

Department of Health, Clean Water Branch
Response to Public Comments on the Hawaii Administrative Rule Amendment,
Published on July 12, 2013

October 2013

On July 12, 2013, the State of Hawaii (State), Department of Health (DOH), Clean Water Branch (CWB) published a hearing notice for the proposed revisions to Hawaii Administrative Rules (HAR), Chapters 11-54 (Water Quality Standards) and 11-55 (Water Pollution Control) in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Isle newspapers, Docket No. R-1-12. The proposed revisions were available for public review between the date the hearing notice was published, July 12, 2013 and the hearing, August 21, 2013. The Department accepted comments by email, mail, and hand delivery until 4:30 pm on day of the hearing.

DOH received eight (8) sets of comments on the proposed revisions. As a result of comments received, the following were revised:

HAR Chapter 11-55-04(a) has been revised to:

“Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, or substantially altering the quality of any discharges...”

HAR Chapter 11-55-34.02(b)(2) has been revised to:

“Appendix C, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity” for storm water discharges from construction activities which result in the disturbance of five acres or more of total land area or small construction activities which result in the disturbance of one to less than five acres of total land area or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area;”

HAR Section 11-55-34.08(j) has been revised to:

- (j) A notice of intent shall be submitted to the director at least thirty days before the earlier of:
 - (1) The beginning of any discharge that is not covered under Appendix C (except for coverage under Appendix M for a declared pest emergency situation where the notice of intent shall be submitted no later than thirty days after beginning the pesticide discharge);

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- (2) The beginning of any construction activity which is covered under Appendix C, unless coverage is required for an emergency-related construction activity, in which case an NOI shall be submitted no later than 30 calendar days after the start of construction activities;

HAR Section 11-55-34-09(d) has been revised to:

“The director may automatically or by notification, administratively extend a notice of general permit coverage upon receipt of a complete notice of intent for renewal of a notice of general permit coverage before the expiration of the general permit or when the notice of general permit coverage specifies, whichever occurs first. A notice of general permit coverage shall be automatically extended unless the department informs the Permittee otherwise. An administrative extension of an NGPC granted, automatically or by notification, for a project which later is found to be in non-compliance will be automatically terminated and may be required to apply for individual NPDES permit coverage. If administratively extended, the terms and conditions of the expired permit will continue to be effective for projects that submitted NOIs prior to the expiration date. The department intends that projects that do not submit NOIs prior to the expiration date will not be administratively extended.

The permittee who submits a notice of intent for renewal of the notice of general permit coverage shall be treated as an owner or operator applying for permit renewal under section 342D-6(h), HRS.”

HAR Chapter 11-55, Appendix A, Section 34(a) has been revised to:

Legal name(s), street address, contact person's name and position title, and telephone and email address of the owner and operator, except for Appendix C and duly authorized representative, if applicable;

Note: For a construction activity, the operator is usually the general contractor.

HAR Chapter 11-55, Appendix B, Section 4(b)(3) has been revised to:

“...the permittee shall monitor the next representative rainfall event and submit the data to the director of health within sixty calendar days after sample collection;”

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HAR Chapter 11-55, Appendix B, Section 10.a.(2) has been revised to:

“The permittee shall submit monitoring results at least annually and the results shall be postmarked or received by the department no later than sixty calendar days after sample collection.”

HAR Chapter 11-55, Appendix C, Section 1.7 has been added to include the following:

“Infeasible means not technologically possible, or cost prohibitive and not achievable in light of best industry practices.”

HAR Chapter 11-55, Appendix C, the last sentence in Section 5.1.1.2.1.2 has been revised to:

“If any storm water flow will be channelized at the site, the permittee shall design storm water controls to control both peak flowrates and total storm water volume to minimize channel and streambank erosion in the immediate vicinity of discharge points; and”

HAR Chapter 11-55, Appendix C, Section 5.1.1.2.2 has been revised to:

“The permittee shall direct discharges from storm water controls to vegetated areas of the site, including any natural buffers established under section 5.1.2.1., and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible. Use velocity dissipation devices if necessary to minimize soil erosion in order to minimize pollutant discharges when directing storm water to vegetated areas.”

HAR Chapter 11-55, Appendix C, Section 5.1.2.1 has been revised to:

“Note: If the boundary of the disturbance area is within 50 feet of the State water, triggering this requirement, then the installation of the project’s perimeter control may be considered equivalent to the installation of sediment control.”

HAR Chapter 11-55, Appendix C, Section 5.1.2.3.4 has been revised to:

“Where sediment has been tracked-out from the site onto the surface of off-site streets, other paved areas, and sidewalks, the permittee shall remove the deposited sediment by the end of the same work day in which the track-out occurs or by the end of the next work day if track-out occurs during non-working hours.”

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HAR Chapter 11-55, Appendix C, Section 5.2 has been revised to:

“Note: For the purposes of this permit, “exposed portions of the site” means areas of exposed soil that are required to be stabilized. Note that the department does not expect that temporary or permanent stabilization measures to be applied to areas that are intended to be left unvegetated or unstabilized following construction (e.g., dirt access roads, utility pole pads, areas being used for storage of vehicles, equipment, or materials). Otherwise, permanent stabilization is required for disturbed areas.”

HAR, Chapter 11-55, Appendix C, Section 5.2.1.1 has been revised to:

“The permittee shall initiate soil stabilization measures immediately whenever earth-disturbing activities have permanently or temporarily ceased on any portion of the site. In limited circumstances, stabilization may not be required immediately (or, in even more limited circumstances, permanently) if the intended function of a specific area of the site necessitates that it remain disturbed.

Note: The Department can envision only limited cases where a disturbed area would not require stabilization because it should remain disturbed. Permittees must still minimize discharges from disturbed areas.”

HAR Chapter 11-55, Appendix C, Section 5.2.1.1.(d) “#1-3” has been corrected to “a-c.”

HAR Chapter 11-55, Appendix C, Section 5.2.1.3.2 replaced “a sensitive water” with “an impaired water.”

HAR Chapter 11-55, Appendix C, Section 5.2.1.7 has been revised to:

“The permittee shall preserve native topsoil on the site, unless infeasible. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed.”

HAR Chapter 11-55, Appendix C, Section 5.2.1.3.1 has been revised to:

“Deadlines for projects that are affected by circumstances beyond the control of the permittee that delay the initiation and/or completion of vegetative stabilization as required in sections 5.2.1.1. and/or 5.2.1.2. If the permittee is unable to meet the deadlines in sections 5.2.1.1. and/or 5.2.1.2. due to circumstances beyond the permittee’s control (e.g. problems with the supply of seed stock or with the availability of specialized equipment, unsuitability of soil conditions due to excessive precipitation and/or flooding), and the permittee is using vegetative

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cover for temporary or permanent stabilization, the permittee may comply with the following stabilization deadlines instead:"

HAR Chapter 11-55, Appendix C, Section 5.3.3.1.3 has been revised to:

"Use drip pans and absorbents under or around leaky vehicles and equipment;"

HAR Chapter 11-55, Appendix C, Section 5.3.3.3.2(a) has been revised by adding "and materials" into the sentence.

"In storage areas, provide either (1) cover (e.g., plastic sheeting or temporary roofs) to prevent these chemicals and materials from coming into contact with rainwater, or (2) a similarly effective means designed to prevent the discharge of pollutants from these areas; and"

HAR Chapter 11-55, Appendix C, Section 7.2.2 replaced "size of the property" to "size of the project site."

HAR Chapter 11-55, Appendix C, Section 7.2.3 has been revised to be consistent with Sections 1.3 and 1.3.2. to indicate that emergency-related construction activities are declared by the President of the United State or State Governor. Reference to the "director" of health has been removed.

HAR Chapter 11-55, Appendix C, Section 7.2.4 has been revised to:

"The SWPPP must include a list of all other contractors (e.g., sub-contractors) who will be engaged in construction activities at the site, and the areas of the site over which each contractor has control.

Note: The department acknowledges that a list of all other contractors might not be available at the time the SWPPP and NOI are submitted. If that is the case, then the SWPPP must be amended to include the information required in Section 7.2.4 prior to the start of construction activities."

HAR Chapter 11-55, Appendix C, Section 7.2.6.4 has been revised by adding "and features" into the sentence.

"Topography of the site, existing vegetative cover and features (e.g., forest, pasture, pavement, structures), and drainage pattern(s) of storm water onto, over, and from the site property before and after major grading activities;"

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HAR Chapter 11-55, Appendix C, Section 7.2.10.3 has been revised to include the following:

“Descriptions of measures that will minimize the discharge of pollutants via storm water discharges after construction operations have been finished. All projects require post construction BMPs to minimize the discharge of pollutants via storm water discharges after construction operations have been finished. Examples include: open, vegetated swales and natural depressions; structures for storm water retention, detention, or recycle; velocity dissipation devices to be placed at the outfalls of detention structures or along with the length of outfall channels; and other appropriate measures.”

HAR Chapter 11-55, Appendix C, Section 7.2.13.1 has been revised to correct a typo (i.e., replaced “permit” with “permittee”).

HAR Chapter 11-55, Appendix C, Section 7.2.15 has been revised to require the items “if applicable.”

HAR Chapter 11-55, Appendix C, Section 7.2.15.2(d) has been revised to require a list of other permits rather than copies of other permit.

HAR Chapter 11-55, Appendix C, Section 7.2.15.1 Contractor Information has been added to Section 7.2.15 for “Information to be included in the SWPPP prior to the start of construction activities.”

HAR Chapter 11-55, Appendix C, Section 7.4.4 has been revised to:

“All modifications made to the SWPPP consistent with section 7.4. must be certified, signed, and dated by the Certifying Person that meets the requirements in section 15 of appendix A, chapter 11-55 or the duly authorized representative that meets the requirements of 11-55-07(b).”

HAR Chapter 11-55, Appendix C, Section 9.1 has been revised to:

“The permittee shall timely inspect the receiving state waters, storm water runoff and control measures, and best management practices...Except, if the discharge enters an MS4 or separate drainage system, then the permittee may inspect their discharge when it enters a drainage system rather than at the receiving water (excluding an upset event, BMP failure, or rainfall events greater than 0.25 inches).”

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HAR Chapter 11-55, Appendix C, Section 9.1.7.1 has been revised to:

“The permittee must complete an inspection report within 48 hours of completing any site inspection.”

HAR Chapter 11-55, Appendix C, Sections 9.1.7.2 and 10.4.3 has been revised to:

“Each inspection report must be certified and signed in accordance with section 15 of appendix A, chapter 11-55 or the duly authorized representative that meets the requirements of 11-55-07(b).”

HAR Chapter 11-55, Appendix C, Section 13.1 has been revised to:

“The owner or its duly authorized representative shall prepare a monthly compliance report, which shall include but is not limited to information as required in this general permit and NGPC, any incidences of non-compliance and corrective actions. The monthly compliance report shall be kept on-site and available by the end of the next business day when requested by the department. Upon the department receiving EPA’s Cross-Media Electronic Reporting Regulation (CROMERR), the monthly compliance reports shall be submitted through the e-Permitting Portal. Any comments provided by the department shall be answered in the time specified and to the satisfaction of the department. If the activity is in compliance and none of the information on file with the department requires updating, or there were no incidences of non-compliance, preparation of the monthly compliance information is still required which states that there were “no changes, updates, or any incidences of non-compliance to report.

Note: EPA's Cross-Media Electronic Reporting Regulation (CROMERR) sets performance-based, technology-neutral standards for systems that states, tribes, and local governments use to receive electronic reports from facilities they regulate under EPA-authorized programs and requires program modifications or revisions to incorporate electronic reporting. CROMERR also addresses electronic reporting directly to EPA.”

HAR Chapter 11-55, Appendix C, Section 13.2 has been revised to:

“When all construction activities have ceased, the owner shall submit to the department a completed Notice of Cessation form. The department shall receive this information within 7 calendar days after the end of the month.”

HAR Chapter 11-55, Appendix F, Table 34.4 has been corrected for the typographical error in the unit of measure for Total Residual Chlorine to “µg/l.”

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HAR Chapter 11-55, Appendices D – L, Section 2 has been revised to clarify that a permit, license, or written equivalent written approval from the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s) is not required when the permittee is the owner of the drainage system.

DOH acknowledges and appreciates all of the comments that were received. The public hearing comments and DOH responses to these comments are as follows:
Comment Set 1 – Ms. Lisa Woods Munger and Ms. Lisa A. Bail, Goodsill Anderson Quinn & Stifel

Comment 1:

We write on behalf of [Chevron U.S.A Inc., Maui Ocean Center, Hawaiian Electric Company and the Association of Unit Owners of Yacht Harbor Tower] with comments on the proposed changes to Hawaii Administrative Rules, Title 11, Chapter 55, entitled "Water Pollution Control." Our comments are directed to the proposed change to HAR § 11-55-15(d):

(d) [The director may issue a permit to an existing facility which does not or cannot presently comply with subsections (b) and (c) only if the permit includes a schedule of compliance with specific deadlines for bringing the facility into compliance with subsections (b) and (c). Schedule of compliance shall comply with section 11-55-21.] In permits where more stringent effluent limitations are included, compliance schedules may be provided in the permits if the requirements of 11-55-21 and 40 CFR 122.2 and 122.47 are met.

We note that this is a significant and substantive change to Chapter 11-55. Currently, where the Department seeks to impose more stringent effluent limitations on an existing facility, the permit can be granted "only if the permit includes a schedule of compliance." (Emphasis added.) The current rule thereby allows the existing facility time to come into compliance. In contrast, the proposed amendment provides that where the Department seeks to impose more stringent effluent limitations on existing facilities, the Department "schedules of compliance may be provided." (Emphasis added.) The Department would no longer be required to afford existing facilities time to come into compliance.

Without a schedule of compliance, existing facilities would be placed in immediate noncompliance with the rules upon permit issuance. A facility's only two options to avoid non-compliance may be: (1) to shut down its facility, or (2) to

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continue operating, but to face the potential for enforcement action even though the facility was not provided a reasonable opportunity to comply. Even if the agency decides to exercise enforcement discretion, it cannot control attempts by opportunistic third parties to bring enforcement actions seeking injunctions and/or significant financial penalties under the Clean Water Act's citizen suit provisions even though the facility is diligently working towards achieving the new lower levels. This is fundamentally unfair to the existing facility.

Beyond fairness, the proposed amendment is inconsistent with its enabling statute, Hawaii Revised Statutes Chapter 342D. Section 342D-6, Permits, contemplates that permits will be required for discharges and provides 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." (Emphasis added.) The purpose of this rule is clearly to allow facilities to be in compliance with applicable rules and standards, not to put them in immediate noncompliance.

For this reason, the proposed HAR § 11-55-15(d) is inconsistent with the current section that follows, HAR § 11-55-15(e), which provides:

(e) In acting upon an NPDES permit application for an individual permit the director shall deny the application unless the information submitted shows that the new or existing treatment works or waste outlet described in the NPDES permit application can, conditionally or otherwise, meet the conditions of subsection (b) or (c). (Emphasis added.)

Again, without a schedule of compliance, the permit cannot be granted because the facility cannot show that it meets the conditions of the rule.

To the extent the Department believes that the law needs to be changed to comport with federal requirements, such a change could be achieved with a minor change to the language as follows:

(d) The director may issue a permit to an existing facility which does not or cannot presently comply with subsections (b) and (c) only if the permit includes a schedule of compliance with specific deadlines for bringing the facility into compliance with subsections (b) and (c). Schedule of compliance shall comply with section 11-55-21[.] and 40 CFR 122.2 and 122.47.

We urge the Department to reconsider its proposed amendment.

Response to Comment 1:

It is true that DOH would no longer be required to afford existing facilities time to come into compliance. However, DOH may still issue a NPDES permit with a schedule of compliance if it meets the requirements in 40 CFR 122.47. DOH may not issue a NPDES permit with a schedule of compliance if the permit limit is based on existing Water Quality Standards. Existing facilities should already be complying with the State Water Quality Standards (WQS) in HAR 11-54 per Hawaii Revised Statutes (HRS), Chapter 342D whether it has an NPDES permit or not.

DOH disagrees with the commenter's statement that:

"Without a schedule of compliance, existing facilities would be placed in immediate noncompliance with the rules upon permit issuance."

If the schedule of compliance is for an already existing WQS (HAR 11-54), the existing facility is already in non-compliance.

The proposed change to HAR 11-55-15(d) is consistent with federal regulations. 40 CFR 122.2 and 122.47 does not require a renewal NPDES permit to contain compliance schedules for an existing facility that does not or cannot presently comply with new effluent limitations in the renewal NPDES permit. 40 CFR 122.47(a)(2) requires the first NPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. 40 CFR 122.47(a)(2) also requires for recommencing dischargers a schedule of compliance, only when necessary, to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

DOH can no longer renew a NPDES permit with a schedule of compliance if the permit effluent limitation already existed in the previous NPDES permit because this would be less stringent than what is allowed by EPA. At a minimum, DOH cannot be any less stringent than EPA. Although Hawaii has been delegated by the EPA to administer the NPDES permit program, the EPA has direct oversight over our program and may object to the issuance of any NPDES permit.

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If DOH allows schedule of compliances to be issued for every renewal NPDES permit, all existing facilities will be in perpetual non-compliance and final compliance will never be achieved.

