribution system" (also called "airport hydrant system") means an UST system which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more tanks from an external source such as a pipeline,



barge, rail car, or other motor fuel carrier.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

"Belowground release" means any release to the subsurface of the land and to groundwater. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

"Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"Class A operator" means the individual who has primary responsibility to operate and maintain the UST system in accordance with applicable requirements established by the department. The Class A operator typically manages resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

"Class B operator" means the individual who has day-to-day responsibility for implementing applicable regulatory requirements established by the department.

The Class B operator typically implements in-field aspects of operation, maintenance, and associated recordkeeping for the UST system.

"Class C operator" means the individual responsible for initially addressing emergencies presented by a spill or release from an UST system. The Class C operator typically controls or monitors the dispensing or sale of regulated substances.

"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

"Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

"Consumptive use" with respect to heating oil means consumed on the premises.

"Containment sump" means a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps, and related components in the containment area. Containment sumps may be single walled or secondarily contained and located at the top of tank (tank top or submersible turbine pump sump), underneath the dispenser (under-dispenser containment sump), or at other points in the piping run (transition or intermediate sump).

"Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification



or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"Department" means the state department of health.

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

"Director" means the director of the state department of health.

"Dispenser" means equipment located aboveground that dispenses regulated substances from the UST system.

"Dispenser system" means the dispenser and the equipment necessary to connect the dispenser to the underground storage tank system. The equipment necessary to connect the dispenser to the underground storage tank system includes check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are underneath the dispenser and connect the dispenser to the underground piping.

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"EPA" means the United States Environmental Protection Agency.

"Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Exposure assessment" means a determination regarding the extent of exposure of, or potential for exposure of, individuals to regulated substances from a release from an UST or tank system. An exposure assessment shall be based on factors such as the nature and extent of contamination, the existence of

or potential for pathways of human exposure (including ground or surface water contamination, air emissions, dermal exposure, soil ingestion, and food chain contamination), the size of the community or communities within the likely pathways of exposure, an analysis of expected human exposure levels with respect to short-term and long-term health effects associated with identified contaminants, and any available recommended exposure or tolerance limits for the contaminants.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. Farm includes fish hatcheries, rangeland, and nurseries with growing operations.

"Field-constructed tank" means a tank constructed in the field. For example, a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field is considered field-constructed.

"Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Free product" refers to a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water).

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Hazardous substance" means a hazardous substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, except any substance regulated as a hazardous waste under chapter 342J, Hawaii Revised Statutes, or

the rules adopted thereunder, or Subtitle C of the Solid Waste Disposal Act.

"Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance or any mixture of such substances and petroleum, and that is not a petroleum UST system.

"Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

"Motor fuel" means a complex blend of hydrocarbons typically used in the operation of a motor engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any blend containing one or more of these substances (e.g., motor gasoline blended with alcohol).

"Noncommercial purposes" with respect to motor fuel means not for resale.

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Operational life" refers to the period beginning

when installation of the tank system has commenced until the time the tank system is properly closed under subchapter 7.

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

"Owner" means:

- (1) In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and
- (2) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

"Permit" means written authorization, as provided for in section 342L-4, Hawaii Revised Statutes, from the director to install or operate an UST or tank system. A permit authorizes owners or operators to install and operate an UST or tank system in a manner, or to do an act, not forbidden by chapter 342L, Hawaii Revised Statutes, or by this chapter, but requiring review by the department.

"Person" means an individual, trust, estate, firm, joint stock company, corporation (including a government corporation), partnership, association, commission, consortium, joint venture, commercial entity, the state or a county, the United States government, federal agency, interstate body, or any other legal entity.

"Petroleum" means petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

"Petroleum UST system" means an underground storage tank system that contains petroleum or a



mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

"Pipeline facilities" (including gathering lines) means pipe rights-of-way and any associated equipment, facilities, or buildings.

"Regulated substance" means hazardous substances, petroleum, and any other substance designated by the department that, when released into the environment, may present substantial danger to human health, welfare, or the environment. The term regulated substance includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an UST system into groundwater, surface water, or subsurface soils.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or a leak has occurred into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

"Repair" means to restore to proper operating condition a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other UST system component that has caused a release of product from the UST system or has failed to function properly.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"Secondary containment" or "secondarily contained" means a release prevention and release

detection system for a tank or piping. This system has an inner and outer barrier with an interstitial space that is monitored for leaks. This term includes containment sumps when used for interstitial monitoring of piping.

"Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Storm water collection system" or "wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

"Temporary closure" or "temporarily closed" means that owners and operators do not deposit regulated substances into the UST or tank system nor dispense regulated substances from the UST or tank system for sixty days or longer, except for UST systems that store fuel solely for use by emergency power generators and UST systems with field-constructed tanks. For UST systems that store fuel solely for use by emergency power generators and UST systems with field-constructed tanks, "temporary closure" or "temporarily closed" means that the UST or tank system

is empty, as defined in section 11-280.1-70(a), and owners and operators do not deposit regulated substances into the UST or tank system for sixty days or longer.

"Under-dispenser containment" or "UDC" means containment underneath a dispenser system designed to prevent leaks from the dispenser and piping within or above the UDC from reaching soil, groundwater, and surface water.

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any belowground release.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is ten percent or more beneath the surface of the ground. This term does not include any:

- (1) Farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes;
- (2) Tank used for storing heating oil for consumptive use on the premises where stored;
- (3) Septic tank;
- (4) Pipeline facility (including gathering lines):
  - (A) Which is regulated under 49 U.S.C. chapter 601; or
  - (B) Which is an intrastate pipeline facility regulated under state laws as provided in 49 U.S.C. chapter 601, and which is determined by the Secretary of Transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline

pressure or as an integral part of a pipeline;

- (5) Surface impoundment, pit, pond, or lagoon;
- (6) Storm water or wastewater collection system;
- (7) Flow-through process tank;
- (8) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
- (9) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term underground storage tank or UST does not include any pipes connected to any tank which is described in paragraphs (1) to (9).

"Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Variance" means a special written authorization from the director to own, install, or operate an UST or tank system in a manner deviating from, or to do an act that deviates from, the requirements of this chapter that are more stringent than 40 C.F.R. part 280.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.  
 [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ]  
 (Auth: HRS §342L-3) (Imp: HRS §342L-3)

**§11-280.1-13 Installation requirements for partially excluded UST systems--codes of practice.**  
 The following codes of practice may be used as



guidance for complying with section 11-280.1-11:

- (1) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection";
- (2) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems";
- (3) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; or
- (4) Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems". [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§§11-280.1-14 to 11-280.1-19 (Reserved) .**

## SUBCHAPTER 2

UST SYSTEMS: DESIGN, CONSTRUCTION, AND INSTALLATION

**§11-280.1-20 Performance standards for UST systems.** (a) In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, owners and operators of UST systems must meet all applicable requirements of this subchapter. UST systems must meet the requirements of this section as follows:

- (1) UST systems installed after December 22, 1988, other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must meet the requirements of this section, except as specified in subsection (g).
  - (2) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks installed on or after July 15, 2018 must meet the requirements of this section.
- (b) Tanks. Each tank must be properly designed, constructed, and installed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:
- (1) The tank is constructed of fiberglass-reinforced plastic; or
  - (2) The tank is constructed of steel and cathodically protected in the following manner:
    - (A) The tank is coated with a suitable dielectric material;
    - (B) Field-installed cathodic protection systems are designed by a corrosion expert;
    - (C) Impressed current systems are designed to allow determination of current operating status as required in section 11-280.1-31(3); and
    - (D) Cathodic protection systems are operated and maintained in accordance with section 11-280.1-31 or according to guidelines established by the department; or
  - (3) The tank is constructed of steel and clad or jacketed with a non-corrodible material; or
  - (4) The tank is constructed of metal without additional corrosion protection measures provided that:
    - (A) The tank is installed at a site that is

determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and

- (B) Owners and operators maintain records that demonstrate compliance with the requirements of subparagraph (A) for the remaining life of the tank; or
- (5) The tank construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than paragraphs (1) to (4).

(c) Piping. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, installed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

- (1) The piping is constructed of a non-corrodible material; or
- (2) The piping is constructed of steel and cathodically protected in the following manner:
  - (A) The piping is coated with a suitable dielectric material;
  - (B) Field-installed cathodic protection systems are designed by a corrosion expert;
  - (C) Impressed current systems are designed to allow determination of current operating status as required in section 11-280.1-31(3); and
  - (D) Cathodic protection systems are operated and maintained in accordance with section 11-280.1-31 or guidelines established by the department; or
- (3) The piping is constructed of metal without additional corrosion protection measures

provided that:

- (A) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and
  - (B) Owners and operators maintain records that demonstrate compliance with the requirements of subparagraph (A) for the remaining life of the piping; or
- (4) The piping construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in paragraphs (1) to (3).
- (d) Spill and overfill prevention equipment.
- (1) Except as provided in paragraphs (2) and (3), to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:
- (A) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and
  - (B) Overfill prevention equipment that will:
    - (i) Automatically shut off flow into the tank when the tank is no more than ninety-five percent full;
    - (ii) Alert the transfer operator when the tank is no more than ninety percent full by restricting the flow into the tank or triggering a high-level alarm; or
    - (iii) Restrict flow thirty minutes prior

to overfilling, alert the transfer operator with a high-level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

- (2) Owners and operators are not required to use the spill and overfill prevention equipment specified in paragraph (1) if:
  - (A) Alternative equipment is used that is determined by the department to be no less protective of human health and the environment than the equipment specified in paragraph (1)(A) or (B); or
  - (B) The UST system is filled by transfers of no more than twenty-five gallons at one time.
- (3) Flow restrictors used in vent lines may not be used to comply with paragraph (1)(B) when overfill prevention is installed or replaced after July 15, 2018.
- (4) Overfill prevention methods that rely on the use of alarms must have the alarms clearly labeled "overfill alarm" and located where the delivery person can clearly see and hear the alarm in order to immediately stop delivery of the product.
- (5) Spill and overfill prevention equipment must be periodically tested or inspected in accordance with section 11-280.1-35.

(e) Installation. The UST system must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

(f) Certification of installation. All owners and operators must ensure that one or more of the following methods of certification, testing, or



inspection is used to demonstrate compliance with subsection (e) by providing a certification of compliance on the "Certification of Underground Storage Tank Installation" form prescribed by the director and in accordance with section 11-280.1-325(d).

- (1) The installer has been certified by the tank and piping manufacturers;
- (2) The installer has been certified or licensed by the department;
- (3) The installation has been inspected and certified by a licensed professional engineer with education and experience in UST system installation;
- (4) The installation has been inspected and approved by the department;
- (5) All work listed in the manufacturer's installation checklists has been completed and the checklists maintained; or
- (6) The owner and operator have complied with another method for ensuring compliance with subsection (e) that is determined by the department to be no less protective of human health and the environment.
- (g) Secondary containment.
- (1) UST systems installed on or after August 9, 2013, other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must be provided with secondary containment that meets the requirements of section 11-280.1-24, except for suction piping that meets the requirements of section 11-280.1-41(b)(6).
- (2) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks must be provided with secondary containment that meets the requirements of section 11-280.1-24, except for:
  - (A) Suction piping that meets the requirements of section 11-280.1-41(b)(6);
  - (B) Piping associated with UST systems with

field-constructed tanks with a capacity greater than 50,000 gallons; and

- (C) Piping associated with airport hydrant systems. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-21 Upgrading of UST systems.** (a) All UST systems must comply with one of the following requirements:

- (1) UST system performance standards in section 11-280.1-20(b) to (d);
- (2) For airport hydrant fuel distribution systems and UST systems with field-constructed tanks installed before July 15, 2018:
  - (A) The system performance standards in section 11-280.1-20(b) and (c); and
  - (B) Not later than July 15, 2019, the system performance standards under section 11-280.1-20(d); or
- (3) Closure requirements under subchapter 7.

(b) UST systems other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks: Not later than July 15, 2028, tanks and piping installed before August 9, 2013 must be provided with secondary containment that meets the requirements of section 11-280.1-24, except for suction piping that meets the requirements of section 11-280.1-41(b)(6).

(c) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks: Not later than July 15, 2038, tanks and piping installed before July 15, 2018 must be provided with secondary containment that meets the requirements of section 11-280.1-24 or must utilize a design which the director determines is protective of human health and the environment, except for:

- (1) Suction piping that meets the requirements

- of section 11-280.1-41(b)(6);
- (2) Piping associated with UST systems with field-constructed tanks with a capacity greater than 50,000 gallons; and
  - (3) Piping associated with airport hydrant systems. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-22 (Reserved).**

**§11-280.1-23 Tank and piping design for hazardous substance UST systems.** Owners and operators of hazardous substance UST systems must provide secondary containment for tanks and underground piping that meets the requirements of section 11-280.1-24. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

- §11-280.1-24 Secondary containment design.** (a) Secondary containment systems must be designed, constructed, and installed to:
- (1) Contain regulated substances leaked from the primary containment until they are detected and removed;
  - (2) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and
  - (3) Be checked for evidence of a release at least every thirty-one days.
- (b) Double-walled tanks must be designed, constructed, and installed to:
- (1) Contain a leak from any portion of the inner tank within the outer wall; and
  - (2) Detect the failure of the inner wall.
  - (c) External liners (including vaults) must be



designed, constructed, and installed to:

- (1) Contain one hundred percent of the capacity of the largest tank within its boundary;
- (2) Prevent precipitation and groundwater intrusion from interfering with the ability to contain or detect a leak or release of regulated substances; and
- (3) Surround the UST completely to effectively prevent lateral and vertical migration of regulated substances. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-25 Under-dispenser containment.** (a)

Dispenser systems installed on or after August 9, 2013, other than for airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must have under-dispenser containment that meets the requirements in subsection (c).

(b) Dispenser systems installed on or after July 15, 2018 must have under-dispenser containment that meets the requirements in subsection (c).

(c) Under-dispenser containment required by subsection (a) or (b) must:

- (1) Be liquid-tight on its sides, bottom, and at any penetrations;
- (2) Be compatible with the substance conveyed by the piping; and
- (3) Meet one of the following requirements:
  - (A) Allow for visual inspection and access to the components in the containment system; or
  - (B) Be monitored for leaks from the dispenser system with a sensing device that signals the operator of the presence of regulated substances. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-26 Performance standards and design for UST systems--codes of practice.** (a) The following codes of practice may be used to comply with section 11-280.1-20(b)(1):

- (1) Underwriters Laboratories Standard 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures"; or
- (2) Underwriter's Laboratories of Canada S615, "Standard for Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids".

(b) The following codes of practice may be used to comply with section 11-280.1-20(b)(2):

- (1) Steel Tank Institute "Specification STI-P3<sup>®</sup> Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks";
- (2) Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks";
- (3) Underwriters Laboratories of Canada S603, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids", and S603.1, "Standard for External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids", and S631, "Standard for Isolating Bushings for Steel Underground Tanks Protected with External Corrosion Protection Systems";
- (4) Steel Tank Institute Standard F841, "Standard for Dual Wall Underground Steel Storage Tanks"; or
- (5) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection", and Underwriters Laboratories Standard 58, "Standard for Steel Underground

Tanks for Flammable and Combustible Liquids".

(c) The following codes of practice may be used to comply with section 11-280.1-20(b)(3):

- (1) Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks";
- (2) Steel Tank Institute ACT-100® Specification F894, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks";
- (3) Steel Tank Institute ACT-100-U® Specification F961, "Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks"; or
- (4) Steel Tank Institute Specification F922, "Steel Tank Institute Specification for Permatank®".

(d) The following codes of practice may be used to comply with section 11-280.1-20(c)(1):

- (1) Underwriters Laboratories Standard 971, "Nonmetallic Underground Piping for Flammable Liquids"; or
- (2) Underwriters Laboratories of Canada Standard S660, "Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids".

(e) The following codes of practice may be used to comply with section 11-280.1-20(c)(2):

- (1) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems";
- (2) Underwriters Laboratories Subject 971A, "Outline of Investigation for Metallic Underground Fuel Pipe";
- (3) Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems";
- (4) NACE International Standard Practice SP

0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems"; or

- (5) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection".

(f) Tank and piping system installation practices and procedures described in the following codes of practice may be used to comply with the requirements of section 11-280.1-20(e):

- (1) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System";
- (2) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or
- (3) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" and Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages".

(g) When designing, constructing, and installing airport hydrant systems and UST systems with field-constructed tanks, owners and operators may use military construction criteria, such as Unified Facilities Criteria (UFC) 3-460-01, "Petroleum Fuel Facilities". [Eff 7/15/18; comp 1/17/20; comp

**JUL - 8 2021** ] (Auth: HRS §§342L-3, 342L-32)  
(Imp: HRS §§342L-3, 342L-32)

**§§11-280.1-27 to 11-280.1-29 (Reserved).**

### SUBCHAPTER 3

#### GENERAL OPERATING REQUIREMENTS

**§11-280.1-30 Spill and overfill control.** (a)

Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

(b) The owner and operator must report, investigate, and clean up any spills and overfills in accordance with section 11-280.1-53. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-31 Operation and maintenance of corrosion protection.** All owners and operators of metal UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented until the UST system is permanently closed or undergoes a change-in-service pursuant to section 11-280.1-71:

- (1) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.
- (2) All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:
  - (A) Frequency. All cathodic protection systems must be tested within six months of installation and at least every three years thereafter; and
  - (B) Inspection criteria. The criteria that are used to determine that cathodic



protection is adequate as required by this section must be in accordance with a code of practice developed by a nationally recognized association.

- (3) UST systems with impressed current cathodic protection systems must also be inspected every sixty days to ensure the equipment is operating properly.
- (4) For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained, in accordance with section 11-280.1-34, to demonstrate compliance with the performance standards in this section. These records must provide the following:
  - (A) The results of the last three inspections required in paragraph (3); and
  - (B) The results of testing from the last two inspections required in paragraph (2). [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-32 Compatibility.** (a) Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.

(b) Owners and operators must notify the department at least thirty days prior to switching to a regulated substance containing greater than ten percent ethanol, greater than twenty percent biodiesel, or any other regulated substance identified by the department. In addition, owners and operators with UST systems storing these regulated substances must meet one of the following:

- (1) Demonstrate compatibility of the UST system (including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill

equipment). Owners and operators may demonstrate compatibility of the UST system by using one of the following options:

- (A) Certification or listing of UST system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or
- (B) Equipment or component manufacturer approval. The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer; or
- (2) Use another option determined by the department to be no less protective of human health and the environment than the options listed in paragraph (1).

(c) Owners and operators must maintain records in accordance with section 11-280.1-34 documenting compliance with subsection (b) for as long as the UST system is used to store the regulated substance. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ]  
(Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-33 Repairs allowed.** (a) Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must meet the following requirements:

- (1) Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory;
- (2) Repairs to fiberglass-reinforced plastic

tanks may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory;

- (3) Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Non-corrodible pipes and fittings may be repaired in accordance with the manufacturer's specifications;
- (4) Prior to the return to use of a repaired UST system, any repaired USTs must pass a tank tightness test in accordance with section 11-280.1-43(3);
- (5) Prior to the return to use of a repaired UST system, any repaired piping that routinely contains product must pass a line tightness test in accordance with section 11-280.1-44(2);
- (6) Prior to return to use of a repaired UST system, repairs to secondary containment areas of tanks and piping used for interstitial monitoring, containment sumps used for interstitial monitoring of piping, and containment walls must have the secondary containment tested for integrity using vacuum, pressure, or liquid methods in accordance with requirements developed by the manufacturer, a code of practice developed by a nationally recognized association or independent testing laboratory, or requirements established by the department;
- (7) Within six months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with section 11-280.1-31(2) and (3) to ensure that it is operating properly; and
- (8) Prior to the return to use of repaired spill or overfill prevention equipment, the



repaired spill or overfill prevention equipment must be tested or inspected, as appropriate, in accordance with section 11-280.1-35 to ensure it is operating properly.

(b) UST system owners and operators must maintain records, in accordance with section 11-280.1-34, of each repair until the UST system is permanently closed or undergoes a change-in-service pursuant to section 11-280.1-71. [Eff 7/15/18; comp 1/17/20; comp **JUL - 8 2021**] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-34 Notification, reporting, and recordkeeping.** (a) Notification. Owners and operators shall notify the department of any of the following changes in information relating to an UST or tank system by submitting the "Notification for Underground Storage Tanks" form prescribed by the director:

- (1) Completed closure or change-in-service;
- (2) Temporary closure or the return to currently-in-use status;
- (3) Changes in product dispensing method, dispenser system, or under dispenser containment;
- (4) Changes in financial responsibility mechanism;
- (5) Changes in release detection method;
- (6) Changes in spill and overfill prevention method;
- (7) Changes in piping;
- (8) Changes in type of regulated substances stored;
- (9) Changes in corrosion protection mechanism; and
- (10) Installation of or changes in secondary containment.

(b) Intent to close notification. Owners and operators shall notify the department of planned

permanent closure or change-in-service of an UST or tank system and scheduled excavation work for permanent closure or change-in-service by submitting the "Notice of Intent to Close Underground Storage Tanks" form prescribed by the director.

(c) Timing of notification. Owners and operators shall submit the notifications required in subsection (a) and (b) within thirty days following any of the changes requiring notification, except that:

- (1) Notification of planned permanent closure or change-in-service must be received by the department at least thirty days before commencement of excavation work for closure or change-in-service;
- (2) Notification of scheduled excavation work for permanent closure or change-in-service must be received by the department at least seven days before the scheduled work date;
- (3) Notification of change in type of regulated substance stored to a regulated substance containing greater than ten percent ethanol or greater than twenty percent biodiesel must be received by the department at least thirty days before the change; and
- (4) Notification of temporary closure must be received by the department within thirty days of the UST system having met the definition of temporary closure in section 11-280.1-12.

(d) Reporting. Owners and operators must submit the following information to the department:

- (1) Reports of all releases including suspected releases (sections 11-280.1-50 and 11-280.1-52), spills and overfills (section 11-280.1-53), and confirmed releases (section 11-280.1-61);
- (2) Release response actions planned or taken, including initial abatement measures (section 11-280.1-62), initial site characterization (section 11-280.1-63), free product removal (section 11-280.1-64), investigation for soil and groundwater

- cleanup (section 11-280.1-65), and corrective action plan (section 11-280.1-66);
- (3) Quarterly release response reports (section 11-280.1-65.2);
  - (4) Current evidence of financial responsibility as required in section 11-280.1-110; and
  - (5) Notice of changes in Designated Class A or B Operators (section 11-280.1-241(c)).
- (e) Recordkeeping. Owners and operators must maintain the following information:
- (1) A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (section 11-280.1-20(b)(4); section 11-280.1-20(c)(3));
  - (2) Documentation of operation of corrosion protection equipment (section 11-280.1-31(4));
  - (3) Documentation of compatibility for UST systems (section 11-280.1-32(c));
  - (4) Documentation of UST system repairs (section 11-280.1-33(b));
  - (5) Documentation of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping (section 11-280.1-35(b));
  - (6) Documentation of periodic walkthrough inspections (section 11-280.1-36(b));
  - (7) Documentation of compliance with under-dispenser containment sensing device requirements (section 11-280.1-37(b));
  - (8) Documentation of compliance with release detection requirements (section 11-280.1-45);
  - (9) Results of the site investigation conducted at permanent closure or change-in-service (section 11-280.1-74);
  - (10) Documentation of operator training (section 11-280.1-245);
  - (11) Permits or variances or both, including all

documentation, as specified in section 11-280.1-334(a); and

- (12) Evidence of current financial assurance mechanisms used to demonstrate financial responsibility (section 11-280.1-111).
- (f) Availability and maintenance of records.
  - (1) Owners and operators must keep the required records at the UST site or an alternative location approved by the department.
  - (2) Owners and operators must make the records immediately available for inspection by the department at the UST site.
  - (3) Permanent closure records required under section 11-280.1-74 may be maintained or submitted to the department as provided in section 11-280.1-74.

(g) Owners and operators of UST systems must cooperate fully with inspections, monitoring, and testing conducted by the department, as well as requests by the department for document submission, testing, and monitoring by the owner or operator pursuant to chapter 342L, Hawaii Revised Statutes. [Eff 7/15/18; comp 1/17/20; am and comp

**JUL - 8 2021** ] (Auth: HRS §§342L-3, 342L-7.5)  
(Imp: HRS §§342L-3, 342L-7, 342L-7.5, 342L-30)

**§11-280.1-35 Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment.** (a)

Owners and operators of UST systems with spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping must meet these requirements to ensure the equipment is operating properly and will prevent releases to the environment:

- (1) Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) must prevent releases to the environment by meeting one

of the following:

- (A) The equipment is double walled and the integrity of both walls is periodically monitored at a frequency not less than once every thirty-one days. Owners and operators must begin meeting the requirements of subparagraph (B) and conduct a test within thirty days of discontinuing periodic monitoring of this equipment; or
  - (B) The spill prevention equipment is tested at least once every three hundred sixty-five days to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:
    - (i) Requirements developed by the manufacturer. (Note: Owners and operators may use this option only if the manufacturer has developed requirements.);
    - (ii) Code of practice developed by a nationally recognized association or independent testing laboratory; or
    - (iii) Requirements determined by the department to be no less protective of human health and the environment than the requirements listed in clauses (i) and (ii).
- (2) Containment sumps used for interstitial monitoring of piping must prevent releases to the environment by meeting one of the following:
- (A) The equipment is double walled and the integrity of both walls is periodically monitored at a frequency not less than annually. Owners and operators must begin meeting the requirements of subparagraph (B) and conduct a test within thirty days of discontinuing



periodic monitoring of this equipment;  
or

- (B) The containment sumps used for interstitial monitoring of piping are tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the criteria in paragraph (1)(B)(i) to (iii).

- (3) Overfill prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in section 11-280.1-20(d) and will activate when regulated substance reaches that level. Inspections must be conducted in accordance with one of the criteria in paragraph (1)(B)(i) to (iii).

(b) Owners and operators must maintain records as follows (in accordance with section 11-280.1-34) for spill prevention equipment, containment sumps used for interstitial monitoring of piping, and overfill prevention equipment:

- (1) All records of testing or inspection must be maintained for three years; and
- (2) For spill prevention equipment not tested every three hundred sixty-five days and containment sumps used for interstitial monitoring of piping not tested every three years, documentation showing that the prevention equipment is double walled and the integrity of both walls is periodically monitored must be maintained for as long as the equipment is periodically monitored.

[Eff 7/15/18; comp 1/17/20; comp

**JUL - 8 2021** ] (Auth: HRS §§342L-3, 342L-7.5, 342L-32) (Imp: HRS §§342L-3, 342L-7.5, 342L-32)

**§11-280.1-36 Periodic operation and maintenance walkthrough inspections.** (a) To properly operate and maintain UST systems, beginning not later than July 15, 2019, owners and operators must conduct walkthrough inspections that, at a minimum, check the following equipment as specified below:

- (1) Every thirty-one days:
  - (A) Spill prevention equipment:
    - (i) Visually check for damage;
    - (ii) Remove liquid or debris;
    - (iii) Check for and remove obstructions in the fill pipe;
    - (iv) Check the fill cap to make sure it is securely on the fill pipe; and
    - (v) For double walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area; and
  - (B) Release detection equipment:
    - (i) Check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present; and
    - (ii) Ensure records of release detection testing are reviewed and current;
- (2) Annually:
  - (A) Containment sumps:
    - (i) Visually check for damage, leaks to the containment area, or releases to the environment;
    - (ii) Remove liquid (in contained sumps) or debris; and
    - (iii) For double walled sumps with interstitial monitoring, check for a leak in the interstitial area; and
  - (B) Hand held release detection equipment: Check devices such as tank gauge sticks or groundwater bailers for operability and serviceability;

- (3) For UST systems receiving deliveries at intervals greater than every thirty-one days, spill prevention equipment may be checked in accordance with paragraph (1)(A) prior to each delivery; and
- (4) For airport hydrant systems, at least once every thirty-one days if confined space entry according to the Occupational Safety and Health Administration is not required or at least annually if confined space entry is required (see 29 C.F.R. part 1910):
  - (A) Hydrant pits:
    - (i) Visually check for any damage;
    - (ii) Remove any liquid or debris; and
    - (iii) Check for any leaks; and
  - (B) Hydrant piping vaults: Check for any hydrant piping leaks.

(b) Owners and operators must maintain records, in accordance with section 11-280.1-34, of operation and maintenance walkthrough inspections for three years. Records must include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every thirty-one days due to infrequent deliveries. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-7.5, 342L-32) (Imp: HRS §§342L-3, 342L-7.5, 342L-32)

**§11-280.1-37 Periodic inspection and maintenance of under-dispenser containment.** (a) Under-dispenser containment that allows for visual inspection and access to the components in the containment system to meet the requirements of section 11-280.1-25 must be visually inspected for damage and have any liquid or debris removed every thirty-one days.

(b) Sensing devices for under-dispenser containment used to meet the requirements of section 11-280.1-25 must:



- (1) Be operated and maintained in accordance with one of the following:
  - (A) The manufacturer's instructions;
  - (B) A code of practice developed by a nationally recognized association or independent testing laboratory; or
  - (C) Requirements determined by the department to be no less protective of human health and the environment than those in subparagraphs (A) and (B); and
- (2) Be inspected for proper operation, and electronic and mechanical components tested, at least annually.

(c) UST system owners and operators must maintain records in accordance with section 11-280.1-34 demonstrating compliance with subsection (a) or (b). Written documentation of all inspection, testing, and maintenance must be maintained for at least three years. All records that the UDC sensor and connected equipment are designed to produce must be maintained for at least three years after the record is generated. [Eff 7/15/18; comp 1/17/20; am and comp 342L-32] (Auth: HRS §§342L-3, 342L-7.5, 342L-32) (Imp: HRS §§342L-3, 342L-7.5, 342L-32)

**§11-280.1-38 General operating requirements-- codes of practice.** (a) The following codes of practice may be used to comply with section 11-280.1-30(a): the transfer procedures described in National Fire Protection Association Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids" or American Petroleum Institute Recommended Practice 1007, "Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles". Further guidance on spill and overfill prevention appears in American Petroleum Institute Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets".

(b) The following codes of practice may be used to comply with section 11-280.1-31(2):

- (1) NACE International Test Method TM 0101, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems";
- (2) NACE International Test Method TM0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems";
- (3) Steel Tank Institute Recommended Practice R051, "Cathodic Protection Testing Procedures for STI-P3® USTs";
- (4) NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection"; or
- (5) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".

(c) The following code of practice may be useful in complying with section 11-280.1-32: American Petroleum Institute Recommended Practice 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Filling Stations".

