

State of Hawaii  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Engineering Division  
Honolulu, Hawaii 96813

June 22, 2012

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

**REQUEST APPROVAL OF VARIANCE, PURSUANT TO HAWAII ADMINISTRATIVE  
RULES SECTION 13-190.1-9, TO (1) CHANGE THE DAM AND RESERVOIR ANNUAL  
FEE PAYMENT DEADLINE FOR THE 2012 CALENDAR YEAR AND TO (2)  
PRORATE AND REDUCE THE 2012 ANNUAL FEE TO AN AMOUNT EQUAL TO  
ONE HALF THE AMOUNT STIPULATED IN THE HAWAII ADMINISTRATIVE  
RULES SECTION 13-190.1-52**

The Engineering Division (Division) requests approval for a variance to revise the dam and reservoir annual fee payment deadline from December 31, 2011 to July 31, 2012 for annual fees applied toward the 2012 calendar year. The Division also requests approval to reduce and collect an annual fee equal to one half the amount to be applied for the second half (July 1, 2012 to December 31, 2012) of the 2012 calendar year.

**AUTHORITY:**

HRS Chapter 179D & Hawaii Administrative Rule (HAR) Chapter 190.1

HRS Section 179D-6, "General powers and duties of the board of land and natural resources", Item (b) (8) Require fees to cover a portion of the board's costs in carrying out the administration of dam and reservoir safety;

HAR Section 13-190.1-9 Variiances. The board or department may, upon a showing of good cause, grant a variance from any provision of this chapter, including, without limitation, an extension of time to comply with any such provision.

HAR Section 13-190.1-52 Annual fees.

- (a) An annual fee shall be paid by the owner of the dam, on or before December 31 of each year, for the following calendar year, based upon a fixed rate and height of the dam. The annual fee shall be five hundred dollars per dam, plus one hundred ten dollars per foot of height.
- (b) Any owner who fails to pay any annual fee or any part of any annual fee required to be paid within the time required shall pay a penalty of ten per cent of the annual fee or part of the annual fee, plus interest at the rate of one-half of one per cent per month, or for each fraction of a month, from the date on which the annual fee or the part of the annual fee became due and payable to the department until the date of payment.
- (c) For the purposes of this section, "height of the dam" means the vertical distance, to the nearest foot, from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the department, or from the lowest elevation of the outside

limit of the barrier, as determined by the department, if it is not across a stream channel or watercourse, to the maximum water storage elevation.

BACKGROUND/DISCUSSION:

As authorized under HRS Chapter 179D, the Board of Land and Natural Resources (BLNR) has the authority to require fees to cover a portion of their costs in carrying out the administration of dam and reservoir safety. The BLNR approved the HAR Chapter 13-190.1 on November 22, 2010 which became effective February 20, 2012. HAR Chapter 13-190.1 clarifies the fee amounts and establishes December 31 as the deadline for when these annual fees are to be paid by dam owners for the following calendar year. As the rules became effective on February 20, 2012, dam owners could not be assessed their 2012 calendar year fees by December 31, 2011.

Since 2009, just 3 years after the Kaloko Disaster, the legislature had eliminated approximately \$450,000 in annual (general) funds previously appropriated for the dam safety program. The program is now fully funded by the Department's special funds and must rely on fees to operate. No annual fees have been assessed on dam owners since the Kaloko disaster and the Department is unable to effectively perform the duties and meet the obligations mandated by the law without these fees. In fairness to the needs of the program and dam owners' obligations, the Division believes the recommendation to collect one-half of the annual fees from dam owners is a reasonable request to cover fee expenditures for the remaining portion of the 2012 calendar year. The annual fee payment deadline date of December 31 will resume for the 2013 and future calendar years.

HRS CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

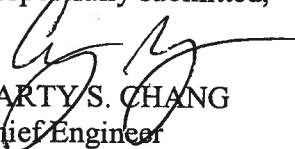
The timing or collection of these fees do not trigger any HRS Chapter 343 actions.

RECOMMENDATION:


That the Board:

1. Approve a variance to revise the dam and reservoir annual fee payment deadline for the 2012 calendar year from December 31, 2011 to July 31, 2012;
2. Approve a variance to reduce and collect an annual fee equal to one half the amount stipulated in HAR 13-190.1-52 to be applied for the second half (July 1, 2012 to December 31, 2012) of the 2012 calendar year.

Respectfully submitted,

  
CARTY S. CHANG  
Chief Engineer

APPROVED FOR SUBMITTAL:

  
WILLIAM J. AILA, JR.  
Chairperson

- Exhibits:
- 1 Hawaii Revised Statutes (HRS) Chapter 179D
  - 2 Hawaii Administrative Rules (HAR) Chapter 13-190.1.