HRS 342D-6(b) states: “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.” The purpose of this rule is for the DOH to obtain reasonable assurance from the facility showing they will comply with applicable rules and standards. It is the Permittee’s responsibility to comply with HRS 342D, HAR 11-54, HAR 11-55, and the NPDES permit.

For example, if an organization requested NPDES permit coverage to discharge an industrial wastewater, DOH will require this organization to provide information in the NPDES application that shows they have a treatment facility for their industrial wastewater. The design, implementation, operation, and maintenance of this industrial wastewater treatment are the responsibility of the organization.

The current HAR 11-55-15(e) states: “In acting upon an NPDES permit application for an individual permit the director shall deny the application unless the information submitted shows that the new or existing treatment works or waste outlet described in the NPDES permit application can, conditionally or otherwise, meet the conditions of subsection (b) or (c).” The proposed revision to HAR 11-55-15(d) is consistent with the current HAR 11-55-15(e). With the proposed revision, DOH would be in compliance with HAR 11-55-15(b) and HAR 11-55-15(c) by requiring a compliance schedule in the renewal NPDES permit, exercising enforcement, or denying the request for a renewal NPDES permit.

No changes to the proposed rules have been made as a result of this comment.

Comment Set 2 – City and County of Honolulu, Department of Environmental Services, Division of Environmental Quality, Water Quality Branch

Comment 2.a:

The Rationale for Proposed Revisions for Appendix C is misleading. It fails to mention that it is a complete re-write of the 2007 edition of Appendix C. Additionally, Appendix C does not follow the format of the other appendices, nor were the changes made in the Ramseyer format used for rule changes. This

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made it much more difficult to assess differences between the existing and proposed rule.

Response to Comment 2.a:

DOH apologizes for not mentioning that the proposed revisions for Appendix C were a complete re-write of the 2007 edition of Appendix C. However, the July 12, 2013 public notice of the public hearing did indicate that substantive modifications were being proposed to HAR 11-55, Appendix C.

Appendix C did not follow the Ramseyer format as explained on the last page of the proposed HAR 11-55 (above the Director's signature line) which indicated that "New Material, except for Appendix C is underscored." DOH did not follow the Ramseyer format for Appendix C changes because the DOH was doing a total re-write of Appendix C, including changing basic formatting throughout, which made Ramseyer format impractical.

No changes to the proposed rules have been made as a result of this comment.

Comment 2.b:

The Rationale mentions that changes were made to be consistent with the 2012 EPA General Permit for Construction Activity, but does not mention that Appendix C is copied almost verbatim from the EPA General Permit.

Response to Comment 2.b:

It is correct that the new Appendix C closely follows the EPA General Permit. No changes to the proposed rules have been made as a result of this comment.

Comment 2.c:

It is difficult to assess the cost impact and potential delays that the rules will have on construction activity in Hawaii. Much of the material is prescriptive and reads like a construction BMP manual (e.g. "Position portable toilets so that they are secure and will not be tipped or knocked over").

Response to Comment 2.c:

Thank you for your comment.

No changes to the proposed rules have been made as a result of this comment.

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Comment 2.d:

Section 2.1.2. We applaud this deviation from the EPA General Permit. We concur that construction activities using polymers, flocculants, or other treatment chemicals should be covered by an individual NPDES permit, and not by the General Permit.

Response to Comment 2.d

Thank you for your comment.

Comment 2.e:

Section 7.4.4. We request that the person authorized to certify modifications be more clearly identified, instead of the proposed language that states "authorized by a person identified in section 15 of appendix A, chapter 11-55." Section 15 of appendix A of chapter 11-55 refers to 40 CFR 122.22 and 122.41 (k). We believe that the contractor should be ultimately be responsible for changes to the SWPPP with respect to BMP changes (e.g., scheduling, location of entrance/egress, replacing silt fences with compost socks, etc.). This section could, if the owner were the applicant make all changes the responsibility of the owner. We do not believe that is the intent.

Response to Comment 2.e:

The authorized representative acts on behalf of the owner. The owner is ultimately responsible for compliance with the Appendix C general permit.

Section 7.4.4 has been revised to:

"All modifications made to the SWPPP consistent with section 7.4. must be certified, signed, and dated by the Certifying Person that meets the requirements in section 15 of appendix A, chapter 11-55 or the duly authorized representative that meets the requirements of 11-55-07(b)."

Comment 2.f:

Section 10. Corrective Actions. The narrative should be deleted and the text start with 10.1 "Corrective actions defined". This would make it consistent with the EPA general permit.

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Response to Comment 2.f:

The narrative is from the current Appendix C. The purpose is to prevent any discharges of storm water associated with construction activities from violating the basic water quality criteria. The EPA CGP does not have this narrative since administration of the State Water Quality Standards is the responsibility of the State.

No changes to the proposed rules have been made as a result of this comment.

Comment Set 3 – State of Hawaii, Department of Transportation

Comment 3.a:

Chapter 11-55, NPDES General Permit Terms

Comment- We request that the General Permit terms for Appendix B, Appendix F, Appendix G, and Appendix K be revised to 4 or 5 years.

Rationale- We recognize that staggering of the various General Permit terms would assist DOH in processing of the permit renewals at different times, however, the truncated duration of three years may not be enough time to accomplish targets such as compliance schedules especially since draft changes to 11-55-15(d) may require compliance schedules be incorporated in the permits. If the "first round" of appendices were to expire within four years of the effective date (2013 to 2017) which would then coincide with Appendix M (adopted in 2012 for five years to 2017), and the "second round" of appendices were to expire within five years of the effective date (2013 to 2018), it would provide DOH the ability to stagger the permits, while allowing ample time for any required permit issues to be consistently implemented.

Response to Comment 3.a:

The compliance schedule provisions in HAR 11-55 are for NPDES individual permits, not for NPDES General Permits. If a person/organization wants to be covered under an NPDES General Permit, they need to be able to comply with every condition of that NPDES General Permit.

Please see Comment 8.b and DOH's response to Comment 8.b.

No changes to the proposed rules have been made as a result of this comment.

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Comment 3.b:

Chapter 11-55-34.05(f)

Comment- We request clarification or provide examples of construction activities which may commence prior to obtaining general permit coverage, and conditions to which a party may restore a site to preconstruction conditions so it may re-qualify for coverage under the general permit instead of a individual NPDES permit.

Response to Comment 3.b:

None. Construction activities may not commence prior to obtaining general permit coverage.

One can re-qualify for coverage under the general permit by restoring a site to preconstruction conditions, but such restoration requires at a minimum, removing all installed structures, grading the site back to existing elevations (comparing before and after topographic maps), and stabilizing the soil back to original conditions. The site shall be exactly as it was before the activity occurred.

No changes to the proposed rules have been made as a result of this comment.

Comment 3.c:

Chapter 11-55-34.08(j)(1)

Comment- We request a definition of "emergency related construction activity" in section 11-55-34 General permit definitions.

Response to Comment 3.c:

A definition is not appropriate here. HAR 11-55-34.08(J)(2) refers to HAR 11-55, Appendix C. Emergency related construction activities are explained in HAR 11-55, Appendix C, Section 1.3.

Also refer to Comment 8.d and the correction made in the response.

No changes to the proposed rules have been made as a result of this comment.

Comment 3.d:

Chapter 11-55-34.09(d)

Comment: We request a provision in the regulation instead of an automatic termination of an administratively extended NGPC, the general permit holder may have an opportunity to show immediate correction, or provide evidence the

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noncompliance was unanticipated and modifications to current programs will be implemented to avoid issue occurring again.

Response to Comment 3.d:

The proposed automatic termination language is required to ensure that Permittees follow all provisions of the general permit. If DOH had to review showings of correction or no anticipation of violation, it would be inconsistent with the streamlining intent of general permits and automatic coverage. For further explanation, please refer to the Response to Comment 8.e.

No changes to the proposed rules have been made as a result of this comment.

Comment 3.e:

Chapter 11-55-34.11

Comment- Chapter 11-55-34.11 was revised to be consistent with 40 CFR 122.28 where General Permits may only be revoked and/or terminated. Please clarify what changes to an existing Notice of General Permit Coverage will require submittal of a new NOI and reissuance of the NGPC.

Response to Comment 3.e:

Any changes to the NOI will require submittal of a new NOI and issuance of a new NGPC. The DOH is in the process of revising the NOI to simplify the filing and limit it to basic information, so the need for changes should be greatly reduced.

Note: The NOI no longer requires the general contractor information. Refer to Appendix A, Section 34 and Appendix C Section 7.2.15.

No changes to the proposed rules have been made as a result of this comment.

Comment 3.f:

Chapter 11-55-40 (l)(A)(i)

Comment- HDOT understands the need for field citations to quickly and efficiently settle violations of Chapter 342, HRS, however we are curious as to how the DOH will determine easily verifiable exceedance of limitations established by NPDES permit in the field.

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Response to Comment 3.f:

HAR 11-55-40 defines the field citation as “an offer to settle an administrative case against a specific violation on a specific day.” The field citation is issued by personal service or certified mail. It is not a citation written up in the field.

DOH may utilize the Discharge Monitoring Reports, laboratory analysis reports, and other tools to determine NPDES permit effluent limit exceedances.

No changes to the proposed rules have been made as a result of this comment.

Comment 3.g:

Chapter 11-55, Appendix B, Section 10.a.(2), Page 55-B-25

10. Reporting Requirements

(a) Reporting of Monitoring Results

(2) The permittee shall submit monitoring results at least annually and the results shall be postmarked or received by the department no later than [sixty days after the end of each monitoring year] thirty calendar days after sample collection. The first monitoring year shall start on January 1st of the year of the issuance date of the notice of general permit coverage or other date specified by the director in written correspondence to the permittee and end on December 31st. The subsequent monitoring years shall be calendar years.

Comment- We request to revise this requirement to:

"(2) The permittee shall submit monitoring results at least annually and the results shall be postmarked or received by the department no later than [sixty days after the end of each monitoring year] forty-five calendar days after sample collection. The first monitoring year shall start on January 1st of the year of the issuance date of the notice of general permit coverage or other date specified by the director in written correspondence to the permittee and end on December 31st. The subsequent monitoring years shall be calendar years."

Rationale- We request DOH to consider the time needed for laboratory analysis of the samples and therefore, increase the timeframe for submission of monitoring results to 45 days after sample collection.

Response to Comment 3.g:

DOH agrees. Based on other comments received during the comment period, the submission timeframe has been revised to 60 calendar days after sample collection.

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Comment 3.h:

Chapter 11-55, Appendix B, Section 10.(b).2, Page 55-B-26

Comment: In all cases of required monitoring during a storm event, it will be assumed manual sampling will not occur under unsafe conditions, or after normal working hours.

Response to Comment 3.h:

Yes. The assumption is correct.

No changes to the proposed rules have been made as a result of this comment.

Comment 3.i:

Chapter 11-55, Appendix C, Section 2.1.5. , Page 55-C-4

2. Limitations on Coverage under this General Permit

2.1 This general permit does not cover the following:

2.1.5. Storm water discharges from construction approved under a CWA Section 404 permit or;

Comment- Is a project with an Army Corps of Engineers Section 404 Permit not eligible for coverage under the NPDES General Permit?

Response to Comment 3.i:

The activity covered under a Section 404 permit is not eligible for NPDES general permit coverage. Portions of the project not covered under a Section 404 permit may seek NPDES general permit coverage. This is consistent with 40 CFR 122.3(b).

No changes to the proposed rules have been made as a result of this comment.

Comment 3.j:

Chapter 11-55, Appendix C, Section 5, Page 55-C-7

5. Effluent Limitation Applicable to All Discharges from Construction Sites

The permittee is required to comply with the following effluent limitations in this section for discharges from the site and/or from construction support activities.

Comment -In review of referenced 11-54-4, it appears that no numerical limits are assigned to construction storm water runoff.

Response to Comment 3.j:

Yes. Currently, HAR 11-54-4 only contains narrative effluent limitations.

No changes to the proposed rules have been made as a result of this comment.

Comment 3.k:

Chapter 11-55, Appendix C, Section 5.1.1.4.2.1., Page 55-C-11

5.1.1 General requirements applicable to all construction sites

5.1.1.4. Maintenance Requirements

5.1.1.4.2.1.

Initiate work to fix the problem immediately after discovering the problem, and complete such work by the close of the next work day, if the problem does not require significant repair or replacement, or if the problem can be corrected through routine maintenance.

Comment - We request revising this requirement to the following:

"If discharge from the site is imminent, initiate work to fix the problem immediately after discovering the problem, and complete such work by the close of the next work day, if the problem does not require significant repair or replacement, or if the problem can be corrected through routine maintenance.

If discharge from the site is not imminent and the problem does not require significant repair or replacement, or can be corrected through routine maintenance, initiate work to fix the problem after discovering the problem, and complete such work within five work days,."

Rationale- HDOT construction personnel would like to continue to use their discretion in determining whether a BMP needs to be fixed immediately after discovering a problem, or if the repair is not required immediately since the BMP problem identified is minor and the BMP is still working effectively. HDOT conducts weekly BMP inspections and rainfall event BMP inspections and oftentimes identifies a wide range of concerns with BMPs, some of which do not have to be addressed by the close of the next work day. If a discharge is imminent, or not immediately repairing a BMP has the potential for a pollutant discharge to leave the site, HDOT will repair the BMP immediately.

When a routine repair is needed and discharge from the site is not imminent, depending on the situation, the completion of the repair may take a few days. For example, a contractor may not be actively working on a site but the BMPs are still in-place. HDOT would need to coordinate with the contractor, the contractor may need coordinate with his subcontractor, then mobilize equipment to the construction site and then repair the BMPs. The required coordination, mobilization and repair could possibly take a few days.

Response to Comment 3.k:

DOH disagrees that any change is necessary. Because storm events are variable, problems that do not involve significant repair should be fixed as soon as possible and no later than close of business of the next business day as provided in the general permit. Please note that Section 5.1.1.4.2.2. allows for 7 day timeframe for significant repairs among for new erosion or sediment control.

No changes were made to the proposed rules as a result of this comment.

Comment 3.l:

Chapter 11-55, Appendix C, Section 5.1.1.4.2.2., Page 55-C-11

5.1.1 General requirements applicable to all construction sites

5.1.1.4. Maintenance Requirements

5.1.1.4.2.2.

When installation of a new erosion or sediment control or a significant repair is needed, the permittee shall install the new or modified control and make it operational, or complete the repair, by no later than 7 calendar days from the time of discovery where feasible. If it is infeasible to complete the installation or repair within 7 calendar days, the permittee shall document in its records why it is infeasible to complete the installation or repair within the 7-day timeframe and document the schedule for installing the storm water control(s) and making it operational as soon as practicable after the 7-day timeframe. Where these actions result in changes to any of the storm water controls or procedures documented in the SWPPP, the permittee shall modify the SWPPP accordingly within 7 calendar days of completing this work.

Comment- We request this requirement be revised to:

"When installation of a new erosion or sediment control or when a significant repair is needed or when a routine repair is needed and the extent of the repair is extensive and discharge from the site is not imminent, the permittee shall install the new or modified control and make it operational, or complete the repair, by no later than 7 calendar days from the time of discovery where feasible. If it is infeasible to complete the installation or repair within 7 calendar days, the permittee shall document in its records why it is infeasible to complete the installation or repair within the 7-day timeframe and document the schedule for installing the storm water control(s) and making it operational as soon as practicable after the 7-day timeframe. Where these actions result in changes to any of the storm water controls or procedures documented in the SWPPP, the permittee shall modify the SWPPP accordingly within 7 calendar days of completing this work."

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Rationale- HDOT conducts weekly BMP inspections and rainfall event BMP inspections. When a routine repair is needed and discharge from the site is not imminent, depending on the situation, the completion of the repair may take a few days if the extent of the repair is extensive. For example, Highways projects are generally linear in nature and routine maintenance of a silt fence 3 miles long can be initiated immediately, but may take more than 5 work days to complete depending on the repair required.

Response to Comment 3.l:

The proposed Section 5.1.1.4.2.2 is for new erosion and sediment control installation or for significant repairs. It is important that BMPs be repaired quickly after discovery that significant repairs are needed. This section already allows the repair within a 7-day timeframe, which DOH believes is reasonable.

No changes to the proposed rules have been made as a result of this comment.

Comment 3.m:

Chapter 11-55, Appendix C, Section 5.1.2.1, Page 55-C-12

5.1.2. Erosion and sediment control requirements applicable to all sites.

5.1.2.1.

Provide natural buffers and sediment control. (These requirements only apply when a state water is located within 50 feet of the project's earth disturbances).

Comment- We request a definition of natural buffer be included at the beginning of this section. The Note in Section 5.1.2.1.1.3. states "Any preexisting structures or impervious surfaces are allowed in the natural buffer provided the permittee retain and protect from disturbance the natural buffer area outside the preexisting disturbance." This information that a preexisting structure or impervious surface are allowed within a natural buffer would be helpful to know when the concept of a natural buffer is introduced.

Rationale- A natural buffer may be envisioned to consist only of natural vegetation with no structures or hardened surfaces.

Response to Comment 3.m:

An explanation of natural buffer (with discussion on preexisting structures and impervious surfaces) was already provided in the Section 5.1.2.1.1.3.

No changes to the proposed rules have been made as a result of this comment.

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Comment 3.n:

Chapter 11-55, Appendix C, Section 5.1.2.1, Page 55-C-12

5.1.2. Erosion and sediment control requirements applicable to all sites.

5.1.2.1.