(d) The following codes of practice may be used to comply with section 11-280.1-33(a)(1):

- (1) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";
- (2) American Petroleum Institute Recommended Practice RP 2200, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines";
- (3) American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks";
- (4) National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair";

- (5) National Leak Prevention Association Standard 631, Chapter A, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks";
  - (6) Steel Tank Institute Recommended Practice R972, "Recommended Practice for the Addition of Supplemental Anodes to STI-P3® Tanks";
  - (7) NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection"; or
  - (8) Fiberglass Tank and Pipe Institute Recommended Practice T-95-02, "Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks".
- (e) The following codes of practice may be used to comply with section 11-280.1-33(a)(6):
- (1) Steel Tank Institute Recommended Practice R012, "Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks";
  - (2) Fiberglass Tank and Pipe Institute Protocol, "Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space"; or
  - (3) Petroleum Equipment Institute Recommended Practice RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".
- (f) The following code of practice may be used to comply with section 11-280.1-35(a)(1), (2) and (3): Petroleum Equipment Institute Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".
- [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-39 (Reserved) .**

SUBCHAPTER 4

RELEASE DETECTION

- §11-280.1-40 General requirements for all UST systems.** (a) Owners and operators of UST systems must provide a method, or combination of methods, of release detection that:
- (1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;
  - (2) Utilizes equipment compatible with the regulated substances being stored;
  - (3) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions;
  - (4) Is operated and maintained, and electronic and mechanical components are tested for proper operation, in accordance with one of the following: manufacturer's instructions; a code of practice developed by a nationally recognized association or independent testing laboratory; or requirements determined by the department to be no less protective of human health and the environment than the requirements of paragraphs (1) to (3). All maintenance and service of the release detection equipment must be conducted by a technician with current certification or training appropriate to the equipment serviced. A test of the proper operation must be performed at least every three hundred sixty-five days, or in a time frame recommended by the equipment manufacturer, whichever is more frequent. Beginning July

15, 2019, as applicable to the facility, the test must cover at a minimum the following components and criteria:

- (A) Automatic tank gauge and other controllers: test alarm; verify system configuration; test battery backup;
  - (B) Probes and sensors: inspect for residual buildup; ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks and breaks; test alarm operability and communication with controller;
  - (C) Automatic line leak detector: test operation to meet criteria in section 11-280.1-44(1) by simulating a leak;
  - (D) Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller; and
  - (E) Hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation; and
- (5) Meets the performance requirements in section 11-280.1-43 or 11-280.1-44, as applicable, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, the methods listed in section 11-280.1-43(2), (3), (4), (8), (9), and (10) and section 11-280.1-44(1), (2), and (4) must be capable of detecting the leak rate or quantity specified for that method in the corresponding section of the rule with a probability of detection of 0.95 and a probability of false alarm of 0.05.
- (b) When a release detection method operated in accordance with the performance standards in section 11-280.1-43 or 11-280.1-44 indicates a release may have occurred, owners and operators must notify the department in accordance with subchapter 5.
- (c) Any UST system that cannot apply a method of release detection that complies with the requirements



of this subchapter must complete the change-in-service or closure procedures in subchapter 7. [Eff 7/15/18; comp 1/17/20; am and comp **JUL - 8 2021** ] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

**§11-280.1-41 Requirements for petroleum UST**

**systems.** (a) Tanks. Owners and operators of petroleum UST systems must provide release detection for tanks as follows:

- (1) Tanks that are neither part of an airport hydrant fuel distribution system nor a UST system with field-constructed tanks:
  - (A) Tanks installed before August 9, 2013 must be monitored for releases at least every thirty-one days using one of the methods listed in section 11-280.1-43(4) to (9), except that:
    - (i) UST systems that meet the performance standards in section 11-280.1-20, and the monthly inventory control requirements in section 11-280.1-43(1) or (2), may use tank tightness testing (conducted in accordance with section 11-280.1-43(3)) at least every five years until ten years after the tank was installed; and
    - (ii) Tanks with capacity of 550 gallons or less and tanks with a capacity of 551 to 1,000 gallons that meet the tank diameter criteria in section 11-280.1-43(2) may use manual tank gauging (conducted in accordance with section 11-280.1-43(2)).
  - (B) Not later than July 15, 2028, tanks installed before August 9, 2013 must be monitored for releases at least every thirty-one days in accordance with

- section 11-280.1-43(7).
- (C) Tanks installed on or after August 9, 2013 must be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7).
- (2) Tanks that are part of an airport hydrant fuel distribution system or a UST system with field-constructed tanks, except field-constructed tanks with a capacity greater than 50,000 gallons:
- (A) Tanks installed before July 15, 2018 must be monitored for releases at least every thirty-one days using one of the methods listed in section 11-280.1-43(4) to (9), except that:
    - (i) UST systems that meet the performance standards in section 11-280.1-20, and the monthly inventory control requirements in section 11-280.1-43(1) or (2), may use tank tightness testing (conducted in accordance with section 11-280.1-43(3)) at least every five years until ten years after the tank was installed; and
    - (ii) Tanks with capacity of 550 gallons or less and tanks with a capacity of 551 to 1,000 gallons that meet the tank diameter criteria in section 11-280.1-43(2) may use manual tank gauging (conducted in accordance with section 11-280.1-43(2)).
  - (B) Tanks installed on or after July 15, 2018 must be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7).
- (3) Field-constructed tanks with a capacity greater than 50,000 gallons:
- (A) Tanks installed before July 15, 2018 must be monitored for releases at least every thirty-one days using one of the

methods listed in section 11-280.1-43(4), (7), (8), and (9) or use one or a combination of the methods of release detection listed in section 11-280.1-43(10).

- (B) Tanks installed on or after July 15, 2018 must be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7).

(b) Piping. Underground piping that routinely contains regulated substances must be monitored for releases as follows:

- (1) Piping installed before August 9, 2013, for UST systems other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must meet one of the following:

- (A) Pressurized piping. Underground piping that conveys regulated substances under pressure must:

- (i) Be equipped with an automatic line leak detector conducted in accordance with section 11-280.1-44(1); and
- (ii) Have an annual line tightness test conducted in accordance with section 11-280.1-44(2) or have monthly monitoring conducted in accordance with section 11-280.1-44(3).

- (B) Suction piping. Underground piping that conveys regulated substances under suction must:

- (i) Have a line tightness test conducted at least every three years and in accordance with section 11-280.1-44(2);
- (ii) Use a monthly monitoring method conducted in accordance with section 11-280.1-44(3); or
- (iii) Meet the standards in paragraph (6)(A) to (E).



- (2) Not later than July 15, 2028, piping installed before August 9, 2013, for UST systems other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must meet one of the following:
  - (A) Pressurized piping. Underground piping that conveys regulated substances under pressure must:
    - (i) Be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7); and
    - (ii) Be equipped with an automatic line leak detector in accordance with section 11-280.1-44(1).
  - (B) Suction piping. Underground piping that conveys regulated substances under suction must:
    - (i) Be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7); or
    - (ii) Meet the standards in paragraph (6)(A) to (E).
- (3) Piping installed on or after August 9, 2013, for UST systems other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must meet the technical specifications in paragraph (2)(A) or (B).
- (4) Piping for UST systems with field-constructed tanks with a capacity less than or equal to 50,000 gallons and not part of an airport hydrant fuel distribution system:
  - (A) Piping installed before July 15, 2018 must meet the technical specifications in paragraph (1)(A) or (B).
  - (B) Not later than July 15, 2038, piping installed before July 15, 2018 must meet the technical specifications in paragraph (2)(A) or (B), unless an

- alternative design is approved by the director under section 11-280.1-21(c).
- (C) Piping installed on or after July 15, 2018 must meet the technical specifications in paragraph (2) (A) or (B).
- (5) Piping for airport hydrant fuel distribution systems and UST systems with field-constructed tanks with a capacity greater than 50,000 gallons must meet one of the following:
- (A) Pressurized piping. Underground piping that conveys regulated substances under pressure must:
- (i) Be equipped with an automatic line leak detector conducted in accordance with section 11-280.1-44(1); and
  - (ii) Have an annual line tightness test conducted in accordance with section 11-280.1-44(2) or have monthly monitoring conducted in accordance with any of the methods in section 11-280.1-43(7) to (9) designed to detect a release from any portion of the underground piping that routinely contains regulated substances; or
  - (iii) Use one or a combination of the methods of release detection listed in section 11-280.1-44(4).
- (B) Suction piping. Underground piping that conveys regulated substances under suction must:
- (i) Have a line tightness test conducted at least every three years and in accordance with section 11-280.1-44(2);
  - (ii) Use a monthly monitoring method conducted in accordance with section 11-280.1-43(7) to (9) designed to detect a release from

- any portion of the underground piping that routinely contains regulated substances;
  - (iii) Use one or a combination of the methods of release detection listed in section 11-280.1-44(4); or
  - (iv) Meet the standards in paragraph (6)(A) to (E).
- (6) No release detection is required for suction piping that is designed and constructed to meet the following standards:
- (A) The below-grade piping operates at less than atmospheric pressure;
  - (B) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;
  - (C) Only one check valve is included in each suction line;
  - (D) The check valve is located directly below and as close as practical to the suction pump; and
  - (E) A method is provided that allows compliance with subparagraphs (B) to (D) to be readily determined. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

**§11-280.1-42 Requirements for hazardous substance UST systems.** Owners and operators of hazardous substance UST systems must monitor these systems in accordance with section 11-280.1-43(7) at least every thirty-one days. In addition, underground piping that conveys hazardous substances under pressure must be equipped with an automatic line leak detector in accordance with section 11-280.1-44(1). [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ]

(Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

**§11-280.1-43 Methods of release detection for tanks.** Each method of release detection for tanks used to meet the requirements of sections 11-280.1-40 to 11-280.1-42 must be conducted in accordance with the following:

- (1) Inventory control. Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least one percent of flow-through plus one hundred thirty gallons on a monthly basis in the following manner:
  - (A) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;
  - (B) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
  - (C) If a manual measuring device is used (e.g., a gauge stick), the measurements must be made through a drop tube that extends to within one foot of the tank bottom. Level measurements shall be to the nearest one-eighth of an inch;
  - (D) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;
  - (E) Deliveries are made through a drop tube that extends to within one foot of the tank bottom;
  - (F) Product dispensing is metered and recorded within the state standards for meter calibration or an accuracy of six cubic inches for every five gallons of

- product withdrawn, and the meter is calibrated every three hundred sixty-five days; and
- (G) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.
- (2) Manual tank gauging. Manual tank gauging must meet the following requirements:
- (A) Tank liquid level measurements are taken at the beginning and ending of a period using the appropriate minimum duration of test value in the table below during which no liquid is added to or removed from the tank;
  - (B) If a manual measuring device is used (e.g., a gauge stick), the measurements must be made through a drop tube that extends to within one foot of the tank bottom. Level measurements shall be to the nearest one-eighth of an inch;
  - (C) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;
  - (D) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
  - (E) A release is suspected and subject to the requirements of subchapter 5 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal tank capacity	Minimum duration of test	Weekly standard (one test)	Monthly standard (four test average)
550 gallons or less .....	36 hours .....	10 gallons .....	5 gallons
551-1,000 gallons (when tank diameter is 64 inches) .....	44 hours .....	9 gallons .....	4 gallons
551-1,000 gallons (when tank diameter is 48 inches) .....	58 hours .....	12 gallons .....	6 gallons
551-1,000 gallons (also requires periodic tank tightness testing) ..	36 hours .....	13 gallons .....	7 gallons
1,001-2,000 gallons (also requires periodic tank tightness testing) ..	36 hours .....	26 gallons .....	13 gallons

- (F) Tanks of five hundred fifty gallons or less nominal capacity and tanks with a nominal capacity of five hundred fifty-one to one thousand gallons that meet the tank diameter criteria in the table in subparagraph (E) may use manual tank gauging as the sole method of release detection. All other tanks with a nominal capacity of five hundred fifty-one to two thousand gallons may use manual tank gauging in place of inventory control in paragraph (1), combined with tank tightness testing as indicated in the table. Tanks of greater than two thousand gallons nominal capacity may not use this method to meet the requirements of this subchapter.
- (3) Tank tightness testing. Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.
- (4) Automatic tank gauging. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:
- (A) The automatic product level monitor test can detect a 0.2 gallon per hour



- leak rate from any portion of the tank that routinely contains product;
- (B) The automatic tank gauging equipment must meet the inventory control (or other test of equivalent performance) requirements of paragraph (1); and
  - (C) The test must be performed with the system operating in one of the following modes:
    - (i) In-tank static testing conducted at least once every thirty-one days; or
    - (ii) Continuous in-tank leak detection operating on an uninterrupted basis or operating within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every thirty-one days.
- (5) Vapor monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:
- (A) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;
  - (B) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;
  - (C) The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than

- thirty-one days;
- (D) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;
- (E) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;
- (F) In the UST excavation zone, the site is assessed to ensure compliance with the requirements in subparagraphs (A) to (D) and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product; and
- (G) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
- (6) Groundwater monitoring. Testing or monitoring for liquids on the groundwater must meet the following requirements:
  - (A) The regulated substance stored is immiscible in water and has a specific gravity of less than one;
  - (B) Groundwater is never more than twenty feet from the ground surface and the hydraulic conductivity of the soils between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);
  - (C) The slotted portion of the monitoring well casing must be designed to prevent



- migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions;
- (D) Monitoring wells shall be sealed from the ground surface to the top of the filter pack;
  - (E) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;
  - (F) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the groundwater in the monitoring wells;
  - (G) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in subparagraphs (A) to (E) and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product; and
  - (H) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
- (7) Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed, and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:
- (A) For double walled UST systems, the sampling or testing method can detect a leak through the inner wall in any portion of the tank that routinely contains product;

- (B) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a leak between the UST system and the secondary barrier;
- (i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least  $10^{-6}$  cm/sec for the regulated substance stored) to direct a leak to the monitoring point and permit its detection;
  - (ii) The barrier is compatible with the regulated substance stored so that a leak from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;
  - (iii) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;
  - (iv) The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than thirty-one days;
  - (v) The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a twenty-five-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and,
  - (vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

- (C) For tanks with an internally fitted liner, an automated device can detect a leak between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.
- (8) Statistical inventory reconciliation. Release detection methods based on the application of statistical principles to inventory data similar to those described in paragraph (1) must meet the following requirements:
  - (A) Report a quantitative result with a calculated leak rate;
  - (B) Be capable of detecting a leak rate of 0.2 gallon per hour or a release of one hundred fifty gallons within thirty-one days; and
  - (C) Use a threshold that does not exceed one-half the minimum detectible leak rate.
- (9) Other methods. Any other type of release detection method, or combination of methods, can be used if:
  - (A) It can detect a 0.2 gallon per hour leak rate or a release of one hundred fifty gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or
  - (B) The owner and operator can demonstrate to the department that the method can detect a release as effectively as any of the methods allowed in paragraphs (3) to (8), and the department approves the method. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the department on its use to ensure the protection of human health and the

environment.

- (10) Methods of release detection for field-constructed tanks. One or a combination of the following methods of release detection for tanks may be used when allowed by section 11-280.1-41.
- (A) Conduct an annual tank tightness test that can detect a 0.5 gallon per hour leak rate;
  - (B) Use an automatic tank gauging system to perform release detection at least every thirty-one days that can detect a leak rate less than or equal to one gallon per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every three years;
  - (C) Use an automatic tank gauging system to perform release detection at least every thirty-one days that can detect a leak rate less than or equal to two gallons per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every two years;
  - (D) Perform vapor monitoring (conducted in accordance with paragraph (5) for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;
  - (E) Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25, ATA Airport Fuel Facility Operations and Maintenance Guidance Manual, or equivalent procedures) at least every thirty-one days that can detect a leak equal to or less than 0.5 percent of flow-through; and

- (i) Perform a tank tightness test that can detect a 0.5 gallon per hour leak rate at least every two years; or
  - (ii) Perform vapor monitoring or groundwater monitoring (conducted in accordance with paragraph (5) or (6), respectively, for the stored regulated substance) at least every thirty-one days; or
- (F) Another method approved by the department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subparagraphs (A) to (E). In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability of detection. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

**§11-280.1-44 Methods of release detection for piping.** Each method of release detection for piping used to meet the requirements of sections 11-280.1-40 to 11-280.1-42 must be conducted in accordance with the following:

- (1) Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping may be used only if they detect leaks of three gallons per hour at ten pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector must be conducted in accordance with section 11-280.1-40(a)(4).
- (2) Line tightness testing. A periodic test of

piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.

- (3) Applicable tank methods. Any of the methods in section 11-280.1-43(5) to (9) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.
- (4) Methods of release detection for piping associated with airport hydrant systems and field-constructed tanks. One or a combination of the following methods of release detection for piping may be used when allowed by section 11-280.1-41.
  - (A) (i) Perform a semiannual or annual line tightness test at or above the piping operating pressure in accordance with the table below.

MAXIMUM LEAK DETECTION RATE PER TEST  
SECTION VOLUME

Test section volume (gallons)	Semiannual test—leak detection rate not to exceed (gallons per hour)	Annual test— leak detection rate not to exceed (gallons per hour)
<50,000	1.0	0.5
≥50,000 to <75,000	1.5	0.75
≥75,000 to <100,000	2.0	1.0
≥100,000	3.0	1.5

- (ii) Piping segment volumes ≥100,000 gallons not capable of meeting the maximum 3.0 gallon per hour leak rate for the semiannual test may be tested at a leak rate up to 6.0 gallons per hour according to the following schedule:

PHASE IN FOR PIPING SEGMENTS  
≥100,000 GALLONS IN VOLUME



First test .....	Not later than July 15, 2021 (may use up to 6.0 gph leak rate).
Second test .....	Between July 15, 2021 and July 15, 2024 (may use up to 6.0 gph leak rate).
Third test .....	Between July 15, 2024 and July 15, 2025 (must use 3.0 gph for leak rate).
Subsequent tests ..	Not later than July 15, 2025 begin using semiannual or annual line testing according to the Maximum Leak Detection Rate Per Test Section Volume table above.

- (B) Perform vapor monitoring (conducted in accordance with section 11-280.1-43(5) for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;
- (C) Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25, ATA Airport Fuel Facility Operations and Maintenance Guidance Manual, or equivalent procedures) at least every thirty-one days that can detect a leak equal to or less than 0.5 percent of flow-through; and
  - (i) Perform a line tightness test (conducted in accordance with subparagraph (A) using the leak rates for the semiannual test) at least every two years; or
  - (ii) Perform vapor monitoring or groundwater monitoring (conducted in accordance with section 11-280.1-43(5) or (6), respectively, for the stored regulated substance) at least every thirty-one days; or
- (D) Another method approved by the department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subparagraphs (A) to (C). In comparing methods, the department shall consider the size of

release that the method can detect and the frequency and reliability of detection. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

**§11-280.1-45 Release detection recordkeeping.**

All UST system owners and operators must maintain records in accordance with section 11-280.1-34 demonstrating compliance with all applicable requirements of this subchapter. These records must include the following:

- (1) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for the operating life of the UST system. Records of site assessments required under section 11-280.1-43(5)(F) and (6)(G) must be maintained for as long as the methods are used. Records of site assessments developed after July 15, 2018 must be signed by a professional engineer or professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the department;
- (2) The results of any sampling, testing, or monitoring must be maintained for at least three years, except as follows:
  - (A) The results of annual operation tests conducted in accordance with section 11-280.1-40(a)(4) must be maintained for three years. At a minimum, the results must list each component tested, indicate whether each component tested meets criteria in section



- 11-280.1-40(a)(4) or needs to have action taken, and describe any action taken to correct an issue;
- (B) The results of tank tightness testing conducted in accordance with section 11-280.1-43(3) must be retained until the next test is conducted; and
  - (C) The results of tank tightness testing, line tightness testing, and vapor monitoring using a tracer compound placed in the tank system conducted in accordance with section 11-280.1-43(10) or section 11-280.1-44(4) must be retained until the next test is conducted;
- (3) All records that the equipment being utilized to monitor or maintain the UST system is designed to produce must be maintained for at least three years after the record is generated; and
  - (4) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least three years. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for five years from the date of installation. [Eff. 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-7.5, 342L-33) (Imp: HRS §§342L-3, 342L-7.5, 342L-33)

**§11-280.1-46 Release detection--codes of practice.** (a) The following code of practice may be used to comply with section 11-280.1-40(a)(4): Petroleum Equipment Institute Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".

(b) Practices described in the American Petroleum Institute Recommended Practice RP 1621, "Bulk Liquid Stock Control at Retail Outlets" may be used, where applicable, as guidance in meeting the requirements of section 11-280.1-43(1). [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-33) (Imp: HRS §§342L-3, 342L-33)

**§§11-280.1-47 to 11-280.1-49 (Reserved).**

## SUBCHAPTER 5

### RELEASE REPORTING, INVESTIGATION, AND CONFIRMATION

#### **§11-280.1-50 Reporting of suspected releases.**

Owners and operators of UST systems must notify the department within twenty-four hours and follow the procedures in section 11-280.1-52 for any of the following conditions:

- (1) The discovery by any person of evidence of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water).
- (2) Unusual UST or tank system operating conditions observed or experienced by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, an unexplained presence of water in the tank, or liquid in the interstitial space of secondarily contained systems), unless:
  - (A) The system equipment or component is found not to be releasing regulated substances to the environment;

- (B) Any defective system equipment or component is immediately repaired or replaced; and
  - (C) For secondarily contained systems, except as provided for in section 11-280.1-43(7)(B)(iv), any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed.
- (3) Monitoring results, including investigation of an alarm, from a release detection method required under sections 11-280.1-41 and 11-280.1-42 that indicate a release may have occurred unless:
- (A) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result;
  - (B) The leak is contained in the secondary containment and:
    - (i) Except as provided for in section 11-280.1-43(7)(B)(iv), any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed; and
    - (ii) Any defective system equipment or component is immediately repaired or replaced;
  - (C) In the case of inventory control described in section 11-280.1-43(1), a second month of data does not confirm the initial result or the investigation determines no release has occurred; or
  - (D) The alarm was investigated and determined to be a non-release event (for example, from a power surge or caused by filling the tank during release detection testing). [Eff

7/15/18; comp 1/17/20; comp  
JUL - 8 2021 ] (Auth: HRS §§342L-3,  
342L-34) (Imp: HRS §§342L-3, 342L-34)

**§11-280.1-51 Investigation of off-site impacts.**

When required by the department, owners and operators of UST systems must follow the procedures in section 11-280.1-52 to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that has been observed by the department or brought to the department's attention by any person. [Eff 7/15/18; comp 1/17/20; comp

JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-52 Release investigation and confirmation steps.** (a) Unless release response action is initiated in accordance with subchapter 6, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under section 11-280.1-50 within seven days following the discovery of the suspected release, unless a written request for extension of time is granted by the director.

(b) Investigations and confirmations required in subsection (a) must use the following steps or another procedure approved by the department:

- (1) System test. Owners and operators must conduct tests (according to the requirements for tightness testing in sections 11-280.1-43(3) and 11-280.1-44(2) and, as appropriate, secondary containment testing described in section 11-280.1-33(a)(6)).

(A) The test must determine whether:

- (i) A leak exists in that portion of

- the tank that routinely contains product, or the attached delivery piping; or
- (ii) A breach of either wall of the secondary containment has occurred.
- (B) If the system test confirms a leak into the interstice or a release, owners and operators must repair, replace, or close the UST system. In addition, owners and operators must begin release response action in accordance with subchapter 6 if the test results for the system, tank, or delivery piping indicate that a release exists.
- (C) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a release exists and if environmental contamination is not the basis for suspecting a release.
- (D) Owners and operators must conduct a site assessment as described in paragraph (2) if the test results for the system, tank, and delivery piping do not indicate that a release exists but environmental contamination is the basis for suspecting a release.
- (2) Site assessment. Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill and surrounding soil, the depth and flow of groundwater, and other factors as appropriate for identifying the presence and source of the release.
- (A) If the test results for the excavation zone or the UST site



indicate that a release has occurred, owners and operators must begin release response action in accordance with subchapter 6;

- (B) If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.

(c) If it is determined that a release has not occurred, owners and operators must report the results of the investigation in writing to the department within thirty days following discovery of the suspected release. The report shall include, but not be limited to, results of the tests required by subsection (b) as well as performance claims pursuant to section 11-280.1-40(a)(5). [Eff 7/15/18; comp 1/17/20; am and comp **JUL - 8 2021** ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-53 Reporting and cleanup of spills and overfills.** (a) Owners and operators of UST systems must contain and immediately clean up all spills and overfills in a manner which is protective of human health and the environment as set forth in section 11-280.1-65.3.

(b) Owners and operators must notify the department within twenty-four hours and begin release response action in accordance with subchapter 6 in the following cases:

- (1) Spill or overfill of petroleum that results in a release to the environment that exceeds twenty-five gallons or that causes a sheen on nearby surface waters; and
- (2) Spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity, as determined in compliance with section 11-451-6.

§11-280.1-53

(c) Owners and operators must immediately notify the department of a spill or overfill of petroleum that is less than 25 gallons or a spill or overfill of a hazardous substance that is less than its reportable quantity, as determined in compliance with section 11-451-6, and comply with section 11-280.1-62(b) if cleanup cannot be accomplished within twenty-four hours.

(d) An owner or operator must submit the appropriate forms listed in section 11-280.1-111(b) documenting current evidence of financial responsibility to the director within thirty days after identifying a release from an underground storage tank or tank system required to be reported under this section. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-34, 342L-35) (Imp: HRS §§342L-3, 342L-34, 342L-35)

**§§11-280.1-54 to 11-280.1-59 (Reserved) .**

## SUBCHAPTER 6

### RELEASE RESPONSE ACTION

**§11-280.1-60 General.** Owners and operators of petroleum or hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this subchapter, except for USTs excluded under section 11-280.1-10(b) and UST systems subject to RCRA Subtitle C corrective action requirements under section 3004(u) of the Resource Conservation and Recovery Act, as amended, or under section 342J-36, Hawaii Revised Statutes. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

280.1-74

**§11-280.1-61 Immediate response actions.** (a)

Upon confirmation of a release in accordance with section 11-280.1-52 or after a release from the UST system is identified in any other manner, owners and operators must perform the following response actions within twenty-four hours:

- (1) Report the release to the department by telephone;
- (2) Take necessary actions to prevent any further release of the regulated substance into the environment, including removal of as much of the regulated substance from the UST or tank system as possible;
- (3) Identify and mitigate any safety hazards (such as fire, explosion, and vapor hazards) posed by the release of the regulated substance; and
- (4) Take necessary action to minimize the spread of contamination.

(b) Within seven days of confirmation, owners and operators must accurately complete and submit to the department the "Confirmed Release Notification" form prescribed by the director.

(c) An owner or operator must submit the appropriate forms listed in section 11-280.1-111(b) documenting current evidence of financial responsibility to the director within thirty days after identifying a release from an underground storage tank or tank system required to be reported under this section. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-34, 342L-35) (Imp: HRS §§342L-3, 342L-34, 342L-35)

**§11-280.1-61.1 Posting of signs.** (a) If the

department determines that posting of signs is appropriate, owners and operators shall post signs around the perimeter of the site informing passersby



of the potential hazards. In this instance, "site" means an area where contamination poses an immediate health risk or an area where contaminated media is exposed to the surface.

(b) Signs shall be placed at each entrance to the site and at other locations in sufficient numbers to be seen from any approach to the site.

(c) Signs shall be legible and readable from a distance of at least twenty-five feet. The sign legend shall read, "Caution - Petroleum/Hazardous Substance Contamination - Unauthorized Personnel Keep Out". Other sign legends may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the site and that entry onto the site may be dangerous. A contact person and telephone number shall be listed on the sign.

(d) The sign may be removed upon determination by the department that no further release response action is necessary or that posting of signs is no longer appropriate. [Eff 7/15/18; comp 1/17/20; comp

JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-35)  
(Imp: HRS §§342L-3, 342L-35)

**§11-280.1-62 Initial abatement measures and site assessment.** (a) Unless directed to do otherwise by the department, owners and operators must perform the following abatement measures:

- (1) Continue to remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;
- (2) Visually inspect the area around the UST or tank system for evidence of any aboveground releases or exposed belowground releases and continue to take necessary actions to minimize the spread of contamination and to prevent further migration of the released substance into surrounding soils, air, surface water, and groundwater;
- (3) Continue to monitor and mitigate any

additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);

- (4) Remedy hazards (such as dust and vapors and the potential for leachate generation) posed by contaminated soils and debris that are excavated or exposed as a result of release confirmation, site investigation, abatement, or release response action activities;
  - (5) Conduct an assessment of the release by measuring for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site assessment required by section 11-280.1-52(b) or the site assessment required for change-in-service or permanent closure in section 11-280.1-72(a). In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill and surrounding soil, depth and flow of groundwater and other factors as appropriate for identifying the presence and source of the release;
  - (6) Investigate to determine the possible presence of free product, and begin free product removal in accordance with section 11-280.1-64;
  - (7) Remove or remediate contaminated soil at the site to the extent necessary to prevent the spread of free product; and
  - (8) If any of the remedies in this section include treatment or disposal of contaminated soils, owners or operators must comply with all applicable local, state, and federal requirements.
- (b) Within twenty days after release

confirmation, or within another reasonable period of time determined by the department, owners and operators must submit a report to the department summarizing the initial abatement steps taken under subsection (a) and any resulting information or data. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ]  
(Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-63 Initial site characterization.**

(a) Owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in sections 11-280.1-60 and 11-280.1-61. This information must include, but is not necessarily limited to the following:

- (1) Data on the nature and estimated quantity of release;
- (2) Data from available sources and all previous site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;
- (3) Results of the site assessment required under section 11-280.1-62(a)(5); and
- (4) Results of the free product investigations required under section 11-280.1-62(a)(6), to be used by owners and operators to determine whether free product must be recovered under section 11-280.1-64.

(b) Within forty-five days of release confirmation, or another reasonable period of time determined by the department, owners and operators must submit the information collected in compliance with subsection (a) to the department in a manner that demonstrates its applicability and technical adequacy.

[Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-7.5, 342L-35) (Imp: HRS §§342L-3, 342L-7.5, 342L-35)

**§11-280.1-64 Free product removal.** (a) At sites where investigations under section 11-280.1-62(a)(6) indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the department while continuing, as necessary, any actions initiated under sections 11-280.1-61 to 11-280.1-63, or preparing for actions required under sections 11-280.1-65 to 11-280.1-66. In meeting the requirements of this section, owners and operators must:

- (1) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, state, and federal regulations;
- (2) Use abatement of free product migration as a minimum objective for the design of the free product removal system;
- (3) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and
- (4) Prepare and submit to the department, within forty-five days after confirming a release, or within another reasonable period of time determined by the department, a free product removal report that provides at least the following information:
  - (A) The name of the person responsible for implementing the free product removal measures;
  - (B) The estimated quantity, type, and

- thickness of free product observed or measured in wells, boreholes, and excavations;
- (C) The type of free product recovery system used;
  - (D) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;
  - (E) The type of treatment applied to, and the effluent quality expected from, any discharge;
  - (F) All actions already performed or currently underway to remove free product, including steps that have been or are being taken to obtain necessary permits for any discharge;
  - (G) The disposition of the recovered free product; and
  - (H) Schedule for completion of free product removal.

(b) Owners and operators shall initiate free product removal as soon as practicable but no later than thirty days following confirmation of a release, or sooner if directed by the department. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ]  
(Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-65 Investigations for soil and groundwater cleanup.** (a) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the groundwater and surface water, owners and operators must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

- (1) There is evidence that groundwater wells



- have been affected by the release (e.g., as found during release confirmation or previous release response actions);
- (2) Free product is found to need recovery in compliance with section 11-280.1-64;
  - (3) There is evidence that contaminated soils may be in contact with groundwater (e.g., as found during conduct of the initial response measures or investigations required under sections 11-280.1-60 to 11-280.1-64); and
  - (4) The department requests an investigation, based on the potential effects of contaminated soil or groundwater on nearby surface water and groundwater resources.
- (b) Owners and operators must include information collected in accordance with this section with each quarterly report required pursuant to section 11-280.1-65.2. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-65.1 Notification of confirmed releases.** (a) Within ninety days following confirmation of a release, the owner and operator shall notify those members of the public directly affected by the release in writing of the release and the proposed response to the release, including a historical account of actions performed since the discovery of the release. Members of the public directly affected by the release shall include:

- (1) Persons who own, hold a lease for, or have easements at, any property on which the regulated substance released from the UST was discovered; and
  - (2) Other persons identified by the director.
- (b) The owner and operator shall send a letter to all members of the public directly affected by the release. Model language for the letter shall be provided by the department and shall include at least the following information:

- (1) Name and address of the UST or UST system;
- (2) Statement that a release of regulated substance has been confirmed at the UST or UST system;
- (3) Name of a contact person at the department; and
- (4) Reference to an attached factsheet pursuant to subsection (c).

(c) The letter to the members of the public directly affected by the release shall include a factsheet which contains the following information:

- (1) Name and address of the UST or UST system;
- (2) Name and address of the owner and operator of the UST or UST system;
- (3) Name, address, and telephone contact of the party performing the cleanup activities;
- (4) Date of the confirmed release;
- (5) Nature and extent of the confirmed release;
- (6) Summary of measures taken to assess the release and extent of contamination; and
- (7) Summary of the proposed response to the release.

(d) The factsheet shall be updated on a quarterly basis and sent to all members of the public directly affected by the release. If additional members of the public directly affected by the release are identified in the course of release response actions, then the owner and operator shall provide those persons with all previous and future letters and factsheets.

(e) The owner and operator shall include in the quarterly report required pursuant to section 11-280.1-65.2 the following information:

- (1) Copy of the letter pursuant to subsection (b);
  - (2) List of the members of the public directly affected by the release and to whom the letter was sent; and
  - (3) Copies of the factsheet and amended factsheets pursuant to subsections (c) and (d).
- JUL - 8 2021 [Eff 7/15/18; comp 1/17/20; comp  
(Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)]

**§11-280.1-65.2 Release response reporting.** (a)

No later than ninety days following the confirmation of a release, owners and operators must submit to the department a written report in the format specified by the department. The report must include:

- (1) All release response actions taken pursuant to this subchapter during the first ninety-day period (first quarter); and
- (2) A plan for future release response actions to be taken.

(b) Beginning one hundred eighty days following confirmation of a release, owners and operators must submit to the department written quarterly progress reports and an electronic copy of the written report in a format specified by the department. The reports must document:

- (1) All response actions taken pursuant to this subchapter after the last reported date;
  - (2) A plan for future release response actions to be taken; and
  - (3) Information required pursuant to section 11-280.1-65.1.
- (c) Quarterly progress reports are not required

if:

- (1) Response actions have met the requirements of section 11-280.1-65.3; and
  - (2) A final quarterly report has been submitted.
- [Eff 7/15/18; comp 1/17/20; comp  
JUL - 8 2021 ] (Auth: HRS §§342L-3,  
342L-7.5, 342L-35) (Imp: HRS §§342L-3,  
342L-7.5, 342L-35)

**§11-280.1-65.3 Site cleanup criteria.** (a)

Owners and operators must remediate soil, surface water, and groundwater, and materials contaminated by releases from USTs or tank systems in a manner that is protective of human health and the environment and



achieves cleanup as described in subsection (b).

(b) Owners and operators must remediate contaminated soil, groundwater, and surface water at the site to residual concentrations that meet one of the following criteria:

- (1) Default Tier 1 Screening Levels as presented in Table 1 in subsection (e); or
- (2) Site-specific action levels as approved by the department. Owners and operators should consult with the department on how the standards in this paragraph can be met. Site-specific action levels must take into account the following factors:
  - (A) For systemic toxicants, acceptable levels shall represent concentration levels to which the human population may be exposed without adverse effect during a lifetime or part of a lifetime, and incorporating an adequate margin of safety;
  - (B) For known or suspected carcinogens, acceptable levels are generally concentration levels in soil, groundwater and vapor that represent an excess upper bound lifetime cancer risk to an individual of between  $10^{-4}$  and  $10^{-6}$  using information on the relationship between dose and response. The  $10^{-6}$  excess risk level shall be used as the point of departure for determining acceptable levels for alternatives when chemical-specific state or federal requirements are not available or are not sufficiently protective because of the presence of multiple contaminants at the site or multiple pathways of exposure;
  - (C) Impacts to ecological receptors, including but not limited to plants and animals; and
  - (D) Other applicable requirements, including but not limited to nuisance

concerns for odor and taste, if applicable.

(c) The department may require the owners and operators to modify cleanup activities being performed at a site if the department determines that the activities are not being carried out in accordance with this subchapter, or are not achieving cleanup levels that are protective of human health and the environment. The department may impose modifications to cleanup activities by written notice to the owners and operators, and the owners and operators must implement necessary changes to the cleanup activities in response to the department's notice by a time schedule established by the department.

(d) A schedule for estimated completion of site cleanup shall be included in each fourth quarter report required pursuant to section 11-280.1-65.2(b).

(e) The figure labeled "Table 1. Tier 1 Screening Levels of Soil and Groundwater" is made a part of this subsection.

Table 1. Tier 1 Screening Levels for Soil and Groundwater

Contaminant	DRINKING WATER SOURCE THREATENED				DRINKING WATER SOURCE NOT THREATENED			
	Groundwater (ug/l)	Basis <sup>1</sup>	Soil (mg/kg)	Basis <sup>2</sup>	Groundwater (ug/l)	Basis <sup>3</sup>	Soil (mg/kg)	Basis <sup>2</sup>
Acenaphthene	N/A <sup>4</sup>	-	120	L/VI	N/A <sup>4</sup>	-	120	L/VI
Benzene	5.0	DWP	0.30	L	71	CAT	0.77	VI
Benzo(a)pyrene	N/A <sup>4</sup>	-	3.6	DE	N/A <sup>4</sup>	-	3.6	DE
Dichloroethylene, cis 1,2-	70	DWP	0.36	VI	620	CAT	0.36	VI
Dichloroethylene, trans 1,2-	100	DWP	3.6	VI	560	CAT	3.6	VI
Ethylbenzene	7.3	CAT	0.90	L	7.3	CAT	0.90	L
Fluoranthene	N/A <sup>4</sup>	-	87	L	N/A <sup>4</sup>	-	87	L
Lead	5.6	CAT	200	DE	5.6	CAT	200	DE
Methyl Tert Butyl Ether (MTBE)	5.0	DWS	0.028	L	730	CAT	2.3	VI
Naphthalene	12	CAT	3.1	L	12	CAT	3.1	L
Polychlorinated Biphenyls (PCBs)	N/A <sup>4</sup>	-	1.2	DE	N/A <sup>4</sup>	-	1.2	DE
Tetrachloethylene (PCE)	5.0	DWP	0.098	VI	53	CAT	0.098	VI
Toluene	9.8	CAT	0.78	L	9.8	CAT	0.78	L
TPH-gasolines	300	DWP	100	GC	500	CAT	100	GC
TPH-middle distillates	400	DWP	220	DE	640	CAT	220	DE
TPH-residual fuels	500	DWS	500	GC	640	CAT	500	GC
Trichloroethylene	5.0	DWP	0.089	VI	47	CAT	0.089	VI
Vinyl Chloride	2.0	DWP	0.036	VI	18	VI	0.036	VI
Xylenes	13	CAT	1.4	L	13	CAT	1.4	L

Notes to Table 1.

1. Drinking water screening levels are the lowest of screening levels for: drinking water primary maximum contaminant levels based on toxicity ("DWP"), drinking water secondary maximum contaminant levels based on taste and odor concerns ("DWS"), vapor intrusion ("VI"), and chronic aquatic toxicity ("CAT").
2. Soil screening levels are the lowest of screening levels for: direct exposure ("DE"), vapor intrusion ("VI"), leaching ("L"), and gross contamination ("GC").
3. Non-drinking water screening levels are the lowest of screening levels vapor intrusion ("VI"), chronic aquatic toxicity ("CAT"), and gross contamination ("GC").
4. Testing for acenaphthene, benzo(a)pyrene, fluoranthene, and PCBs in groundwater is not necessary due to low solubility and low mobility. Cleanup of contaminated soil will be adequate to address potential groundwater concerns.

[Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ]  
 (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-66 Corrective action plan.** (a) The department may require that the owner and operator submit a written corrective action plan for responding to a release, if one or more of the following minimum threshold criteria is met:

- (1) Actual or probable release to groundwater which is a drinking water supply;
- (2) Actual or probable release to surface water which is a drinking water supply;
- (3) Actual or probable release to air that poses

- a threat to public health;
- (4) Actual or probable release to and extensive contamination of soil that poses a direct contact hazard due to uncontrolled access;
- (5) Actual or probable existence of uncontrolled regulated substances that pose a direct contact hazard due to uncontrolled access;
- (6) Actual or probable adverse impact to natural resources;
- (7) Actual or probable imminent danger of fire or explosion; or
- (8) A determination by the director that a release poses a substantial endangerment to public health or welfare, the environment, or natural resources.

(b) If a plan is required, owners and operators must submit the plan to the department in a format established by the department within thirty days of the department's request, unless an extension of time is granted by the department.

(c) Corrective action plans which are required to be submitted to the department shall be subject to the review and discretionary approval of the department in accordance with the procedures set forth in this section. Owners and operators are responsible for submitting a corrective action plan that provides for adequate protection of human health and the environment as determined by the department and must make necessary modifications to the plan when directed to do so by the department.

(d) The department will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the department will consider the following factors as appropriate:

- (1) Physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;
- (2) Hydrogeologic characteristics of the facility and the surrounding area;
- (3) Proximity, quality, and current and future

uses of nearby surface water and groundwater;

- (4) Potential effects of residual contamination on nearby surface water and groundwater;
- (5) An exposure assessment; and
- (6) All other information assembled in compliance with this subchapter.

(e) The public participation procedures set forth in section 11-280.1-67 apply to all corrective action plans submitted under this section.

(f) Upon approval of a corrective action plan, owners and operators must implement the plan, including any modifications to the plan made by the department. Owners and operators must monitor, evaluate, and report quarterly to the department the results of implementing the corrective action plan pursuant to this section and section 11-280.1-65.2.

(g) Owners and operators who have been requested by the department to submit a corrective action plan are encouraged to begin cleanup of contaminated soils, surface water, groundwater, and materials before the plan is approved by the department provided that they:

- (1) Notify the department of their intention to begin cleanup;
- (2) Ensure that cleanup measures undertaken are consistent with the cleanup actions required pursuant to section 11-280.1-65.3;
- (3) Comply with any conditions imposed by the department, including halting cleanup or mitigating adverse consequences from cleanup activities; and
- (4) Incorporate self-initiated cleanup measures in the corrective action plan that is submitted to the department for approval.

[Eff. 7/15/18; comp 1/17/20; comp  
**JUL - 8 2021** ] (Auth: HRS §§342L-3,  
 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-67 Public participation for corrective action plans.** (a) The department shall



conduct public participation activities in accordance with subsections (c) through (h) when:

- (1) A corrective action plan required pursuant to section 11-280.1-66(a) has been submitted and the department has made a tentative decision concerning the proposed plan; or
- (2) Implementation of any previously approved corrective action plan has not achieved the cleanup levels established in the plan and termination of the plan is under consideration by the department.

(b) The department will provide notice to the public of the release and the applicable response as required in subsections (c) and (d). Costs for all public participation activities described in subsections (c) through (h) shall be borne by the owner and operator of the UST or UST system, including the costs of making copies of materials to the public under subsection (f).

(c) Notice to members of the public directly affected by the release, as defined in section 11-280.1-65.1(a), shall be given in the form of a letter from the department and shall include at least the following information:

- (1) Name and address of the UST or UST system;
  - (2) Name and address of the owner and operator of the UST or UST system;
  - (3) Summary of the release information and the proposed or previously approved corrective action plan;
  - (4) The department's tentative decision concerning the proposed corrective action plan or concerning the termination of the previously approved corrective action plan;
  - (5) Announcement that an informational meeting will be held in accordance with subsection (g);
  - (6) Request for comments on the corrective action plan and the department's tentative decision; and
  - (7) Availability of information on the release and the department's tentative decision.
- (d) Notice to the general public shall be given

in the form of a notice in a local newspaper and shall include at least the information required in subsection (c)(1) to (7).

(e) Comments shall be received by the department no later than thirty days after the notice provided in subsections (c) and (d) or after the end of the public meeting held pursuant to subsection (g), if any, whichever occurs later.

(f) Information on the release, the proposed corrective action plan, and the department's tentative decision on the plan shall be made available to the public for inspection upon request.

(g) Before approving a corrective action plan, the department may conduct a public meeting to provide information and receive comments on the proposed plan. A meeting will be held if there is sufficient public interest. Public interest shall be indicated by written request to the department.

(h) At the director's discretion, a notice of final decision may be issued. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§§11-280.1-68 to 11-280.1-69 (Reserved).**

## SUBCHAPTER 7

### OUT-OF-SERVICE UST SYSTEMS AND CLOSURE

**§11-280.1-70 Temporary closure.** (a) When an UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with section 11-280.1-31, and applicable release detection in accordance with subchapter 4. Subchapters 5 and 6 must be complied with if a release is suspected or confirmed. Spill and



overfill operation and maintenance testing and inspections in subchapter 3 are not required during temporary closure. If the UST system is empty, release detection and release detection operation and maintenance testing and inspections in subchapters 3 and 4 are not required. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.

(b) When an UST system is temporarily closed for ninety days or more, owners and operators must also comply with the following requirements:

- (1) Leave vent lines open and functioning; and
- (2) Cap and secure all other lines, pumps, manways, and ancillary equipment.

(c) When an UST system is temporarily closed for more than twelve months, owners and operators must permanently close the UST system if it does not meet the applicable design, construction, and installation requirements in subchapter 2, except that the spill and overfill equipment requirements do not have to be met. Owners and operators must permanently close the substandard UST systems at the end of this twelve-month period in accordance with sections 11-280.1-71 to 11-280.1-74, unless the department provides an extension of the twelve-month temporary closure period. Owners and operators must complete a site assessment in accordance with section 11-280.1-72 before such an extension can be applied for. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-37)

**§11-280.1-71 Permanent closure and changes-in-service.** (a) At least thirty days before beginning either permanent closure or a change-in-service of an UST or tank system under subsections (c) and (d), owners and operators must notify the department of their intent to permanently close or make the change-

in-service, as required in section 11-280.1-34, unless such action is in response to a confirmed release. The required assessment of the excavation zone under section 11-280.1-72 must be performed after notifying the department but before completion of the permanent closure or change-in-service.

(b) At least seven days before excavation work for a permanent closure or change-in-service, owners or operators must notify the department of the exact date that the work will occur, as required in section 11-280.1-34.

(c) To permanently close an UST or tank system, owners and operators must:

- (1) Empty and clean the UST and tank system by removing all liquids and accumulated sludges;
- (2) Remove the UST or tank system from the ground, fill the UST or tank system with an inert solid material, or close the tank in place in a manner approved by the department; and
- (3) Conduct a site assessment in accordance with section 11-280.1-72.

(d) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators must:

- (1) Empty and clean the UST and tank system by removing all liquids and accumulated sludges; and
- (2) Conduct a site assessment in accordance with section 11-280.1-72.

(e) Within thirty days of completing a permanent closure or change-in-service, owners and operators must submit to the department:

- (1) A notification as required in section 11-280.1-34; and
- (2) A UST closure report, including the results of the site assessment conducted in accordance with section 11-280.1-72. [Eff 7/15/18; comp 1/17/20; am and comp

JUL - 8 2021

] (Auth: HRS §§342L-3,  
342L-37) (Imp: HRS §§342L-3, 342L-37)

**§11-280.1-72 Assessing the site at closure or change-in-service.** (a) Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the types of backfill and surrounding soil, the depth and flow of groundwater, and other factors appropriate for identifying the presence of a release. The requirements of this section are satisfied if one of the external release detection methods allowed in section 11-280.1-43(5) and (6) is operating in accordance with the requirements in section 11-280.1-43 at the time of closure, and indicates no release has occurred.

(b) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered under subsection (a), or by any other manner, owners and operators must begin release response action in accordance with subchapter 6. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-372)

**§11-280.1-73 Applicability to previously closed UST systems.** (a) When directed by the department, the owner and operator of an UST system permanently closed before December 22, 1988 must assess the excavation zone and close the UST system in accordance with this subchapter if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment.

(b) When directed by the department, the owner and operator of an UST system with field-constructed

tanks or an airport hydrant fuel distribution system permanently closed before August 9, 2013 must assess the excavation zone and close the UST system in accordance with this subchapter if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment. [Eff 7/15/18; comp 1/17/20; comp

**JUL - 8 2021** ] (Auth: HRS §§342L-3, 342L-37)  
(Imp: HRS §§342L-3, 342L-37)

**§11-280.1-74 Closure records.** Owners and operators must maintain records in accordance with section 11-280.1-34 that are capable of demonstrating compliance with closure requirements under this subchapter. The results of the excavation zone assessment required in section 11-280.1-72 must be maintained for at least three years after completion of permanent closure or change-in-service in one of the following ways:

- (1) By the owners and operators who took the UST system out of service;
- (2) By the current owners and operators of the UST system site; or
- (3) By mailing these records to the department if they cannot be maintained at the closed facility. [Eff 7/15/18; comp 1/17/20; comp

**JUL - 8 2021** ] (Auth: HRS §§342L-3, 342L-7.5, 342L-37) (Imp: HRS §§342L-3, 342L-7.5, 342L-37)

**§11-280.1-75 Closure--codes of practice.** The following cleaning and closure procedures may be used to comply with section 11-280.1-71:

- (1) American Petroleum Institute Recommended Practice RP 1604, "Closure of Underground Petroleum Storage Tanks";
- (2) American Petroleum Institute Standard 2015, "Safe Entry and Cleaning of Petroleum

- Storage Tanks, Planning and Managing Tank Entry From Decommissioning Through Recommissioning";
- (3) American Petroleum Institute Recommended Practice 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks";
  - (4) American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks", may be used as guidance for compliance with this section;
  - (5) National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair"; and
  - (6) National Institute for Occupational Safety and Health Publication 80-106, "Criteria for a Recommended Standard...Working in Confined Space", may be used as guidance for conducting safe closure procedures at some tanks containing hazardous substances. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-37)

**§§11-280.1-76 to 11-280.1-89 (Reserved) .**

## SUBCHAPTER 8

### FINANCIAL RESPONSIBILITY

**§11-280.1-90 Applicability.** (a) This subchapter applies to owners and operators of all petroleum underground storage tank (UST) systems except as otherwise provided in this section.

(b) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this subchapter.

(c) The requirements of this subchapter do not apply to owners and operators of any UST system described in section 11-280.1-10(b), (c)(1), (c)(3), or (c)(4).

(d) If the owner and operator of a petroleum underground storage tank system are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-91 (Reserved).**

**§11-280.1-92 Definition of terms.** When used in this subchapter, the following terms have the meanings given below:

"Accidental release" means any sudden or nonsudden release of petroleum arising from operating an underground storage tank system that results in a need for release response action and/or compensation for bodily injury or property damage neither expected nor intended by the tank system owner or operator.

"Bodily injury" shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Chief financial officer" in the case of local



government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

"Controlling interest" means direct ownership of at least fifty percent of the voting stock of another entity.

"Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared:

- (1) A 10-K report submitted to the U.S. Securities and Exchange Commission;
- (2) An annual report of tangible net worth submitted to Dun and Bradstreet; or
- (3) Annual reports submitted to the Energy Information Administration or the Rural Utilities Service.

"Financial reporting year" may thus comprise a fiscal or a calendar year period.

"Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:

- (1) By EPA or the state to require release response action or to recover the costs of release response action;
- (2) By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or
- (3) By any person to enforce the terms of a financial assurance mechanism.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank system. This definition is intended to assist in the understanding of these regulations and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence".

"Owner or operator", when the owner or operator are separate parties, refers to the party that is

obtaining or has obtained financial assurances.

"Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Property damage" shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include response actions associated with releases from USTs or tank systems which are covered by the policy.

"Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank system through one of the financial mechanisms listed in sections 11-280.1-95 through 11-280.1-107, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

"Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

"Substantial governmental relationship" means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an UST or tank system release such as coterminous boundaries, overlapping constituencies, common groundwater aquifer, or other relationship other than monetary compensation that provides a motivation for the



guarantor to provide a guarantee.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Termination" under section 11-280.1-97(b)(1) and (2) means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-93 Amount and scope of required financial responsibility.** (a) Owners or operators of petroleum USTs or tank systems must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs or tank systems in at least the following per-occurrence amounts:

- (1) For owners or operators of petroleum USTs or tank systems that are located at petroleum marketing facilities, or that handle an average of more than ten thousand gallons of petroleum per month based on annual throughput for the previous calendar year: \$1,000,000; and
- (2) For all other owners or operators of petroleum USTs or tank systems: \$500,000.

(b) Owners or operators of petroleum USTs or tank systems must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage

caused by accidental releases arising from the operation of petroleum USTs or tank systems in at least the following annual aggregate amounts:

- (1) For owners or operators of one to one hundred petroleum USTs: \$1,000,000; and
- (2) For owners or operators of one hundred one or more petroleum USTs: \$2,000,000.

(c) For the purposes of subsections (b) and (f) only, "a petroleum underground storage tank" or "a petroleum UST" means a single containment unit and does not mean combinations of single containment units.

(d) Except as provided in subsection (e), if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

- (1) Taking corrective action;
- (2) Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or
- (3) Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in subsections (a) and (b).

(e) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

(f) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks for which assurance must be provided exceeds one hundred, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2,000,000 of annual aggregate assurance by the anniversary of the date on which the mechanism

demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2,000,000 of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

(g) The amounts of assurance required under this section exclude legal defense costs.

(h) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-94 Allowable mechanisms and combinations of mechanisms.** (a) Subject to the limitations of subsections (b) and (c):

- (1) An owner or operator, including a local government owner or operator, may use any one or combination of the mechanisms listed in sections 11-280.1-95 through 11-280.1-103 to demonstrate financial responsibility under this subchapter for one or more USTs or tank systems; and
- (2) A local government owner or operator may use any one or combination of the mechanisms listed in sections 11-280.1-104 through 11-280.1-107 to demonstrate financial responsibility under this subchapter for one or more USTs or tank systems.

(b) An owner or operator may use a guarantee under section 11-280.1-96 or surety bond under section 11-280.1-98 to establish financial responsibility only if the State Attorney General has submitted a written statement to the director that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in the State.

(c) An owner or operator may use self-insurance

in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor. [Eff 7/15/18; comp 1/17/20; comp **JUL - 8 2021** ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-95 Financial test of self-insurance.**

(a) An owner or operator, and/or guarantor, may satisfy the requirements of section 11-280.1-93 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, and/or guarantor, must meet the criteria of subsection (b) or (c) based on year-end financial statements for the latest completed fiscal year.

- (b) (1) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:
  - (A) The total of the applicable aggregate amount required by section 11-280.1-93, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the department, to EPA, or to a state implementing agency under a state program approved by EPA under 40 C.F.R. part 281;
  - (B) The sum of the RCRA subtitle C corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to demonstrate financial responsibility to the department under 40 C.F.R. sections 261.143 and 261.147, as incorporated and amended in section 11-261.1-1, 40 C.F.R. sections 264.101,

- 264.143, 264.145, and 264.147, as incorporated and amended in section 11-264.1-1, and 40 C.F.R. sections 265.143, 265.145, and 265.147, as incorporated and amended in section 11-265.1-1, to EPA under 40 C.F.R. sections 261.143, 261.147, 264.101, 264.143, 264.145, 264.147, 265.143, 265.145, and 265.147, or to a state implementing agency under a state program authorized by EPA under 40 C.F.R. part 271; and
- (C) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 C.F.R. section 144.63 or to a state implementing agency under a state program authorized by EPA under 40 C.F.R. part 145.
- (2) The owner or operator, and/or guarantor, must have a tangible net worth of at least \$10,000,000.
- (3) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in subsection (d).
- (4) The owner or operator, and/or guarantor, must either:
- (A) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Utilities Service; or
- (B) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.
- (5) The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of



- opinion, or a "going concern" qualification.
- (c) (1) The owner or operator, and/or guarantor, must meet the financial test requirements of 40 C.F.R. section 264.147(f)(1), as incorporated and amended in chapter 11-264.1, substituting the appropriate amounts specified in section 11-280.1-93(b)(1) and (2) for the "amount of liability coverage" each time specified in that section.
  - (2) The fiscal year-end financial statements of the owner or operator, and/or guarantor, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.
  - (3) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
  - (4) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in subsection (d).
  - (5) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Utilities Service, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:
    - (A) The accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in such financial statements; and
    - (B) In connection with that comparison, no matters came to the accountant's

attention which caused the accountant to believe that the specified data should be adjusted.

(d) To demonstrate that it meets the financial test under subsection (b) or (c), the chief financial officer of the owner or operator, or guarantor, must sign, within one hundred twenty days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance" or "guarantee" or both] to demonstrate financial responsibility for [insert: "taking corrective action" or "compensating third parties for bodily injury and property damage" or both] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test, or a corresponding financial test under EPA or another authorized state program, by this [insert: "owner or operator" or "guarantor"]:

[List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test or a corresponding financial test under EPA or under a state program approved under 40 C.F.R. part 281. If separate mechanisms or combinations of mechanisms are being used to assure any of the

tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326.]

A [insert: "financial test" and/or "guarantee"] is also used by this [insert: "owner or operator" or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 C.F.R. parts 271 and 145:

	Amount
EPA Regulations:	
Closure (§§261.143, 264.143, and 265.143)	\$
Post-Closure Care (§§264.145 and 265.145)	\$
Liability Coverage (§§261.147, 264.147, and 265.147)	\$
Corrective Action (§264.101(b))	\$
Plugging and Abandonment (§144.63)	\$
Authorized State Programs:	
Closure	\$
Post-Closure Care	\$
Liability Coverage	\$
Corrective Action	\$
Plugging and Abandonment	\$
TOTAL	\$

This [insert: "owner or operator" or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his or her financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the



criteria of subsection (b) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of subsection (c) are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

	Amount	
1. Amount of annual UST aggregate coverage being assured by a financial test, or guarantee or both	\$	
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, or guarantee or both	\$	
3. Sum of lines 1 and 2	\$	
4. Total tangible assets	\$	
5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]	\$	
6. Tangible net worth [subtract line 5 from line 4]	\$	
7. Is line 6 at least \$10,000,000?	Yes	No
8. Is line 6 at least ten times line 3?	Yes	No
9. Have financial statements for the latest fiscal year been filed with the U.S. Securities and Exchange Commission?	Yes	No
10. Have financial statements for the latest fiscal year been filed with the federal Energy Information Administration?	Yes	No
11. Have financial statements for the latest fiscal year been filed with the federal Rural Utilities Service?	Yes	No

- |   |     |    |
|---|-----|----|
| 12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.] | Yes | No |
|---|-----|----|

## ALTERNATIVE II

- |   | Amount |    |
|---|--------|----|
| 1. Amount of annual UST aggregate coverage being assured by a financial test, or guarantee or both  | \$     |    |
| 2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, or guarantee or both | \$     |    |
| 3. Sum of lines 1 and 2   | \$     |    |
| 4. Total tangible assets  | \$     |    |
| 5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]      | \$     |    |
| 6. Tangible net worth [subtract line 5 from line 4]   | \$     |    |
| 7. Total assets in the U.S. [required only if less than ninety per cent of assets are located in the U.S.]  | \$     |    |
| 8. Is line 6 at least \$10,000,000?   | Yes    | No |
| 9. Is line 6 at least six times line 3?   | Yes    | No |
| 10. Are at least ninety per cent of assets located in the U.S.? [If "No," complete line 11]   | Yes    | No |
| 11. Is line 7 at least six times line 3?  | Yes    | No |
- [Fill in either lines 12-15 or lines

\$11-280.1-95

16-18:]

- |   |     |    |
|---|-----|----|
| 12. Current assets  | \$  |    |
| 13. Current liabilities   | \$  |    |
| 14. Net working capital [subtract line 13<br>from line 12]  | \$  |    |
| 15. Is line 14 at least six times line 3?   | Yes | No |
| 16. Current bond rating of most recent<br>bond issue  |     |    |
| 17. Name of rating service  |     |    |
| 18. Date of maturity of bond  |     |    |
| 19. Have financial statements for the<br>latest fiscal year been filed with the<br>U.S. Securities and Exchange<br>Commission, the federal Energy<br>Information Administration, or the<br>federal Rural Utilities Service? | Yes | No |

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in section 11-280.1-95(d), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(e) If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test

based on the year-end financial statements, the owner or operator must obtain alternative coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.

(f) The director may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the director finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of subsections (b) or (c) and (d), the owner or operator must obtain alternate coverage within thirty days after notification of such a finding.

(g) If the owner or operator fails to obtain alternate assurance within one hundred fifty days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within thirty days of notification by the director that he or she no longer meets the requirements of the financial test, the owner or operator must notify the director of such failure within ten days. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-96 Guarantee.** (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

- (1) A firm that:
  - (A) Possesses a controlling interest in the owner or operator;
  - (B) Possesses a controlling interest in a firm described under subparagraph (A); or
  - (C) Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or

- (2) A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

(b) Within one hundred twenty days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of section 11-280.1-95 based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in section 11-280.1-95(d) and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within one hundred twenty days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the director notifies the guarantor that it no longer meets the requirements of the financial test of section 11-280.1-95(b) or (c), and (d), the guarantor must notify the owner or operator within ten days of receiving such notification from the director. In both cases, the guarantee will terminate no less than one hundred twenty days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in section 11-280.1-114(e).

(c) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the State of [name of state], herein referred to as guarantor, to the Hawaii state department of health and to any and all third parties, and obligees, on behalf of [owner or operator] of



[business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of section 11-280.1-95(b) or (c) and (d), Hawaii Administrative Rules, and agrees to comply with the requirements for guarantors as specified in section 11-280.1-96(b), Hawaii Administrative Rules.

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326 and the name and address of the facility.] This guarantee satisfies subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with

owner or operator)] [owner or operator], guarantor guarantees to the Hawaii department of health and to any and all third parties that:

In the event that [owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the Hawaii director of health has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the Hawaii director of health, shall fund a standby trust fund in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, in an amount not to exceed the coverage limits specified above.

In the event that the Hawaii director of health determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, the guarantor, upon written instructions from the Hawaii director of health, shall fund a standby trust in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Hawaii director of health, shall fund a standby trust in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of

section 11-280.1-95(b) or (c) and (d), Hawaii Administrative Rules, guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate one hundred twenty days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within ten days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 11-280.1, Hawaii Administrative Rules.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;



- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Hawaii department of health, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in section 11-280.1-96(c), Hawaii Administrative Rules, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(d) An owner or operator who uses a guarantee to satisfy the requirements of section 11-280.1-93 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the Hawaii director of health under section 11-280.1-112. This standby trust fund must meet the requirements specified in section 11-280.1-103. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-97 Insurance and risk retention group coverage.** (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(b) Each insurance policy must be amended by an endorsement worded as specified in paragraph (1) or evidenced by a certificate of insurance worded as specified in paragraph (2), except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

(1) ENDORSEMENT

Name: [name of each covered location]  
Address: [address of each covered location]  
Policy Number:  
Period of Coverage: [current policy period]  
Name of [Insurer or Risk Retention Group]:  
Address of [Insurer or Risk Retention Group]:  
Name of Insured:  
Address of Insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this

instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.] for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage, and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) to (e) of this paragraph are hereby amended

- to conform with subsections (a) to (e);
- a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.
  - b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in sections 11-280.1-95 to 11-280.1-102 and sections 11-280.1-104 to 11-280.1-107, Hawaii Administrative Rules.
  - c. Whenever requested by the Hawaii director of health, the ["Insurer" or "Group"] agrees to furnish to the Hawaii director of health a signed duplicate original of the policy and all endorsements.
  - d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten days after a copy of such written notice is

received by the insured.

[Insert for claims-made policies:

- e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in section 11-280.1-97(b)(1), Hawaii Administrative Rules, and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the State of Hawaii"].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

(2) CERTIFICATE OF INSURANCE

Name: [name of each covered location]

Address: [address of each covered location]  
Policy Number:  
Endorsement (if applicable):  
Period of Coverage: [current policy period]  
Name of [Insurer or Risk Retention Group]:  
Address of [Insurer or Risk Retention Group]:  
Name of Insured:  
Address of Insured:

Certification:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.] for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage



applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

- a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.
- b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in sections 11-280.1-95 to 11-280.1-102 and 11-280.1-104 to 11-280.1-107, Hawaii Administrative Rules.
- c. Whenever requested by the Hawaii director of health, the ["Insurer" or

"Group"] agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

- d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

- e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in section 11-280.1-97(b)(2), Hawaii Administrative Rules, and that the



["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of Hawaii"].