Provide natural buffers and sediment control. (These requirements only apply when a state water is located within 50 feet of the project's earth disturbances).

Note: Written documentation allowing use is required from the owner of areas that are not owned by the permittee or that are otherwise outside the operational control to be considered areas of undisturbed natural buffer for purposes of compliance with this section.

Comment- Please explain the necessity for obtaining written documentation allowing use of undisturbed natural buffer from owner.

Response to Comment 3.n:

The undisturbed natural buffer is a BMP. If the Permittee does not own the undisturbed natural buffer land area, they need to obtain written approval from the owner because the Permittee will be using another person's property as a BMP. The owner has a right to know if his/her property is being used for sediment and erosion control.

No changes to the proposed rules have been made as a result of this comment.

Comment 3.o:

Chapter 11-55, Appendix C, Section 5.1.2.1.1.1., Page 55-C-13

5.1.2. Erosion and sediment control requirements applicable to all sites.

5.1.2.1.

Provide natural buffers and sediment control. (These requirements only apply when a state water is located within 50 feet of the project's earth disturbances) ...

5.1.2.1.1 Compliance Alternatives.

The permittee can comply with this requirement in one of the following ways:

5.1.2.1.1.1

Provide and maintain a 50-foot undisturbed natural buffer and sediment control;
or

Note: If the earth disturbances are located 50 feet or further from a state water and have installed sediment control, then the permittee has complied with this alternative.

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Comment- Note in 5.1.2.1.1.1, seems to contradict with 5.1.2.1 which states "These requirements only apply when a state water is located within 50 feet of the project's earth disturbances." If a natural buffer and sediment control is required only when a State Water is located 50 feet or less from the project's earth disturbances, then Section 5.1.2.1.1.1 applies, but the Note does not apply.

Response to Comment 3.o:

DOH disagrees that the note contradicts the section. The note deals with the situation where the disturbance is 50 feet or greater, whereas the section deals with disturbances within 50 feet.

No changes to the proposed rules have been made as a result of this comment.

Comment 3.p:

Chapter 11-55, Appendix C, Section 5.1.2.1.1. Page 55-C-14

5.1.2. Erosion and sediment control requirements applicable to all sites.

5.1.2.1.

Provide natural buffers and sediment control. (These requirements only apply when a state water is located within 50 feet of the project's earth disturbances).

5.1.2.1.1. Compliance Alternatives.

The permittee can comply with this requirement in one of the following ways:.....

The compliance alternative selected above must be maintained throughout the duration of permit coverage, except that the permittee may select a different compliance alternative during the period of permit coverage, in which case the permittee shall modify the SWPPP to reflect this change.

Comment-We request revising this requirement to:

"The compliance alternative selected above must be maintained until construction in that portion of the project is complete, the area is restored and stabilized, and no potential of pollutant runoff exists, except that the permittee may select a different compliance alternative during the period of permit coverage, in which case the permittee shall modify the SWPPP to reflect this change."

Rationale- This suggested revision would address the situation where construction of a portion of a project is complete and stabilized, and the construction continues on in other areas. It is not uncommon on HDOT projects for a project's permit to remain open for several years to accommodate completion of construction for the entire project including restoration of all disturbed project areas.

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Response to Comment 3.p:

DOH disagrees with the suggested revision. All portions of the project covered under an NGPC must be maintained throughout permit coverage. For projects that remain open for several years, where the project may be completed in portions, separate NOIs should be submitted, thereby allowing Notice of Cessations to be submitted for each portion.

No change required.

Comment 3.q:

Chapter 11-55, Appendix C, Section 5.1.2.1.2.3., Page 55-C-14
5.1.2. Erosion and sediment control requirements applicable to all sites.

5.1.2.1.

Provide natural buffers and sediment control. (These requirements only apply when a state water is located within 50 feet of the project's earth disturbances) ...

5.1.2.1.2.3.

Delineate, and clearly mark off with flags, tape, or other similar marking device all natural buffer areas.

Comment- We request this requirement be revised to:

"Delineate, and clearly mark off, with flags, tape, or other similar marking device all natural buffer areas, where feasible."

Rationale- HDOT can only commit to marking off natural buffer areas within the Highways rights-of-way, or with approval of the landowner.

Response to Comment 3.q:

DOH disagrees that a change is needed. DOT's delineation is on its property, not on a neighbor's land.

No changes were made to the proposed rules as a result of this comment.

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Comment 3.r:

18. Chapter 11-55, Appendix C, Section 5.1.2.3.4., Page 55-C-17

5.1.2. Erosion and sediment control requirements applicable to all sites.

5.1.2.3 Minimize sediment track-out

5.1.2.3.4.

Where sediment has been tracked-out from the site onto the surface of off-site streets, other paved areas, and sidewalks, the permittee shall remove the deposited sediment by the end of the same work day in which the track-out occurs or by the end of the next work day if track-out occurs on a non-work day.

Comment - We request this requirement be revised to:

"Where sediment has been tracked-out from the site onto the surface of off-site streets, other paved areas, and sidewalks, the permittee shall remove the deposited sediment within one work day of when the track-out is discovered or by the end of the following work day if track-out is discovered on a non-work day."

Rationale- The track-out may not be discovered on the day it occurs since track-out can be caused by vehicles unrelated to the construction project activities. HDOT Highways construction sites are linear, are located within the highway, or immediately adjacent to the highway. Therefore, it is not always possible to prevent the public from traversing a portion of the site during non-work hours. There have been instances where the public drives over biosocks and turns around in areas that are part of the active construction site, resulting in track-out of sediment onto the adjacent highway.

Response to Comment 3.r:

Section 5.1.2.3.4. has been revised to replace "on a non-work day" to "during non-working hours":

"Where sediment has been tracked-out from the site onto the surface of off-site streets, other paved areas, and sidewalks, the permittee shall remove the deposited sediment by the end of the same work day in which the track-out occurs or by the end of the next work day if track-out occurs during non-working hours."

Comment 3.s:

19. Chapter 11-55, Appendix C 5.1.2.7, Page 55-C-20

5.1.2. Erosion and sediment control requirements applicable to all sites.

5.1.2.7 Preserve topsoil

The permittee shall preserve native topsoil on the site, unless infeasible.

Comment- We request this requirement be revised to:

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"The permittee shall preserve native topsoil on the site, unless infeasible or unless the design specifies otherwise."

Rationale- HDOT Highways design criteria and project plans and specifications will designate when topsoil will be preserved.

Response to Comment 3.s:

Section 5.1.2.7 already contains a note stating: "Some projects may be designed to be highly impervious after construction, and therefore little or no vegetation is intended to remain. In these cases, preserving topsoil at the site would not be feasible."

No changes required.

Comment 3.t:

20. Chapter 11-55, Appendix C, Section 5.1.2.9.2., Page 55-C-21

5.1.2. Erosion and sediment control requirements applicable to all sites.

5.1.2.9. Protect storm drain inlets.

5.1.2.9.2. Maintenance requirements.

Clean, or remove and replace, the protection measures as sediment accumulates, the filter becomes clogged, and/or performance is compromised. Where there is evidence of sediment accumulation adjacent to the inlet protection measure, the permittee shall remove the deposited sediment by the end of the same work day in which it is found or by the end of the following work day if removal by the same work day is not feasible.

Comment- We request this requirement be revised to:

"Clean, or remove and replace, the protection measures as sediment accumulates, the filter becomes clogged, and/or performance is compromised. Where there is evidence of sediment accumulation adjacent to the inlet protection measure and discharge of sediment into the inlet is imminent, the permittee shall remove the deposited sediment by the end of the same work day in which it is found or by the end of the following work day if removal by the same work day is not feasible. Where there is evidence of sediment accumulation adjacent to the inlet protection measure and discharge of the sediment into the inlet is not imminent, the permittee shall remove the deposited sediment through routine maintenance or as designated by the manufacturers recommended maintenance schedule."

Rationale- HDOT would like to continue to have the discretion in determining when sediment at storm drain inlets requires removal based on the sediment accumulation rates and the manufacturers recommendations regarding required maintenance.

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Response to Comment 3.t:

DOH disagrees with adding the word “imminent” to when deposited sediment shall be removed as the intensity and frequency of storm events are highly variable, so it is not always possible to tell when a discharge is imminent. Also, DOH disagrees that sediment removal shall only occur when required by routine maintenance or as designated by the manufacturer as sediment removal may be required prior to routine maintenance and not all storm drain protection devices are proprietary.

No changes required.

Comment 3.u:

21. Chapter 11.55, Appendix C, Section 5.1.3.2.1.1., Page 55-C-22

5.1.3.2. Sediment Basins.

If installing a sediment basin, the permittee shall comply with the following:

5.1.3.2.1. Design requirements.

5.1.3.2.1.1.

Provide storage for either (1) the calculated volume of runoff from a minimum 2-year, 24-hour storm, or (2) 3,600 cubic feet per acre drained;

Comment-We request this Section be revised to delete the specific design requirements stipulated in Section 5.1.3.2.1.1.

Rationale- This section includes design requirements for the sediment basin that are not consistent with the requirements detailed in the City and County of Honolulu Storm Water Best Management Practice Manual (November 2011) and State Highways Division Construction Best Management Practices Field Manual (January 2008). In order to avoid confusion as to what design criteria to use, we request that this section be deleted.

Response to Comment 3.u:

The design requirements are from the EPA's CGP. DOH's requirements must be at least as stringent as the EPA.

No change required.

Comment 3.v:

22. Chapter 11-55, Appendix C, Section 5.1.3.3. , Page 55-C-23

5.1.3.3. Dewatering practices

Comment- If a dewatering permit has been obtained (under Chapter 11-55, Appendix G) does this prohibition still apply?

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Response to Comment 3.v:

The prohibition is specific to the Appendix C NPDES general permit. The purpose of the prohibition is to inform everyone that coverage under the Appendix C NPDES general permit does not authorize you to discharge dewatering effluent to state waters. Discharge of dewatering effluent to state waters can be authorized under the Appendix G NPDES general permit or an Individual NPDES permit.

No changes to the proposed rules have been made as a result of this comment.

Comment 3.w:

23. Chapter 11-55, Appendix C, Section 5.2.1.3.1., Page 55-C-26

5.2 Stabilization Requirements

5.2.3 Exceptions to the deadlines for initiating and completing stabilization.

5.2.1.3.1.

Deadlines for projects that are affected by circumstances beyond the control of the permittee that delay the initiation and/or completion of vegetative stabilization as required in sections 5.2.1.1. and/or 5.2.1.2. If the permittee is unable to meet the deadlines in sections 5.2.1.1. and/or 5.2.1.2. due to circumstances beyond the permittee's control, and the permittee is using vegetative cover for temporary or permanent stabilization, the permittee may comply with the following stabilization deadlines instead:

Comment- We request that a similar section be added regarding exceptions to the deadlines for initiating and completing stabilization of non-vegetative stabilization.

Rationale- There may be similar circumstances encountered that are beyond the control of the permittee that delay the initiation and/or completion of non-vegetative stabilization.

Response to Comment 3.w:

The exceptions to the deadlines for initiating and completing stabilization are only meant for vegetative stabilization. The language stating "beyond the permittee's control" in this section was intended to mean problems with the supply of seed stock or with the availability of specialized equipment, unsuitability of soil conditions due to excessive precipitation and/or flooding. This intent is also specified in the EPA's CGP and CGP fact sheet. Installation and completion of vegetative stabilization is more susceptible to adverse weather conditions than non-vegetative controls.

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Section 5.2.1.3.1 was revised to include examples of what is meant by “beyond the permittee’s control” in this section.

Section 5.2.1.3.1 was revised to:

“Deadlines for projects that are affected by circumstances beyond the control of the permittee that delay the initiation and/or completion of vegetative stabilization as required in sections 5.2.1.1. and/or 5.2.1.2. If the permittee is unable to meet the deadlines in sections 5.2.1.1. and/or 5.2.1.2. due to circumstances beyond the permittee’s control (e.g. problems with the supply of seed stock or with the availability of specialized equipment, unsuitability of soil conditions due to excessive precipitation and/or flooding), and the permittee is using vegetative cover for temporary or permanent stabilization, the permittee may comply with the following stabilization deadlines instead:”

Comment 3.x:

24. Chapter 11-55, Appendix C, Section 5.2.1.3.2, Page 55-C-27

5.2 Stabilization Requirements

5.2.3 Exceptions to the deadlines for initiating and completing stabilization.

5.2.1.3.2.

Deadlines for sites discharging to impaired waters. For any portion of the site that discharges to a sediment or nutrient-impaired water (see section 6.2.), the permittee is required to complete the stabilization activities specified in sections 5.2.1.2.1. and/or 5.2.1.2.2. within 7 calendar days after the temporary or permanent cessation of earth disturbing activities.

Comment-We request that this requirement be revised to:

“Deadlines for sites discharging to impaired waters that are located immediately adjacent to the impaired water body. For any portion of the site that is located immediately adjacent to and that discharges to a sediment or nutrient-impaired water (see section 6.2.), the permittee is required to complete the stabilization activities specified in sections 5.2.1.2.1. and/or 5.2.1.2.2. within 7 calendar days after the temporary or permanent cessation of earth-disturbing activities.”

Rationale- A project could be ultimately discharging into an impaired water body but be located miles away.

Response to Comment 3.x:

DOH disagrees with adding “immediately adjacent.” The Permittee is responsible for any discharge to impaired waters from any project/facility (regardless of the distance to the State water).

No change required.

Comment 3.y:

25. Chapter 11-55, Appendix C, Section 5.2.2.1.1.3, Page 55-C-29

5.2 Stabilization Requirements.

5.2.2 Criteria for stabilization.

5.2.2.1. Vegetative stabilization.

5.2.2.1.1.

For all sites, except those located on agricultural lands.

5.2.2.1.1.3

Immediately after seeding or planting the area to be vegetatively stabilized, to the extent necessary to prevent erosion on the seeded or planted area, the permittee shall select, design, and install non-vegetative erosion controls that provide cover (e.g., mulch, rolled erosion control products) to the area while vegetation is becoming established.

Comment- We request this requirement be revised to:

"Immediately after seeding or planting the area to be vegetatively stabilized, to the extent necessary to prevent erosion on the seeded or planted area, the permittee shall select, design, and install non-vegetative erosion controls that provide cover (e.g., mulch, rolled erosion control products) to the area while vegetation is becoming established, unless the project design requires the erosion control matting be installed prior to seeding or planting of an area."

Rationale- HDOT Standard Specifications Section 641.03(A) states "When hydro-mulch seeding is done in conjunction with erosion control matting, install erosion control matting to completion and follow with hydromulching within 24 hours."

Response to Comment 3.y:

No change required. The requirement indicates that non-vegetative erosion controls that provide cover are required only to the extent necessary to prevent erosion on the seeded or planted area. If non-vegetative erosion controls are necessary to prevent erosion, then they are required even if the project design requires erosion control matting to be installed prior to seeding or planting of an area.

Comment 3.z:

26. Chapter 11-55, Appendix C, Section 5.3.2.1, Page 55-C-31

5.3 Pollution prevention requirements.

5.3.2. General Maintenance Requirements.

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5.3.2.1 Initiate work to fix the problem immediately after discovering the problem and complete such work by the close of the next work day~ if the problem does not require significant repair or replacement~ or if the problem can be corrected through routine maintenance.

Comment: We request revising the requirement to:

"If discharge from the site is imminent initiate work to fix the problem immediately after discovering the problem, and complete such work by the close of the next work day, if the problem does not require significant repair or replacement, or if the problem can be corrected through routine maintenance. If discharge from the site is not imminent and the problem does not require significant repair or replacement, or can be corrected through routine maintenance, initiate work to fix the problem after discovering the problem, and complete such work within five work days."

Rationale- HDOT construction personnel would like to continue to use their discretion in determining whether a BMP needs to be fixed immediately after discovering a problem, or if the repair is not required immediately since the BMP problem identified is minor and the BMP is still working effectively. HDOT conducts weekly BMP inspections and rainfall event BMP inspections and oftentimes identifies a wide range of concerns with BMPs, some of which do not have to be addressed by the close of the next work day. If a discharge is imminent, or not immediately repairing a BMP has the potential for a pollutant discharge to leave the site, HDOT will repair the BMP immediately. HDOT conducts weekly BMP inspections and rainfall event BMP inspections. When a routine repair is needed and discharge from the site is not imminent, depending on the situation, the completion of the repair may take a few days. For example, a contractor may not be actively working on a site but the BMPs are still in-place. HDOT would need to coordinate with the contractor, the contractor may need coordinate with his subcontractor, then mobilize equipment to the construction site and then repair the BMPs. The required coordination, mobilization and repair could possibly take a few days.

Response to Comment 3.z:

No change required. Please see the Response to Comments 3.k, 3.l, and 3.t.

Comment 3.A.1:

27. Chapter 11-55, Appendix C, Section 5.3.2.2., Page 55-C-31

5.3 Pollution prevention requirements.

5.3.2. General Maintenance Requirements

5.3.2.2.