[Signature of authorized representative of Insurer]  
[Type Name]  
[Title], Authorized Representative of [name of Insurer or Risk Retention Group]  
[Address of Representative]

(c) Each insurance policy must be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the State of Hawaii. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-98 Surety bond.** (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

(b) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed:

Period of coverage:

Principal: [legal name and business address of owner or operator]

Type of organization: [insert: "individual", "joint

venture", "partnership", or "corporation"]  
 State of incorporation (if applicable):  
 Surety(ies): [name(s) and business address(es)]  
 Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].  
 Penal sums of bond:  
 Per occurrence \$  
 Annual aggregate \$  
 Surety's bond number:

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Hawaii department of health, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, and the Hawaii director of health's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "sudden and nonsudden accidental releases"] arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, within one hundred twenty days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Hawaii director of health that the Principal has failed to ["take corrective action, in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, and the Hawaii director of health's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in accordance with chapter 11-280.1, Hawaii Administrative Rules, and the Hawaii director of health's instructions," and/or "third party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Hawaii director of health under section 11-280.1-112, Hawaii Administrative Rules.

Upon notification by the Hawaii director of health that the Principal has failed to provide alternate financial assurance within sixty days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Hawaii director of health has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate

penal sum into the standby trust fund as directed by the Hawaii director of health under section 11-280.1-112, Hawaii Administrative Rules.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in section 11-280.1-98(b), Hawaii Administrative Rules, as such regulations were constituted on the date this bond was executed.

Principal  
[Signature(s)]  
[Name(s)]  
[Title(s)]  
[Corporate seal]

Corporate Surety(ies)  
[Name and address]  
State of Incorporation:



Liability limit: \$  
[Signature(s)]  
[Name(s) and title(s)]  
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$

(c) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

(d) The owner or operator who uses a surety bond to satisfy the requirements of section 11-280.1-93 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the director under section 11-280.1-112. This standby trust fund must meet the requirements specified in section

11-280.1-103. [Eff 7/15/18; comp 1/17/20; comp  
JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp:  
HRS §§342L-3, 342L-36)

**§11-280.1-99 Letter of credit.** (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in the State of Hawaii and whose letter-of-credit operations are regulated and examined by a federal or State of Hawaii agency.

(b) The letter of credit must be worded as follows, except that instructions in brackets are to

be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]

[Name and address of Hawaii director of health]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation of

(1) your sight draft, bearing reference to this letter of credit, No. \_\_\_\_, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of chapter 342L, Hawaii Revised Statutes."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least one hundred twenty days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for one hundred twenty days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in



§11-280.1-99

accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in section 11-280.1-99(b), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert: "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(c) An owner or operator who uses a letter of credit to satisfy the requirements of section 11-280.1-93 must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the director under section 11-280.1-112. This standby trust fund must meet the requirements specified in section 11-280.1-103.

(d) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least one hundred twenty days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the one hundred twenty days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§§11-280.1-100 to 11-280.1-101 (Reserved) .**

**§11-280.1-102 Trust fund.** (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by establishing a trust fund that conforms to the requirements of this section. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(b) The wording of the trust agreement must be identical to the wording specified in section 11-280.1-103(b)(1), and must be accompanied by a formal certification of acknowledgment as specified in section 11-280.1-103(b)(2).

(c) The trust fund, when established, must be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

(d) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the director for release of the excess.

(e) If other financial assurance as specified in this subchapter is substituted for all or part of the trust fund, the owner or operator may submit a written request to the director for release of the excess.

(f) Within sixty days after receiving a request from the owner or operator for release of funds as specified in subsection (d) or (e), the director will instruct the trustee to release to the owner or operator such funds as the director specifies in writing.

~~Pub. L. 104-191, 110 Stat. 1899, 1900 (1996)~~  
HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-103 Standby trust fund.** (a) An owner or operator using any one of the mechanisms authorized by section 11-280.1-96, 11-280.1-98, or 11-280.1-99 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

- (b)(1) The standby trust agreement, or trust agreement, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert: "corporation", "partnership", "association", or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert: "Incorporated in the State of \_\_\_\_" or "a national bank"], the "Trustee".

Whereas, the Hawaii state department of health has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the [insert

"standby" where trust agreement is standby trust agreement] trust agreement;

[Whereas, the Grantor has elected to establish [insert either "a guarantee", "surety bond", or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.)];

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

- (a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism. This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Hawaii state department of health. The Grantor and the Trustee intend that no third

party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the Hawaii director of health's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Hawaii state department of health.

Section 4. Payment for ["Corrective Action" or "Third-Party Liability Claims" or both]. The Trustee shall make payments from the Fund as the Hawaii director of health shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;



- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

The Trustee shall reimburse the Grantor, or other persons as specified by the Hawaii director of health, from the Fund for corrective action expenditures and/or third-party liability claims, in such amounts as the director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep

the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.  
The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any

common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the



same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the

Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Hawaii director of health to the Trustee shall be in writing, signed by the director, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Hawaii director of health, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Hawaii director of health if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Hawaii director of health, if the Grantor ceases to exist. Upon termination

of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Hawaii director of health issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in section 11-280.1-103(b)(1), Hawaii

Administrative Rules, as such regulations  
were constituted on the date written above.

[Signature of Grantor]  
[Name of the Grantor]  
[Title]

Attest:  
[Signature of Trustee]  
[Name of the Trustee]  
[Title]  
[Seal]

[Signature of Witness]  
[Name of the Witness]  
[Title]  
[Seal]

- (2) The standby trust agreement, or trust  
agreement, must be accompanied by a formal  
certification of acknowledgment similar to  
the following:

State of \_\_\_\_  
County of \_\_\_\_

On this [date], before me personally  
came [owner or operator] to me known, who,  
being by me duly sworn, did depose and say  
that she/he resides at [address], that  
she/he is [title] of [corporation], the  
corporation described in and which executed  
the above instrument; that she/he knows the  
seal of said corporation; that the seal  
affixed to such instrument is such corporate  
seal; that it was so affixed by order of the  
Board of Directors of said corporation; and  
that she/he signed her/his name thereto by  
like order.

[Signature of Notary Public]  
[Name of Notary Public]



(c) The director will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the director determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

(d) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-104 Local government bond rating test.**

(a) A general purpose local government owner or operator and/or local government serving as a guarantor may satisfy the requirements of section 11-280.1-93 by having a currently outstanding issue or issues of general obligation bonds of \$1,000,000 or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating must be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.

(b) A local government owner or operator or local government serving as a guarantor that is not a general-purpose local government and does not have the legal authority to issue general obligation bonds may satisfy the requirements of section 11-280.1-93 by having a currently outstanding issue or issues of revenue bonds of \$1,000,000 or more, excluding refunded issues and by also having a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of

AAA, AA, A or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard & Poor's, the lower rating for each bond must be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

(c) The local government owner or operator and/or guarantor must maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.

(d) To demonstrate that it meets the local government bond rating test, the chief financial officer of a general purpose local government owner or operator and/or guarantor must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM THE CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being

used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency*

\*[Moody's or Standard & Poor's]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1,000,000. All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last twelve months. Neither rating service has provided notification within the last twelve months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in section 11-280.1-104(d), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Date]  
[Signature]  
[Name]  
[Title]

(e) To demonstrate that it meets the local government bond rating test, the chief financial officer of local government owner or operator and/or guarantor other than a general purpose government must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:



LETTER FROM THE CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test.]

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding revenue bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency*

\*[Moody's or Standard & Poor's]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1,000,000. All outstanding revenue bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least

investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last twelve months. The revenue bonds listed are not backed by third-party credit enhancement or insured by a municipal bond insurance company. Neither rating service has provided notification within the last twelve months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in section 11-280.1-104(e), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Date]  
[Signature]  
[Name]  
[Title]

(f) The director may require reports of financial condition at any time from the local government owner or operator and/or local government guarantor. If the director finds, on the basis of such reports or other information, that the local government owner or operator and/or guarantor no longer meets the local government bond rating test requirements of this section, the local government owner or operator must obtain alternative coverage within thirty days after notification of such a finding.

(g) If a local government owner or operator using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the local government owner or operator must obtain alternative coverage within one hundred fifty days of the change in status.

(h) If the local government owner or operator fails to obtain alternate assurance within one hundred fifty days of finding that it no longer meets the requirements of the bond rating test or within thirty

days of notification by the director that it no longer meets the requirements of the bond rating test, the owner or operator must notify the director of such failure within ten days. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-105 Local government financial test.**

(a) A local government owner or operator may satisfy the requirements of section 11-280.1-93 by passing the financial test specified in this section. To be eligible to use the financial test, the local government owner or operator must have the ability and authority to assess and levy taxes or to freely establish fees and charges. To pass the local government financial test, the owner or operator must meet the criteria of subsection (b)(2) and (3) based on year-end financial statements for the latest completed fiscal year.

(b) (1) The local government owner or operator must have the following information available, as shown in the year-end financial statements for the latest completed fiscal year:

(A) Total Revenues: Consists of the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers

between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt.

- (B) Total Expenditures: Consists of the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).
- (C) Local Revenues: Consists of total revenues (as defined in subparagraph (A)) minus the sum of all transfers from other governmental entities, including all monies received from federal, state, or local government sources.
- (D) Debt Service: Consists of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. Includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest-

bearing warrants. Excludes payments on non-interest-bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

- (E) Total Funds: Consists of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. Includes federal securities, federal agency securities, state and local government securities, and other securities such as bonds, notes and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets.
- (F) Population consists of the number of people in the area served by the local government.

- (2) The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The local government cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.
- (3) The local government owner or operator must have a letter signed by the chief financial officer worded as specified in subsection (c).

(c) To demonstrate that it meets the financial test under subsection (b), the chief financial officer of the local government owner or operator, must sign, within one hundred twenty days of the close of each financial reporting year, as defined by the twelve-



month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating [an] underground storage tank[s].

Underground storage tanks at the following facilities are assured by this financial test [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules.]

This owner or operator has not received an adverse opinion, or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A, or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A or Baa and a Standard and Poor's rating

of AAA, AA, A, or BBB.

WORKSHEET FOR MUNICIPAL FINANCIAL TEST

PART I: BASIC INFORMATION

1. Total Revenues
  - a. Revenues (dollars)  
Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and non-operating revenues, as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.
  - b. Subtract interfund transfers (dollars)
  - c. Total Revenues (dollars)
2. Total Expenditures
  - a. Expenditures (dollars)  
Value consists of the sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.
  - b. Subtract interfund transfers (dollars)
  - c. Total Expenditures (dollars)
3. Local Revenues
  - a. Total Revenues (from 1c) (dollars)
  - b. Subtract total intergovernmental transfers (dollars)
  - c. Local Revenues (dollars)
4. Debt Service
  - a. Interest and fiscal charges (dollars)
  - b. Add debt retirement (dollars)
  - c. Total Debt Service (dollars)
5. Total Funds (Dollars)  
(Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee

retirement funds, agency funds, and trust funds)  
 6. Population (Persons)

PART II: APPLICATION OF TEST

7. Total Revenues to Population
  - a. Total Revenues (from 1c)
  - b. Population (from 6)
  - c. Divide 7a by 7b
  - d. Subtract 417
  - e. Divide by 5,212
  - f. Multiply by 4.095
8. Total Expenses to Population
  - a. Total Expenses (from 2c)
  - b. Population (from 6)
  - c. Divide 8a by 8b
  - d. Subtract 524
  - e. Divide by 5,401
  - f. Multiply by 4.095
9. Local Revenues to Total Revenues
  - a. Local Revenues (from 3c)
  - b. Total Revenues (from 1c)
  - c. Divide 9a by 9b
  - d. Subtract 0.695
  - e. Divide by 0.205
  - f. Multiply by 2.840
10. Debt Service to Population
  - a. Debt Service (from 4c)
  - b. Population (from 6)
  - c. Divide 10a by 10b
  - d. Subtract 51
  - e. Divide by 1,038
  - f. Multiply by -1.866
11. Debt Service to Total Revenues
  - a. Debt Service (from 4c)
  - b. Total Revenues (from 1c)
  - c. Divide 11a by 11b
  - d. Subtract 0.068
  - e. Divide by 0.259
  - f. Multiply by -3.533
12. Total Revenues to Total Expenses
  - a. Total Revenues (from 1c)



- b. Total Expenses (from 2c)
  - c. Divide 12a by 12b
  - d. Subtract 0.910
  - e. Divide by 0.899
  - f. Multiply by 3.458
13. Funds Balance to Total Revenues
- a. Total Funds (from 5)
  - b. Total Revenues (from 1c)
  - c. Divide 13a by 13b
  - d. Subtract 0.891
  - e. Divide by 9.156
  - f. Multiply by 3.270
14. Funds Balance to Total Expenses
- a. Total Funds (from 5)
  - b. Total Expenses (from 2c)
  - c. Divide 14a by 14b
  - d. Subtract 0.866
  - e. Divide by 6.409
  - f. Multiply by 3.270
15. Total Funds to Population
- a. Total Funds (from 5)
  - b. Population (from 6)
  - c. Divide 15a by 15b
  - d. Subtract 270
  - e. Divide by 4,548
  - f. Multiply by 1.866
16. Add 7f+8f+9f+10f+11f+12f+13f+14f+15f+4.937

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in section 11-280.1-105(c), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Date]  
[Signature]  
[Name]  
[Title]

(d) If a local government owner or operator using the test to provide financial assurance finds

that it no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.

(e) The director may require reports of financial condition at any time from the local government owner or operator. If the director finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of subsections (b) and (c), the owner or operator must obtain alternate coverage within thirty days after notification of such a finding.

(f) If the local government owner or operator fails to obtain alternate assurance within one hundred fifty days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within thirty days of notification by the director that it no longer meets the requirements of the financial test, the owner or operator must notify the director of such failure within ten days. [Eff 7/15/18; comp 1/17/20; comp

JUL - 8 2021] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-106 Local government guarantee.** (a) A local government owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be a local government having a "substantial governmental relationship" with the owner or operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor must:

- (1) Demonstrate that it meets the bond rating test requirement of section 11-280.1-104 and deliver a copy of the chief financial officer's letter as contained in section

- 11-280.1-104(d) and (e) to the local government owner or operator;
- (2) Demonstrate that it meets the worksheet test requirements of section 11-280.1-105 and deliver a copy of the chief financial officer's letter as contained in section 11-280.1-105(c) to the local government owner or operator; or
  - (3) Demonstrate that it meets the local government fund requirements of section 11-280.1-107(1), (2), or (3), and deliver a copy of the chief financial officer's letter as contained in section 11-280.1-107 to the local government owner or operator.

(b) If the local government guarantor is unable to demonstrate financial assurance under section 11-280.1-104, 11-280.1-105, or 11-280.1-107(1), (2), or (3), at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than one hundred twenty days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in section 11-280.1-114(e).

(c) The guarantee agreement must be worded as specified in subsection (d) or (e), depending on which of the following alternative guarantee arrangements is selected:

- (1) If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the director, the guarantee shall be worded as specified in subsection (d).
- (2) If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the director for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in subsection (e).

(d) The local government guarantee with standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

LOCAL GOVERNMENT GUARANTEE WITH STANDBY TRUST MADE BY  
A LOCAL GOVERNMENT

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of Hawaii, herein referred to as guarantor, to the Hawaii department of health and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of section 11-280.1-104, Hawaii Administrative Rules, the local government financial test requirements of section 11-280.1-105, Hawaii Administrative Rules, or the local government fund under section 11-280.1-107(1), (2), or (3), Hawaii Administrative Rules.]

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.] This guarantee satisfies subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, requirements for assuring funding for [insert: "taking corrective action" and/or

"compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the Hawaii department of health and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the director of the Hawaii department of health has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the director shall fund a standby trust fund in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, in an amount not to exceed the coverage limits specified above.

In the event that the director determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, the guarantor upon written instructions from the director shall fund a standby trust fund in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"]



accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the director, shall fund a standby trust in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within ten days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 11-280.1, Hawaii Administrative Rules.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or

- operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];
  - (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
  - (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
  - (e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Hawaii department of health, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in section 11-280.1-106(d), Hawaii Administrative Rules, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

- (e) The local government guarantee without

standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

LOCAL GOVERNMENT GUARANTEE WITHOUT STANDBY TRUST MADE BY A LOCAL GOVERNMENT

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of Hawaii, herein referred to as guarantor, to the Hawaii department of health and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of section 11-280.1-104, Hawaii Administrative Rules, the local government financial test requirements of section 11-280.1-105, Hawaii Administrative Rules, or the local government fund under section 11-280.1-107(1), (2), or (3), Hawaii Administrative Rules].

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.] This guarantee satisfies subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, requirements for assuring funding for [insert: "taking corrective action" and/or



"compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the Hawaii department of health and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the Hawaii director of health has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the director shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the director determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, the guarantor upon written instructions from the director shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount

agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the director, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within ten days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 11-280.1, Hawaii Administrative Rules.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(8) The guarantor's obligation does not apply to

any of the following:

- (a) Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert: local government owner or operator] arising from and in the course of, employment by [insert: local government owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Hawaii department of health, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in section 11-280.1-106(e), Hawaii Administrative Rules, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

[Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth:  
HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-107 Local government fund.** A local government owner or operator may satisfy the requirements of section 11-280.1-93 by establishing a dedicated fund account that conforms to the requirements of this section. Except as specified in paragraph (2), a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets one of the following requirements:

- (1) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks or tank systems and is funded for the full amount of coverage required under section 11-280.1-93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage; or
- (2) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks or tank systems, and is funded for five times the full amount of coverage required under section 11-280.1-93, or

funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under section 11-280.1-93, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth the amount in the fund; or

- (3) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks or tank systems. A payment is made to the fund once every year for seven years until the fund is fully-funded. This seven-year period is hereafter referred to as the "pay-in-period". The amount of each payment must be determined by this formula:

$$\frac{TF - CF}{Y}$$

Where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in-period, and;

- (A) The local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental



- releases arising from the operation of petroleum underground storage tanks or tank systems, or
- (B) The local government owner or operator has a letter signed by the appropriate state attorney general stating that the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws. The letter must also state that prior voter approval is not necessary before use of the bonding authority.
- (4) To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator and/or guarantor must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor.] This letter is in support of the use of the local government fund mechanism to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s). Underground storage tanks at the following facilities are assured by this local government fund

mechanism: [List for each facility: the name and address of the facility where tanks are assured by the local government fund].

[Insert: "The local government fund is funded for the full amount of coverage required under section 11-280.1-93, Hawaii Administrative Rules, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage." or "The local government fund is funded for five times the full amount of coverage required under section 11-280.1-93, Hawaii Administrative Rules, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage." or "A payment is made to the fund once every year for seven years until the fund is fully-funded and [name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund" or "A payment is made to the fund once every year for seven years until the fund is fully-funded and I have attached a letter signed by the State Attorney General stating that (1) the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws and (2) that prior voter approval is not necessary before use of the bonding authority"].

The details of the local government fund are as follows:

Amount in Fund (market value of fund at close of last fiscal year):

[If fund balance is incrementally funded as specified in section

11-280.1-107(3), Hawaii Administrative Rules, insert:  
Amount added to fund in the most recently completed fiscal year:  
Number of years remaining in the pay-in period: ]

A copy of the state constitutional provision, or local government statute, charter, ordinance or order dedicating the fund is attached.

I hereby certify that the wording of this letter is identical to the wording specified in section 11-280.1-107(4), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Date]  
[Signature]  
[Name]  
[Title]

[Eff 7/15/18; comp 1/17/20; comp  
JUL - 8 2021 ] (Auth: HRS §§342L-3,  
342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-108 Substitution of financial assurance mechanisms by owner or operator.** (a) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this subchapter, provided that at all times the owner or operator maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of section 11-280.1-93.

(b) After obtaining alternate financial assurance as specified in this subchapter, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance. [Eff 7/15/18; comp 1/17/20; comp

JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp:



**§11-280.1-109 Cancellation or nonrenewal by a provider of financial assurance.** (a) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(1) Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until one hundred twenty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(2) Termination of insurance or risk retention coverage, except for non-payment or misrepresentation by the insured, may not occur until sixty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of ten days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in section 11-280.1-114, the owner or operator must obtain alternate coverage as specified in this subchapter within sixty days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within sixty days after receipt of the notice of termination, the owner or operator must notify the director of such failure and submit:

- (1) The name and address of the provider of financial assurance;
- (2) The effective date of termination; and

- (3) The evidence of the financial assurance mechanism subject to the termination maintained in accordance with section 11-280.1-111(b). [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-110 Reporting by owner or operator.**

(a) An owner or operator must submit the appropriate forms listed in section 11-280.1-111(b) documenting current evidence of financial responsibility to the director:

- (1) Within thirty days after the owner or operator identifies a release from an underground storage tank or tank system required to be reported under section 11-280.1-53 or 11-280.1-61;
- (2) If the owner or operator fails to obtain alternate coverage as required by this subchapter, within thirty days after the owner or operator receives notice of:
  - (A) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor;
  - (B) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;
  - (C) Failure of a guarantor to meet the requirements of the financial test; or
  - (D) Other incapacity of a provider of financial assurance; or
- (3) As required by sections 11-280.1-95(g) and 11-280.1-109(b).

(b) An owner or operator must certify compliance with the financial responsibility requirements of this subchapter as specified in the notification form

submitted pursuant to section 342L-30, Hawaii Revised Statutes, or section 11-280.1-34, the permit application submitted pursuant to section 11-280.1-324 or 11-280.1-326, and the certification of installation form submitted pursuant to section 11-280.1-325(d).

(c) The director may require an owner or operator to submit evidence of financial assurance as described in section 11-280.1-111(b) or other information relevant to compliance with this subchapter at any time. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-111 Recordkeeping.** (a) Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subchapter for an underground storage tank or tank system until released from the requirements of this subchapter under section 11-280.1-113. An owner or operator must maintain such evidence at the underground storage tank or tank system site or the owner's or operator's place of work. Records maintained off-site must be made available upon request of the director.

(b) An owner or operator must maintain the following types of evidence of financial responsibility:

- (1) An owner or operator using an assurance mechanism specified in sections 11-280.1-95 to 11-280.1-99 or section 11-280.1-102 or sections 11-280.1-104 to 11-280.1-107 must maintain a copy of the instrument worded as specified.
- (2) An owner or operator using a financial test or guarantee, or a local government financial test or a local government guarantee supported by the local government financial test must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most

recent completed financial reporting year. Such evidence must be on file no later than one hundred twenty days after the close of the financial reporting year.

- (3) An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
- (4) A local government owner or operator using a local government guarantee under section 11-280.1-106(d) must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
- (5) A local government owner or operator using the local government bond rating test under section 11-280.1-104 must maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.
- (6) A local government owner or operator using the local government guarantee under section 11-280.1-106, where the guarantor's demonstration of financial responsibility relies on the bond rating test under section 11-280.1-104 must maintain a copy of the guarantor's bond rating published within the last twelve months by Moody's or Standard & Poor's.
- (7) An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.
- (8) An owner or operator using a local government fund under section 11-280.1-107 must maintain the following documents:
  - (A) A copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating

- the fund;
- (B) Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under section 11-280.1-107(3) using incremental funding backed by bonding authority, the financial statements must show the previous year's balance, the amount of funding during the year, and the closing balance in the fund; and
  - (C) If the fund is established under section 11-280.1-107(3) using incremental funding backed by bonding authority, the owner or operator must also maintain documentation of the required bonding authority, including either the results of a voter referendum (under section 11-280.1-107(3) (A), or attestation by the state attorney general as specified under section 11-280.1-107(3) (B)).
- (9) A local government owner or operator using the local government guarantee supported by the local government fund must maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.
  - (10) (A) An owner or operator using an assurance mechanism specified in sections 11-280.1-95 to 11-280.1-107 must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF FINANCIAL  
RESPONSIBILITY



[Owner or operator] hereby certifies that it is in compliance with the requirements of subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules.

The financial assurance mechanism(s) used to demonstrate financial responsibility under subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, is (are) as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases".]

[Signature of owner or operator]

[Name of owner or operator]

[Title]

[Date]

[Signature of witness or notary]

[Name of witness or notary]

[Date]

- (B) The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s). [Eff 7/15/18; comp 1/17/20; comp **JUL - 8 2021** ] (Auth: HRS §§342L-3, 342L-7.5, 342L-36) (Imp: HRS §§342L-3, 342L-7.5, 342L-36)

**§11-280.1-112 Drawing on financial assurance mechanisms.** (a) Except as specified in subsection (d), the director shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

- (1) (A) The owner or operator fails to establish alternate financial assurance within sixty days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and
- (B) The director determines or suspects that a release from an underground storage tank or tank system covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the director pursuant to subchapter 5 or 6 of a release from an underground storage tank or tank system covered by the mechanism; or

- (2) The conditions of subsection (b)(1), (b)(2)(A), or (b)(2)(B) are satisfied.

(b) The director may draw on a standby trust fund when:

- (1) The director makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted release response action as required under subchapter 6; or
- (2) The director has received either:
  - (A) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s)

that a third-party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF A VALID CLAIM

The undersigned, as principals and as legal representatives of [insert: owner or operator] and [insert: name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of \$[\_\_\_\_\_].

[Signatures]

Owner or Operator

Attorney for Owner or Operator  
(Notary)

Date

[Signatures]

Claimant(s)

Attorney(s) for Claimant(s)  
(Notary)

Date

or;

- (B) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank or tank system covered by financial assurance under this subchapter and the director determines that the owner or operator has not satisfied the judgment.



(c) If the director determines that the amount of corrective action costs and third-party liability claims eligible for payment under subsection (b) may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The director shall pay third-party liability claims in the order in which the director receives certifications under subsection (b)(2)(A), and valid court orders under subsection (b)(2)(B).

(d) A governmental entity acting as guarantor under section 11-280.1-106(e), the local government guarantee without standby trust, shall make payments as directed by the director under the circumstances described in subsections (a), (b), and (c). [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-113 Release from the requirements.** An owner or operator is no longer required to maintain financial responsibility under this subchapter for an underground storage tank or tank system after the tank or tank system has been permanently closed or undergoes a change-in-service or, if release response action is required, after release response action has been completed and the tank or tank system has been permanently closed or undergoes a change-in-service as required by subchapter 7. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-114 Bankruptcy or other incapacity of owner or operator or provider of financial assurance.**  
(a) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the director by

certified mail of such commencement and submit the appropriate forms listed in section 11-280.1-111(b) documenting current financial responsibility.

(b) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in section 11-280.1-96.

(c) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator must notify the director by certified mail of such commencement and submit the appropriate forms listed in section 11-280.1-111(b) documenting current financial responsibility.

(d) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor must notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in section 11-280.1-106.

(e) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit. The owner or operator must obtain alternate financial assurance as specified in this subchapter within thirty days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within thirty days after such notification, the owner or operator must notify the director. [Eff 7/15/18; comp 1/17/20; comp

§11-280.1-115

JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp:  
HRS §§342L-3, 342L-36)

**§11-280.1-115 Replenishment of guarantees, letters of credit, or surety bonds.** (a) If at any time after a standby trust is funded upon the instruction of the director with funds drawn from a guarantee, local government guarantee with standby trust, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

- (1) Replenish the value of financial assurance to equal the full amount of coverage required; or
- (2) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(b) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by section 11-280.1-93. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms. [Eff 7/15/18; comp 1/17/20; comp

JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp:  
HRS §§342L-3, 342L-36)

**§§11-280.1-116 to 11-280.1-199 (Reserved).**

## SUBCHAPTER 9

### LENDER LIABILITY

280.1-182

**§11-280.1-200 Definitions.** (a) UST technical standards, as used in this subchapter, refers to the UST preventative and operating requirements under subchapters 2, 3, 4, 7, and 10 and section 11-280.1-50.

(b) Petroleum production, refining, and marketing.

- (1) "Petroleum production" means the production of crude oil or other forms of petroleum (as defined in section 11-280.1-12) as well as the production of petroleum products from purchased materials.
- (2) "Petroleum refining" means the cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products.
- (3) "Petroleum marketing" means the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes.

(c) "Indicia of ownership" means evidence of a secured interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter "lease financing transaction"), and legal or equitable title obtained pursuant to foreclosure. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

(d) A "holder" is a person who, upon the

effective date of this regulation or in the future, maintains indicia of ownership (as defined in subsection (c)) primarily to protect a security interest (as defined in subsection (f)(1)) in a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located. A holder includes the initial holder (such as a loan originator); any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market); a guarantor of an obligation, surety, or any other person who holds ownership indicia primarily to protect a security interest; or a receiver or other person who acts on behalf or for the benefit of a holder.

(e) A "borrower, debtor, or obligor" is a person whose UST or UST system or facility or property on which the UST or UST system is located is encumbered by a security interest. These terms may be used interchangeably.

(f) "Primarily to protect a security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation.

(1) "Security interest" means an interest in a petroleum UST or UST system or in the facility or property on which a petroleum UST or UST system is located, created or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in an UST or UST system or in the facility or property on which the UST or UST



system is located, for the purpose of securing a loan or other obligation.

- (2) "Primarily to protect a security interest", as used in this subchapter, does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why any ownership indicia are held must be as protection for a security interest.

(g) "Operation" means, for purposes of this subchapter, the use, storage, filling, or dispensing of petroleum contained in an UST or UST system. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§§11-280.1-201 to 11-280.1-209 (Reserved).**

**§11-280.1-210 Participation in management.** (a)

The term "participating in the management of an UST or UST system" means that the holder is engaging in decisionmaking control of, or activities related to, operation of the UST or UST system, as defined in this section. Actions that are participation in management:

- (1) Participation in the management of an UST or UST system means, for purposes of this subchapter, actual participation by the holder in the management or control of decisionmaking related to the operation of an UST or UST system. Participation in management does not include the mere capacity or ability to influence or the unexercised right to control UST or UST system operations. A holder is participating

in the management of the UST or UST system only if the holder either:

- (A) Exercises decisionmaking control over the operational (as opposed to financial or administrative) aspects of the UST or UST system, such that the holder has undertaken responsibility for all or substantially all of the management of the UST or UST system; or
- (B) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decisionmaking of the enterprise with respect to all, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise.

- (2) Operational aspects of the enterprise relate to the use, storage, filling, or dispensing of petroleum contained in an UST or UST system, and include functions such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer. Financial or administrative aspects include functions such as that of a credit manager, accounts payable/receivable manager, personnel manager, controller, chief financial officer, or similar functions. Operational aspects of the enterprise do not include the financial or administrative aspects of the enterprise, or actions associated with environmental compliance, or actions undertaken voluntarily to protect the environment in accordance with applicable requirements in this chapter.

(b) Actions that are not participation in management pre-foreclosure:

- (1) Actions at the inception of the loan or

other transaction. No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management within the meaning of this subchapter. A prospective holder who undertakes or requires an environmental investigation (which could include a site assessment, inspection, and/or audit) of the UST or UST system or facility or property on which the UST or UST system is located (in which indicia of ownership are to be held), or requires a prospective borrower to clean up contamination from the UST or UST system or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such action considered to be participating in the management of the UST or UST system or facility or property on which the UST or UST system is located.

- (2) Loan policing and work out. Actions that are consistent with holding ownership indicia primarily to protect a security interest do not constitute participation in management for purposes of this subchapter. The authority for the holder to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations or promises from the borrower. Loan policing and work out activities cover and include all such activities up to foreclosure, exclusive of any activities that constitute participation in management.
  - (A) Policing the security interest or loan.
    - (i) A holder who engages in policing



activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in section 11-280.1-210(a). Such policing actions include, but are not limited to, requiring the borrower to clean up contamination from the UST or UST system during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the UST or UST system or facility or property on which the UST or UST system is located (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial condition during the term of the security interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower).

- (ii) Policing activities also include undertaking by the holder of UST environmental compliance actions and voluntary environmental actions taken in compliance with this chapter, provided that the holder does not otherwise

participate in the management or daily operation of the UST or UST system as provided in sections 11-280.1-210(a) and 11-280.1-230. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in this chapter. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the UST or UST system.

- (B) Loan work out. A holder who engages in work out activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in section 11-280.1-210(a). For purposes of this rule, "work out" refers to those actions by which a holder, at any time prior to foreclosure, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Work out activities include, but are not limited to, restructuring or renegotiating the

terms of the security interest;  
requiring payment of additional rent or interest; exercising forbearance;  
requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(c) Foreclosure on an UST or UST system or facility or property on which an UST or UST system is located, and participation in management activities post-foreclosure.

(1) Foreclosure.

(A) Indicia of ownership that are held primarily to protect a security interest include legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. For purposes of this subchapter, the term "foreclosure" means that legal, marketable or equitable title or deed has been issued, approved, and recorded, and that the holder has obtained access to the UST, UST system, UST facility, and property on which the UST or UST system is located, provided that the holder acted diligently to acquire marketable title or deed and to gain access to the UST, UST system, UST facility, and property on which the UST or UST system is located. The indicia of ownership held after foreclosure continue to be maintained primarily as protection for

a security interest provided that the holder undertakes to sell, re-lease an UST or UST system or facility or property on which the UST or UST system is located, held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the UST or UST system or facility or property on which the UST or UST system is located, in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, taking all facts and circumstances into consideration, and provided that the holder does not participate in management (as defined in section 11-280.1-210(a)) prior to or after foreclosure.

- (B) For purposes of establishing that a holder is seeking to sell, re-lease pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or divest in a reasonably expeditious manner an UST or UST system or facility or property on which the UST or UST system is located, the holder may use whatever commercially reasonable means as are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, or may employ the means specified in section 11-280.1-210(c)(2). A holder that outbids, rejects, or fails to act upon a written, bona fide, firm offer of

fair consideration for the UST or UST system or facility or property on which the UST or UST system is located, as provided in section 11-280.1-210(c)(2), is not considered to hold indicia of ownership primarily to protect a security interest.

- (2) Holding foreclosed property for disposition and liquidation. A holder, who does not participate in management prior to or after foreclosure, may sell, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), an UST or UST system or facility or property on which the UST or UST system is located, liquidate, wind up operations, and take measures, prior to sale or other disposition, to preserve, protect, or prepare the secured UST or UST system or facility or property on which the UST or UST system is located. A holder may also arrange for an existing or new operator to continue or initiate operation of the UST or UST system. The holder may conduct these activities without voiding the security interest exemption, subject to the requirements of this subchapter.

- (A) A holder establishes that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest by, within twelve months following foreclosure, listing the UST or UST system or the facility or property on which the UST or UST system is located, with a broker, dealer, or agent who deals with the type of property in question, or by advertising the UST or UST system or facility or property on which the UST or UST system is located, as being for sale or disposition on at least a monthly basis in either a real estate

publication or a trade or other publication suitable for the UST or UST system or facility or property on which the UST or UST system is located, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the location of the UST or UST system or facility or property on which the UST or UST system is located. For purposes of this provision, the twelve-month period begins to run from the date that the marketable title or deed has been issued, approved and recorded, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, provided that the holder acted diligently to acquire marketable title or deed and to obtain access to the UST, UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the twelve-month period begins to run from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

- (B) A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the UST or UST system or the facility or property on which the UST or UST system is located, establishes by such outbidding,



rejection, or failure to act, that the ownership indicia in the secured UST or UST system or facility or property on which the UST or UST system is located are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or state law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

- (i) Fair consideration, in the case of a holder maintaining indicia of ownership primarily to protect a senior security interest in the UST or UST system or facility or property on which the UST or UST system is located, is the value of the security interest as defined in this section. The value of the security interest includes all debt and costs incurred by the security interest holder, and is calculated as an amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure, plus any unpaid interest, rent, or penalties (whether arising before or after foreclosure). The value of the security interest also includes all reasonable and necessary costs, fees, or other charges incurred by the holder incident to work out, foreclosure, retention,

preserving, protecting, and preparing, prior to sale, the UST or UST system or facility or property on which the UST or UST system is located, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), of an UST or UST system or facility or property on which the UST or UST system is located, or other disposition. The value of the security interest also includes environmental investigation costs (which could include a site assessment, inspection, and/or audit of the UST or UST system or facility or property on which the UST or UST system is located), and release response and corrective action costs incurred under sections 11-280.1-51 to 11-280.1-67 or any other costs incurred as a result of reasonable efforts to comply with any other applicable federal, state or local law or regulation; less any amounts received by the holder in connection with any partial disposition of the property and any amounts paid by the borrower (if not already applied to the borrower's obligations) subsequent to the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure. In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is



- the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth in this subsection.
- (ii) Outbids, rejects, or fails to act upon an offer of fair consideration means that the holder outbids, rejects, or fails to act upon within ninety days of receipt, a written, bona fide, firm offer of fair consideration for the UST or UST system or facility or property on which the UST or UST system is located received at any time after six months following foreclosure, as defined in section 11-280.1-210(c). A "written, bona fide, firm offer" means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed UST or UST system or facility or property on which the UST or UST system is located, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. For purposes of this provision, the six-month period begins to run from the date that marketable title or deed has been issued, approved and recorded to the holder, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, provided that the holder was acting diligently to acquire

marketable title or deed and to obtain access to the UST or UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the six-month period begins to run from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

- (3) Actions that are not participation in management post-foreclosure. A holder is not considered to be participating in the management of an UST or UST system or facility or property on which the UST or UST system is located when undertaking actions under this chapter, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system as provided in sections 11-280.1-210(a) and 11-280.1-230. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in this chapter. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the

§11-280.1-210

UST or UST system. [Eff 7/15/18; comp  
1/17/20; comp JUL - 8 2021 ] (Auth: HRS  
§§342L-3, 342L-36) (Imp: HRS §§342L-3,  
342L-36)

**§§11-280.1-211 to 11-280.1-219 (Reserved).**

**§11-280.1-220 Ownership of an underground storage tank or underground storage tank system or facility or property on which an underground storage tank or underground storage tank system is located.** Ownership of an UST or UST system or facility or property on which an UST or UST system is located. A holder is not an "owner" of a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located for purposes of compliance with the UST technical standards as defined in section 11-280.1-200(a), the UST release response and corrective action requirements under sections 11-280.1-51 to 11-280.1-67, and the UST financial responsibility requirements under sections 11-280.1-90 to 11-280.1-111, provided the person:

- (1) Does not participate in the management of the UST or UST system as defined in section 11-280.1-210; and
- (2) Does not engage in petroleum production, refining, and marketing as defined in section 11-280.1-200(b). [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§§11-280.1-221 to 11-280.1-229 (Reserved).**

**§11-280.1-230 Operating an underground storage tank or underground storage tank system. (a)**

Operating an UST or UST system prior to foreclosure. A holder, prior to foreclosure, as defined in section 11-280.1-210(c), is not an "operator" of a petroleum UST or UST system for purposes of compliance with the UST technical standards as defined in section 11-280.1-200(a), the UST corrective action requirements under sections 11-280.1-51 to 11-280.1-67, and the UST financial responsibility requirements under sections 11-280.1-90 to 11-280.1-111, provided that the holder is not in control of or does not have responsibility for the daily operation of the UST or UST system.

(b) Operating an UST or UST system after foreclosure. The following provisions apply to a holder who, through foreclosure, as defined in section 11-280.1-210(c), acquires a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located.

(1) A holder is not an "operator" of a petroleum UST or UST system for purposes of compliance with this chapter if there is an operator, other than the holder, who is in control of or has responsibility for the daily operation of the UST or UST system, and who can be held responsible for compliance with applicable requirements of this chapter.

(2) If another operator does not exist, as provided for under paragraph (1), a holder is not an "operator" of the UST or UST system, for purposes of compliance with the UST technical standards as defined in section 11-280.1-200(a), the UST corrective action requirements under sections 11-280.1-51 to 11-280.1-67, and the UST financial responsibility requirements under sections 11-280.1-90 to 11-280.1-111, provided that the holder:

(A) Empties all of its known USTs and UST systems within sixty calendar days after foreclosure, or another

- reasonable time period specified by the department, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment; and
- (B) Empties those USTs and UST systems that are discovered after foreclosure within sixty calendar days after discovery, or another reasonable time period specified by the department, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment.
- (3) If another operator does not exist, as provided for under paragraph (1), in addition to satisfying the conditions under paragraph (2), the holder must either:
- (A) Permanently close the UST or UST system in accordance with sections 11-280.1-71 to 11-280.1-74, except section 11-280.1-72(b); or
  - (B) Temporarily close the UST or UST system in accordance with the following applicable provisions of section 11-280.1-70:
    - (i) Continue operation and maintenance of corrosion protection in accordance with section 11-280.1-31;
    - (ii) Report suspected releases to the department; and
    - (iii) Conduct a site assessment in accordance with section 11-280.1-72(a) if the UST system

is temporarily closed for more than twelve months and the UST system does not meet the applicable system design, construction, and installation requirements in subchapter 2, except that the spill and overfill equipment requirements do not have to be met. The holder must report any suspected releases to the department. For purposes of this provision, the twelve-month period begins to run from the date on which the UST system is emptied and secured under paragraph (2).

- (4) The UST system can remain in temporary closure until a subsequent purchaser has acquired marketable title to the UST or UST system or facility or property on which the UST or UST system is located. Once a subsequent purchaser acquires marketable title to the UST or UST system or facility or property on which the UST or UST system is located, the purchaser must decide whether to operate or close the UST or UST system in accordance with applicable requirements in this chapter. [Eff 7/15/18; comp 1/17/20; comp <sup>JUL - 8 2021</sup> ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§§11-280.1-231 to 11-280.1-239 (Reserved).

## SUBCHAPTER 10

### OPERATOR TRAINING

280.1-201



**§11-280.1-240 General requirement for all UST systems.** All owners and operators of UST systems must ensure they have designated Class A, Class B, and Class C operators who meet the requirements of this subchapter. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-241 Designation of Class A, B, and C operators.** (a) UST system owners and operators must designate:

- (1) At least one Class A and one Class B operator for each UST or group of USTs at a facility; and
- (2) Each individual who meets the definition of Class C operator at the UST facility as a Class C operator.

(b) Separate individuals may be designated for each class of operator or an individual may be designated for more than one of the operator classes.

(c) Owners and operators shall submit written notice to the department identifying the Class A and Class B operators for each UST or tank system in use or temporarily out of use no later than thirty days after an operator assumes the operator's responsibilities as a Class A or Class B operator. The notification must include the name of each operator, the date training was completed, the name and address of each facility where the USTs or tank systems for which the operator has been designated is located, and written verification from a training program approved or administered by the department that the Class A and Class B operator for each UST or tank system has successfully completed operator training in the operator's class. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-242 Requirements for operator training.**

UST system owners and operators must ensure Class A, Class B, and Class C operators meet the requirements of this section. Any individual designated for more than one operator class must successfully complete the required training program or comparable examination according to the operator classes in which the individual is designated.

(1) Class A operators. Each designated Class A operator must either be trained in accordance with subparagraphs (A) and (B) or pass a comparable examination in accordance with paragraph (5).

(A) At a minimum, the training must teach the Class A operators about the purpose, methods, and function of:

- (i) Spill and overfill prevention;
- (ii) Release detection;
- (iii) Corrosion protection;
- (iv) Emergency response;
- (v) Product and equipment compatibility and demonstration;
- (vi) Financial responsibility;
- (vii) Notification and permitting;
- (viii) Temporary and permanent closure;
- (ix) Reporting, recordkeeping, testing, and inspections;
- (x) Environmental and regulatory consequences of releases; and
- (xi) Training requirements for Class B and Class C operators.

(B) At a minimum, the training program must evaluate Class A operators to determine these individuals have the knowledge and skills to make informed decisions regarding compliance and determine whether appropriate individuals are fulfilling the operation, maintenance, and recordkeeping requirements for UST systems in accordance with subparagraph (A).



- (2) Class B operators. Each designated Class B operator must either receive training in accordance with subparagraphs (A) and (B) or pass a comparable examination, in accordance with paragraph (5).
  - (A) At a minimum, the training program for Class B operators must teach the Class B operator about the purpose, methods, and function of:
    - (i) Operation and maintenance, including components of UST systems, materials of UST system components, and methods of release detection and release prevention applied to UST components;
    - (ii) Spill and overfill prevention;
    - (iii) Release detection and related reporting;
    - (iv) Corrosion protection;
    - (v) Emergency response;
    - (vi) Product and equipment compatibility and demonstration;
    - (vii) Reporting, recordkeeping, testing, and inspections;
    - (viii) Environmental and regulatory consequences of releases; and
    - (ix) Training requirements for Class C operators.
  - (B) At a minimum, the training program must evaluate Class B operators to determine these individuals have the knowledge and skills to implement applicable UST regulatory requirements in the field on the components of typical UST systems in accordance with subparagraph (A).
- (3) Class C operators. Each designated Class C operator must either: be trained by a Class A or Class B operator in accordance with subparagraphs (A) and (B); complete a training program in accordance with subparagraphs (A) and (B); or pass a comparable examination, in accordance with

paragraph (5).

- (A) At a minimum, the training program for the Class C operator must teach the Class C operators to take appropriate actions (including notifying appropriate authorities) in response to emergencies or alarms caused by spills or releases resulting from the operation of the UST system.
- (B) At a minimum, the training program must evaluate Class C operators to determine these individuals have the knowledge and skills to take appropriate action (including notifying appropriate authorities) in response to emergencies or alarms caused by spills or releases from an underground storage tank system.
- (4) Training program requirements. Any training program must meet the minimum requirements of this section, must incorporate an evaluation of operator knowledge through written examination, a practical demonstration, or other reasonable testing methods acceptable to the department, and must be approved or administered by the department. An operator training program may consist of in-class or on-line instruction and may include practical exercises.
- (5) Comparable examination. A comparable examination must, at a minimum, test the knowledge of the Class A, Class B, or Class C operators in accordance with the requirements of paragraph (1), (2), or (3), as applicable. The acceptability of a comparable examination to meet the requirements of this section is determined by the department. The department may accept operator training verification from other states if the operator training is deemed by the department to be equivalent to the

§11-280.1-242

requirements of this section. [Eff 7/15/18;  
comp 1/17/20; comp JUL - 8 2021 ] (Auth:  
HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3,  
342L-32)

**§11-280.1-243 Timing of operator training.** (a)

An owner and operator must ensure that designated Class A, Class B, and Class C operators meet the requirements in section 11-280.1-242.

(b) Class A and Class B operators designated on or after July 15, 2018 must meet requirements in section 11-280.1-242 within thirty days of assuming duties.

(c) Class C operators designated after July 15, 2018 must be trained before assuming duties of a Class C operator. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-244 Retraining.** (a) Class A and

class B operators shall be retrained every five years. Class C operators shall be retrained every three hundred sixty-five days.

(b) Class A and Class B operators of UST systems determined by the department to be out of compliance must complete a training program or comparable examination in accordance with requirements in section 11-280.1-242. The training program or comparable examination must be developed or administered by the department or an independent organization. At a minimum, the training must cover the area(s) determined to be out of compliance. An UST or tank system is out of compliance if the system:

- (1) Meets any of the delivery prohibition criteria outlined in section 11-280.1-429;  
or
- (2) Is in significant violation of other requirements, such as temporary or permanent

closure requirements, as determined by the director.

(c) UST system owners and operators must ensure Class A and Class B operators are retrained as required in subsection (b) no later than thirty days from the date the department determines the facility is out of compliance, except in one of the following situations:

- (1) Class A and Class B operators take annual refresher training. Refresher training for Class A and Class B operators must cover all applicable requirements in section 11-280.1-242;
- (2) The department, at its discretion, waives this retraining requirement for either the Class A or Class B operator or both. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-245 Documentation.** Owners and operators of underground storage tank systems must maintain a list of designated Class A, Class B, and Class C operators and maintain records verifying that training and retraining, as applicable, have been completed, in accordance with section 11-280.1-34 as follows:

- (1) The list must:
  - (A) Identify all Class A, Class B, and Class C operators currently designated for the facility; and
  - (B) Include names, class of operator trained, date assumed duties, date each completed initial training, and any retraining.
- (2) Records verifying completion of training or retraining must be a paper or electronic record for Class A, Class B, and Class C operators. The records, at a minimum, must identify name of trainee, date trained,

operator training class completed, and list the name of the trainer or examiner and the training company name, address, and telephone number. Owners and operators must maintain these records for as long as Class A, Class B, and Class C operators are designated. The following requirements also apply to the following types of training:

- (A) Records from classroom or field training programs (including Class C operator training provided by the Class A or Class B operator) or a comparable examination must, at a minimum, be signed by the trainer or examiner;
  - (B) Records from computer based training must, at a minimum, indicate the name of the training program and web address, if Internet based; and
  - (C) Records of retraining must include those areas on which the Class A or Class B operator has been retrained.
- [Eff 7/15/18; comp 1/17/20; comp  
JUL - 8 2021 ] (Auth: HRS §§342L-3,  
342L-7.5, 342L-32) (Imp: HRS §§342L-3,  
342L-7.5, 342L-32)

**§§11-280.1-246 to 11-280.1-249 (Reserved) .**

SUBCHAPTER 11

(RESERVED) .

**§§11-280.1-250 to 11-280.1-299 (Reserved) .**

SUBCHAPTER 12

PERMITS AND VARIANCES

**§§11-280.1-300 to 11-280.1-322 (Reserved) .**

**§11-280.1-323 Permit required.** (a) No person shall install or operate an UST or tank system without first obtaining a permit from the director.

(b) The director shall approve an application for a permit only if the applicant has submitted sufficient information to the satisfaction of the director that the technical, financial, and other requirements of this chapter are or can be met and the installation and operation of the UST or tank system will be done in a manner that is protective of human health and the environment.

(c) A permit shall be issued only in accordance with chapter 342L, Hawaii Revised Statutes, and this chapter, and it shall be the duty of the permittee to ensure compliance with the law in the installation and operation of the UST or tank system.

(d) Issuance of a permit shall not relieve any person of the responsibility to comply fully with all applicable laws. [Eff 7/15/18; comp 1/17/20; comp

**JUL - 8 2021** ] (Auth: HRS §342L-3) (Imp: HRS §§342L-3, 342L-31)

**§11-280.1-324 Application for a permit.** (a) Every application for a permit shall be submitted to the department on the "Application for an Underground Storage Tank Permit" form prescribed by the director.

(b) A permit fee in accordance with section 11-280.1-335 shall accompany each application for a permit.

(c) The applicant shall submit sufficient



information to enable the director to make a decision on the application. Information submitted shall include but not be limited to the following:

- (1) General information on involved parties, including the landowner, UST owner, and UST operator; location of the property (including TMK); and basic description of the UST or tank system;
- (2) Age, size, precise location within the property, and use of each UST;
- (3) Description of tanks, piping, ancillary equipment, spill and overfill prevention equipment, and release detection equipment;
- (4) Other information required in the form prescribed by the director; and
- (5) Other information as the department may require.

(d) Every application shall be signed by the owner and the operator and shall constitute an acknowledgment that the applicants assume responsibility for the installation and operation of the UST or tank system in accordance with this chapter and the conditions of the permit, if issued. Each signatory shall be:

- (1) In the case of a corporation, a principal executive officer of at least the level of vice president, or a duly authorized representative if that representative is responsible for the overall operation of the UST or tank system;
- (2) In the case of a partnership, a general partner;
- (3) In the case of a sole proprietorship, the proprietor; or
- (4) In the case of a county, state, or federal entity, either a principal executive officer, ranking elected official, or other duly authorized employee. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ]  
(Auth: HRS §§342L-3, 342L-7.5, 342L-14)  
(Imp: HRS §§342L-4, 342L-30, 342L-31)

**§11-280.1-325 Permit.** (a) Upon approval of an application for a permit to install and operate an UST or tank system, the director shall issue a permit for a term of five years except as noted in subsection (b).

(b) The owner or operator shall have one year from the issuance of the permit to install an UST or tank system. If the installation is not completed within one year, the permit expires and the owner or operator must apply for a new permit.

(c) The owner or operator must inform the department at least seven days prior to performing the actual installation. The information shall include the permit number, name and address of the UST or tank system, the contact person, the contact person's phone number, and date and time of actual installation.

(d) The owner or operator must notify the department within thirty days after the installation of the UST or tank system. The notification shall be submitted on the "Certification of Underground Storage Tank Installation" form prescribed by the director. If information submitted on the "Application for an Underground Storage Tank Permit" form has changed since the original application, the section of the certification form entitled "Changes to Original Installations Plans" must be completed and submitted. The certification of installation must certify compliance with the following requirements:

- (1) Installation of tanks and piping under section 11-280.1-20(f);
- (2) Cathodic protection of steel tanks and piping under section 11-280.1-20(b) and (c);
- (3) Financial responsibility under subchapter 8; and
- (4) Release detection under sections 11-280.1-41 and 11-280.1-42.

(e) The department, where practicable and appropriate, may issue one permit to the owner or operator of an UST system for the purpose of combining all USTs, piping, and any ancillary equipment



constituting that UST system under one permit, irrespective of the number of individual USTs, so long as that UST system is part of one reasonably contiguous physical location. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-7.5) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-326 Permit renewals.** (a) On application, a permit may be renewed for a term of five years.

(b) A renewal fee in accordance with section 11-280.1-335 shall accompany each application for renewal of a permit.

(c) An application for a renewal shall be received by the department at least one hundred eighty days prior to the expiration of the existing permit and shall be submitted on the "Application for Renewal of an Underground Storage Tank Permit" form prescribed by the director. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-7.5, 342L-14) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-327 Action on complete permit application.** (a) The director need not act upon nor consider any incomplete application for a permit. An application shall be deemed complete only when:

- (1) All required and requested information, including the application form, plans, specifications, and other information required by this subchapter have been submitted in a timely fashion;
- (2) All fees have been paid as prescribed in section 11-280.1-335; and
- (3) The director determines that the application is complete.

(b) The director shall approve, approve with conditions, or deny a complete application for a permit to install or operate an UST or tank system or

a permit renewal, modification, or transfer, required under this chapter. [Eff 7/15/18; am and comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-328 Permit conditions.** The director may impose conditions on a permit that the director deems reasonably necessary to ensure compliance with this chapter and any other relevant state requirement, including conditions relating to equipment, work practice, or operation. Conditions may include, but shall not be limited to, the requirement that devices for measurement or monitoring of regulated substances be installed and maintained and the results reported to the director, all costs and expenses to be borne by the applicant. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-329 Modification of permit.** (a) The director may modify a permit if there is a change that requires a modification to an existing permit. Changes requiring a permit modification shall include but not be limited to:

- (1) The addition or removal of an UST from an UST system; and
- (2) Any change to or modification of an UST or UST system which would otherwise place the existing UST or UST system out of compliance with this chapter or an existing permit.

(b) An application for modification of a permit shall be made in writing to the department and shall be accompanied by sufficient information on the planned renovation or modification to the UST or tank system to assist the director in making a determination as to whether the application for modification should be denied or granted.

(c) Applications for a permit modification shall

be received by the department no later than sixty days prior to the occurrence of the event that prompted the application except that applications for change-in-service must be received by the department at least thirty days before the owner or operator begins the change-in-service. Applications shall be submitted on the "Application for an Underground Storage Tank Permit" form prescribed by the director.

(d) Owners and operators shall submit a permit application to add USTs or tank systems to an existing permit. If the director approves the addition, the existing permit shall be terminated, and a new permit shall be issued which covers the additional USTs as well as the already-permitted USTs. The term of the new permit shall be for the remaining term of the original permit. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-330 Revocation or suspension of permit.** The director may revoke or suspend a permit if the director finds any one of the following:

- (1) There is a release or threatened release of regulated substances that the department deems to pose an imminent and substantial risk to human health or the environment;
- (2) The permittee violated a condition of the permit; or
- (3) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-331 Change in owner or operator for a permit.** (a) No permit to install, own, or operate an UST or tank system shall be transferable unless approved by the department. An application to

transfer a permit from one owner to another owner must be signed by both the current owner and the prospective new owner. An application to transfer a permit from one operator to another operator must be made by the owner.

(b) The transferred permit will be effective for the remaining life of the original permit.

(c) An application for the transfer shall be received by the department at least thirty days prior to the proposed effective date of the transfer and shall be submitted on the "Application for Transfer of an Underground Storage Tank Permit" form prescribed by the director. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-30, 342L-31)

**§11-280.1-332 Variances allowed.** Provisions of chapter 342L, Hawaii Revised Statutes, and this chapter relating to USTs or tank systems which are more stringent than Title 40, part 280 of the Code of Federal Regulations, published by the Office of the Federal Register, as amended as of July 1, 2017, may be varied by the director in accordance with sections 342L-5 and 342L-6, Hawaii Revised Statutes, and this chapter. No variance may be less stringent than the federal requirements. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §342L-3) (Imp: HRS §342L-5)

**§11-280.1-333 Variance applications.** (a) An application for a variance shall be submitted to the department on the "Application for an Underground Storage Tank Variance" form prescribed by the director.

(b) A variance fee in accordance with section 11-280.1-335 shall accompany each application for a variance.

(c) Every application shall be signed by the

owner and operator, and the signature shall be by one of the following:

- (1) In the case of a corporation, by a principal executive officer of at least the level of vice president, or a duly authorized representative if that representative is responsible for the overall operation of the UST or tank system;
- (2) In the case of a partnership, by a general partner;
- (3) In the case of a sole proprietorship, by the proprietor; or
- (4) In the case of a county, state, or federal entity, by a principal executive officer, ranking elected official, or other duly authorized employee.

(d) The director shall approve, approve with conditions, or deny a complete application for a variance or variance renewal or modification as required under this chapter and sections 342L-5 and 342L-6, Hawaii Revised Statutes. The director shall notify the applicant of the director's decision, within one hundred eighty days of receipt of a complete application. Otherwise, a complete application is deemed approved on the one hundred eightieth day after it is received by the department.

[Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ]

(Auth: HRS §§342L-3, 342L-7.5, 342L-14) (Imp: HRS §§342L-5, 342L-6)

**§11-280.1-334 Maintenance of permit or variance.**

(a) Permits and variances, including application records, shall be maintained at the location of the UST or tank system for which the permit was issued and shall be made available for inspection upon request of any duly authorized representative of the department.

(b) No person shall wilfully deface, alter, forge, counterfeit, or falsify any permit or variance. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-7.5) (Imp: HRS §§342L-4, 342L-7,

342L-31)

**§11-280.1-335 Fees.** (a) Every applicant for a permit or a variance, or applicant for modification or renewal of a permit or variance, or applicant for a transfer of a permit, shall pay the applicable fees as set forth below:

Type of Application	Permit	Variance
Permit or variance application	\$300	\$400
Application to modify	\$200	\$300
Application for renewal	\$100	\$200
Application for transfer	\$50	NA

(b) Fees shall be submitted with the application and are nonrefundable.

(c) Fees shall be made payable to the State of Hawaii.

(d) If more than one type of application is combined, the highest applicable fee will be assessed. However, a permit application and a variance application shall not be combined under one fee. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §342L-3) (Imp: HRS §342L-14)

**§§11-280.1-336 to 11-280.1-399 (Reserved) .**

## SUBCHAPTER 13

### ENFORCEMENT

280.1-217



§11-280.1-421

**§§11-280.1-400 to 11-280.1-420 (Reserved) .**

**§11-280.1-421 Purpose.** The purpose of this subchapter is to create an enforcement program that facilitates the effective and expeditious resolution of violations of chapter 342L, Hawaii Revised Statutes, and this chapter. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §342L-3) (Imp: HRS §§342L-7, 342L-8, 342L-10)

**§11-280.1-422 Field citations.** (a) Field citations may be issued for violations of chapter 342L, Hawaii Revised Statutes, and this chapter that the department deems appropriate for resolution through the issuance of a field citation. Nothing in this section requires the department to elect one enforcement mechanism over another and the decision to proceed with one course of action over, or in conjunction with, another is within the discretion of the director.

(b) The field citation is an offer to settle an allegation of noncompliance with this chapter. If the owner or operator declines to accept the department's offer to settle within the time period set forth in the field citation, the department may bring administrative or civil enforcement action under chapter 342L, Hawaii Revised Statutes.

(c) The field citation shall set forth sufficient facts to notify the recipient of the alleged violations, the applicable law, the proposed settlement amount, and the time period during which to respond.

(d) By returning the signed settlement agreement attached to the field citation and payment of the proposed settlement amount to the department, the

owner or operator will be deemed to have accepted the terms and conditions of the settlement offer.

(e) By signing the settlement agreement, the owner or operator waives his or her right to a contested case hearing pursuant to chapter 91, Hawaii Revised Statutes. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §342L-3) (Imp: HRS §§342L-7, 342L-8, 342L-10)

JUL - 8 2021

**§§11-280.1-423 to 11-280.1-428 (Reserved) .**

**§11-280.1-429 Delivery, deposit, and acceptance prohibition.** (a) No person shall deliver to, deposit into, or accept a regulated substance into an UST or tank system that has been identified by the department as ineligible for delivery, deposit, or acceptance.

(b) An UST or tank system shall be identified by the department as ineligible for delivery, deposit, or acceptance by placement of a tag or other notice of ineligibility onto the fill pipe of the ineligible UST or tank system. If an owner or operator is not present at the facility at the time the underground storage tank is identified as ineligible, the department may notify an employee at the facility at the time of identification in lieu of the owner or operator.

(c) No person shall remove, tamper with, destroy, or damage a tag or other notice of ineligibility affixed to any UST or tank system unless authorized to do so by the department. Removal of a tag or other notice of ineligibility by the department or person authorized by the department shall occur only after the department confirms that the conditions giving rise to the delivery prohibition have been corrected to the department's satisfaction. The department shall make this determination either at a hearing, if one is requested in accordance with this section, or as soon as practicable.



(d) Pursuant to this section, a tag or other notice of ineligibility may immediately be affixed to the fill pipe of an UST or tank system upon finding by the department of any of the following:

- (1) Operating without a permit issued by the department;
- (2) Operating inconsistently with one or more conditions of a permit issued by the department;
- (3) Required spill prevention equipment is not installed or properly functioning or maintained;
- (4) Required overfill protection equipment is not installed or properly functioning or maintained;
- (5) Required release detection equipment is not installed or properly functioning or maintained;
- (6) Required corrosion protection equipment is not installed or properly functioning or maintained;
- (7) Failure to maintain financial responsibility; or
- (8) Failure to protect a buried metal flexible connector from corrosion.

(e) An owner or operator of an UST or tank system designated by the department to be ineligible shall be provided a hearing to contest the department's determination of ineligibility within forty-eight hours of the department's receipt of a written request for a hearing by the owner or operator of the ineligible UST or tank system. The hearing shall modify or affirm the department's determination of ineligibility and shall be conducted in accordance with chapter 91, Hawaii Revised Statutes, and the department's rules of practice and procedure. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021] (Auth: HRS §342L-3) (Imp: HRS §342L-32.5)

DEPARTMENT OF HEALTH

The Amendment and Compilation of Chapter 11-280.1, Hawaii Administrative Rules, on the Summary Page dated February 18, 2020, occurred on February 18, 2020 following a public hearing held on December 2, 2019, after public notice was given in The Maui News on October 29, 2019 and in the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on October 30, 2019.

The foregoing rulemaking actions shall take effect ten days after filing with the Office of the Lieutenant Governor.