When installation of a new pollution prevention control or a significant repair is needed~ the permittee shall install the new or modified control and make it operational~ or complete the repair~ by no later than 7 calendar days from the time of discovery. If it is infeasible to complete the installation or repair within 7 calendar days, the permittee shall document in the records why it is infeasible to complete the installation or repair within the 7 calendar day timeframe and document the schedule for installing the storm water control(s) and making it operational as soon as practicable after the 7 calendar day timeframe. Where these actions result in changes to any of the pollution prevention controls or procedures documented in the SWPPP, the permittee shall modify the SWPPP accordingly within 7 calendar days of completing this work.

Comment- We request revising the requirement to:

"When installation of a new erosion or sediment control or when a significant repair is needed or when a routine repair is needed and the extent of the repair is extensive and discharge from the site is not imminent, the permittee shall install the new or modified control and make it operational, or complete the repair, by no later than 7 calendar days from the time of discovery where feasible. If it is infeasible to complete the installation or repair within 7 calendar days, the permittee shall document in its records why it is infeasible to complete the installation or repair within the 7-day timeframe and document the schedule for installing the storm water control(s) and making it operational as soon as practicable after the 7-day timeframe. Where these actions result in changes to any of the storm water controls or procedures documented in the SWPPP, the permittee shall modify the SWPPP accordingly within 7 calendar days of completing this work."

Rationale- HDOT conducts weekly BMP inspections and rainfall event BMP inspections.

When a routine repair is needed and discharge from the site is not imminent, depending on the situation, the completion of the repair may take a few days if the extent of the repair is extensive. For example, Highways projects are generally linear in nature and routine maintenance of a silt fence 3 miles long can be initiated immediately, but may take more than 5 work days to complete depending on the repair required.

Response to Comment 3.A.1:

No change required. Please see the Response to Comments 3.k, 3.l, and 3.t.

Comment 3.B.1:

Chapter 11-55, Appendix C, Section 6.1, Page 55-C-40

6. Water Quality-Based Effluent Limitations

6.1 General Effluent limitation to meet applicable water quality standards

The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.

Comment- Per an initial review of this section and the referenced Section 11-54-4, there does not appear to be assigned numerical based effluent limitations for construction site runoff for sediment and other pollutants.

Response to Comment 3.B.1.:

Yes. Currently, HAR 11-54-4 contains narrative effluent limitations. No change required.

Comment 3.C.1:

29. Chapter 11-55, Appendix C, Section 6.2., Page 55-C-40

6. Water Quality-Based Effluent Limitations

6.2 Discharge limitations for impaired waters

Note: For the purposes of this section, "impaired waters" are waters identified as impaired on the State CWA section 303(d) list, and waters with a state-established and EPA-approved TMDL. The construction site will be considered to discharge to an impaired water if the first state water to which the discharge enters is to a water on the section 303(d) list or one with a state established and EPA-approved TMDL. For discharges that enter a storm water drainage system prior to discharge, the first state water to which discharge is the water body that receives the storm water discharge from the storm water drainage system. If discharge is to an impaired water that is impaired for a parameter other than a sediment-related parameter or nutrients, the department will inform the permittee if any additional limits or controls are necessary for the discharge to be controlled as necessary to meet water quality standards, including for it to be consistent with the assumptions of any available wasteload allocation in any applicable TMDL, or if coverage under an individual permit is necessary.

Comment - If discharging into a TMDL water body how will DOH determine allocation to be assigned to the project and what standards will be used?

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Response to Comment 3.C.1:

HAR 11-54 (Water Quality Standards or WQS) will be utilized. Determination of specific Waste Load Allocations presumably will be made during the development of the TMDL.

No changes to the proposed rules have been made as a result of this comment.

Comment 3.D.1:

30. Chapter 11-55, Appendix C, Section 7.1, Page 55-C-43

7. Storm Water Pollution Prevention Plan (SWPPP)

7.1 Requirement to develop a SWPPP prior to submitting an NOI

All permittees and their contractors with a construction project to be covered under this permit must develop a SWPPP. The Permittee is required to develop the site's SWPPP prior to submitting the NOI

Comment- This requires development of the SWPPP prior to submitting the NOI. Please clarify when the SWPPP is required to be submitted. What is the difference between a SWPPP and a Site-Specific BMP Plan referred to in HDOT's MS4 NPDES Permit?

A few of the items required to be included in the SWPPP such as information about the Site Contractors and more details reflecting the contractors means and methods would not be available prior to or at the time the NOI is submitted. If this specific information is only available at the time of construction and not prior to the submittal of the NOI, then it can only be submitted after submission of the NOI.

Response to Comment 3.D.1:

A current copy of the SWPPP is required to be developed prior to submitting the NOI, and must be readily accessible "at the site or at an easily accessible location so that it can be made available at the time of an on-site inspection or upon request by the department; EPA; or local agency approving storm water management plans; the operator of a storm water drainage system receiving discharges from the site; or representatives of the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS)." Refer to Section 7.3 of the permit.

The SWPPP replaced the Site-Specific BMP Plan. The proposed HDOT MS4 permit references the Site-Specific BMP plan and other similar plans. Therefore, review of the SWPPP is still required in the HDOT MS4 permit.

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As a result of this comment, the NOI was revised to no longer require the general contractor's information to be submitted. The general contractor information is required in the SWPPP prior to the start of construction activities. Please refer to the changes in Appendix A, Section 34 and Appendix C, Section 7.2.15.

All of the SWPPP requirements in Appendix C, Section 7 (except Section 7.2.15) shall be completed prior to the DOH issuing the NGPC. Preparation of the SWPPP provides DOH with reasonable assurance that the Appendix C requirements will be complied with and that an NGPC may be issued.

DOH believes that the contractor's means and methods are already specified in the proposed Appendix C. For any SWPPP modifications, refer to Appendix C, Section 7.4.

Comment 3.E.1:

31. Chapter 11-55, Appendix C, Section 7.2.15, Page 55-C-56

7. Storm Water Pollution Prevention Plan (SWPPP)

7.2 SWPPP Contents

7.2.15. Other state, federal, or county permits.

The following are required to be included in the SWPPP prior to the start of construction activities:

- a. Copy of the drainage system owner's approval allowing the discharge to enter their drainage system;
- b. Copy of the county-approved grading permit;
- c. Copy of the department of the army permit and section 401 water quality certification; and
- d. Copy of other permits.

Comment- We request this requirement be revised to:

"The following are required to be included in the SWPPP prior to the start of construction activities, as applicable:

- a. Copy of the drainage system owner's approval allowing the discharge to enter their drainage system;
- b. Copy of the county-approved grading permit;
- c. Copy of the department of the army permit and section 401 water quality certification; and
- d. Copy of other permits."

Rationale- Not all of the items listed in items a. through d. are applicable to all projects.

Response to Comment 3.E.1:

Section 7.2.15 was revised to require the items above only "if applicable."

Comment 3.F.1:

32. Chapter 11-55, Appendix C, Section 7 .2.18.a., Page 55-C-57

7. Storm Water Pollution Prevention Plan (SWPPP)

7.2 SWPPP Contents

7.2.18. Post-authorization additions to the SWPPP.

After the issuance of the NGPC the permittee shall include the following documents as part of the SWPPP:

A copy of the NOI submitted to the department along with any correspondence exchanged between the permittee and the department related to coverage under this permit;

a. A copy of the NOI submitted to the department along with any correspondence exchanged between the permittee and the department related to coverage under this permit;

b. A copy of the NGPC and all attachments included with the NGPC (an electronic copy easily available to the storm water team is also acceptable)"

Comment- We request revising the requirement to:

"After the issuance of the NGPC the permittee shall include the following documents as part of the SWPPP:

a. A copy of the NOI submitted to the department along with any correspondence exchanged between the permittee and the department related to coverage under this permit (an electronic copy easily available to the storm water team is also acceptable);

b. A copy of the NGPC and all attachments included with the NGPC (an electronic copy easily available to the storm water team is also acceptable)."

Rationale- The NOI, related attachments and correspondence may be voluminous to carry around in hardcopy. The option to have an electronic copy easily available to the storm water team would decrease the amount of hardcopies team members would have to have on hand.

Response to Comment 3.F.1:

Section 7.2.1 already indicates that each member of the storm water team must have ready access to an electronic or paper copy of the SWPPP. No changes required.

Comment 3.G.1:

33. Chapter 11-55, Appendix C, Section 7 .3, Page 55-C-58

7. Storm Water Pollution Prevention Plan (SWPPP)

7.3 On-site availability of the SWPPP.

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If an onsite location is unavailable to keep the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance of the construction site.

Comment- We request revising this requirement to:

"If an onsite location is unavailable to keep the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance of the construction site. If this is not feasible, the permittee shall notify the Department of Health of the plan's location, prior to commencement of construction activities."

Rationale- The majority of HDOT Highways construction projects are work within the Highways rights-of-way, where the construction site entrance is dynamic due to the need to open highway lanes to traffic at the end of the work day.

Response to Comment 3.G.1:

DOH understands. This requirement may not apply to HDOT Highways construction projects without a main entrance. Whoever is available on the site, should know of the SWPPP team member that has ready access to the SWPPP. No changes required.

Comment 3.H.1:

34. Chapter 11-55, Appendix C, Section 7.4.4., Page 55-C-60

Comment- Could the delegated authorized representative, noted in 40 CFR 122.22(b), also authorize modifications to the SWPPP?

Response to Comment 3.H.1:

Section 7.4.4 has been revised to:

"All modifications made to the SWPPP consistent with section 7.4. must be certified, signed, and dated by the Certifying Person that meets the requirements in section 15 of appendix A, chapter 11-55 or the duly authorized representative that meets the requirements of 11-55-07(b)."

Comment 3.I.1:

35. Chapter 11-55, Appendix C, Section 9.1.2., Page 55-C-61 and 62

9.1 Site Inspections

9.1.2. Frequency of Inspections.

At a minimum, the permittee shall conduct a site inspection in accordance with one of the two schedules listed below, unless subject to section 9.1.3. or section 9.1.4.:

a. At least once every 7 calendar days; or

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b. Once every 14 calendar days and within 24 hours of the occurrence of a storm event of 0.25 inches or greater. To determine if a storm event of 0.25 inches or greater has occurred on the site, the permittee shall either keep a properly maintained rain gauge on the site, or obtain the storm event information from a weather station that is representative of the location. For any day of rainfall during normal business hours that measures 0.25 inches or greater, the permittee shall record the total rainfall measured for that day in accordance with section 9.1.7.1.d.

Note: Inspections are only required during the project's normal working hours.

Note: The permittee is required to specify in the SWPPP which schedule will be followed.

Note: "Within 24 hours of the occurrence of a storm event~~ means that the permittee is required to conduct an inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. Thus, if the permittee has elected to inspect bi-weekly in accordance with section 9.1.2.b. and there is a storm event at the site that continues for multiple days, and each day of the storm produces 0.25 inches or more of rain, the permittee is required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.

Comment- We request that a definition of a storm event be included. It is unclear whether a storm event is a rainfall event where a threshold is exceeded, or whether a storm event needs to be identified as such by NOAA. The requirement to conduct BMP inspections within 24 hours of a storm event 0.25 inches or greater conflicts with the "Note: Inspections are only required during the project's normal working hours." A rainfall event on a late Friday afternoon would require an inspection on a Saturday to meet the 24 hour requirement.

We request that the trigger for conducting inspections be revised to 0.5 inches or greater which occurs in a 24-hour period. In all cases of required inspections during a storm event, it will be assumed inspections will not occur under unsafe conditions, or after normal working hours. We request that this requirement be revised to:

"9.1.2. Frequency of Inspections.

At a minimum, the permittee shall conduct a site inspection in accordance with one of the two schedules listed below, unless subject to section 9.1.3. or section 9.1.4.:

a. At least once every 7 calendar days; or

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b. Once every 14 calendar days and within 24 hours of the occurrence of a storm event of 0.5 inches or greater. To determine if a storm event of 0.5 inches or greater has occurred on the site, the permittee shall either keep a properly maintained rain gauge on the site, or obtain the storm event information from a weather station that is representative of the location. For any day of rainfall during normal business hours that measures 0.5 inches or greater, the permittee shall record the total rainfall measured for that day in accordance with section 9.1.7.1.d.

Note: Inspections are only required during the project's normal working hours.

Note: The permittee is required to specify in the SWPPP which schedule will be followed.

Note: "Within 24 hours of the occurrence of a storm event" means that the permittee is required to conduct an inspection within 24 hours once a storm event has produced 0.5 inches, even if the storm event is still continuing. Thus, if the permittee has elected to inspect bi-weekly in accordance with section 9.1.2.b. and there is a storm event at the site that continues for multiple days, and each day of the storm produces 0.5 inches or more of rain, the permittee is required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm."

Rationale- HDOT currently conducts BMP inspections weekly and within 24 hours of a 0.5 inches of rainfall or greater within a 24-hour period. We find that that the 0.5 inches of rainfall trigger is sufficient to generate storm water runoff from the construction sites where we will need to check our BMPs. We feel that a 0.25 inches rainfall event would not produce a significant amount of runoff since a portion of the runoff would percolate into the ground and the remainder would not pose a threat to or compromise the BMPs. In addition, more frequent BMP inspections would stretch HDOT resources in a way that may reduce attention to more significant rain occurrences. HDOT Standard Specifications Section 209.03 (B), lines 262 to 273 states "Properly maintain all BM features. Inspect, prepare written reports, and make repairs to BMP measures at following intervals:

- (1) Weekly during dry periods
- (2) Within 24 hours of any rainfall of 0.5 inches or greater which occurs in a 24-hour period.
- (3) Daily during periods of prolonged rainfall
- (4) When existing erosion control measures are damaged or not operating properly as required by site specific BMP."

Response to Comment 3.I.1:

Appendix C, Section 9.1.2.b requires the permittee to conduct a site inspection once every 14 calendar days and within 24 hours of the occurrence of a storm event of 0.25 inches or greater. In other words, a storm event is an event with rainfall of 0.25 inches or greater. A "rainfall event" is not mentioned in Appendix C. Permittees are required to conduct their inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. No change required.

The requirement to conduct BMP inspections within 24 hours only applies during the project's normal working hours. No change required.

DOH disagrees with revising the 0.25 inches of rainfall to 0.5 inches. The 0.25 inches of rainfall is consistent with the EPA's CGP and DOH cannot be less stringent than the EPA. No change required.

Comment 3.J.1:

36. Chapter 11-55, Appendix C, Section 9.1.3, Page 55-C-62 and 63

9.1 Site Inspections

9.1.3. Increase in inspection frequency for sites discharging to impaired waters.

For any portion of the site that discharges to an impaired water (see section 6.2.), instead of the inspection frequency specified in section 9.1.2., the permittee shall conduct inspections in accordance with the following inspection frequencies:

a. Once every 7 calendar days; and

b. Within 24 hours of the occurrence of a storm event of 0.25 inches or greater.

To determine if a storm event of 0.25 inches or greater has occurred on the site, the permittee shall either keep a properly maintained rain gauge on the site, or obtain the storm event information from a weather station that is representative of the location. For any day of rainfall during normal business hours that measures 0.25 inches or greater, the permittee shall record the total rainfall measured for that day in accordance with section 9.1.7.1.d.

Note: Inspections are only required during the project's normal working hours.

Note: "Within 24 hours of the occurrence of a storm event" means that the permittee is required to conduct an inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. Thus, if there is a storm event at the site that continues for multiple days~ and each day of the storm produces 0.25 inches or more of rain~ the permittee is required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.

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Note: If the permittee qualifies for any of the reduced inspection frequencies in section

9.1.4.1 the permittee may conduct inspections in accordance with section 9.1.4. for any portion of the site that discharges to an impaired water.

Comment- We request that a definition of a storm event be included. It is unclear whether a storm event is a rainfall event where a threshold is exceeded, or whether a storm event needs to be identified as such by NOAA. The requirement of inspections to conduct BMP inspections within 24 hours of a storm event 0.25 inches or greater conflicts with the "Note: Inspections are only required during the project's normal working hours." A rainfall event on a late Friday afternoon would require an inspection on a Saturday to meet the 24 hour requirement. In all cases of required inspections during a storm event, it will be assumed inspections will not occur under unsafe conditions. In addition, we request that the trigger for conducting inspections be revised to 0.5 inches or greater which occurs in a 24-hour period. We request that this requirement be revised to:

"9.1.3. Increase in inspection frequency for sites discharging to impaired waters. For any portion of the site that discharges to an impaired water (see section 6.2.), instead of the inspection frequency specified in section 9.1.2., the permittee shall conduct inspections in accordance with the following inspection frequencies:

- a. Once every 7 calendar days; and
- b. Within 24 hours of the occurrence of a storm event of 0.5 inches or greater.

To determine if a storm event of 0.5 inches or greater has occurred on the site, the permittee shall either keep a properly maintained rain gauge on the site, or obtain the storm event information from a weather station that is representative of the location. For any day of rainfall during normal business hours that measures 0.5 inches or greater, the permittee shall record the total rainfall measured for that day in accordance with section 9.1.7.1.d.

Note: Inspections are only required during the project's normal working hours.

Note: "Within 24 hours of the occurrence of a storm event" means that the permittee is required to conduct an inspection within 24 hours once a storm event has produced 0.5 inches, even if the storm event is still continuing. Thus, if there is a storm event at the site that continues for multiple days, and each day of the storm produces 0.5 inches or more of rain, the permittee is required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.

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Note: If the permittee qualifies for any of the reduced inspection frequencies in section 9.1.4., the permittee may conduct inspections in accordance with section 9.1.4. for any portion of the site that discharges to an impaired water."