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



DAVID Y. IGE  
Governor of Hawaii

Dated: June 25, 2021

APPROVED AS TO FORM:



Wade H. Hargrove III  
Deputy Attorney General

Filed

21 JUN 28 PM 1:27

OFFICE  
LIEUTENANT GOVERNOR S

**13. HAR Chapter 13-34 Pupukea Marine Life Conservation District,  
Oahu**

§ 13-34-1 Boundaries

§ 13-34-2 Prohibited activities

§ 13-34-5 Penalty

§ 13-34-6 Asset forfeiture

Amendment and Compilation of Chapter 13-34  
Hawaii Administrative Rules

(date of adoption)

1. Chapter 13-34, Hawaii Administrative Rules,  
entitled "Pupukea Marine Life Conservation District,  
Oahu", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART I MARINE LIFE CONSERVATION DISTRICTS

CHAPTER 34

PUPUKEA MARINE LIFE CONSERVATION DISTRICT, OAHU

§13-34-1	Boundaries
§13-34-1.1	Definitions
§13-34-2	Prohibited activities
§13-34-3	Permitted activities
§13-34-4	Exceptions; permits
§13-34-5	Penalty
§13-34-6	Asset forfeiture

**§13-34-1 Boundaries.** (a) The Pupukea Marine Life Conservation District ~~[shall include]~~ includes that portion of the submerged lands and overlying waters bounded by a line beginning at Kulalua Point at approximately 21.654826°, -158.063347°, then extending ~~[seaward]~~ due west ~~[(270 degrees) to a point]~~ for one hundred yards ~~[offshore at longitude 21° 39' 44" N latitude 158° 03' 89" W,~~ to a point at approximately 21.654826°, -158.064036°, then ~~[south to the most seaward exposed rock of Wananapaoa Islets on the southern side of Waimea Bay, including the Wananapaoa Islets at longitude 21° 38' 60" N latitude 158° 03' 50" W,~~ in a straight line in a southwesterly direction to the western edge of the westernmost Wananapaoa Islet at approximately 21.638840°, -158.070270°, then ~~[due southeast (135 degrees)]~~ in a straight line in a southeasterly direction to shore at approximately 21.637475°, -158.068906°, then northerly along the shoreline to the point of origin, as ~~[further described]~~ shown in ~~[the "Map of the Pupukea Marine Life Conservation District, Oahu 01/10/02" attached]~~ "Exhibit A. Map of the Pupukea Marine Life Conservation District", dated July 1, 2019, incorporated herein, and located at the end of this chapter.

(b) For the purposes of this chapter, Waimea Bay includes that portion of the district lying to the south of an imaginary line drawn between Waimea Point at approximately 21.643299°, -158.064967° and a point directly offshore at approximately 21.644580°, -158.068032°, as shown in "Exhibit A. Map of the Pupukea Marine Life Conservation District", dated July 1, 2019, incorporated herein, and located at the end of this chapter.

(c) For the purposes of this chapter, the shoreline shall be determined by the upper reaches of the wash of the waves on shore. Should there be a stream or river flowing into the ocean, the shoreline shall be determined by an imaginary straight line drawn between the upper reaches of the wash of the waves on either side of the stream or river. [Eff 1/13/83; am and comp 3/25/02; am and comp 9/8/03; am

and comp ] (Auth: HRS §190-3) (Imp:  
HRS §§190-1, 190-2, 190-3)

**§13-34-1.1 Definitions.** As used in this chapter, unless the context clearly indicates otherwise:

"Akule" means any fish of the species known as *Selar crumenophthalmus*. This also includes the various life stages known as pa'a'a, hahalalu, halalu, and mau.

"District" means the Pupukea Marine Life Conservation District.

"Finfish" means any of various species of marine life that uses fins to swim, not including marine mammals or sea turtles.

"Hook-and-line" means a type of fishing gear consisting of a length of fishing line, to which is attached one or more hooks or other device for capturing marine life. A weight and a pole may also be used to aid in the placement of the fishing line in the water.

~~["Legal nets" means any net that is not in violation of any law, rule or regulation.]~~

"Limu kohu" means any seaweed known as *Asparagopsis taxiformis* or a recognized synonym.

"Limu lipe'epe'e" means any seaweed known as ~~[*Lawrencia succisa*]~~ *Chondrophyucus dotyi*, *C. succisus*, *C. undulatus*, *Palisada parvipapillata*, or a recognized synonym.

"Net" means any of various fishing devices of mesh material made into various shapes, such as but not limited to, a bag, sack, pouch, or curtain, used to entangle, surround, or concentrate aquatic life.

"Opelu" means any fish of the species known as *Decapterus macarellus* or a recognized synonym.

~~["Opihi"]~~ "'Opihi" means any mollusk of the genus ~~[*Cellana*]~~ *Cellana* or a recognized synonym. The animal is also known as ko'ele, alinalina, maka-ia-uli, and ~~[limpets.]~~ limpet.

§13-34-1.1

"Personal safety" means any defensive action that a person or persons may engage in to prevent life threatening injury or death.

"Snag" means to engage in the act of pulling on a line that is attached to one or more hooks quickly enough across a fish for the purpose of hooking the fish anywhere except by the mouth.

"Spear" means any fishing device consisting of a straight rigid shaft with one or more sharpened points at one end of the shaft, along with any device that aids in the aiming accuracy or the force of propulsion of the shaft. A spear includes, but is not limited to, spear gun, bow and arrow, Hawaiian sling, and three-prong spear. A spear also includes any similar device that is capable of impaling aquatic life to allow capture, with or without the aid of artificial propulsion.

"Take" means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, aquatic life. The use of any gear, equipment, tool, or any means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life can be fished for, caught, captured, confined, or harvested, shall be construed as taking.

"Trap" means any of various fishing devices of mesh, perforated, or solid material made into the shape of a box, container, or enclosure, with one or more openings that allow aquatic life to enter into the interior of the box, container, or enclosure, but restrict exit out, thereby capturing the aquatic life within.

~~["Waimea Bay" means that portion of the district bounded by an imaginary line from, and including, the Wananapaoa Islets across the mouth of Waimea Bay to Waimea Point.]~~ [Eff and comp 3/25/02; am and comp 9/8/03; am and comp ] (Auth: HRS §190-3) (Imp: HRS §§190-1, 190-2, 190-3)

**§13-34-2 Prohibited activities.** It is unlawful for any person to engage in the following activities within the Pupukeya Marine Life Conservation District, except as may be allowed under sections 13-34-3 and 13-34-4, or other applicable law:

- (1) Fish for, catch, take, injure, kill, possess, or remove any finfish, crustacean, mollusk including sea shell and [~~opihī,~~] 'opihī, live coral, or other marine life, or eggs thereof;
- (2) Take, alter, deface, destroy, possess, or remove any sand, coral, rock, or other geological feature, or specimen; [~~or~~]
- (3) Have or possess in the water, any spear, trap, net, crowbar or other device that may be used for the [~~taking,~~] taking, injuring, or killing of marine life, or the altering of a geological feature[~~-~~]; or
- (4) Introduce any food, substance, or chemical into the water to attract marine life for any purpose other than the taking and removing of such marine life as permitted under section 13-34-3. [Eff 1/13/83; comp 3/25/02; am and comp 9/8/03; am and comp ] (Auth: HRS §190-3) (Imp: HRS §§190-1, 190-3)

**§13-34-3 Permitted activities.** In compliance with all other state laws and rules, [A] a person may:

- (1) Take and possess any finfish with hook-and-line only from the [~~shoreline~~] shore of Waimea Bay [~~only,~~]; provided that no person may snag any akule and further provided that no person may use more than two poles with one line per pole and with no more than two hooks per line;



§13-34-3

- (2) Take and possess any opelu with [~~legal~~] nets from Waimea Bay only during August and September;
- (3) Take and possess any akule with [~~legal~~] nets from Waimea Bay only during November and December;
- (4) Possess within the [~~District~~] district any knife for the sole purpose of personal safety; and
- (5) Take and possess limu kohu and limu lipe'epe'e within the district by hand harvesting only; provided that no person shall take limu kohu and limu lipe'epe'e with the holdfast or roots attached and no person shall take or possess more than two pounds (squeezed dry) of either limu kohu or limu lipe'epe'e or a combined total of two pounds of both per day. [Eff 1/13/83; am and comp 3/25/02; am and comp 9/8/03; am and comp ] (Auth: HRS §190-3)  
(Imp: HRS §§190-1, 190-3)

**§13-34-4 Exceptions; permits.** The department may issue permits to engage in activities within the district, that may be otherwise prohibited by law and section 13-34-2, provided that:

- (1) The permits may be issued for scientific, propagation, or other purposes as provided by law, or as reasonably necessary to protect the public health, safety, and welfare;
- (2) The board may impose terms and conditions it deems necessary to carry out the [~~purpose~~] purposes of chapter 190, HRS;
- (3) The board may revoke any permit for any infraction of the terms and conditions of the permit; and
- (4) A person whose permit is revoked shall not be eligible to apply for another permit until the expiration of a specified period

from the date of revocation as provided by law. [Eff 1/13/83; am and comp 3/25/02; am and comp 9/8/03; am and comp ]  
(Auth: HRS §190-3) (Imp: HRS §§187A-6, 190-4)

**§13-34-5 Penalty.** (a) [A] Any person violating [the provisions] any provision of this [rule] chapter or the terms and conditions of any permit issued as provided by this [rule,] chapter, shall be [guilty of a petty misdemeanor, and may be] subject to [administrative penalties as provided by law.]:

- (1) Administrative penalties as provided by section 187A-12.5, HRS;
- (2) Criminal penalties as provided by section 190-5, HRS; and
- (3) Any other penalty as provided by law.

(b) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State. [Eff: 1/13/83; am and comp 3/25/02; am and comp 9/8/03; am and comp ] (Auth: HRS §190-3) (Imp: HRS §§187A-12.5, 190-5)

**§13-34-6 Asset forfeiture.** Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter, may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS." [Eff and comp ] (Auth: HRS §190-3) (Imp: HRS §199-7, ch. 712A)

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

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

4. These amendments to and compilation of chapter 13-34, 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 Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on (date) and filed with the Office of the Lieutenant Governor.

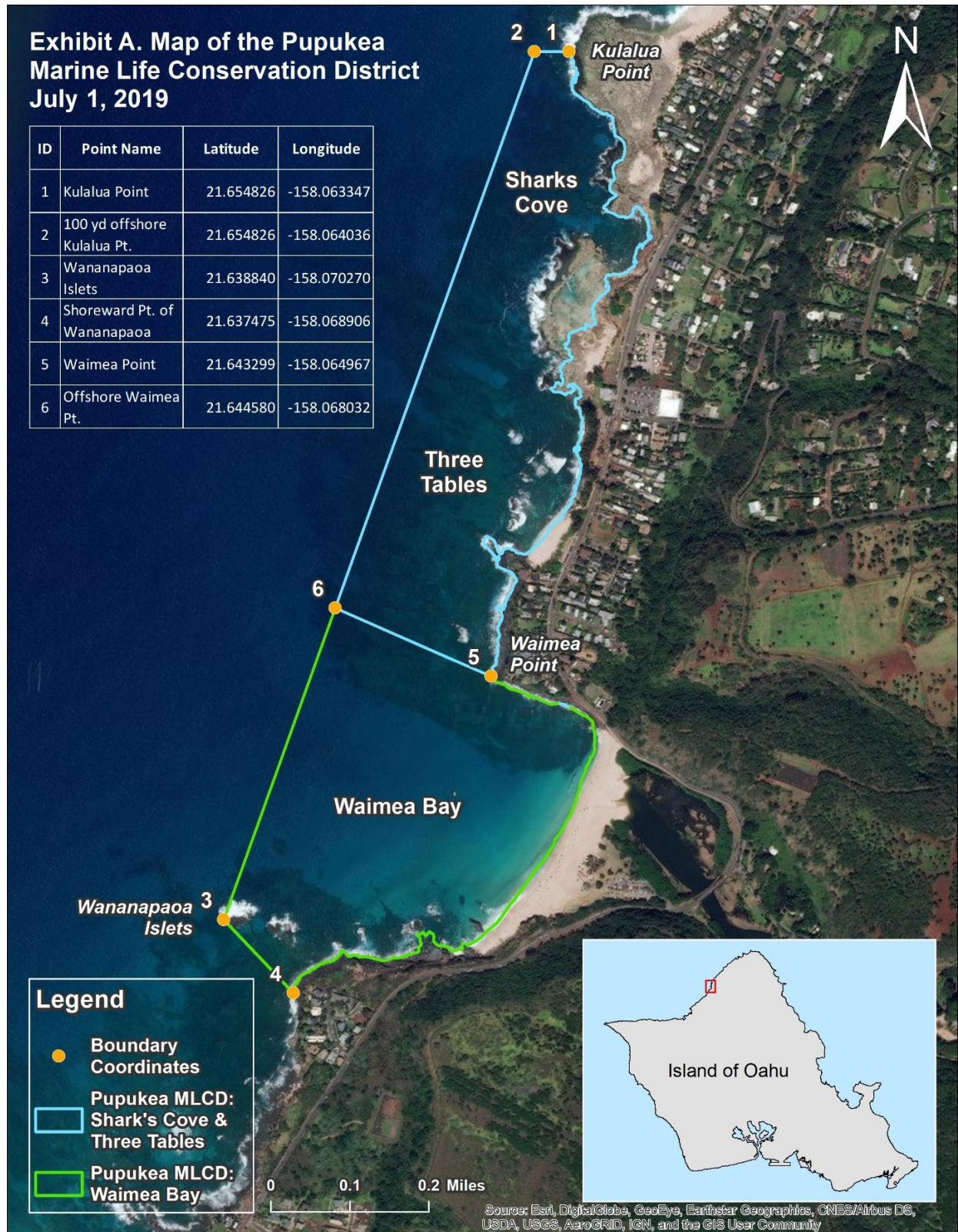
---

SUZANNE D. CASE  
Chairperson  
Board of Land and Natural  
Resources

APPROVED FOR PUBLIC HEARING:

---

Deputy Attorney General



**UNOFFICIAL COPY**

An official copy can be obtained from DLNR  
(808) 587-0100

§13-34-1

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART I MARINE LIFE CONSERVATION DISTRICTS

CHAPTER 34

PUPUKEA MARINE LIFE CONSERVATION DISTRICT, OAHU

§13-34-1	Boundaries
§13-34-1.1	Definitions
§13-34-2	Prohibited activities
§13-34-3	Permitted activities
§13-34-4	Exceptions; permits
§13-34-5	Penalty
§13-34-6	Asset forfeiture

**§13-34-1 Boundaries.** (a) The Pupukea Marine Life Conservation District includes that portion of the submerged lands and overlying waters bounded by a line beginning at Kulalua Point at approximately 21.654826°, -158.063347°, then extending due west for one hundred yards to a point at approximately 21.654826°, -158.064036°, then in a straight line in a southwesterly direction to the western edge of the westernmost Wananapaoa Islet at approximately 21.638840°, -158.070270°, then in a straight line in a southeasterly direction to shore at approximately

§13-34-1

21.637475°, -158.068906°, then northerly along the shoreline to the point of origin, as shown in "Exhibit A. Map of the Pupukea Marine Life Conservation District", dated July 1, 2019, incorporated herein, and located at the end of this chapter.

(b) For the purposes of this chapter, Waimea Bay includes that portion of the district lying to the south of an imaginary line drawn between Waimea Point at approximately 21.643299°, -158.064967° and a point directly offshore at approximately 21.644580°, -158.068032°, as shown in "Exhibit A. Map of the Pupukea Marine Life Conservation District", dated July 1, 2019, incorporated herein, and located at the end of this chapter.

(c) For the purposes of this chapter, the shoreline shall be determined by the upper reaches of the wash of the waves on shore. Should there be a stream or river flowing into the ocean, the shoreline shall be determined by an imaginary straight line drawn between the upper reaches of the wash of the waves on either side of the stream or river. [Eff 1/13/83; am and comp 3/25/02; am and comp 9/8/03; am and comp 8/27/21] (Auth: HRS §190-3) (Imp: HRS §§190-1, 190-2, 190-3)

**§13-34-1.1 Definitions.** As used in this chapter, unless the context clearly indicates otherwise:

"Akule" means any fish of the species known as *Selar crumenophthalmus*. This also includes the various life stages known as pa'a'a, hahalalu, halalu, and mau.

"District" means the Pupukea Marine Life Conservation District.

"Finfish" means any of various species of marine life that uses fins to swim, not including marine mammals or sea turtles.

"Hook-and-line" means a type of fishing gear consisting of a length of fishing line, to which is attached one or more hooks or other device for

capturing marine life. A weight and a pole may also be used to aid in the placement of the fishing line in the water.

"Limu kohu" means any seaweed known as *Asparagopsis taxiformis* or a recognized synonym.

"Limu lipe'epe'e" means any seaweed known as *Chondrophyucus dotyi*, *C. succisus*, *C. undulatus*, *Palisada parvipapillata*, or a recognized synonym.

"Net" means any of various fishing devices of mesh material made into various shapes, such as but not limited to, a bag, sack, pouch, or curtain, used to entangle, surround, or concentrate aquatic life.

"Opelu" means any fish of the species known as *Decapterus macarellus* or a recognized synonym.

"Opihi" means any mollusk of the genus *Cellana* or a recognized synonym. The animal is also known as ko'ele, alinalina, maka-ia-uli, and limpet.

"Personal safety" means any defensive action that a person or persons may engage in to prevent life threatening injury or death.

"Snag" means to engage in the act of pulling on a line that is attached to one or more hooks quickly enough across a fish for the purpose of hooking the fish anywhere except by the mouth.

"Spear" means any fishing device consisting of a straight rigid shaft with one or more sharpened points at one end of the shaft, along with any device that aids in the aiming accuracy or the force of propulsion of the shaft. A spear includes, but is not limited to, spear gun, bow and arrow, Hawaiian sling, and three-prong spear. A spear also includes any similar device that is capable of impaling aquatic life to allow capture, with or without the aid of artificial propulsion.

"Take" means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, aquatic life. The use of any gear, equipment, tool, or any means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or on or about the

§13-34-1.1

shore where aquatic life can be fished for, caught, captured, confined, or harvested, shall be construed as taking.

"Trap" means any of various fishing devices of mesh, perforated, or solid material made into the shape of a box, container, or enclosure, with one or more openings that allow aquatic life to enter into the interior of the box, container, or enclosure, but restrict exit out, thereby capturing the aquatic life within. [Eff and comp 3/25/02; am and comp 9/8/03; am and comp 8/27/21] (Auth: HRS §190-3) (Imp: HRS §§190-1, 190-2, 190-3)

**§13-34-2 Prohibited activities.** It is unlawful for any person to engage in the following activities within the Pupukea Marine Life Conservation District, except as may be allowed under sections 13-34-3 and 13-34-4, or other applicable law:

- (1) Fish for, catch, take, injure, kill, possess, or remove any finfish, crustacean, mollusk including sea shell and 'opihi, live coral, or other marine life, or eggs thereof;
- (2) Take, alter, deface, destroy, possess, or remove any sand, coral, rock, or other geological feature, or specimen;
- (3) Have or possess in the water, any spear, trap, net, crowbar or other device that may be used for the taking, injuring, or killing of marine life, or the altering of a geological feature; or
- (4) Introduce any food, substance, or chemical into the water to attract marine life for any purpose other than the taking and removing of such marine life as permitted under section 13-34-3. [Eff 1/13/83; comp 3/25/02; am and comp 9/8/03; am and comp 8/27/21] (Auth: HRS §190-3) (Imp: HRS §§190-1, 190-3)



**§13-34-3 Permitted activities.** In compliance with all other state laws and rules, a person may:

- (1) Take and possess any finfish with hook-and-line only from the shore of Waimea Bay; provided that no person may snag any akule and further provided that no person may use more than two poles with one line per pole and with no more than two hooks per line;
- (2) Take and possess any opelu with nets from Waimea Bay only during August and September;
- (3) Take and possess any akule with nets from Waimea Bay only during November and December;
- (4) Possess within the district any knife for the sole purpose of personal safety; and
- (5) Take and possess limu kohu and limu lipe'epe'e within the district by hand harvesting only; provided that no person shall take limu kohu and limu lipe'epe'e with the holdfast or roots attached and no person shall take or possess more than two pounds (squeezed dry) of either limu kohu or limu lipe'epe'e or a combined total of two pounds of both per day. [Eff 1/13/83; am and comp 3/25/02; am and comp 9/8/03; am and comp 8/27/21] (Auth: HRS §190-3) (Imp: HRS §§190-1, 190-3)

**§13-34-4 Exceptions; permits.** The department may issue permits to engage in activities within the district, that may be otherwise prohibited by law and section 13-34-2, provided that:

- (1) The permits may be issued for scientific, propagation, or other purposes as provided by law, or as reasonably necessary to protect the public health, safety, and welfare;
- (2) The board may impose terms and conditions it deems necessary to carry out the purposes of chapter 190, HRS;

§13-34-4

- (3) The board may revoke any permit for any infraction of the terms and conditions of the permit; and
- (4) A person whose permit is revoked shall not be eligible to apply for another permit until the expiration of a specified period from the date of revocation as provided by law. [Eff 1/13/83; am and comp 3/25/02; am and comp 9/8/03; am and comp 8/27/21] (Auth: HRS §190-3) (Imp: HRS §§187A-6, 190-4)

**§13-34-5 Penalty.** (a) Any person violating any provision of this chapter or the terms and conditions of any permit issued as provided by this chapter, shall be subject to:

- (1) Administrative penalties as provided by section 187A-12.5, HRS;
- (2) Criminal penalties as provided by section 190-5, HRS; and
- (3) Any other penalty as provided by law.

(b) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State. [Eff: 1/13/83; am and comp 3/25/02; am and comp 9/8/03; am and comp 8/27/21] (Auth: HRS §190-3) (Imp: HRS §§187A-12.5, 190-5)

**§13-34-6 Asset forfeiture.** Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter, may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS. [Eff and comp 8/27/21] (Auth: HRS §190-3) (Imp: HRS §199-7, ch. 712A)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to and compilation of chapter 13-34, Hawaii Administrative Rules, on the Summary page dated June 10, 2021, were adopted on June 10, 2021, following a public hearing held on January 19, 2021, after public notice was given in the Honolulu Star-Advertiser on December 13, 2020.

These rules 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

/s/ David Y. Ige

---

DAVID Y. IGE  
Governor  
State of Hawaii

August 27, 2021  
Dated: \_\_\_\_\_

APPROVED AS TO FORM:

/s/ Colin J. Lau

---

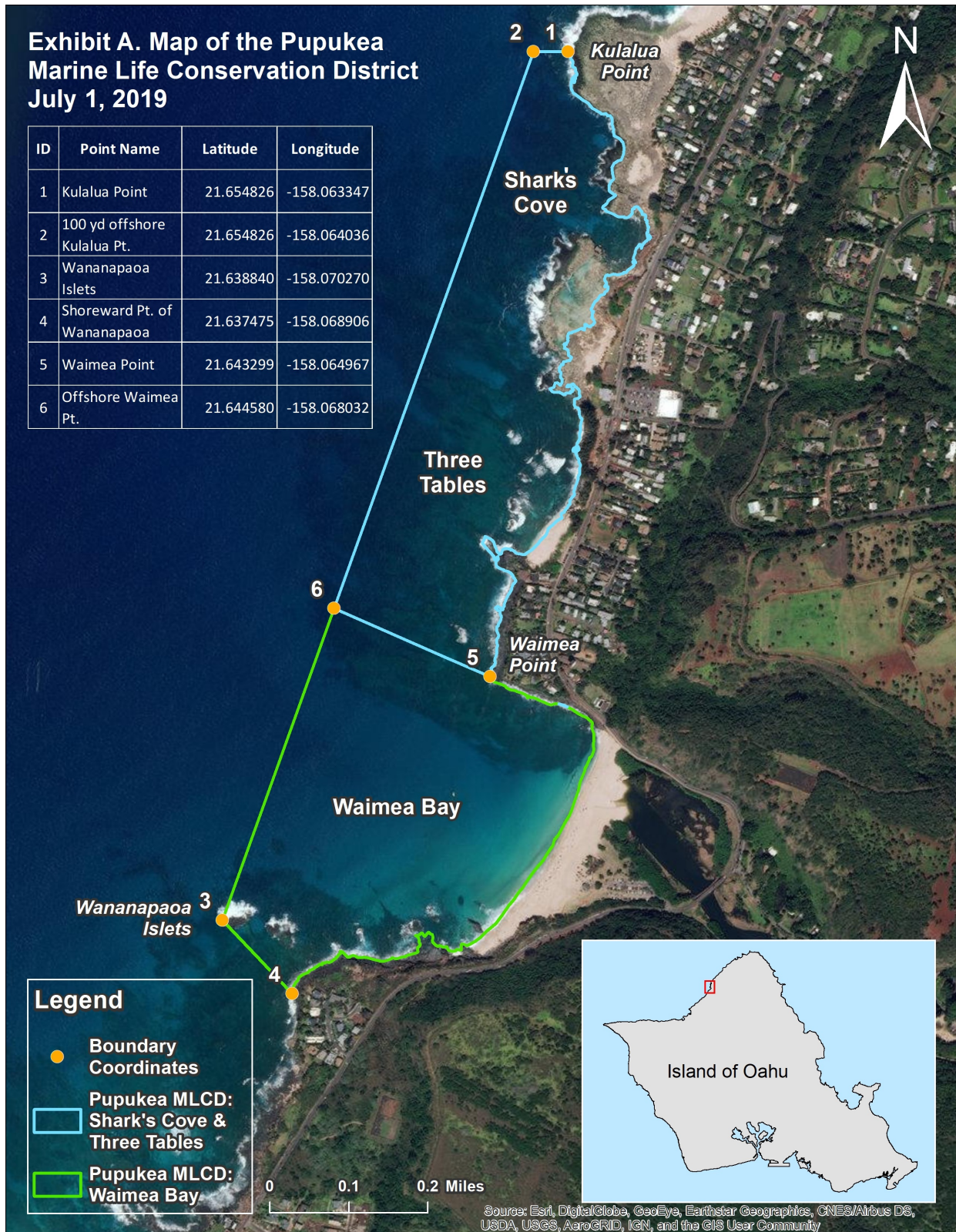
Deputy Attorney General

August 27, 2021

---

Filed





**14. HAR Chapter 13-51 Marine Fisheries Management Areas, Kahului Harbor, Maui**

§ 13-51-1 Definitions

§ 13-51-2 Regulated activities

Refer to **1. HAR Chapter 13-51 Marine Fisheries Management Areas, Kahului Harbor, Maui**

## **15. HAR Chapter 13-95.1 Island-Based Fisheries**

§ 13-95.1-1 Definitions

§ 13-95.1-3 Scope

§ 13-95.1-4 Exceptions

Amendment and Compilation of Chapter 13-95.1  
Hawaii Administrative Rules

(Date adopted)

1. Section 13-95.1-1, Hawaii Administrative Rules, entitled "Island-Based Fisheries Rules", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART V PROTECTED MARINE FISHERIES RESOURCES

CHAPTER 95.1

ISLAND-BASED FISHERIES RULES

Subchapter 1 General Provisions

§13-95.1-1	Definitions
§13-95.1-2	Penalty
§13-95.1-3	Scope
§13-95.1-4	Exceptions
§13-95.1-5	Severability



§13-95.1-1

## Subchapter 2 Maui Island Fisheries

§13-95.1-20 Goatfish

§13-95.1-21 Uhu

### SUBCHAPTER 1

#### GENERAL PROVISIONS

**§13-95.1-1 Definitions.** As used in this chapter, unless otherwise provided:

"Commercial marine dealer" means any person who sells or exchanges, or who is an agent in the transfer of marine life obtained directly from a commercial marine licensee, or any commercial marine licensee who sells or exchanges marine life at retail.

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

"Goatfish" means any fish in the family Mullidae, or any recognized synonym.

"Kūmū" means any fish known as *Parupeneus porphyreus* or any recognized synonym. Kūmū are also known as whitesaddle goatfish.

"Length" means the straight-line measurement from the tip of the snout to the middle of the trailing edge of the tail.

"Marine life" means any type or species of saltwater fish, shellfish, mollusks, crustaceans, coral, or other marine animals, including any part, product, egg, or offspring thereof; or seaweed or other marine plants, including any part, product, seed, or holdfast thereof.

"Moano kea" means any fish known as *Parupeneus cyclostomus* or any recognized synonym. Moano kea are also known as moano kali, moano ukali ulua, blue goatfish, or goldsaddle goatfish.

"Munu" means any fish known as *Parupeneus insularis* or any recognized synonym. Munu are also known as doublebar goatfish.

"'Oama" means any juvenile weke'ā [~~or~~], Mulloidichthys flavolineatus, or juvenile weke ula, Mulloidichthys vanicolensis, which is less than [~~five~~] eight inches in length.

"Possess" means to procure, receive, hold, or control for a sufficient period to have had the opportunity to release or relinquish control.

"Take" means to fish for, catch, capture, confine, or harvest, or attempt to fish for, catch, capture, confine, or harvest, [~~aquatic~~] marine life. This term shall not apply to the temporary capture or confinement of any specimen which is returned to the water as soon as possible after landing.

"Uhu" means any fish belonging to the family Scaridae or any recognized synonyms. Uhu is a general term for parrotfish.

"Uhu 'ahu'ula" means any fish known as *Chlorurus perspicillatus* or any recognized synonym. Uhu 'ahu'ula are also known as spectacled parrotfish. The terminal phase of these fish is also known as "uhu uliuli".

"Uhu 'ele'ele" is any *Scarus rubroviolaceus* which has reached its terminal phase, indicated by a change in coloration from brownish-red and yellowish-gray, to green and blue. A predominantly green or blue-green body color and a green beak on a specimen of *Scarus rubroviolaceus* is prima facie evidence that the specimen is an uhu 'ele'ele. Both uhu 'ele'ele and uhu pālukaluka are known as redlip or ember parrotfish.

"Uhu pālukaluka" means any fish known as *Scarus rubroviolaceus* or any recognized synonym. Uhu pālukaluka are also known as redlip or ember parrotfish. The terminal phase of these fish is also known as "uhu 'ele'ele".

"Uhu uliuli" is any *Chlorurus perspicillatus* which has reached its terminal phase, indicated by a change in coloration from a grayish brown body with a broad white band at the base of the tail, to a blue-green body with a dark band across the top of the snout. A predominantly blue-green body color and the lack of a white tail band on a specimen of *Chlorurus*

§13-95.1-1

*perspicillatus* is prima facie evidence that the specimen is an uhu uliuli. Both uhu uliuli and uhu 'ahu'ula are known as spectacled parrotfish.

"Weke'ā" means any fish known as *Mulloidichthys flavolineatus* or any recognized synonym. Weke'ā are also known as white goatfish. The young of these fish are also known as 'oama.

"Weke nono" means any fish known as *Mulloidichthys pfluegeri* or any recognized synonym. Weke nono are also known as Pflueger's goatfish or moelua.

"Weke ula" means any fish known as *Mulloidichthys vanicolensis* or any recognized synonym. Weke ula are also known as red weke. The young of these fish are also known as 'oama. [Eff 11/1/14; am and comp ] (Auth: HRS §§187A-5, 189-2, 189-6) (Imp: HRS §§187A-1, 187A-5, 189-2, 189-6)

**§13-95.1-2 Penalty.** (a) Any person who violates any provision of this chapter shall be subject to administrative fines as provided by chapter 187A, HRS.

(b) Any administrative fine imposed under this section for any violation of a provision of this chapter shall not preclude the imposition of criminal penalties pursuant to section 188-70, HRS, or as may be otherwise provided by law. [Eff 11/1/14; comp ] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 187A-12.5, 188-53, 188-70)

**§13-95.1-3 Scope.** (a) Unless expressly provided otherwise, the scope of jurisdiction for subchapter 2 shall be as follows:

Subchapter 2 shall apply to the take or possession of [~~aquatic~~] marine life from, in, or on the lands or waters of Maui island subject to state jurisdiction or control. For purposes of this section, "waters of Maui island" means all ocean waters within three nautical miles seaward from the highest wash of the waves on the shores of Maui,

excluding all waters within two nautical miles from the shores of Kaho'olawe island, as shown on Exhibit 1 entitled "Map of Maui Island Fisheries", dated May 19, 2014, and located at the end of this chapter.

(b) Nothing in this chapter shall restrict the State's claims to jurisdiction and authority over its marine waters.

(c) The take and possession provisions of this chapter supersede any conflicting take or possession provisions in chapter 13-95. [Eff 11/1/14; am and comp ] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-1.5, 188-22.5, 187A-5, 188-53)

**§13-95.1-4 Exceptions.** (a) The prohibitions of this chapter shall not apply to authorized employees of the department when acting in the course of their official duties, departmental agents and contractors engaged in authorized departmental activities, or to any persons conducting activities permitted under a valid license or permit listed under section 13-95-1.1 that expressly refers to this chapter.

(b) Native Hawaiian traditional and customary rights recognized under article XII, section 7, of the Hawaii State Constitution shall not be abridged.

(c) For the purposes of this chapter, any commercial marine dealer may possess more than the allowed number of aquatic specimens, only if the specimens were purchased from other individual(s) with:

(1) A valid commercial marine license[+] pursuant to section 189-2, HRS; or

(2) A valid special marine product license; and has receipts issued for each purchase pursuant to section 189-11, HRS. Receipts shall include the first and last name and license number of the person to whom the receipt is issued. [Eff 11/1/14; am and comp ] (Auth: HRS §§187A-3.5, 187A-5, 187A-6, 189-2, 189-6) (Imp: HRS §§187A-3.5, 187A-5, 187A-6, 188-53, 189-2, 189-6, 189-11)

§13-95.1-5

**§13-95.1-5 Severability.** If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remaining provisions, or application of the provisions which can be given effect without the invalid provision or application, shall not be affected. [Eff 11/1/14; comp ] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

## SUBCHAPTER 2

### MAUI ISLAND FISHERIES

**§13-95.1-20 Goatfish.** (a) No person may take or possess any kūmū, moano kea, or weke nono less than twelve inches in length.

(b) Except as provided in subsection (f), no person may take or possess any other goatfish less than eight inches in length.

(c) No person may take more than one kūmū per day, or possess more than one kūmū at any one time.

(d) No person may take more than two moano kea per day, or possess more than two moano kea at any one time.

(e) No person may take more than two munu per day, or possess more than two munu at any one time.

(f) Notwithstanding subsection (b), any person may take up to fifty 'oama per day, or possess up to fifty 'oama at any one time, provided that no 'oama may be taken by any means other than hook-and-line fishing.

(g) No person may sell any 'oama at any time. [Eff 11/1/14; comp ] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

**§13-95.1-21 Uhu.** (a) No person may take or possess any uhu 'ele'ele or uhu uliuli at any time.

(b) No person may take or possess any uhu pālukaluka or any uhu 'ahu'ula less than fourteen inches in length.

(c) Any other department size restriction notwithstanding, subject to subsections (a) and (b), any person may take any other uhu greater than ten inches in length.

(d) No person may take more than two uhu of any variety per day, or possess more than two uhu of any variety at any one time." [Eff 11/1/14; comp  
] (Auth: HRS §§187A-5, 188-53) (Imp:  
HRS §§187A-5, 188-53)

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

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

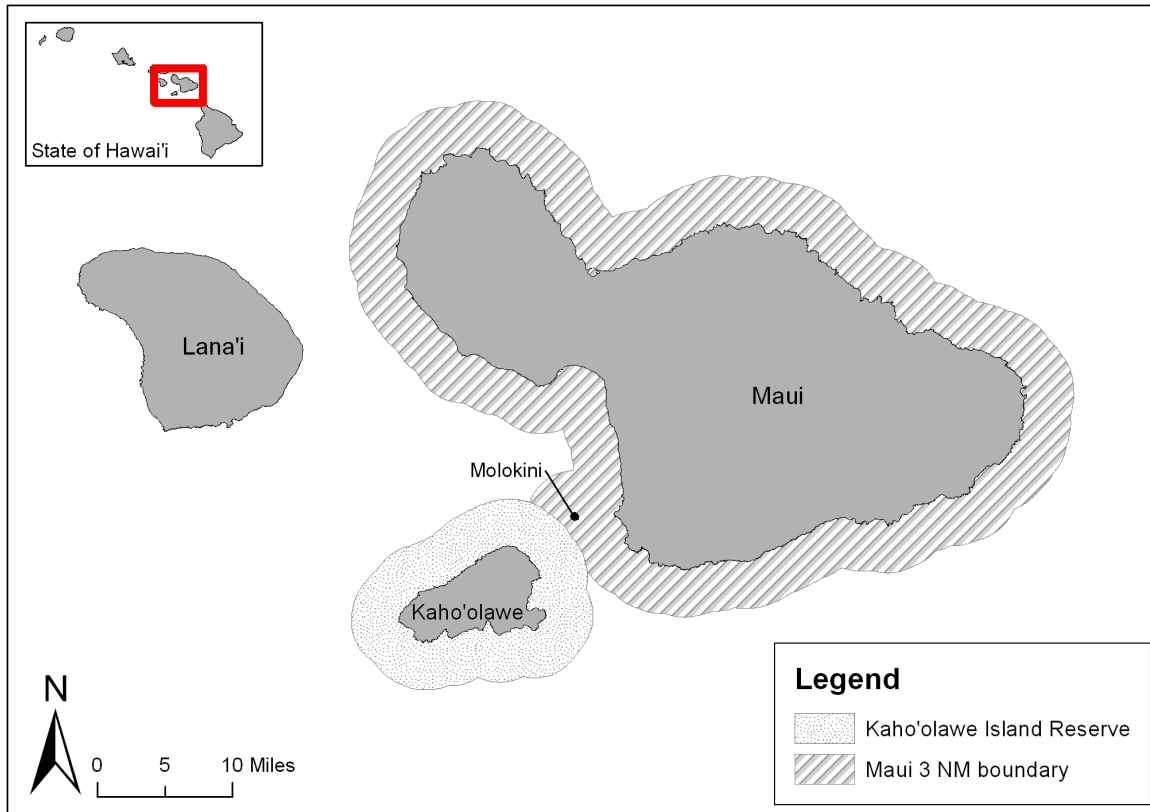
4. The amendments to and compilation of chapter 13-95.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on \_\_\_\_\_, and filed with the Office of the Lieutenant Governor.

\_\_\_\_\_  
SUZANNE D. CASE  
Chairperson, Board of Land  
and Natural Resources

APPROVED FOR PUBLIC HEARING:

\_\_\_\_\_  
Deputy Attorney General

**Exhibit 1. Map of Maui Island Fisheries (May 19, 2014)**

NOTE: The Maui Island Fisheries rules do NOT apply to waters within two nautical miles of Kaho'olawe island (which are governed by the Kaho'olawe Island Reserve Commission's separate authority, Hawaii Administrative Rules chapter 13-261).



**UNOFFICIAL COPY**

An official copy can be obtained from DLNR  
(808) 587-0100

§13-95.1-1

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART V PROTECTED MARINE FISHERIES RESOURCES

CHAPTER 95.1

ISLAND-BASED FISHERIES RULES

Subchapter 1 General Provisions

§13-95.1-1	Definitions
§13-95.1-2	Penalty
§13-95.1-3	Scope
§13-95.1-4	Exceptions
§13-95.1-5	Severability

Subchapter 2 Maui Island Fisheries

§13-95.1-20	Goatfish
§13-95.1-21	Uhu

SUBCHAPTER 1

GENERAL PROVISIONS

§13-95.1-1

**§13-95.1-1 Definitions.** As used in this chapter, unless otherwise provided:

"Commercial marine dealer" means any person who sells or exchanges, or who is an agent in the transfer of marine life obtained directly from a commercial marine licensee, or any commercial marine licensee who sells or exchanges marine life at retail.

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

"Goatfish" means any fish in the family Mullidae, or any recognized synonym.

"Kūmū" means any fish known as *Parupeneus porphyreus* or any recognized synonym. Kūmū are also known as whitesaddle goatfish.

"Length" means the straight-line measurement from the tip of the snout to the middle of the trailing edge of the tail.

"Marine life" means any type or species of saltwater fish, shellfish, mollusks, crustaceans, coral, or other marine animals, including any part, product, egg, or offspring thereof; or seaweed or other marine plants, including any part, product, seed, or holdfast thereof.

"Moano kea" means any fish known as *Parupeneus cyclostomus* or any recognized synonym. Moano kea are also known as moano kali, moano ukali ulua, blue goatfish, or goldsaddle goatfish.

"Munu" means any fish known as *Parupeneus insularis* or any recognized synonym. Munu are also known as doublebar goatfish.

"Oama" means any juvenile weke'ā, *Mulloidichthys flavolineatus*, or juvenile weke ula, *Mulloidichthys vanicolensis*, which is less than eight inches in length.

"Possess" means to procure, receive, hold, or control for a sufficient period to have had the opportunity to release or relinquish control.

"Take" means to fish for, catch, capture, confine, or harvest, or attempt to fish for, catch,

§13-95.1-1

capture, confine, or harvest, marine life. This term shall not apply to the temporary capture or confinement of any specimen which is returned to the water as soon as possible after landing.

"Uhu" means any fish belonging to the family Scaridae or any recognized synonyms. Uhu is a general term for parrotfish.

"Uhu 'ahu'ula" means any fish known as *Chlorurus perspicillatus* or any recognized synonym. Uhu 'ahu'ula are also known as spectacled parrotfish. The terminal phase of these fish is also known as "uhu uliuli".

"Uhu 'ele'ele" is any *Scarus rubroviolaceus* which has reached its terminal phase, indicated by a change in coloration from brownish-red and yellowish-gray, to green and blue. A predominantly green or blue-green body color and a green beak on a specimen of *Scarus rubroviolaceus* is prima facie evidence that the specimen is an uhu 'ele'ele. Both uhu 'ele'ele and uhu pālukaluka are known as redlip or ember parrotfish.

"Uhu pālukaluka" means any fish known as *Scarus rubroviolaceus* or any recognized synonym. Uhu pālukaluka are also known as redlip or ember parrotfish. The terminal phase of these fish is also known as "uhu 'ele'ele".

"Uhu uliuli" is any *Chlorurus perspicillatus* which has reached its terminal phase, indicated by a change in coloration from a grayish brown body with a broad white band at the base of the tail, to a blue-green body with a dark band across the top of the snout. A predominantly blue-green body color and the lack of a white tail band on a specimen of *Chlorurus perspicillatus* is prima facie evidence that the specimen is an uhu uliuli. Both uhu uliuli and uhu 'ahu'ula are known as spectacled parrotfish.

"Weke'ā" means any fish known as *Mulloidichthys flavolineatus* or any recognized synonym. Weke'ā are also known as white goatfish. The young of these fish are also known as 'oama.

§13-95.1-1

"Weke nono" means any fish known as *Mulloidichthys pfluegeri* or any recognized synonym. Weke nono are also known as Pflueger's goatfish or moelua.

"Weke ula" means any fish known as *Mulloidichthys vanicolensis* or any recognized synonym. Weke ula are also known as red weke. The young of these fish are also known as 'oama. [Eff 11/1/14; am and comp 11/27/21] (Auth: HRS §§187A-5, 189-2, 189-6) (Imp: HRS §§187A-1, 187A-5, 189-2, 189-6)

**§13-95.1-2 Penalty.** (a) Any person who violates any provision of this chapter shall be subject to administrative fines as provided by chapter 187A, HRS.

(b) Any administrative fine imposed under this section for any violation of a provision of this chapter shall not preclude the imposition of criminal penalties pursuant to section 188-70, HRS, or as may be otherwise provided by law. [Eff 11/1/14; comp 11/27/21] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 187A-12.5, 188-53, 188-70)

**§13-95.1-3 Scope.** (a) Unless expressly provided otherwise, the scope of jurisdiction for subchapter 2 shall be as follows:

Subchapter 2 shall apply to the take or possession of marine life from, in, or on the lands or waters of Maui island subject to state jurisdiction or control. For purposes of this section, "waters of Maui island" means all ocean waters within three nautical miles seaward from the highest wash of the waves on the shores of Maui, excluding all waters within two nautical miles from the shores of Kaho'olawe island, as shown on Exhibit 1 entitled "Map of Maui Island Fisheries", dated May 19, 2014, and located at the end of this chapter.

§13-95.1-5

(b) Nothing in this chapter shall restrict the State's claims to jurisdiction and authority over its marine waters.

(c) The take and possession provisions of this chapter supersede any conflicting take or possession provisions in chapter 13-95. [Eff 11/1/14; am and comp 11/27/21] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-1.5, 188-22.5, 187A-5, 188-53)

**§13-95.1-4 Exceptions.** (a) The prohibitions of this chapter shall not apply to authorized employees of the department when acting in the course of their official duties, departmental agents and contractors engaged in authorized departmental activities, or to any persons conducting activities permitted under a valid license or permit listed under section 13-95-1.1 that expressly refers to this chapter.

(b) Native Hawaiian traditional and customary rights recognized under article XII, section 7, of the Hawaii State Constitution shall not be abridged.

(c) For the purposes of this chapter, any commercial marine dealer may possess more than the allowed number of aquatic specimens, only if the specimens were purchased from other individual(s) with:

(1) A valid commercial marine license pursuant to section 189-2, HRS; or

(2) A valid special marine product license; and has receipts issued for each purchase pursuant to section 189-11, HRS. Receipts shall include the first and last name and license number of the person to whom the receipt is issued. [Eff 11/1/14; am and comp 11/27/21] (Auth: HRS §§187A-3.5, 187A-5, 187A-6, 189-2, 189-6) (Imp: HRS §§187A-3.5, 187A-5, 187A-6, 188-53, 189-2, 189-6, 189-11)

**§13-95.1-5 Severability.** If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remaining

§13-95.1-5

provisions, or application of the provisions which can be given effect without the invalid provision or application, shall not be affected. [Eff 11/1/14; comp 11/27/21] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

SUBCHAPTER 2

MAUI ISLAND FISHERIES

**§13-95.1-20 Goatfish.** (a) No person may take or possess any kūmū, moano kea, or weke nono less than twelve inches in length.

(b) Except as provided in subsection (f), no person may take or possess any other goatfish less than eight inches in length.

(c) No person may take more than one kūmū per day, or possess more than one kūmū at any one time.

(d) No person may take more than two moano kea per day, or possess more than two moano kea at any one time.

(e) No person may take more than two munu per day, or possess more than two munu at any one time.

(f) Notwithstanding subsection (b), any person may take up to fifty 'oama per day, or possess up to fifty 'oama at any one time, provided that no 'oama may be taken by any means other than hook-and-line fishing.

(g) No person may sell any 'oama at any time. [Eff 11/1/14; comp 11/27/21] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

**§13-95.1-21 Uhu.** (a) No person may take or possess any uhu 'ele'ele or uhu uliuli at any time.

**UNOFFICIAL COPY**

An official copy can be obtained from DLNR  
(808) 587-0100

§13-95.1-21

(b) No person may take or possess any uhu pālukaluka or any uhu 'ahu'ula less than fourteen inches in length.

(c) Any other department size restriction notwithstanding, subject to subsections (a) and (b), any person may take any other uhu greater than ten inches in length.

(d) No person may take more than two uhu of any variety per day, or possess more than two uhu of any variety at any one time." [Eff 11/1/14; comp 11/27/21] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

**UNOFFICIAL COPY**

An official copy can be obtained from DLNR  
(808) 587-0100

DEPARTMENT OF LAND AND NATURAL RESOURCES

The amendments to and compilation of chapter 13-51, Hawaii Administrative Rules, on the Summary page dated August 27, 2021, were adopted on August 27, 2021, following public hearing held on July 14, 2021, after public notice was given in the Honolulu Star-Advertiser on June 6, 2021.

These rules 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

/s/ David Y. Ige

\_\_\_\_\_  
DAVID Y. IGE  
Governor, State of Hawaii

November 17, 2021  
Dated: \_\_\_\_\_

APPROVED AS TO FORM:

/s/ Melissa D. Goldman

\_\_\_\_\_  
Deputy Attorney General

November 17, 2021

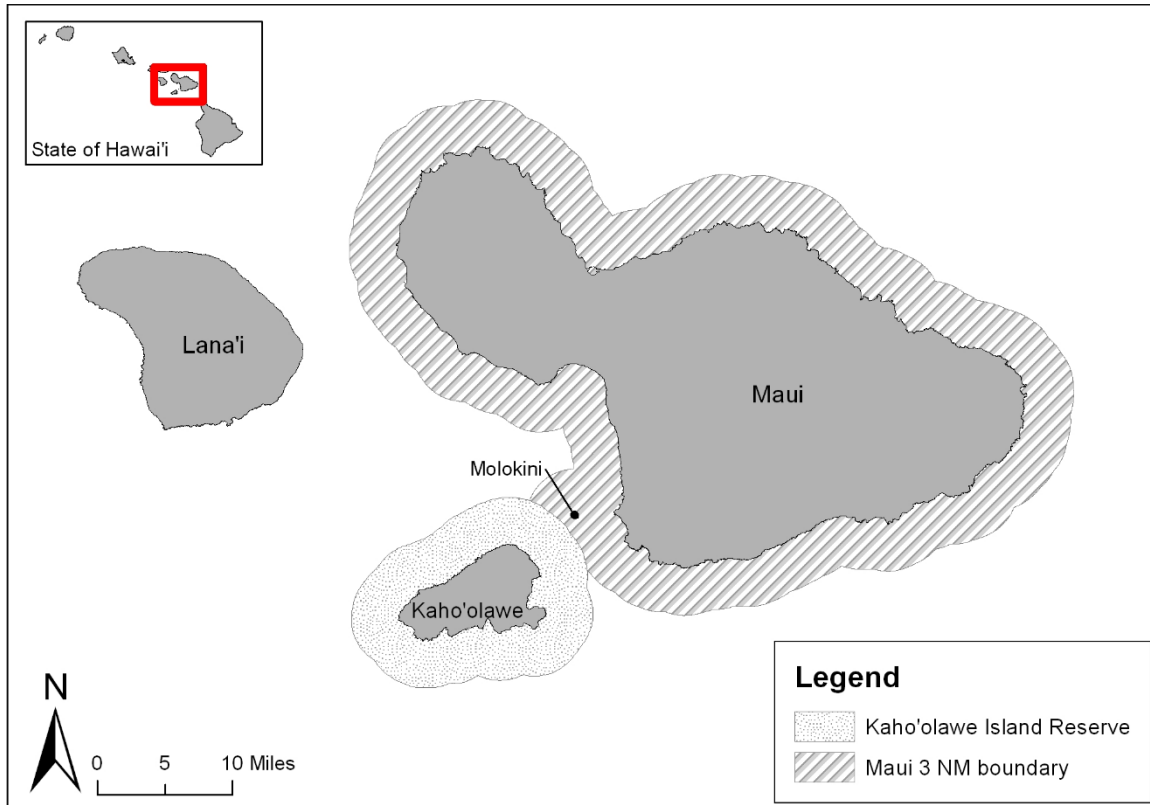
\_\_\_\_\_  
Filed



**UNOFFICIAL COPY**

An official copy can be obtained from DLNR  
(808) 587-0100

**Exhibit 1. Map of Maui Island Fisheries (May 19, 2014)**



NOTE: The Maui Island Fisheries rules do NOT apply to waters within two nautical miles of Kaho'olawe island (which are governed by the Kaho'olawe Island Reserve Commission's separate authority, Hawaii Administrative Rules chapter 13-261).

**16. Act 43, SLH 2021 Relating to the Taking of Marine Life**

HRS § 189-2 Commercial marine and commercial marine vessel license

**ACT 43**

H.B. NO. 1016

A Bill for an Act Relating to the Taking of Marine Life.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that fishing is an important pastime for many Hawaii residents, providing not only recreational and subsistence benefits, but also an additional source of income for many small-scale commercial fishers who often sell a portion of their catch to cover costs of fuel or fishing gear.

The legislature further finds that the existing commercial marine license laws can be unnecessarily burdensome on boat-based fishers due to the requirement that each individual on a fishing vessel must have a commercial marine license to participate in a commercial fishing trip where any portion of the resulting catch may be sold. The legislature additionally finds that this requirement places logistical and financial burdens on vessel captains when part-time crew members are needed for a commercial fishing trip or when unscheduled or infrequent visitors are invited aboard. It can also lead to confusion regarding

who is responsible for submitting commercial catch reports for fishing activities aboard a vessel.

The legislature also finds that although existing statutory language requires vessel-based fishing charters to obtain a commercial marine license, it is unclear whether shore-based charters are also required to obtain a commercial marine license.

The purpose of this Act is to:

- (1) Specify that a single commercial marine vessel license satisfies the commercial marine license requirement for all persons aboard a licensed vessel;
- (2) Require each commercial marine vessel licensee for a Hawaii longline vessel that satisfies the commercial marine license requirement by obtaining the vessel license to file an annual report with the department of land and natural resources that contains certain information on the crew members;
- (3) Require any person providing fishing charter services to obtain a commercial marine license;
- (4) Allow any vessel used for or engaged in the taking of marine life for commercial purposes to be eligible to obtain a commercial marine vessel license;
- (5) Authorize the department of land and natural resources to establish rules and fees for obtaining a commercial marine vessel license; and
- (6) Require the department of land and natural resources to submit a report to the legislature regarding the status of its administrative rules establishing a new commercial marine vessel license category.

SECTION 2. Section 189-2, Hawaii Revised Statutes, is amended to read as follows:

**“§189-2 Commercial marine license~~[-]~~ and commercial marine vessel license.** (a) No person shall take marine life for commercial purposes whether the marine life is caught or taken within or outside of the State, without first obtaining a commercial marine license as provided in this section~~[-]~~; provided that a single valid commercial marine vessel license shall satisfy the commercial marine license requirement for all persons taking marine life for commercial purposes aboard a validly-licensed vessel. If a Hawaii longline vessel satisfies the commercial marine license requirement by obtaining a single commercial marine vessel license, the commercial marine vessel licensee shall file an annual report with the department that contains the following information: identity, nationality, arrival date, and departure date of the crew members.

(b) ~~[Additionally, any]~~ Any person providing ~~[vessel]~~ charter services in the State for the taking of marine life in or outside of the State shall obtain a commercial marine license.

(c) Any vessel used for or engaged in the taking of marine life for commercial purposes shall be eligible to obtain a commercial marine vessel license.

~~[(e)]~~ (d) The department may adopt rules pursuant to chapter 91 necessary for the purpose of this section and to set fees for commercial marine ~~[licensing]~~ and commercial marine vessel licenses.

~~[(d)]~~ (e) The fees for commercial marine and commercial marine vessel licenses and duplicate commercial marine and commercial marine vessel licenses shall be established by the department by rules adopted in accordance with chapter 91.

~~[(e)]~~ (f) The department shall suspend, shall refuse to renew, reinstate, or restore, or shall deny any license issued under this section if the department has received certification from the child support enforcement agency pursuant

to section 576D-13 that the licensee or applicant is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. The department shall issue, renew, reinstate, or restore an affected license only upon receipt of authorization from the child support enforcement agency, the office of child support hearings, or the family court.”

SECTION 3. The department of land and natural resources shall submit a report, including any proposed legislation, to the legislature no later than thirty days prior to the convening of the regular session of 2022, concerning the status of its administrative rules establishing a new commercial marine vessel license category.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 8, 2021.)

**17. HAR Chapter 13-256 Ocean Recreation Management Rules and Areas**

HAR § 13-256-73 Kaneohe Bay Ocean Waters

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Section 13-256-73  
Hawaii Administrative Rules

**DRAFT RULES AS OF 10/31/19**

[Date of adoption by agency]

1. Section 13-256-73, Hawaii Administrative Rules, is amended to read as follows:

**"§13-256-73 Kaneohe Bay ocean waters. (a)**

Kaneohe Bay ocean waters means the area ~~[encompassed by]~~ within the boundaries shown on ~~[Exhibit "V", "Kaneohe Bay, Oahu, Hawaii," dated April 16, 2001,]~~ "Exhibit V. Kaneohe Bay, Oahu, Hawaii", dated July 25, 2019, incorporated herein, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at the northern point on the shoreline of Mokapu Point, located at approximately 21° 27' 33.6" N / 157° 43' 21.6" W, then in a straight line to Makahonu Point, located at approximately 21° 32' 33.6" N / 157° 50' 34.2" W, then along the shoreline of Kaneohe Bay to the point of beginning.

~~[(b) All commercial ocean use activities in Kaneohe Bay ocean waters are prohibited on Sundays and federal holidays.]~~

~~(c) There shall be no walking, sitting, standing, or anchoring on live coral or otherwise damaging the reef within Kaneohe Bay ocean waters.~~

~~(d) Zone A Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone A are as follows:~~

~~Zone A is a circle with a radius of two hundred feet with its center at approximately 21° 26' 27.5" N / 157° 47' 45.5" W.~~



~~(e) Zone B Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone B are as follows:~~

~~Zone B is circle with a radius of two hundred feet with its center at approximately 21° 27' 28.5" N / 157° 48' 08.5" W.~~

~~(f) Zone C restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone C are as follows:~~

~~Zone C is a circle with a radius of two hundred feet with its center at approximately 21° 27' 32" N / 157° 48' 13.5" W.~~

~~(g) Zones A, B, and C are subject to the following:~~

~~(1) Zones A, B, and C are designated as commercial thrill craft zones where full service permittees shall be required to operate. Not more than six rental thrill craft shall operate within each of the zones A and B at any one time. No more than three rental thrill craft shall operate within zone C at any one time. Zone A may be referred to as the Checker Reef commercial thrill craft zone. Zones B and C may be referred to as the commercial thrill craft sand flat zones.~~

~~(2) Commercial thrill craft shall be operated in a clockwise direction only within zones A, B, and C only between the hours of 9:00 a.m. and 5:00 p.m., Mondays through Saturdays. No commercial thrill craft shall be operated within Zones A, B, or C on Sundays or federal holidays.~~

~~(h) Zone D Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "W", "Kaneohe, Oahu, Hawaii," dated~~

~~September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone D are as follows:~~

~~Zone D is rectangular in shape which borders the Kaneohe Bay entrance channel day beacon 11 beginning at a point in the water which is located at approximately  $21^{\circ} 28' 32''$  N /  $157^{\circ} 49' 39''$  W, then by a straight line in a due East (true) direction to approximately  $21^{\circ} 28' 32''$  N /  $157^{\circ} 49' 32''$  W, then in a straight line to approximately  $21^{\circ} 28' 10.5''$  N /  $157^{\circ} 49' 27''$  W, then in a straight line due West (true) to approximately  $21^{\circ} 28' 10.5''$  N /  $157^{\circ} 49' 34''$  W, then in a straight line back to beginning.~~

~~Zone D is restricted to commercial SCUBA, snorkeling and sightseeing cruises only. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial snorkeling operators shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. Activity shall take place only near the reef, not on the reef. Vessels entering this zone shall use extreme caution while this zone is occupied during diving activities.~~

~~(i) Zone E Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone E are as follows:~~

~~Zone E is a circle with a radius of three hundred ten yards with its center located at approximately  $21^{\circ} 27' 25''$  N /  $157^{\circ} 47' 46.5''$  W. Zone E is restricted to SCUBA, snorkeling, underwater activities, and sightseeing cruises only. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial snorkeling operators shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on~~

~~coral. Vessels entering this zone shall use extreme caution while this zone is occupied during diving activities.~~

~~(j) Zone F Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone F are as follows:~~

~~Beginning at a point in the water which is located at approximately 21° 26' 50" N / 157° 47' 45" W, then by a straight line to approximately 21° 26' 23.5" N / 157° 47' 25" W, then by a straight line to approximately 21° 26' 16" N / 157° 47' 34" W, then by a straight line to approximately 21° 26' 20.5" N / 157° 47' 59.3" W, then by a straight line to approximately 21° 26' 28.5" N / 157° 48' 09" W, then in a straight line to the point of beginning.~~

~~Zone F is designated as non-exclusive commercial ocean water sports zone. All vessels entering this zone shall exercise extreme caution while it is being utilized for commercial ocean water sports activities. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial operators operating in this zone shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. All activity on top of Checker Reef in Zone F is prohibited.~~

~~(k) Zone G Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone G are as follows:~~

~~Beginning at a point in the water which is located at approximately 21° 26' 25" N / 157° 47' 49" W, then by a straight line to approximately 21° 26' 22" N / 157° 47' 34" W, then by a straight line to approximately 21° 26' 16.5" N /~~

~~157° 47' 36" W, then by a straight line to approximately 21° 26' 19" N / 157° 47' 51" W, then by a straight line to the point of beginning. Zone C is designated as non-exclusive commercial water ski and water sledding zone. Commercial water skiing and water sledding and the operation of towed devices used to carry passengers for commercial purposes shall be restricted to this zone. No more than one commercial vessel for water sledding shall be permitted to tow at any speed within this zone at any one time for safety purposes. Commercial large full service permittees and non-commercial recreational users shall share the zone equally. All towing shall be conducted in a clockwise direction. No person shall moor or anchor a vessel within this zone. High speed operations shall take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.]~~

(b) The boundaries of zones in Kaneohe Bay ocean waters are as indicated in Table 1, "Summary of Kaneohe Bay Ocean Waters Zones & Uses", dated July 25, 2019. The zones of Kaneohe Bay ocean waters are shown on "Exhibit X. Kaneohe Bay, Oahu, Hawaii", dated July 25, 2019, incorporated herein, and located at the end of this subchapter.

(c) Restrictions in Kaneohe Bay ocean waters shall be as follows:

- (1) All commercial ocean use activities in Kaneohe Bay ocean waters are prohibited on Sundays and federal holidays.
- (2) There shall be no walking, sitting, standing, or anchoring on live coral or otherwise damaging the reef within Kaneohe Bay ocean waters. All participants in underwater activities, including, but not limited to, SCUBA, snorkeling, and sea-walker use, shall avoid touching coral or any living parts of a reef.
- (3) All sea-walker activity shall only be conducted on a flat, sandy bottom.

- (4) Commercial SCUBA activities shall be prohibited in Kaneohe Bay ocean waters, except that commercial SCUBA activities shall only be allowed in Kaneohe Bay ocean waters zone D.

(d) Kaneohe Bay ocean waters are designated according to the following restricted zone uses. See Table 1, "Summary of Kaneohe Bay Ocean Waters Zones & Uses", dated July 25, 2019.

- (1) Zones A, B, and C are designated for operation of commercial thrill craft by full service permittees between the hours of 9:00 a.m. and 5:00 p.m. At any one time, not more than six rental thrill craft shall be allowed to operate in zones A and B, and not more than three rental thrill craft shall be allowed to operate in zone C. All commercial thrill craft shall only be operated in a clockwise direction within zones A, B, and C.
- (2) Zone D is designated for SCUBA, snorkeling, and sightseeing cruises only. Activity is limited to near the reef, and not on the reef.
- (3) Zone E is designated for SCUBA, snorkeling, underwater activities, and sightseeing cruises only.
- (4) Zones F and I are for non-exclusive commercial ocean water sports activities. All activity on top of Checker Reef in zone F is prohibited. Vessels operating in zone I shall exercise care to stay clear of sea turtles, which may migrate to the north central part of the zone. Commercial operators whose passengers are not operating thrill craft in zone I shall keep those passengers out of zones B and C.
- (5) Zones G and H are for non-exclusive use by commercial large full-service permittees and non-commercial recreational users which shall share this zone for water skiing, water sledding, and operations of towed

devices used to carry passengers. For safety, no more than one commercial vessel for water sledding shall be permitted to tow at any speed in zone G at any one time. No more than two commercial vessels for water sledding shall be permitted to tow at high speed in zone H. All towing shall be conducted in a clockwise direction. No person shall moor or anchor within these zones. High speed operations shall take place in water at least two hundred feet from any reef edge, reef crest, or sand flat.