Rationale- HDOT currently conducts BMP inspections weekly and within 24 hours of a 0.5 inches of rainfall or greater within a 24-hour period. We find that that the 0.5 inches of rainfall trigger is sufficient to generate storm water runoff from the construction sites where we will need to check our BMPs. We feel that a 0.25 inches rainfall event would not produce a significant amount of runoff since a portion of the runoff would percolate into the ground and the remainder would not pose a threat to or compromise the BMPs. In addition, more frequent BMP inspections would stretch HDOT resources. HDOT Standard Specifications Section 209.03 (B), lines 262 to 273 states "Properly maintain all BM features. Inspect, prepare written reports, and make repairs to BMP measures at following intervals:

- (1) Weekly during dry periods
- (2) Within 24 hours of any rainfall of 0.5 inches or greater which occurs in a 24-hour period.
- (3) Daily during periods of prolonged rainfall
- (4) When existing erosion control measures are damaged or not operating properly as required by site specific BMP:"

Response to Comment 3.J.1:

Refer to Response to Comment 3.I.1. No changes required.

Comment 3.K.1:

37. Chapter 11-55, Appendix C, Section 9.1.5.e., Page 55-C-64
9.1 Site Inspections
9.1.5. Areas that need to be inspected
e. All points of discharge from the site;

Comment- What does all points discharge from the site mean? Is this the perimeter of the site where the discharge leaves the project site or the discharge point at the outfall? If the points of discharge include outfalls, it would difficult to inspect outfalls that are outside of the project limits since they may be located miles away.

Response to Comment 3.K.1:

The points of discharge in this permit mean both the discharge from the site and discharge into the State water. No change required.

Comment 3.L.1:

38. Chapter 11-55, Appendix C, Section 9.1.6.4, Page 55-C-65

9.1 Site Inspections

9.1.6 Requirements for inspections.

During the site inspection, the permittee shall at a minimum:

9.1.6.4

At points of discharge and, if applicable, the banks of any state waters flowing within the property boundaries or immediately adjacent to the property, check for signs of visible erosion and sedimentation (i.e., sediment deposits) that have occurred and are attributable to the discharge; and

Comment- Define points of discharge. Is the concern that the discharge from the project causes erosion or pollution of adjacent properties or stream banks within the property?

Response to Comment 3.L.1:

The points of discharge in this permit mean both the discharge from the site and discharge into the State water. The CWB is concerned with discharges to State waters, but measures may need to be required on discharges from the site in order to control discharge to State waters. The concern is any pollutant discharge or erosion caused by the project.

Comment 3.M.1:

39. Chapter 11-55, Appendix C, Section 9.1.7.1, Page 55-C-66

9.1 Site Inspections

9.1.7. Inspection Report

9.1.7.1 Requirement to Complete Inspection Report

The permittee must complete an inspection report within 24 hours of completing any site inspection ...

Comment-We request this requirement be revised to:

"The permittee must complete an inspection report within 2 work days of completing any site inspection."

Rationale- HDOT inspectors are tasked with inspecting a projects construction and its Site-Specific BMPs. Although BMP inspection reports are generally completed within 24 hours of a site inspection, at times the inspector may not finalize a report immediately due to situations which require him to remain in the field all day. Also, HDOT inspectors may conduct BMP inspections on consecutive days. The first inspection may be a weekly BMP inspection and the next day a rainfall event of .5 inches or greater would trigger another BMP inspection. During these inspections if BMP deficiencies are identified in the field,

the inspector then relays this information to the engineer who then directs the contractor to make the repair. Sometimes the BMP repairs are addressed on the spot. Nevertheless, we prefer that HDOT construction personnel use the time following the inspection to coordinate the repair of the BMPs, rather than finalizing the inspection report within 24 hours.

Response to Comment 3.M.1:

Acknowledged. Revised to 48 hours.

Comment 3.N.1:

40. Chapter 11-55, Appendix C, Section 9.1.7.1.d., Page 55-C-67

9.1 Site Inspections

9.1.7 Inspection Report

9.1.7.1 Signature Requirements

d. If inspecting the site at the frequency specified in section 9.1.2.b.l section 9.1.3.1 or section 9.1.4.1 and have conducted an inspection because of rainfall measuring 0.25 inches or greater~ the permittee shall include the applicable rain gauge or weather station readings that triggered the inspection; and

Comment- We request revising this requirement to:

"d. If inspecting the site at the frequency specified in section 9.1.2.b., section 9.1.3., or section 9.1.4., and have conducted an inspection because of rainfall measuring 0.5 inches or greater, the permittee shall include the applicable rain gauge or weather station readings that triggered the inspection; and"

Rationale- HDOT currently conducts BMP inspections weekly and within 24 hours of a 0.5 inches of rainfall or greater within a 24-hour period. We find that that the 0.5 inches of rainfall trigger is sufficient to generate storm water runoff from the construction sites where we will need to check our BMPs. We feel that a 0.25 inches rainfall event would not produce a significant amount of runoff since a portion of the runoff would percolate into the ground and the remainder would not pose a threat to or compromise the BMPs. In addition, more frequent BMP inspections would stretch HDOT resources in a way that may reduce attention to more significant rain occurrences. HDOT Standard Specifications Section 209.03 (B), lines 262 to 273 states "Properly maintain all BM features. Inspect, prepare written reports, and make repairs to BMP measures at following intervals:

(1) Weekly during dry periods

(2) Within 24 hours of any rainfall of 0.5 inches or greater which occurs in a 24-hour period.

(3) Daily during periods of prolonged rainfall

(4) When existing erosion control measures are damaged or not operating properly as required by site specific BMP."

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Response to Comment 3.N.1:

DOH disagrees with revising the 0.25 inches of rainfall to 0.5 inches. The 0.25 inches of rainfall is consistent with the EPA's CGP and DOH cannot be less stringent than the EPA. No change required.

Comment 3.O.1:

41. Chapter 11-55, Appendix C, Section 9.1.7.2, Page 55-C-67

9.1 Site Inspections

9.1.7 Inspection Report

9.1.7.2 Signature Requirements

Each inspection report must be signed in accordance with section 15 of appendix A, chapter 11-55.

Comment- We request revising this requirement to:

"Each inspection report must be signed by the individual who is delegated the authority by the duly authorized representative to oversee construction activities on a daily basis."

Rationale: Section 15 of Appendix A references the signatory requirement as stated in 40 CFR §122.22 and §122.41(k), which states "All reports required by permits, and other information requested by the Director shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person."

HDOT Highways duly authorized representative is typically the District Engineers who are not involved in the daily oversight of a project's construction. It would be more appropriate to designate the individual who is in-charge of oversight of a project's construction on a day-to-day basis, and for HDOT Highways this would be the Resident Engineer. The HDOT Resident Engineer is familiar with the projects construction, and has the authority to direct the contractor to amend a project's Site-Specific BMPs.

Response to Comment 3.O.1:

This section was revised to "Each inspection report must be certified and signed in accordance with section 15 of appendix A, chapter 11-55 or the duly authorized representative that meets the requirements of 11-55-07(b)."

If the Resident Engineer is in charge of a project's construction on a day-by-day basis and is properly designated, then the Resident Engineer can be HDOT Highways duly authorized representative and not the District Engineer.

Comment 3.P.1:

42. Chapter 11-55, Appendix C, Section 9.2, Page 55-C-67-68

9.2 Inspection by the department or EPA

The permittee shall allow the department, EPA, or an authorized representative of the EPA, to conduct the following activities at reasonable times:

- a. Enter onto areas of the site, including any construction support activity areas covered by this permit (see Section 5), and onto locations where records are kept under the conditions of this permit;
- b. Access and copy any records that must be kept under the conditions of this permit;
- c. Inspect the construction site, including any construction support activity areas covered by this permit (see section 5) and any storm water controls installed and maintained at the site; and
- d. Sample or monitor for the purpose of ensuring compliance

Comment- We request revising the requirement to:

"The permittee shall allow the department, EPA, or an authorized representative of the EPA, to conduct the following activities at reasonable times (during normal working hours) or with sufficient notice if during non-working hours:

- a. Enter onto areas of the site, including any construction support activity areas covered by this permit (see Section 5), and onto locations where records are kept under the conditions of this permit;
- b. Access and copy any records that must be kept under the conditions of this permit;
- c. Inspect the construction site, including any construction support activity areas covered by this permit (see section 5) and any storm water controls installed and maintained at the site; and
- d. Sample or monitor for the purpose of ensuring compliance"

Rationale- The HDOT is responsible for keeping active construction sites secure and safe for the general public, visitors and other non-construction personnel. If representatives from the DOH or EPA arrive during non-work hours, then access to the construction site or portions of the site may not be possible. In addition, the activities to be conducted by the DOH and EPA, specified in a. through d., may not be possible during non-work hours without advance notification to HDOT.

Response to Comment 3.P.1:

No change. "At reasonable times," means during working hours.

Also, DOH disagrees with adding the word "sufficient," because it is too ambiguous.

Comment 3.Q.1:

43. Chapter 11-55, Appendix C, Section 10.4.1, Page 55-C-71

10. Corrective Action

10.4 Corrective action report.

10.4.1.

Within 24 hours of discovering the occurrence of one of the triggering conditions in section 10.2.1. at the site, the permittee shall complete a report of the following:

- a. Which condition was identified at the site;
- b. The nature of the condition identified; and
- c. The date and time of the condition identified and how it was identified.

Comment- We request this requirement be revised to:

"After the occurrence of one of the triggering conditions in section 10.2.1., the permittee shall complete a report of the following and include in the next required inspection report under section 9.1:

- a. Which condition was identified at the site;
- b. The nature of the condition identified; and
- c. The date and time of the condition identified and how it was identified."

Rationale- If one of the triggering conditions in Section 10.2.1 were to be discovered by HDOT, it would require HDOT inspectors and engineers to address the situation and direct the contractor to revise the implemented BMPs. HDOT would prefer to use the time immediately after discovery of the situation to remedy the situation, instead of completing the corrective action report in 24 hours.

Response to Comment 3.Q.1:

No change required. A timeframe to complete the report is required for the permit to be enforceable. Also, DOH believes 24 hours is a reasonable amount of time for HDOT engineers and the contractor to remedy the situation and for the inspector to complete the report (i.e., answer the 3 questions in Section 10.4.1).

Comment 3.R.1:

44. Chapter 11.55, Appendix C, Section 10.4.3, Page 55-C-72

10. Corrective Action

10.4 Corrective action report.

10.4.3.

Each corrective action report must be signed and certified in accordance with section 15 of appendix A, chapter 11-55.

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Comment- We request revising this requirement to:

"Each corrective action report must be signed and certified by the individual who is delegated the authority by the duly authorized representative to oversee construction activities on a daily basis."

Rationale - Section 15 of Appendix A references the signatory requirement as stated in 40 CFR §122.22 and §122.41(k), which states "All reports required by permits, and other information requested by the Director shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person."

HDOT Highways duly authorized representative is typically the District Engineers who are not involved in the daily oversight of a project's construction. It would be more appropriate to designate the individual who is in-charge of oversight of a project's construction on a day-to-day basis and for HDOT Highways this would be the Resident Engineer. The HDOT Resident Engineer is familiar with the project's construction, and has the authority to direct the contractor to amend a project's Site-Specific BMPs.

Response to Comment 3.R.1:

This section was revised to "Each corrective action report must be certified and signed in accordance with section 15 of appendix A, chapter 11-55 or the duly authorized representative that meets the requirements of 11-55-07(b)."

If the Resident Engineer is in charge of a project's construction on a day-by-day basis and is properly designated, then the Resident Engineer can be HDOT Highways duly authorized representative and not the District Engineer.

Comment 3.S.1:

45. Chapter 11.55, Appendix C, Section 11.2.7, Page 55-C-73

11. Notice of Intent requirements

11.2.

The owner or its duly authorized representative shall include the following information in the notice of intent

11.2.7.

Information required in section 7.2.6. -Site map1 except for sections 7.2.6.6. - 7.2.6.8.

Comment- We request revising this requirement to:

"Information required in section 7.2.6.- Site map, except for sections 7.2.6.1.c., 7.2.6.1.d., 7.2.6.1.f., 7.2.6.6. -7.2.6.8."

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Rationale- Sections 7.2.6.1.c, 7.2.6.1.d, and 7.2.6.1.f. require locations of where construction materials will be stockpiled, locations of contaminated soil stockpiles and designated points on the site where vehicles will exit onto paved roads. For HDOT projects, this information is not available in the design phase when the NOI application is prepared and is only available in the construction phase since the contractor is required to submit this information to HDOT.

Response to Comment 3.S.1:

No change required. HDOT may wait until the construction phase to submit the NOI. Also, if the locations are provided during the design phase and the contractor wishes to change these locations, the SWPPP can be modified in accordance with Appendix C, Section 7.4.

Comment 3.T.1:

Chapter 11-55, Appendix C, Section 13, Page 55-C-75

13. Submittal Requirements

13.1

The owner or its duly authorized representative shall submit compliance information, which shall include but is not limited to notifying the department of any compliance information as required in this general permit or as required in its NGPC, any updates to information already on file with the department, and any incidences of non-compliance and corrective actions. Any comments provided by the department in response to the information submitted shall be answered in the time specified and to the satisfaction of the department. If the activity is in compliance and none of the information on file with the department requires updating, or there were no incidences of non-compliance, reporting is still required which states that there were "no changes, updates, or any incidences of non-compliance to report." When all construction activities have ceased, the owner shall submit to the department a completed Notice of Cessation form along with this monthly compliance information. The department shall receive this information within 7 calendar days after the end of the month.

Comment- Section 13.1 states "When all construction activities have ceased, the owner shall submit to the department a completed Notice of Cessation form along with this monthly compliance information. The department shall receive this information within 7 calendar days after the end of the month." We request more detail on the compliance information required to be submitted with the NOC. Is this the Corrective Action reports identified in Section 10?

Response to Comment 3.T.1:

Section 13.1 states "The owner or its duly authorized representative shall submit compliance information, which shall include but is not limited to notifying the

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department of any compliance information as required in this general permit and NGPC, any incidences of non-compliance and corrective actions.” The compliance information may include the information in the Corrective Action reports identified in Section 10, but it is not the same and may be broader. No change required.

Comment 3.U.1:

Chapter 11-55, Appendix G, No Discharge Monitoring Reports

Comment- We currently are required to submit No Discharge Monitoring Report from the 28th day of the following month after the NGPC is issued. We request to modify this requirement to be start upon commencement of dewatering activities.

Response to Comment 3.U.1:

DOH wants all Discharge Monitoring Reports by the 28th day of the following month after the NGPC is issued.

No changes to the proposed rules have been made as a result of this comment.

Comment 3.V.1:

Chapter 11-55, Appendix M, Section 1(b)(2)(B), Page 55-M-5

Comment- Please clarify or provide examples of what is considered "degrade water quality on a short term basis".

Response to Comment 3.V.1:

Appendix M is currently still in effect and at this time cannot be amended, however DOH offers the following explanation.

The phrase “degrade water quality on a short term basis” appears in Appendix M as a condition when you are eligible for coverage to discharge into Class 1 and Class AA waters to protect the public health or the environment. Having to apply for an individual permit would complicate the ability to control pests in a timely manner as is needed to minimize the public health or environmental effects and costs of these pest problems. In recognition of the fundamental purpose of water quality standards (“to protect the public health or welfare, enhance the quality of water and serve the purposes of this Act,” as stated in Section 303(c)(2) of the Clean Water Act), the PGP provides permit coverage for discharges that may result in a short-term and temporary lowering of water quality in Class 1 and Class AA waters, in connection with pesticide applications that are necessary to protect the water quality, environment, or public health. This is consistent with

EPA's longstanding view that "[s]tates may allow some limited activities which result in temporary and short-term changes in water quality.

No changes to the proposed rules have been made as a result of this comment.

Comment 3.W.1:

Chapter 11-55, Appendix M, Section 1(b)(3)(B)(ii), Page 55-M-6

Comment- Please clarify or provide examples of what is considered "distance restriction".

Response to Comment 3.W.1:

The FIFRA label contains specific distance restrictions for pesticides that may be utilized by surface drinking water sources. The distance restriction varies depending on the pesticide.

No changes to the proposed rules have been made as a result of this comment.

Comment Set 4 – Department of the Navy, Pearl Harbor Naval Shipyard & Intermediate Maintenance Facility

Comment 4.a:

A. HAR, CHAPTER 11-54

1. §11-54-1 "Ambient Conditions": Ambient conditions are defined as "the water quality conditions that would occur in the receiving waters if these waters were not influenced by the proposed new human activity."

Assigning a fixed value to ambient conditions for comparison to compliance endpoints should include consideration of natural variability. "Ambient conditions" associated with these parameters naturally fluctuate spatially and temporally over large ranges daily depending on tides, wind, solar radiation and currents. Therefore, without consideration of natural variability, comparison of a single point-in-time reference station to specific permit conditions will erroneously result in a violation.

PHNSY&IMF recommends the HAR include considerations of natural variability when establishing fixed comparisons to permit conditions. This consideration specifically applies when a single reference station is required for comparison to other samples taken throughout the day and is generally

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done using the mathematical expression (\pm) followed by a numerical value. to demonstrate how much variation exists from the mean, or expected value.