~~[(1)]~~ (e) Recreational thrill craft shall not be operated in any area of Kaneohe Bay except in the designated recreational thrill craft zone as described in section 13-256-77. Recreational thrill craft shall access the recreational thrill craft zone by transiting from Heeia Kea small boat harbor directly ~~[to]~~ through the Sampan channel to the Kaneohe recreational thrill craft zone as described in section 13-256-77.

~~[(m) Zone H restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone H are as follows:-~~

~~Beginning at a point in the water which is located at approximately 21° 27' 32.5" N / 157° 48' 19.5" W, then by a straight line to approximately 21° 27' 26.5" N / 157° 48' 10" W, then by a straight line to approximately 21° 27' 14.5" N / 157° 48' 17" W, then by a straight line to approximately 21° 27' 20" N / 157° 48' 27" W, then in a straight line to the point of beginning.~~

~~Zone H is designated as non-exclusive commercial water ski and water sledding zone. Commercial water skiing and water sledding and the operation of towed devices used to carry passengers for commercial purposes are restricted to this zone. No more than two commercial~~

~~vessels for water sledding shall be permitted to tow at high speed within this zone at any one time for safety purposes. Commercial full service permittees and non-commercial recreational users shall share the zone equally. All towing shall be conducted in a clockwise direction. No person shall moor a vessel within this zone. High speed operations must take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.~~

~~(n) Zone I restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone I are as follows:~~

~~Beginning at a point in the water located at approximately 21° 27' 41" N / 157° 48' 18" W, then by a line parallel to the edge of the sand flat to approximately 21° 27' 32" N / 157° 48' 02" W, then by a straight line to approximately 21° 27' 25" N / 157° 48' 07" W, then by a straight line to approximately 21° 27' 34" N / 157° 48' 22.5" W, then by a straight line to the point of beginning.~~

~~Zone I is designated as non-exclusive commercial ocean water sports zone. Other vessels entering this zone shall exercise extreme caution while it is being used for commercial ocean water sports activities. Commercial operators operating in this zone shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest. Commercial operators whose passengers do not operate thrill craft must keep their passengers out of Thrill Craft Zones B and C. Vessels operating in Zone I shall maintain a watch for sea turtles, which may migrate to the north central part of the zone, and exercise care to stay clear of any turtle observed.~~

~~(o) Kaneohe Bay speed restrictions. In addition to speed restrictions found in section 13-244-9, slow-no-wake restrictions shall apply in Kaneohe Bay offshore mooring areas, Kaneohe Bay ocean waters zones D, E, F, and I, Kualoa waters zone B, and anywhere~~

~~within the Kaneohe Bay when a vessel is within two hundred feet of Kapapa Island and the Central Reef shallows defined as areas having a depth of less than or equal to five feet mean lower low water, including the area of Ahu O Laka Island, ("The Sand Bar").~~

~~(p) No increase in the level of commercial ocean use activities existing on July 1, 1993 will be permitted within Kaneohe Bay waters.~~

~~(q) Activities conducted by a bona fide educational institution or an organization which is registered with the State and classified by the Internal Revenue Service as a not-for-profit (section 501(c)(3)) organization shall not be subject to the restrictions of subsection (p), but shall operate only in accordance with a permit issued by the department pursuant to chapter 13-231 or chapter 13-256 or both.~~

~~(r) Anchoring or mooring on living coral is prohibited.~~

~~(s) All sea walker activity shall be done on a flat sandy bottom, not on sea grass beds.~~

~~(t) All underwater activity, including but not limited to SCUBA, snorkeling, and sea-walker, shall prohibit participants from touching coral and/or living parts of a reef.]~~

(f) Slow-no-wake restrictions shall apply in Kaneohe Bay ocean waters zones D, E, F, and I; Kaneohe Bay offshore mooring areas; Kualoa waters zone B; within Kaneohe Bay for vessels within two hundred feet of Kapapa Island; and the Central Reef shallows where mean lower low water areas are less than or equal to five feet in depth including the area of Ahu o Laka (the "Sand Bar"); in addition to speed restrictions found in section 13-244-9.

(g) Commercial operators conducting snorkeling activities shall have a snorkel vest available for each snorkeler in the water and encourage use of vests to avoid the likelihood of snorkelers standing on coral.

(h) Vessels entering any Kaneohe Bay ocean waters zones shall use extreme caution, especially while in a zone with diving activities taking place.



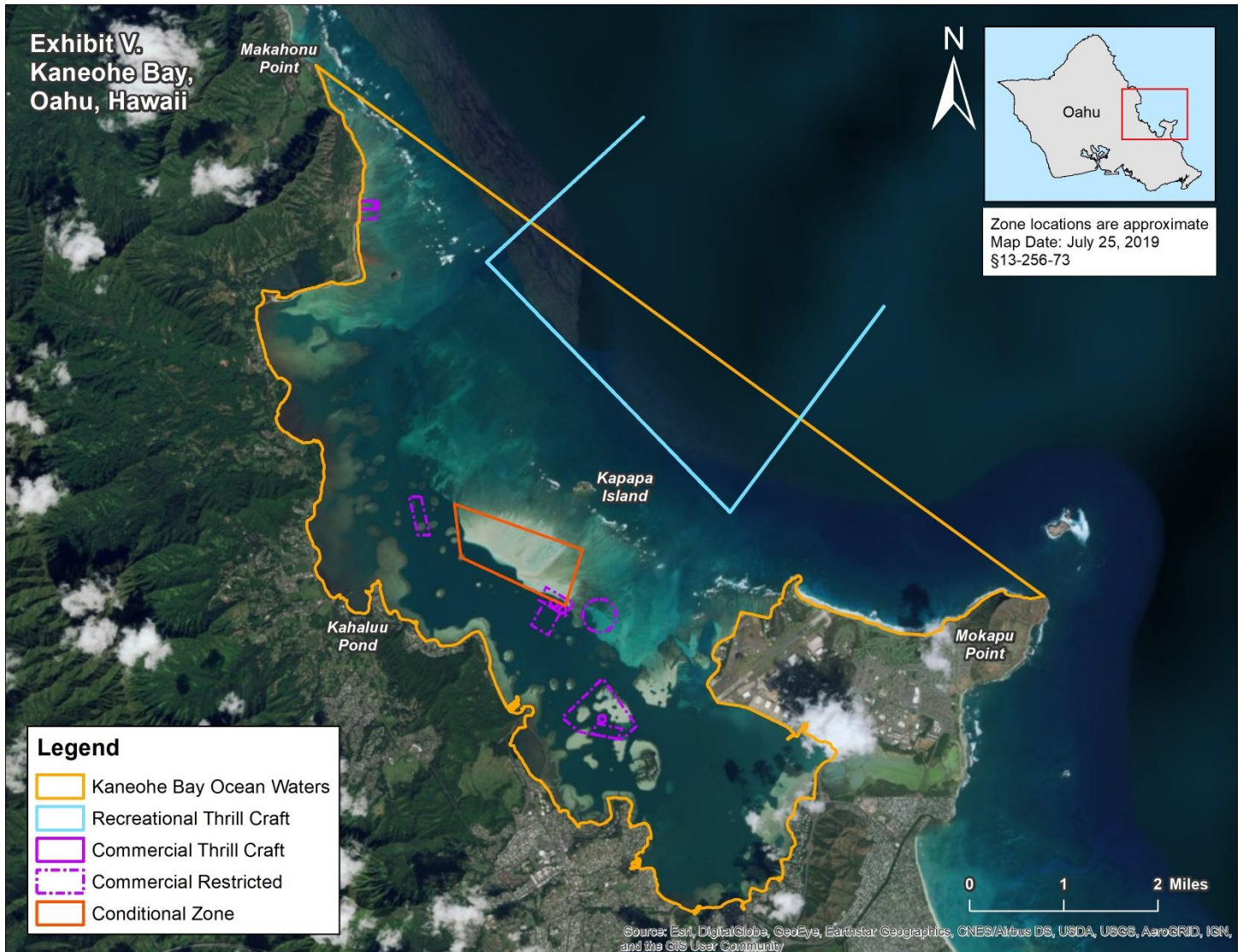
(i) No increase in the level of commercial ocean use activities existing on July 1, 1993 will be permitted within Kaneohe Bay ocean waters." [Eff 2/24/94; am 11/7/11; am ] (Auth: HRS §§ 200-22, 200-24, 200-37) (Imp: HRS §§ 200-22, 200-23, 200-24, 200-37)

**Table 1. Summary of Kaneohe Bay Ocean Waters Zones & Uses**  
**July 25, 2019**

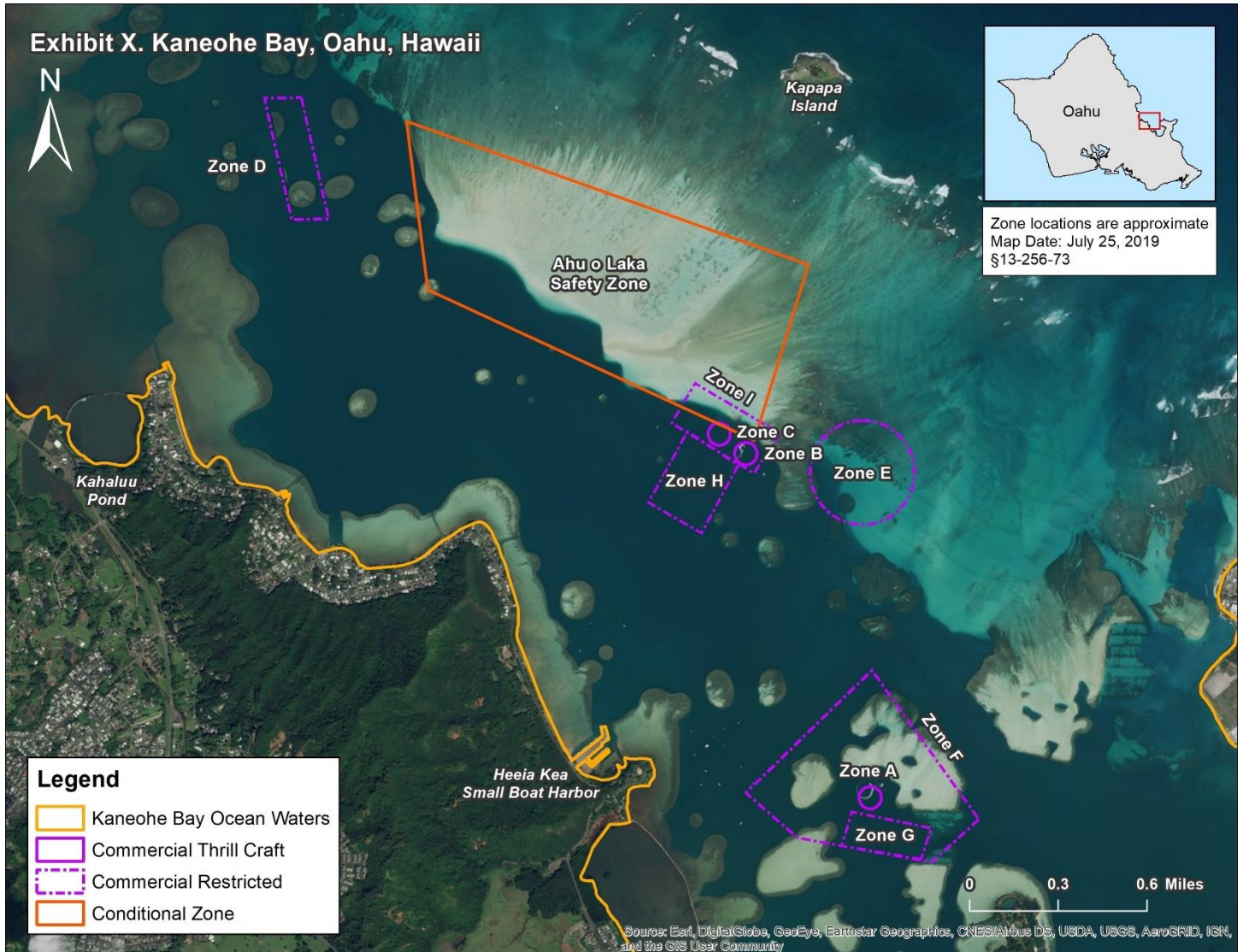
<b>Zone</b>	<b>Origin*</b>	<b>Boundary 1</b>	<b>Boundary 2</b>	<b>Boundary 3</b>	<b>Boundary 4</b>	<b>Use Restrictions</b>
<b>A</b> Checker reef 200-foot radius circle	21° 26' 27.5"N 157° 47' 45.5"W (center)					Comm. thrill craft zone (full service permit); no more than 6. Clockwise only 9am – 5pm
<b>B</b> (Sand flat) 200-foot radius circle	21° 27' 28.5"N 157° 48' 08.5"W (center)					(Same as Zone A)
<b>C</b> (Sand flat) 200-foot radius circle	21° 27' 32"N 157° 48' 13.5"W (center)					Comm. thrill craft zone (full service permit); no more than 3. Clockwise only 9am – 5pm
<b>D</b>	21° 28' 32"N 157° 49' 39"W	21° 28' 32"N 157° 49' 32"W	21° 28' 10.5"N 157° 49' 27"W	21° 28' 10.5"N 157° 49' 34"W		SCUBA, snorkel, & sightseeing cruises; near reef, not on reef; comm. SCUBA zone.
<b>E</b> 310-yard radius circle	21° 27' 25"N 157° 47' 46.5"W (center)					SCUBA, snorkel, U/W activities, & sightseeing cruises.
<b>F</b> Including Checker Reef	21° 26' 50"N 157° 47' 45"W	21° 26' 23.5"N 157° 47' 25"W	21° 26' 16"N 157° 47' 34"W	21° 26' 20.5"N 157° 47' 59.3"W	21° 26' 28.5"N 157° 48' 09"W	Non-exclusive comm. water sports zone. No activity on Checker Reef.
<b>G</b>	21° 26' 25"N 157° 47' 49"W	21° 26' 22"N 157° 47' 34"W	21° 26' 16.5"N 157° 47' 36"W	21° 26' 19"N 157° 47' 51"W		Non-exclusive comm. & rec. water ski and water sledding. Clockwise, one permittee at time. Rec. thrill craft only.
<b>H</b>	21° 27' 32.5"N 157° 48' 19.5"W	21° 27' 26.5"N 157° 48' 10"W	21° 27' 14.5"N 157° 48' 17"W	21° 27' 20"N 157° 48' 27"W		Non-exclusive comm. & rec. water ski and water sledding zone. No more than 2 comm. water sleds at high speed. Clockwise towing, no mooring. High speed areas designated.
<b>I</b>	21° 27' 41"N 157° 48' 18"W	21° 27' 32"N 157° 48' 02"W	21° 27' 25"N 157° 48' 07"W	21° 27' 34"N 157° 48' 22.5"W		Non-exclusive comm. ocean water sports zone. Comm. operators must keep passengers who are not operating thrill craft out of B & C.

\*Unless indicated, points are connected by straight lines with the final point back to the point of origin.

**Exhibit V. Kaneohe Bay, Oahu, Hawaii, July 25, 2019.**  
(All boundaries are unchanged.)



**Exhibit X. Kaneohe Bay, Oahu, Hawaii, July 25, 2019.**  
 (All boundaries are unchanged.)



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

3. The amendments to Section 13-256-73, 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 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.

\_\_\_\_\_  
SUZANNE D. CASE  
Chairperson  
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

\_\_\_\_\_  
Deputy Attorney General

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Section 13-256-73  
Hawaii Administrative Rules

January 22, 2021

SUMMARY

1. Section 13-256-73 is amended.

**§13-256-73 Kaneohe Bay ocean waters. (a)**

Kaneohe Bay ocean waters means the area within the boundaries shown on "Exhibit V. Kaneohe Bay, Oahu, Hawaii", dated July 25, 2019, incorporated herein, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at the northern point on the shoreline of Mokapu Point, located at approximately 21° 27' 33.6" N / 157° 43' 21.6" W, then in a straight line to Makahonu Point, located at approximately 21° 32' 33.6" N / 157° 50' 34.2" W, then along the shoreline of Kaneohe Bay to the point of beginning.

(b) The boundaries of zones in Kaneohe Bay ocean waters are as indicated in Table 1, "Summary of Kaneohe Bay Ocean Waters Zones & Uses", dated July 25, 2019. The zones of Kaneohe Bay ocean waters are shown on "Exhibit X. Kaneohe Bay, Oahu, Hawaii", dated July 25, 2019, incorporated herein, and located at the end of this subchapter.

(c) Restrictions in Kaneohe Bay ocean waters shall be as follows:

- (1) All commercial ocean use activities in Kaneohe Bay ocean waters are prohibited on Sundays and federal holidays.
- (2) There shall be no walking, sitting, standing, or anchoring on live coral or otherwise damaging the reef within Kaneohe Bay ocean waters. All participants in underwater activities, including, but not limited to, SCUBA, snorkeling, and sea-walker use, shall avoid touching coral or any living parts of a reef.
- (3) All sea-walker activity shall only be conducted on a flat, sandy bottom.
- (4) Commercial SCUBA activities shall be prohibited in Kaneohe Bay ocean waters, except that commercial SCUBA activities shall only be allowed in Kaneohe Bay ocean waters zone D.

(d) Kaneohe Bay ocean waters are designated according to the following restricted zone uses. See



Table 1, "Summary of Kaneohe Bay Ocean Waters Zones & Uses", dated July 25, 2019.

- (1) Zones A, B, and C are designated for operation of commercial thrill craft by full service permittees between the hours of 9:00 a.m. and 5:00 p.m. At any one time, not more than six rental thrill craft shall be allowed to operate in zones A and B, and not more than three rental thrill craft shall be allowed to operate in zone C. All commercial thrill craft shall only be operated in a clockwise direction within zones A, B, and C.
- (2) Zone D is designated for SCUBA, snorkeling, and sightseeing cruises only. Activity is limited to near the reef, and not on the reef.
- (3) Zone E is designated for SCUBA, snorkeling, underwater activities, and sightseeing cruises only.
- (4) Zones F and I are for non-exclusive commercial ocean water sports activities. All activity on top of Checker Reef in zone F is prohibited. Vessels operating in zone I shall exercise care to stay clear of sea turtles, which may migrate to the north central part of the zone. Commercial operators whose passengers are not operating thrill craft in zone I shall keep those passengers out of zones B and C.
- (5) Zones G and H are for non-exclusive use by commercial large full-service permittees and non-commercial recreational users which shall share this zone for water skiing, water sledding, and operations of towed devices used to carry passengers. For safety, no more than one commercial vessel for water sledding shall be permitted to tow at any speed in zone G at any one time. No more than two commercial vessels for water sledding shall be permitted to tow at high speed in zone H. All towing shall be



conducted in a clockwise direction. No person shall moor or anchor within these zones. High speed operations shall take place in water at least two hundred feet from any reef edge, reef crest, or sand flat.

(e) Recreational thrill craft shall not be operated in any area of Kaneohe Bay except in the designated recreational thrill craft zone as described in section 13-256-77. Recreational thrill craft shall access the recreational thrill craft zone by transiting from Heeia Kea small boat harbor directly through the Sampan channel to the Kaneohe recreational thrill craft zone as described in section 13-256-77.

(f) Slow-no-wake restrictions shall apply in Kaneohe Bay ocean waters zones D, E, F, and I; Kaneohe Bay offshore mooring areas; Kualoa waters zone B; within Kaneohe Bay for vessels within two hundred feet of Kapapa Island; and the Central Reef shallows where mean lower low water areas are less than or equal to five feet in depth including the area of Ahu o Laka (the "Sand Bar"); in addition to speed restrictions found in section 13-244-9.

(g) Commercial operators conducting snorkeling activities shall have a snorkel vest available for each snorkeler in the water and encourage use of vests to avoid the likelihood of snorkelers standing on coral.

(h) Vessels entering any Kaneohe Bay ocean waters zones shall use extreme caution, especially while in a zone with diving activities taking place.

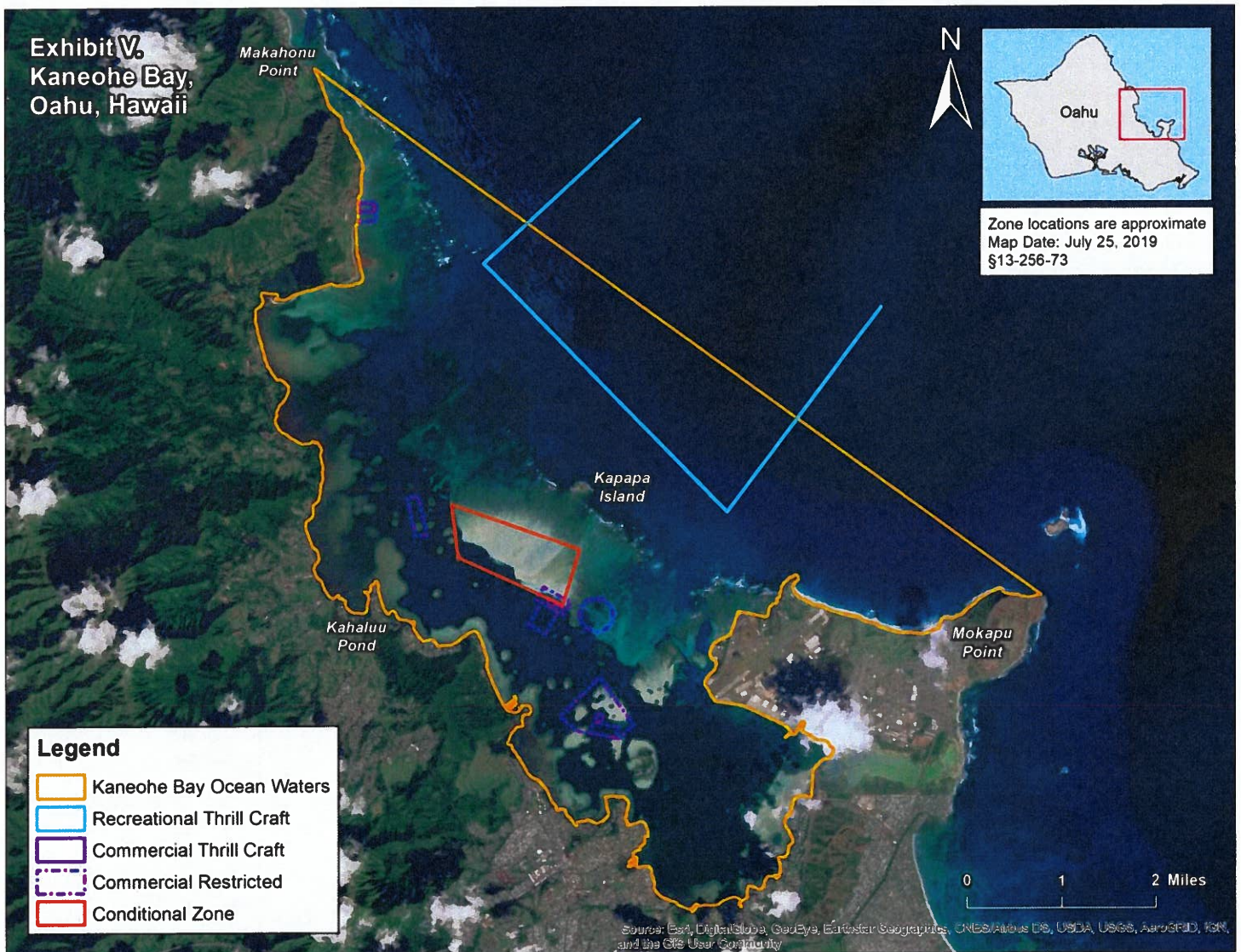
(i) No increase in the level of commercial ocean use activities existing on July 1, 1993 will be permitted within Kaneohe Bay ocean waters. [Eff 2/24/94; am 11/7/11; am **JUL - 8 2021** ] (Auth: HRS §§ 200-22, 200-24, 200-37) (Imp: HRS §§ 200-22, 200-23, 200-24, 200-37)

**Table 1. Summary of Kaneohe Bay Ocean Waters Zones & Uses**  
**July 25, 2019**

<b>Zone</b>	<b>Origin*</b>	<b>Boundary 1</b>	<b>Boundary 2</b>	<b>Boundary 3</b>	<b>Boundary 4</b>	<b>Use Restrictions</b>
<b>A</b> Checker reef 200-foot radius circle	21° 26' 27.5"N 157° 47' 45.5"W (center)					Comm. thrill craft zone (full service permit); no more than 6. Clockwise only 9am – 5pm
<b>B</b> (Sand flat) 200-foot radius circle	21° 27' 28.5"N 157° 48' 08.5"W (center)					(Same as Zone A)
<b>C</b> (Sand flat) 200-foot radius circle	21° 27' 32"N 157° 48' 13.5"W (center)					Comm. thrill craft zone (full service permit); no more than 3. Clockwise only 9am – 5pm
<b>D</b>	21° 28' 32"N 157° 49' 39"W	21° 28' 32"N 157° 49' 32"W	21° 28' 10.5"N 157° 49' 27"W	21° 28' 10.5"N 157° 49' 34"W		SCUBA, snorkel, & sightseeing cruises; near reef, not on reef; comm. SCUBA zone.
<b>E</b> 310-yard radius circle	21° 27' 25"N 157° 47' 46.5"W (center)					SCUBA, snorkel, U/W activities, & sightseeing cruises.
<b>F</b> Including Checker Reef	21° 26' 50"N 157° 47' 45"W	21° 26' 23.5"N 157° 47' 25"W	21° 26' 16"N 157° 47' 34"W	21° 26' 20.5"N 157° 47' 59.3"W	21° 26' 28.5"N 157° 48' 09"W	Non-exclusive comm. water sports zone. No activity on Checker Reef.
<b>G</b>	21° 26' 25"N 157° 47' 49"W	21° 26' 22"N 157° 47' 34"W	21° 26' 16.5"N 157° 47' 36"W	21° 26' 19"N 157° 47' 51"W		Non-exclusive comm. & rec. water ski and water sledding. Clockwise, one permittee at time. Rec. thrill craft only.
<b>H</b>	21° 27' 32.5"N 157° 48' 19.5"W	21° 27' 26.5"N 157° 48' 10"W	21° 27' 14.5"N 157° 48' 17"W	21° 27' 20"N 157° 48' 27"W		Non-exclusive comm. & rec. water ski and water sledding zone. No more than 2 comm. water sleds at high speed. Clockwise towing, no mooring. High speed areas designated.
<b>I</b>	21° 27' 41"N 157° 48' 18"W	21° 27' 32"N 157° 48' 02"W	21° 27' 25"N 157° 48' 07"W	21° 27' 34"N 157° 48' 22.5"W		Non-exclusive comm. ocean water sports zone. Comm. operators must keep passengers who are not operating thrill craft out of B & C.

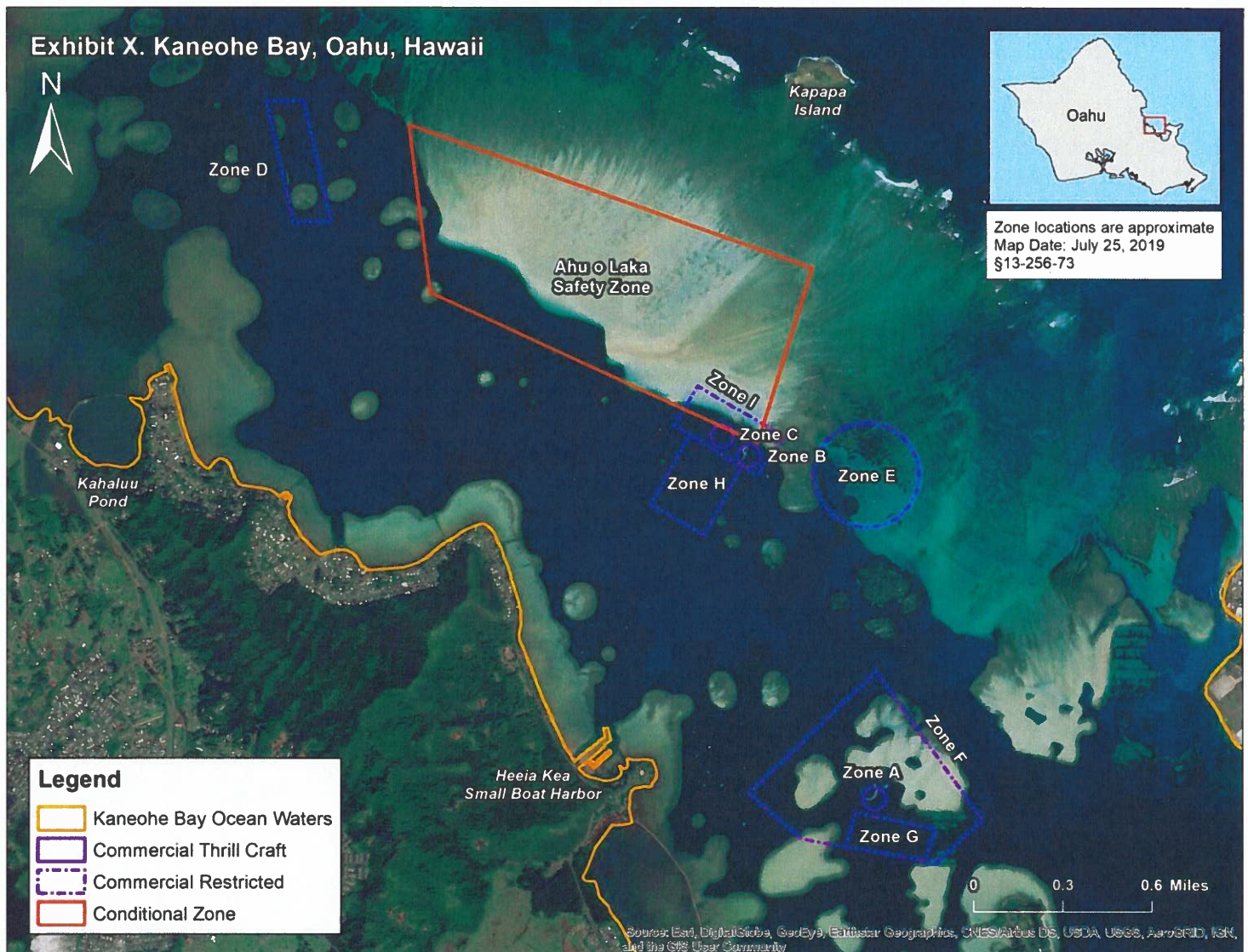
\*Unless indicated, points are connected by straight lines with the final point back to the point of origin.

**Exhibit V. Kaneohe Bay, Oahu, Hawaii, July 25, 2019.**  
 (All boundaries are unchanged.)





**Exhibit X. Kaneohe Bay, Oahu, Hawaii, July 25, 2019.**  
 (All boundaries are unchanged.)



DEPARTMENT OF LAND AND NATURAL RESOURCES

The amendments to section 13-256-73, Hawaii Administrative Rules, on the Summary page dated January 22, 2021, were adopted on January 22, 2021 following a public hearing held on Oahu on December 2, 2020, after public notice was given in the Honolulu Star Advertiser on November 1, 2020.

The amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.

*Suzanne D. Case*

---

SUZANNE D. CASE  
Chairperson  
Board of Land and Natural Resources

*David Y. Ige*

---

DAVID Y. IGE  
Governor  
State of Hawaii

Dated: *June 25, 2021*

---

APPROVED AS TO FORM:

*[Signature]*

---

Deputy Attorney General

---

Filed

21 JUN 28 P2:14

LIEUTENANT GOVERNOR'S  
OFFICE