Response to Comment 4.a:

DOH acknowledges that conditions naturally fluctuate spatially and temporally, but DOH uses set reference points to deal with the spatial variation and simultaneous readings to deal with temporal variation.

No changes to the proposed rules have been made as a result of this comment.

Comment 4.b:

B. HAR, CHAPTER 11-55

2.§11-55-15(d): To clarify, is the DOH restricting compliance schedules to permits with effluent limitations more stringent than the water quality standards? If so, PHNSY&IMF recommends that the use of compliance schedules not be restricted.

Response to Comment 4.b:

No. DOH is not restricting compliance schedules to those more stringent than the WQS. DOH is instead setting new effluent limits with compliance schedules in accordance with 40 CFR 122.47. No changes to the proposed rules have been made as a result of this comment.

Comment 4.c:

3.§11-55-34.09(d): Does the following statement apply to all permits covered under general permits, "An administrative extension of an NGPC granted, automatically or by notification, for a project which later is found to be in non-compliance will be automatically terminated and may be required to apply for individual NPDES permit coverage." PHNSY&IMF recommends that termination be decided on a case-by-case basis.

Response to Comment 4.c:

Yes. It applies to all NPDES general permits. Please see the responses to Comments 3.d and 8.e. No changes to the proposed rules have been made as a result of this comment.

Comment 4.d:

4.§11-55-40(1)(A)(v):

Does the DOH intend to issue field citations for late submittals?

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Response to Comment 4.d:

DOH may issue field citations for late submittals. No changes to the proposed rules have been made as a result of this comment.

Comment 4.e:

5.§11-55-40(1)(B)(v):

Does the DOH intend to issue fines for late submittals?

Response to Comment 4.e:

DOH may issue fines for late submittals. No changes to the proposed rules have been made as a result of this comment.

Comment 4.f:

6.Appendix B (SW General Permit) Section 10(a)(2): Submitting stormwater reports 30 days after sample collection is not feasible considering it takes that long to receive the analytical laboratory reports. PHNSY&IMF recommends submitting the reports 60 days after sample collection.

Response to Comment 4.f:

Acknowledged. Revised as suggested.

Comment Set 5 – City and County of Honolulu, Water Quality Laboratory Branch,
Division of Environmental Quality, Department of Environmental Quality

Comment 5.a:

Note that the proposed TST method of interpreting WET testing results does not replace the existing method of interpretation (known as the “No Observed Effect Concentration” or NOEC); it provides the department with an additional tool to assess water quality.

Comment on the proposed revision above:

If TST is the required statistical tool for data analyses, WET tests will automatically include only the control and sample dilution equivalent to the IWC. Thus, NOEC calculation is not possible since the statistical method to determine NOEC involves several sample dilutions.

Should NOEC remain as a measure of water quality, notwithstanding additional TST data, this case should be clearly stated in the NPDES permits. Laboratories will then have a clear directive to continue WET testing on several sample dilutions.

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Response to Comment 5.a:

This comment is duly noted. NPDES permits will clearly state whether the NOEC or TST will be used for WET test data analysis.

No changes to the proposed rules have been made as a result of this comment.

Comment Set 6 – General Contractors Association of Hawaii

Comment 6.a:

Comments Regarding the Proposal to Stagger Permit Expiration Dates

The GCA does not support the proposal to stagger the expiration dates of the general permits in order to prevent them from expiring on the same date. While this might appear to be an effective way to reduce the flood of NOIs that are received when the general permits expire, the GCA is concerned about the DOH's recent history with respect to the rulemaking process and issuance of general permits.

For instance, the pesticide general permit (Appendix M) was not issued until October 21, 2012, almost one year after the deadline for states to develop permits (it should be noted that the original deadline of April 9, 2011 was extended to October 31, 2011). In fact, the Notice of Public Hearing for the pesticide general permit did not occur until April 30, 2012, six months after the deadline to develop a final permit.

Due in part to the delays caused by the pesticide general permit, the Notice of Public Hearing for the current proposed changes to HAR 11-54 and 11-55 was not issued until July 12, 2013, nearly 9 months after expiration of the previous general permits. This has caused unnecessary delays for project owners and the construction industry, as organizations have been forced to apply for individual permits (which take approximately 6 months, as opposed to 1 month for general permit approval) or wait for reissuance of the general permits.

These unwarranted delays demonstrate that the DOH has had inappropriate expectations regarding the level of effort and amount of time required to follow its own administrative procedures (i.e., HRS Chapter 91, the Hawaii Administrative Rules Drafting Manual, and HAR 11-1).

Similarly, the DOH is nearly a year behind in reissuing all other NPDES General Permits (HAR, Chapter 11-55, Appendices B through L) that expired on October 21, 2012.

Appendix B – Storm Water Associated with Industrial Activity.

Appendix C – Storm Water Associated with Construction Activity.

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Appendix D – Treated Effluent from Leaking Underground Storage Tank Remedial Activities.

Appendix E – Once Through Cooling Water Less Than One (1) Million Gallons Per Day.

Appendix F – Hydrotesting Water.

Appendix G – Construction Activity Dewatering Effluent.

Appendix H – Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals.

Appendix I – Treated Process Wastewater Associated with Well Drilling Activities.

Appendix J – Occasional or Unintentional Discharges from Recycled Water Systems.

Appendix K – Storm Water and Certain Non-Storm Water Discharges from Small MS4s.

Appendix L - Circulation Water from Decorative Ponds or Tanks.

With the proposal to stagger the expiration dates of these 11 general permits, the DOH would be in the rulemaking process for three out of every five years in order to issue new general permits. The GCA is concerned that this would place the DOH into a de facto permanent state of rulemaking just to keep up with general permit renewals, leaving little extra time to address new requirements and possibly causing additional delays. For these reasons, the GCA recommends maintaining the current schedule with all permits expiring at the same time.

Response to Comment 6.a:

Thank you for your concern regarding the lack of resources. However, DOH is committed to reissuing the General Permits as proposed, and we believe the staggering of the expiration dates will allow us to achieve this. We will continue administratively extending NGPCs under expired General Permits in accordance with HAR 11-55.

No changes to the proposed rules have been made as a result of this comment.

Comment 6.b:

Definition of 'Infeasible'

US EPA has proposed to add a definition of "infeasible" at 40 CFR 450.11(b). Several of the provisions of DOH's permit require permittees to implement controls, unless infeasible. However, the current permit language does not provide a definition of infeasible. EPA proposes to add the following definition of infeasible to HAR 11-55:

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Infeasible means not technologically possible, or not economically practicable and achievable in light of best industry practices.

GCA supports the proposed definition for “infeasible” as it is consistent with EPA’s recently issued 2012 federal Construction General Permit (CGP). GCA finds it important for DOH to provide a definition for “infeasible” within the text of permit because several of the rule’s requirements must be implemented “unless infeasible.” The construction community must be able to reasonably assess whether a given BMP is technologically possible to implement, and if so, whether it makes reasonable economic sense in light of comparable industry practices to do so. Site-specific factors must be considered in such determinations and DOH should avoid making broad or universally-applicable feasibility pronouncement.

Response to Comment 6.b:

Appendix C was revised to include the following definition of infeasible: “Infeasible means not technologically possible, or cost prohibitive and not achievable in light of best industry practices.”

Comment 6.c:

HAR 11-55-34.09(d) The provision to automatically terminate an administrative extension of general permit coverage due to any non-compliance is excessively harsh. Legally, when general permits expire, they are automatically “administratively extended” to those permit holders who were already covered. Under such circumstances, it is common for the NPDES permitting authority (INCLUDING US EPA) to provide some type of “enforcement discretion” or “no action” assurance - typically conditioned upon compliance with the terms/conditions of the recently expired permit. Specifically, this means that the permitting authority will pursue enforcement only as it would have under the prior permit. Under DOH’s proposed rule, even a minor paperwork violation that has no bearing on water quality – such as missing a single weekly inspection, or failure to document a single corrective action, would be grounds to automatically terminate coverage under an administratively-extended permit. Thus, there would be no general permit under which the construction project (that discharges stormwater to waters of the state) could apply for coverage. Such construction activities would be forced to cease or they would face significant fines and penalties for noncompliance.

GCA respects the fact that the director should have the ability to police the provisions in the permit. However, the department would potentially shut down construction if it were to terminate the administrative extension without at least providing the permittee an opportunity to correct a non-compliance before termination of the administrative extension.

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Furthermore, GCA does not agree that an NOI must be submitted prior to the permit expiration date. Please see the recent example from Georgia which is attached to this letter.

11-55-34.09(d) ...permit coverage[,] specifies, whichever occurs first. “An administrative extension of an NGPC granted, automatically or by notification, for a project which later is found to be in non-compliance will may be [automatically terminated] subject to fines and penalties by the director [and may be required to apply for individual NPDES permit coverage]. If administratively extended, the terms and conditions of the expired permit will continue to be effective for projects that submitted NOIs prior to the expiration date. [Projects that do not submit NOIs prior to the expiration date may not be administratively extended.]”

Response to Comment 6.c:

Please refer to the Response to Comment 8.e.

DOH does not wish to follow the Georgia example. No changes to the proposed rules have been made as a result of this comment.

Comment 6.d:

Appendix B, Section 10(a)(2) The GCA believes that the proposed requirement to submit DMRs within 30 days of sample collection is too short. In many cases, turnaround time for analytical laboratories can be 2-3 weeks. This leaves only 1-2 weeks for the permittee to review the analytical results, and prepare and submit the DMR. The GCA feels that 60 days after sample collection is more appropriate, and more closely matches the previous requirement to submit DMRs within 60 days after the end of each monitoring year. The 60-day reporting window would also allow time for resampling should there be an issue with the laboratory that disqualifies the sample from being used, such as missed calibrations or holding times.

10(a)(2) The permittee shall submit monitoring results at least annually and the results shall be postmarked or received by the department no later than [thirty] sixty calendar days after sample collection.

Response to Comment 6.d:

DOH agrees. Based on other comments received during the comment period, the submission timeframe has been revised to 60 days after sample collection.

Comment 6.e:

Appendix B, Section 10(b)(2) If effluent limitations are exceeded, the DOH is proposing to require monitoring of every representative storm until limitations are

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met. The GCA believes that this proposed requirement is excessive and places undue burden on permittees. Instead, the GCA proposes the following language, which is consistent with the 2008 EPA MSGP.

10(b)(2) The permittee must conduct follow-up monitoring within 30 calendar days (or during the next representative storm event, should none occur within 30 days) of implementing corrective action(s) taken in response to an exceedance of a limitation in Table 34.1 or other requirements of this general permit. Monitoring must be performed for any pollutant(s) that exceeds the limitation. If this follow-up monitoring exceeds the applicable effluent limit, the permittee must comply with Sections 10(b)(2)(A) and 10(b)(2)(B).

10(b)(2)(A) Report the noncompliance as required in Section 10(c).

10(b)(2)(B) The permittee must continue to monitor, at least quarterly (or during the next representative storm event, should none occur within a quarterly period), until the discharge is in compliance with the limitation or until the department waives the requirement for additional monitoring.

Response to Comment 6.e:

Refer to Response to Comment 8.g.

No changes to the proposed rules have been made as a result of this comment.

Comment 6.f

Appendix C, Section 1.3 Sections 1.3 and 1.3.2 are modified in order to conform with Section 7.2.3.

1.3 This general permit shall automatically cover discharges of storm water from emergency-related construction activities as declared by the President of the United States [or], state governor, or the director if all of the following conditions are met:

Appendix C, Section 1.3.2

1.3.2 Provide documentation to substantiate the occurrence of the public emergency by the President of the United States [or], state governor, or the director

Response to Comment 6.f

Sections 1.3, 1.3.2, and 7.2.3 have been revised to indicate that emergency-related construction activities are declared by the President of the United State or State Governor. Reference to the “director” of health has been removed.

Comment 6.g:

Appendix C, Section 2.1.7 In some cases, a construction support activity would be eligible for general permit coverage for storm water discharges associated with industrial activity, such as with a hot-mix asphalt or concrete batch plant. If the temporary plant meets the description of construction support activities, it should not be required to apply for general permit coverage for that type of construction or industrial activity.

Storm water discharges for which the director has issued a notice of general permit coverage under another general permit specific to that type of construction or industrial activity, except for construction support activities identified in Section 1.1 of Appendix C; and

Response to Comment 6.g:

The requirement in Section 2.1.7 explains that separate Appendix B or C permit coverage is not required if already covered under another NPDES permit. DOH does not believe any change is required because Section 1.1 specifies that construction support activities may also be covered under the general permit for which the construction support activity is required. As long as the construction support activity is covered under a NPDES permit, it does not matter if the coverage is separate or together with the construction activity.

No changes to the proposed rules have been made as a result of this comment.

Comment 6.h:

Appendix C, Section 5.1.1.2.1.2 The GCA proposes the following changes in order to maintain consistency with the settlement agreement and EPA's proposed rulemaking. It is critical for DOH to differentiate between increased erosion caused by the construction site discharges and erosion caused by other sources (e.g., upslope development). This revision would clarify that construction site operators are responsible for erosion control in the "immediate vicinity" of permitted outfalls, which is in the area where the contractor is performing work. This requirement does not require permittees to address streambank and channel erosion that is caused by other sources. GCA believes this is an important point of clarification.

5.1.1.2.1.2 The nature of storm water runoff and run-on at the site, including factors such as expected flow from impervious surfaces, slopes, and site drainage features. If any storm water flow will be channelized at the site, the permittee shall design storm water controls to control both peak flowrates and total storm water volume to minimize [erosion at outlets and to minimize downstream channel and streambank erosion]

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channel and streambank erosion in the immediate vicinity of discharge points;

Response to Comment 6.h:

Acknowledged. Section revised as proposed.

Comment 6.i:

Appendix C, Section 5.1.1.2.2 The GCA proposes the following changes in order to maintain consistency with the settlement agreement and EPA's proposed rulemaking. Replacing the phrase "increase sediment removal" with "to reduce pollutant discharges" would clarify that the goal of the requirement to direct stormwater to vegetated areas and to maximize stormwater infiltration is to reduce pollutant discharges. GCA also seeks to point out that NPDES permitting authorities only have authority over discharges of pollutants; DOH may not regulate the internal processes of a facility. By requiring operators to control erosion within the site, DOH is in effect regulating the internal process of a construction site.

5.1.1.2.2 The permittee shall direct discharges from storm water controls to vegetated areas of the site [to increase sediment removal and maximize storm water infiltration], including any natural buffers established under section 5.1.2.1., and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible. Use velocity dissipation devices if necessary to [prevent erosion] minimize pollutant discharges when directing storm water to vegetated areas.

Response to Comment 6.i:

Section 5.1.1.2.2 has been revised to:

The permittee shall direct discharges from storm water controls to vegetated areas of the site, including any natural buffers established under section 5.1.2.1., and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible. Use velocity dissipation devices if necessary to minimize soil erosion in order to minimize pollutant discharges when directing storm water to vegetated areas.

Comment 6.j:

Appendix C, Section 5.1.2.1 In some cases, the boundary of the disturbance area could be less than 50 feet, but not adjacent to the State water. In these cases, the requirement for a 50-foot buffer is infeasible.

5.1.2.1 Note: If the boundary of the disturbance area is [adjacent to] within 50 feet of the State water, triggering this requirement, then the installation

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of the project's perimeter control may be considered equivalent to the installation of sediment control.

Response to Comment 6.j:

Acknowledged. Revised as suggested.

Comment 6.k:

Appendix C, Section 5.1.2.1.1.3 The GCA proposes the following changes in order to maintain consistency with the settlement agreement and EPA's proposed rulemaking. This recommended change would provide a potential exemption from stabilization for certain areas of a site that the permitting authority has determined must remain disturbed.

5.1.2.1.1.3 If it is infeasible to provide and maintain an undisturbed natural buffer of any size, the permittee shall provide and maintain double sediment control (e.g., perimeter control) spaced a minimum of 5 feet apart and complete stabilization within 7 calendar days of the temporary or permanent cessation of earth-disturbing activities. In limited circumstances, stabilization may not be required if the intended function of a specific area of the site necessitates that it remain disturbed.

Response to Comment 6.k:

The addition of the suggested language is not appropriate within this section because it relates to the "undisturbed natural buffer." However, Section 5.2.1.1. was revised to include the following:

"In limited circumstances, stabilization may not be required immediately (or, in even more limited circumstances, permanently) if the intended function of a specific area of the site necessitates that it remain disturbed.

Note: The Department can envision only limited cases where a disturbed area would not require stabilization because it should remain disturbed. Permittees must still minimize discharges from disturbed areas."

Comment 6.l:

Appendix C, Section 5.1.2.1.2.1 The GCA proposes the following changes in order to maintain consistency with the settlement agreement and EPA's proposed rulemaking:

5.1.2.1.2.1 Ensure that all discharges from the area of earth disturbance to the natural buffer are first treated by the site's erosion and sediment controls, and use velocity dissipation devices if necessary to [prevent

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erosion] minimize pollutant discharges caused by storm water within the buffer;

Response to Comment 6.l:

Section 5.1.2.1.2.1 has been revised to:

Ensure that all discharges from the area of earth disturbance to the natural buffer are first treated by the site's erosion and sediment controls, and use velocity dissipation devices if necessary to minimize soil erosion in order to minimize pollutant discharges caused by storm water within the buffer;

Comment 6.m:

Appendix C, Section 5.1.2.7 The GCA proposes the following changes in order to maintain consistency with the settlement agreement and EPA's proposed rulemaking:

5.1.2.7 The permittee shall preserve native topsoil on the site, unless infeasible. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed.

Response to Comment 6.m:

Acknowledged. Revised as suggested.

Comment 6.n:

Appendix C, Section 5.1.3.2.1.1 Is the permittee free to decide which scenario should be used to determine sediment basin storage volume? Option (2) generally meshes with the C&C Honolulu recent revisions to their drainage control standards which require retention of a 1" rainfall event as a post-construction BMP. As such, many projects might consider building the retention pond at the start of the project in order to meet the requirements of both the Construction General Permit and the post-construction BMPs. If the 2-year 24-hour rain event is greater than 1", is the permittee required to design to the larger storm water flow?

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Response to Comment 6.n:

The Permittee is not required to design the retention pond to meet both rain event requirements, but DOH recommends that the Permittees do so.

No changes to the proposed rules have been made as a result of this comment.

Comment 6.o:

Appendix C, Section 5.2.1.1 The GCA proposes the following changes in order to maintain consistency with the settlement agreement and EPA's proposed rulemaking:

5.2.1.1 The permittee shall initiate soil stabilization measures immediately whenever earth-disturbing activities have permanently or temporarily ceased on any portion of the site. In limited circumstances, stabilization may not be required if the intended function of a specific area of the site necessitates that it remain disturbed.

Note: The Department can envision only limited cases where a disturbed area would not require stabilization because it should remain disturbed. An example would be a motorcross track where unstabilized soil areas are present and are intended to remain present.

Response to Comment 6.o:

Section 5.2.1.1 has been revised to:

The permittee shall initiate soil stabilization measures immediately whenever earth-disturbing activities have permanently or temporarily ceased on any portion of the site. In limited circumstances, stabilization may not be required immediately (or, in even more limited circumstances, permanently) if the intended function of a specific area of the site necessitates that it remain disturbed.

Note: The Department can envision only limited cases where a disturbed area would not require stabilization because it should remain disturbed. Permittees must still minimize discharges from disturbed areas.

Comment 6.p:

Appendix C, Section 5.3.3.1.3 Construction equipment should be referred to as such, rather than as "vehicles."

5.3.3.1.3 Use drip pans and absorbents under or around leaky vehicles and equipment;

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Response to Comment 6.p:

Acknowledged. Revised to say:

5.3.3.1.3 Use drip pans and absorbents under or around leaky vehicles and equipment;

Comment 6.g:

Appendix C, Section 5.3.3.1.6 In rare cases, water can be used to control a spill and prevent a discharge to state waters. The following note should be added to this section:

5.3.3.1.6 Do not clean surfaces by hosing the area down.

Note: In limited cases, such as with heated asphalt cement, water may be used to cool the material itself or cool the ground in front of the material in order to slow it down, prevent a discharge to state waters, and enable recovery of the spilled material.

Response to Comment 6.g:

Section 5.3.3.1.6 states that a permittee shall not “clean surfaces by hosing the area down.” The proposed note discusses limited cases where water is used for spill response and control purposes and is not related to cleaning surfaces. Section 5.3.3.1.6 does not require the addition of this note, as the limited case of using water to slow down a spill is not prohibited by this section. Therefore, the proposed language change will not be incorporated. It should be noted that in situations where water is used to slow down certain spills, like heated asphalt cement, the cooling water will contain pollutants and shall not be discharged to state waters without NPDES permit authorization.

No changes to the proposed rules have been made as a result of this comment.

Comment 6.r:

Appendix C, Section 7.1 Under what circumstances would someone submit an NOI and still have an SSCBMP Plan? Maybe only for legacy sites in which the project (and general permit coverage) began before October 2012 and remain open for an additional 5 years after issuance of this general permit.

7.1 If a Site Specific Construction Best Management Practices (SSCBMP) Plan was previously developed for coverage under a previous version of this general permit, the permittee shall review and update the SSCBMP Plan to ensure that requirements of this permit's SWPPP are addressed prior to submitting the NOI.

Response to Comment 6.r:

Under no circumstances would someone submit an NOI and still have an SSCBMP Plan. Under no circumstances would someone submit an NOI and still have an SSCBMP Plan. The SWPPP replaces the SSCBMP Plan. Legacy sites under administrative extension will still have to update their SSCBMP Plan to meet the requirements of the SWPPP. Section 5 of Appendix C contains exceptions.

No changes to the proposed rules have been made as a result of this comment.

Comment 6.s:

Appendix C, Section 7.2.4 Often, a list of all contractors and subcontractors who will work on the site is not available at the time the NOI and SWPPP are submitted. The GCA recommends the following not be added to this section:
7.2.4 The SWPPP must include a list of all other contractors (e.g., sub-contractors) who will be engaged in construction activities at the site, and the areas of the site over which each contractor has control.

Note: The department acknowledges that a list of all other contractors might not be available at the time the SWPPP and NOI are submitted. If that is the case, then the SWPPP must be amended to include the information required in Section 7.2.4 as it becomes available.

Response to Comment 6.s:

Section 7.2.4 has been revised to:

“The SWPPP must include a list of all other contractors (e.g., sub-contractors) who will be engaged in construction activities at the site, and the areas of the site over which each contractor has control.

Note: The department acknowledges that a list of all other contractors might not be available at the time the SWPPP and NOI are submitted. If that is the case, then the SWPPP must be amended to include the information required in Section 7.2.4 prior to the start of construction activities.”

Comment 6.t:

Appendix C, Section 7.2.10.3 Some projects may not require post construction BMPs. It should be clear that post construction BMPs only need to be included if post construction BMPs are to be utilized.

7.2.10.3 Post construction measures.

Descriptions of measures that will minimize the discharge of pollutants via storm water discharges after construction operations have been finished. Examples include: open, vegetated swales and natural depressions; structures for storm water retention, detention, or recycle; velocity dissipation devices to be placed at

the outfalls of detention structures or along with the length of outfall channels; and other appropriate measures.

Note: Post construction measures must be included in the SWPPP only if they are required for the project (for instance, a county grading or building permit might trigger a requirement for post construction BMPs).

Response to Comment 6.t:

DOH wants to clarify that all projects require post construction BMPs (and inclusion of them in the SWPPP) to minimize the discharge of pollutants via storm water discharges after construction operations have been finished. Previous Appendix C NPDES general permits required the NOI to contain a description of post construction BMPs which means post construction BMPs are required. The language in the public notice permit was the same as in previous general permits, however, this Section 7.2.10.3 has been revised (as a result of this comment) to clarify DOH's intent:

Descriptions of measures that will minimize the discharge of pollutants via storm water discharges after construction operations have been finished. All projects require post construction BMPs to minimize the discharge of pollutants via storm water discharges after construction operations have been finished. Examples include: open, vegetated swales and natural depressions; structures for storm water retention, detention, or recycle; velocity dissipation devices to be placed at the outfalls of detention structures or along with the length of outfall channels; and other appropriate measures.

Comment 6.u:

Appendix C, Section 7.2.12.3 There appears to be a typo in this section.
7.2.10.3 Prior to the commencement of earth-disturbing activities or pollutant-generating activities, whichever occurs first, the permittee shall ensure that the following personnel understand the requirements of this permit and their specific responsibilities with respect to those requirements:

Response to Comment 6.t:

Acknowledged. Revised as suggested in Section 7.2.13.1.

Comment 6.v:

Appendix C, Section 7.2.15(d) As written, the requirement to include a copy of other permits is too broad. For a construction project, this could include many permits that have little or no bearing on the SWPPP, such as building permits, conditional use/special use permits, explosives permits, pressure vessel permits, boiler permits, air permits. Instead, the SWPPP should include a listing of other permits required for the project. If the director determines that some of the other

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permits should be submitted, then that can be requested pursuant to Section 7.2.16.

7.2.15(d) [Copy] A list of other permits required for the project.

Response to Comment 6.v:

Acknowledged. Revised as suggested.

Comment 6.w:

Appendix C, Section 9.1 In some cases, storm water runoff from a site will enter a storm water conveyance, such as an MS4, and the receiving state water could be miles from the site. In such cases, permittees should not be required to inspect the receiving state waters on a routine (i.e., weekly) basis. Instead, it would be more effective to inspect the storm water conveyance in lieu of the receiving state waters. An inspection of the receiving state waters should be necessary only during an upset event, such as an oil spill that reaches the storm water conveyance during or a storm event (or if a storm event occurs before the spill is cleaned up).

9.1 Site Inspections

The permittee shall timely inspect the receiving state waters, storm water conveyances, storm water runoff and control measures, and/or best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4.

Response to Comment 6.w:

Section 9.1 has been revised to:

The permittee shall timely inspect the receiving state waters, storm water runoff and control measures, and best management practices...Except, if the discharge enters an MS4 or separate drainage system, then the permittee may inspect their discharge when it enters a drainage system rather than at the receiving water (excluding an upset event, BMP failure, or rainfall events greater than 0.25 inches).

Comment Set 7 – NAVFAC

Comment Set 7 – Department of the Navy, Naval Facilities Engineering Command, Hawaii

Comment 7.1.

11-55-04(a) Recommend adding "or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area" after "disturb one or more acres of land," in first sentence to be

consistent with Appendix C, 40 CFR 122.26, and Section 11-55-40. Otherwise, it appears that projects that disturb less than one acre of land area but are part of a larger common plan of development that will disturb one acre or more of total land area would not require an individual permit.

Response to Comment 7.1.

Acknowledged and revised as suggested.

“(a) Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, or substantially altering the quality of any discharges...”

Comment 7.2.

11-55-04(g) In Section 11-55-04(g), it is stated that industrial activities, except construction activities under 40 CFR Section 122.26(b)(14)(x) and 40 CFR Section 122.26(b)(15), which provide calculations and certify that they do not discharge storm water to state waters are not required to obtain an individual permit or general permit coverage.

This provision appears to require permit coverage for construction activities described under 40 CFR Section 122.26(b)(14)(x) and 40 CFR Section 122.26(b)(15) regardless of whether there is a potential to discharge storm water into state waters.

We agree that if there is no storm water discharge to state waters that National Pollutant Discharge Elimination System (NPDES) permit coverage would not be required because the NPDES program regulates discharges into waters of the United States. However, we do not agree that construction activities described under 40 CFR Section 122.26(b)(14)(x) and 40 CFR Section 122.26(b)(15) should be excluded from this provision. The climatic and geographic features of the area (such as topography, rainfall, and distance to the nearest storm drain inlet or water body), would determine whether a discharge will occur. We believe this exclusion is arbitrary because these factors would be just as likely to apply if construction activity occurs within a geographic location as they would with another type of industrial activity. The nature of the activity being conducted is not relevant if there is no discharge. In fact, the construction activity would likely be of shorter duration, and the probability of being exposed to a severe storm would be much less than for activities being conducted at a permanent facility. The property owner or operator can use climatic and geographic information, as well as historic observations to determine whether a discharge would occur at a

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construction site, and determine whether to seek coverage under a discharge permit.

Response to Comment 7.2.

DOH disagrees. No changes have been made to the proposed rules as a result of this comment.

Similarly to 40 CFR 122.26(g), conditional exclusion for “no exposure” of industrial activities and material to storm water, the limitations do not include storm water discharges from construction activities [i.e., as described under 40 CFR Section 122.26(b)(14)(x) and 40 CFR Section 122.26(b)(15)].

Comment 7.3.

11-55-34.02(b)(2) Recommend adding "or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area" after “disturb one or more acres of land,” in first sentence to be consistent with Appendix C and 40 CFR 122.26 and Section 11-55-40.

Response to Comment 7.3.

Acknowledged and revised as suggested.

Appendix C, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction [Activity," dated October 2007,]Activity” for storm water discharges from construction activities which result in the disturbance of five acres or more of total land area or small construction activities which result in the disturbance of one to less than five acres of total land area or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area;

Comment 7.4.

11-55-40(1)(A)(v) The proposed addition of this section of the rule includes failure to submit documents, reports, and/or submittals required by the applicable NPDES permit, which includes, but is not limited to, discharge monitoring reports, monthly compliance information, pollution prevention plans, notification to the director, and/or notices of cessation.

A citation and fine seem severe for some of the above-mentioned omissions. Though we recognize that submittals are permit requirements and we do not ignore the requirements, on the overall scale of environmental protection and

compliance, some of the listed documents are not going to have much effect (e.g., some notifications and notices of cessation). There are sometimes valid reasons for a submittal to be delayed or notification overlooked.

Request that the notice of cessation be deleted from this section. Request that this section be modified so that citations would be issued after warnings have been sent with a deadline for response, and that the Department of Health consider extenuating circumstances when deciding if citations are needed.

Response to Comment 7.4.

It is the Permittee's responsibility and not DOH's to ensure compliance. Any failure to comply with any requirement may constitute a violation. The field citation is an opportunity to settle minor violations without larger penalties and delay. The Department may issue warnings and consider extenuating circumstances when deciding if citations are needed, but does not agree that is appropriate before all citations. No changes have been made to the proposed rules as a result of this comment.

Comment 7.5.

Appendix B, Section 10(a)(2) The proposed revision changes the due date for monitoring results to 30 calendar days after sample collection. Request that the due date for monitoring results be 45 days after sample collection or that there be some allowances made if the report is submitted after more than 30 days after sample collection. It is better to have results as soon as possible to identify problem areas, but laboratories cannot always report results within 30 days. Typical turnaround time for most laboratories is three (3) weeks, and sometimes it can take that long or longer even if expedited turnaround time is requested.

Response to Comment 7.5.

DOH agrees. Based on other comments received during the comment period, the submission timeframe has been revised to 60 days after sample collection.

Comment 7.6.

Appendix C, Section 1.1 In the second paragraph of this section it is stated that one of the conditions for a construction support activity to be covered by this general permit is that it cannot serve multiple unrelated construction projects. Request that this be revised to allow general permit coverage for staging and laydown areas that are used for more than one unrelated project by the same contractor on the owner's property for the duration of the construction project.

Common/central staging and laydown areas allow for less land disturbance and disruption to operations and activities on base.

Response to Comment 7.6.

A multi project use area is not a “construction support activity” if it serves multiple unrelated projects. To clarify, projects using the same area for multiple unrelated construction projects must obtain coverage under the general permit, and the multi-use area must seek its own separate coverage. DOH is not willing to issue multiple permit coverages for the same property because it is redundant and will lead to regulatory and enforcement confusion. No changes have been made to the proposed rules as a result of this comment.

Comment 7.7.

Appendix C, Section 5.1.1.2.1.2 It is stated that the permittee shall design storm water controls to control both peak flowrates and total storm water volume. Will a storm of specific frequency and duration be specified by the Clean Water Branch?

Response to Comment 7.7.

No. Storm water runoff may occur from any storm regardless of frequency or duration. Neither the Clean Water Act nor Hawaii’s Water Pollution law specify particular storm frequency or duration.

No changes have been made to the proposed rules as a result of this comment.

Comment 7.8.

Appendix C, Section 5.1.2.1.1.2 and 5.1.2.1.1.3 It is stated that if an undisturbed natural buffer less than 50 feet is provided and maintained or if it is infeasible to provide and maintain an undisturbed natural buffer of any size that double sediment control spaced a minimum of 5 feet apart would be required. It is not always feasible to have 5-foot spacing throughout the duration of the project at projects that would otherwise be eligible for general permit coverage that don’t fit any of the exceptions listed in Section 5.1.2.1.4.3.

Request that either a fourth alternative be provided to allow single erosion control for last five (5) feet of area to be stabilized or that the exceptions be expanded to include projects that are not water-dependent structures or water access area (e.g., shoreline landscaping or erosion control above the high water mark).

Response to Comment 7.8.

The double fencing requirement is limited to particular situations where there is insufficient natural buffer. In order to protect resources, DOH thinks double fencing is necessary in those particular situations.

No changes have been made to the proposed rules as a result of this comment.

Comment 7.9.

Appendix C, Section 5.1.3.3 This section prohibits discharging water removed during dewatering activities. Request that this be revised to prohibit such discharges without separate permit coverage (e.g., Appendix G or individual permit).

Response to Comment 7.9.

The coverage under another permit (either Appendix G or an Individual Permit) is not affected by the coverage under Appendix C. This Appendix C coverage pertains only to this general permit, so no change is required.

Comment 7.10.

Appendix C, Section 5.2 It is stated in the note in this section that the Department of Health does not expect that stabilization measures be applied to areas that are intended to be left unvegetated. We agree that there are areas that should be left unvegetated or unstabilized following construction, especially in areas that were previously unvegetated. There is some concern that this could be mis-interpreted, and that final stabilization will not be implemented at some sites. Requests that this paragraph also indicate that with the exception of areas that were not previously covered by vegetation or otherwise stabilized and those types of areas described in the note that permanent stabilization is required for disturbed areas.

Response to Comment 7.10.

We agree that the note needed clarification and so Section 5.2 has been revised to:

Note: For the purposes of this permit, “exposed portions of the site” means areas of exposed soil that are required to be stabilized. Note that the department does not expect that temporary or permanent stabilization measures to be applied to areas that are intended to be left unvegetated or unstabilized following construction (e.g., dirt access roads, utility pole pads, areas being used for

storage of vehicles, equipment, or materials). Otherwise, permanent stabilization is required for disturbed areas.

Comment 7.11.

Appendix C, Section 5.2.1.1 Should “#1-3” in item d be” a-c” instead?

Response to Comment 7.11.

Acknowledged and revised.

Comment 7.12.

Appendix C, Section 5.2.1.3.2 Does “sensitive water” at the end of this section mean the same as “impaired water” used in the paragraph above?

Response to Comment 7.12.

Yes, the section has been revised to “impaired water.”

Comment 7.13.

Appendix C, Section 5.3.3.3.2 The term “landscape materials” is used in the first paragraph, and “chemicals” is used in item a. Recommend using “materials” in item a.

Response to Comment 7.13.

The section has been revised to “chemicals and materials.”

Comment 7.14.

Appendix C, Section 5.3.3.3.5 This section requires that construction and domestic waste be kept in containers. There are some construction wastes (e.g., removed vegetation, removed concrete) that may not be practical to keep in containers. Request that this section be revised to allow other means of storing waste.

Response to Comment 7.14.

No change required. Removed vegetation and concrete shall not be stockpiled unless intended to be used for construction where they are required to be handled in accordance with Section 5.1.2.4. DOH’s intent is that waste materials that cannot be kept in containers shall be properly disposed of daily and not be kept on-site.

Comment 7.15.

Appendix C, Section 7.2.2 Request that “size of property” be replaced with “size of the project site” in the first sentence. Size of property for large landowners would not provide much information regarding the activities being covered by permit.

Response to Comment 7.15.

Acknowledged and revised as suggested.

Comment 7.16.

Appendix C, Section 7.2.6.4 Pavement and structures are shown as examples of existing vegetative cover, but are not vegetative cover.

Response to Comment 7.16.

Revised to “Topography of the site, existing vegetative cover and features (e.g., forest, pasture, pavement, structures)...”

Comment 7.17.

Appendix C, Section 7.2.15 Recommend inserting “if applicable” to the first sentence.

Response to Comment 7.17.

Acknowledged and revised as suggested.

Comment 7.18.

Appendix C, Section 13.1 There is mention here of reporting still being required which states that there is “no change,” and reference to “this monthly compliance information.” Section 11-55-40(1)(A)(v) lists “monthly compliance information” as one of the submittals for which a citation could be issued for failure to submit. However, there does not appear to be a statement requiring a monthly compliance report. The term “compliance information” is used at the start of the section, but is a generic term currently used in ePermitting for any updates and submittal required by permit instead of a specific report.

If the intent was to require monthly compliance reports for each project covered by general permit, seven (7) days would not provide enough time for the contractor to prepare the report, the owner to review it and get necessary changes made, submit it via ePermitting Portal, get certification statement signed, and submit the hard copy certification package to the Department of

Health. Submittal of monthly reports will require a lot of additional work for authorized representative for the Notice of General Permit Coverage (NGPC) and his/her staff at a time when the Federal Government is expecting a lower operating budget over the next several years.

Request that reports be prepared by the Contractor or permittee and kept at the project site, and that the Department of Health request them periodically from randomly selected sites to check on compliance.

Response to Comment 7.18.

Section 13.1 has been revised to:

“The owner or its duly authorized representative shall prepare a monthly compliance report, which shall include but is not limited to information as required in this general permit and NGPC, any incidences of non-compliance and corrective actions. The monthly compliance report shall be kept on-site and available by the end of the next business day when requested by the department. Upon the department receiving EPA’s Cross-Media Electronic Reporting Regulation (CROMERR), the monthly compliance reports shall be submitted through the e-Permitting Portal. Any comments provided by the department shall be answered in the time specified and to the satisfaction of the department. If the activity is in compliance and none of the information on file with the department requires updating, or there were no incidences of non-compliance, preparation of the monthly compliance information is still required which states that there were “no changes, updates, or any incidences of non-compliance to report.

Note: EPA's Cross-Media Electronic Reporting Regulation (CROMERR) sets performance-based, technology-neutral standards for systems that states, tribes, and local governments use to receive electronic reports from facilities they regulate under EPA-authorized programs and requires program modifications or revisions to incorporate electronic reporting. CROMERR also addresses electronic reporting directly to EPA.”

Comment 7.19.

Appendix C, Sections 13.1 and 13.2 It is stated at the end of Section 13.1 that when all construction activities have ceased, the owner shall submit to the department a completed Notice of Cessation along with this monthly compliance information...within 7 calendar days after the end of the month. Section 13.2 indicates that the Notice of Cessation form needs to be submitted in accordance with 11-55-18, which requires a Notice of Cessation be submitted within thirty

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days after the permanent discontinuance or dismantlement of that treatment works or waste outlet for which the NPDES permit had been issued.

Request that the Notice of Cessation be deleted from Section 13.1, and that time allowed for submittal in 11-55-18 be allowed. It sometimes takes 7 days or more to obtain signature from a senior officer.

Response to Comment 7.19.

DOH is not requiring the Notice of Cessation (NOC) to be submitted within 7 calendar days at the end of the construction activity. To clarify, submittal of the NOC is required within 7 calendar days after the end of the month. For example, if you construction ends on October 1st, you'll have until November 7th to submit the NOC.

Section 13.2 has been revised to:

“When all construction activities have ceased, the owner shall submit to the department a completed Notice of Cessation form. The department shall receive this information within 7 calendar days after the end of the month.”

Comment 7.20.

Appendix C, General Comment Request more flexibility in selecting best management practices. There will likely be some sites where all of the practices in the regulations will not apply, and it would also allow for contractor innovation and changes in the construction industry over time.

Response to Comment 7.20.

DOH believes the permit already provides flexibility in selecting best management practices by offering compliance alternatives and allowances for situations where not feasible. DOH does not require particular BMPs, they require Permittees to come into compliance using appropriate means. No changes have been made to the proposed rules regarding this comment.

Comment 7.21.

Appendix C, General Comment Recommend reducing overlap of information between Sections 5, 7, and 9 to make regulations easier to use and reduce time spent comparing requirements in each section (especially for inspection and corrective action).

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Response to Comment 7.21.

DOH will review the rules over the permit term and make any revisions in the next amendment. No changes have been made to the proposed rules regarding this comment.

Comment 7.22.

Appendix F, Table 34.4 There is a typographical error in the unit of measure for Total Residual Chlorine.

Response to Comment 7.22.

Acknowledged. The unit of measure has been revised.

Comment Set 8 – Alexander & Baldwin, Inc.

Comment 8.a:

Alexander & Baldwin, Inc. (A&B) strongly supports the prompt adoption of revisions to Hawaii Administrative Rules (HAR) Chapter 11-55, Water Pollution Control which are necessary to reauthorize the state's expired National Pollutant Discharge Elimination System (NPDES) general permits.

Since the expiration of the general permits in October 2012, project owners and others in the construction industry have been hampered by the need to obtain individual permits for all development projects that are subject to NPDES permitting requirements. No doubt permittees requiring coverage under other general permits have been similarly impacted. A&B appreciates the significant efforts made by Clean Water Branch to expedite the issuance of individual permits to the extent possible during this period, and we look forward to a timely conclusion to the rulemaking process and prompt adoption of the new general permits. Nevertheless, we would like to offer the following comments on the proposed rule, and we hope that the Department will consider making changes to certain provisions of the proposal.

Response to Comment 8.a:

DOH thanks you for your support.

No changes to the proposed rules have been made as a result of this comment.

Comment 8.b:

The Department should reconsider the proposed staggering of general permit expiration dates.

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Under the proposed revisions, the expiration dates of the general permits would be staggered so that four permits (those included as Appendices E, F, G, and K) would expire three years after the effective date of the rule, four permits (those included as Appendices B, D, H, and I) would expire four years after the effective date, and three permits (those included as Appendices C, J, and L) would expire five years after the effective date. The remaining permit (included as Appendix M) expires October 21, 2017 and would presumably be re-issued with the first group of permits when they expire in late 2016 or early 2017 (depending upon when this proposed rule is adopted). Following the next renewal, the term of the permits included as Appendices B, D, E, F, G, H, I, and K would revert to five years.

Under this proposal the Clean Water Branch would be required to complete rulemakings during three consecutive years out of every five for as long as general permits remain a part of HAR Chapter 11-55. This administrative burden would be in addition to any other rulemakings which may be necessitated by revisions to underlying federal regulations or by legislative changes to the state's water pollution control laws, Hawaii Revised Statutes Chapters 342D and 342E. A&B understands and appreciates the reasoning behind the Department's proposal to stagger the terms of the general permits. However, we are concerned that the Clean Water Branch may lack the resources that will be required to remain in a near constant state of rulemaking indefinitely. An inability to keep up with such an ambitious regulatory agenda could result in a situation similar to that currently being experienced, where general permit coverage is not available to eligible sources, and both the regulated community and the permitting resources of the Department are overburdened by the need to instead obtain individual permit coverage.

While we recognize that the simultaneous expiration of all general permits, coupled with limited permitting resources, has frequently caused a backlog of renewal notices of intent, the Department has the ability to administratively extend permit coverage for existing sources until such a backlog can be addressed, and has consistently done so in the past. While this is not an ideal situation, we believe it is vastly preferable to one in which new sources are unable to obtain general permit coverage due to delays in completing the necessary rulemaking. We therefore strongly urge the Department to reconsider the proposal to stagger the expiration dates of the general permits.

Response to Comment 8.b:

Thank you for your concern regarding the lack of resources. However, DOH is committed to reissuing the General Permits as proposed, and we believe the staggering of the expiration dates will assist us in achieving this. It is CWB's

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intention to continue to administratively extend NGPCs under expired General Permits in accordance with HAR 11-55.

No changes to the proposed rules have been made as a result of this comment.

Comment 8.c:

The proposed change to section 11-55-34.02(b)(12) is non-substantive and could have unintended consequences; it should therefore be postponed until the next expiration and re-issuance of Appendix M.

The Department proposes to revise section 11-55-34.02(b)(12) by replacing "January" with "August". The proposed revision corrects a typographical error in the drafting date of the pesticide general permit (PGP). This date has no regulatory significance, since the expiration date of the permit is tied to the date of adoption (October 21, 2017), not the date drafted; as such, the proposed revision is a non-essential "housekeeping" matter. The proposed revision is problematic because Appendix M states that the general permit expires "five years after the effective date, or when amendments to section 11-55-34.02(b)(12) are adopted, whichever is earlier". Appendix M also states that a notice of general permit coverage under the PGP expires when amendments to section 11-55-34.02(b)(12) are adopted. Thus, the proposed "amendment" to section 11-55-34.02(b)(12) could have unintended consequences to existing permittees by cancelling existing notices of general permit coverage. Since the proposed revision is nonsubstantive and non-essential, we recommend that it be deleted from this proposal.

Response to Comment 8.c:

DOH understands your concern, and CWB does not intend to cancel existing Appendix M NGPCs after this rule amendment becomes effective.

No changes to the proposed rules have been made as a result of this comment.

Comment 8.d:

The proposed change to section 11-55-34.08(j)(2) was inadvertently inserted into section 11-55-34.08(j)(1) and should be redrafted.

The existing section 11-55-34.08(j) requires that a notice of intent (NOI) shall be submitted to the director at least 30 days before the earlier of the beginning of any construction activity which is covered under Appendix C, the expiration date of the existing general permit, or the expiration date of the existing notice of general permit coverage. The Department proposes to revise section 11-55-34.08(j)(2) by clarifying that, for emergency-related construction activities, the NOI may be submitted 30 calendar days after the start of the construction

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activity. Although the rationale for the proposed revisions correctly refers to section 11-55-34.08(j)(2) (see page 3 of the rationale document), in the rule itself the revised language regarding emergency-related construction activity has been inserted into section 11-55-34.08(j)(1). This section applies to discharges not covered under Appendix C. The proposed rule should be revised so that the exception for emergency-related construction activity is instead inserted into section 11-55-34.08(j)(2), as intended.

Response to Comment 8.d:

Section 11-55-34.08(j) has been revised to:

- (j) A notice of intent shall be submitted to the director at least thirty days before the earlier of:
 - (1) The beginning of any discharge that is not covered under Appendix C (except for coverage under Appendix M for a declared pest emergency situation where the notice of intent shall be submitted no later than thirty days after beginning [discharge]~~the construction activity or~~ pesticide discharge);
 - (2) The beginning of any construction activity which is covered under Appendix C[;], unless coverage is required for an emergency-related construction activity, in which case an NOI shall be submitted no later than 30 calendar days after the start of construction activities;

Comment 8.e:

Proposed changes to the provision allowing administrative extension of permit coverage are unclear. The provision requiring termination of an administrative extension of permit coverage for any instance of non-compliance is unreasonable and should be deleted from the proposal.

Section 11-55-34.09(d) allows the director to administratively extend a notice of general permit coverage (NGPC) upon receipt of a complete NOI before the expiration of the general permit or the date specified in the NGPC. Such administrative extensions are commonly issued when the Clean Water Branch is unable to issue a new NGPC in response to a timely renewal NOI. Under the proposed revision, the director may administratively extend a NGPC "automatically or by notification". A&B supports this proposed change. The rule is not clear, however, regarding the circumstances under which an administrative extension would be considered to have been granted automatically. The rule should provide that an NGPC shall be considered to have been automatically extended unless, within 30 days after submittal of a renewal NOI, the director

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advises the permittee otherwise. Absent the inclusion in the rule of some kind of trigger for automatic extension, permittees would have no way of knowing that their coverage has been extended unless they receive a notification from the Department, thus defeating the purpose of the automatic extension.

The proposed section 11-55-34.09(d) also includes a provision that would automatically terminate any administrative extension of a NGPC for a project which is later found to be in noncompliance. Under this provision, termination of permit coverage would be automatic for any non-compliance with the permit, no matter how trivial. A&B believes strongly that such a provision is unreasonably harsh and unwarranted. While it seems reasonable that the Department might consider termination of general permit coverage to be an appropriate response to instances of willful or egregious non-compliance, we believe such a response is unlikely for more minor offenses under normal circumstances. The application of such a demonstrably stricter standard for permittees that are under an administrative extension as compared to those under a current NGPC does not appear justified. This provision would automatically result in a loss of permit coverage for even minor paperwork oversights. We strongly recommend that this provision be deleted from the proposal.

Response to Comment 8.e:

DOH agrees that clarification is needed to the proposed rule regarding an administrative extension being granted automatically. Section 11-55-34-09(d) has been revised to:

“The director may automatically or by notification, administratively extend a notice of general permit coverage upon receipt of a complete notice of intent for renewal of a notice of general permit coverage before the expiration of the general permit or [the term of]when the notice of general permit coverage[,] specifies, whichever occurs first. A notice of general permit coverage shall be automatically extended unless the department informs the Permittee otherwise. An administrative extension of an NGPC granted, automatically or by notification, for a project which later is found to be in non-compliance will be automatically terminated and may be required to apply for individual NPDES permit coverage. If administratively extended, the terms and conditions of the expired permit will continue to be effective for projects that submitted NOIs prior to the expiration date. The department intends that projects that do not submit NOIs prior to the expiration date will not be administratively extended.

The permittee who submits a notice of intent for renewal of the notice of general permit coverage shall be treated as an owner or operator applying for permit renewal under section 342D-6(h), HRS.”

Permittees must submit a renewal NOI in order to request coverage under the new NPDES general permit. Permittees must submit the renewal NOI before the existing NPDES general permit and existing NGPC expire. Renewal NOIs that DOH cannot process before expiration of the existing general permits trigger the granting of the administrative extensions. Per HAR 11-55-34.11 and HAR 11-55-17(c), non-compliance with any condition of the expired General Permit is cause for denying the renewal NOI application. Therefore, DOH believes that if there is non-compliance and the renewal NOI is denied, the administrative extension should also be denied (i.e., terminated).

The commenter has stated: "Under this provision, termination of permit coverage would be automatic for any non-compliance with the permit, no matter how trivial. A&B believes strongly that such a provision is unreasonably harsh and unwarranted." The nature of general permits is that all provisions of the general permit must be complied with in order for there to be coverage. What constitutes a trivial non-compliance requires subjective judgment. Evaluating whether a particular instance of non-compliance is trivial or not would involve a level of review that would be inconsistent with the streamlining purpose of automatic coverage. Any non-compliance with the NPDES general permit conditions results in loss of coverage, though Permittees may reapply.

Comment 8.f:

Requirements for reporting of monitoring results under Appendix B should be revised to allow adequate time for submittal of reports.

A proposed revision to Section 10(a)(2) of Appendix B would require that permittees submit annual discharge monitoring reports no later than 30 calendar days after sample collection. Under the current Appendix B, such reports must be submitted no later than 60 days after the end of the monitoring year. According to the rationale document, "the current requirement prevents the Department from receiving monitoring results until 60 days after each monitoring year" and "the Department needs to receive the monitoring results in a more timely manner ... for the protection of human health and the environment ... and for the Department to take appropriate action (if necessary) for any non-compliance".

A&B disagrees with the Department's position with respect to timely reporting of monitoring results. Under section 10(c) of Appendix B, permittees are already required to orally report any violation of a storm water discharge limitation or a basic water quality criterion specified in the permit. This report must be made orally when the permittee first becomes aware of the circumstances, and a written report must be provided within five days thereafter. The written report must include a description of the noncompliance and any steps taken or planned

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to address it. Thus, any permittee which receives monitoring results indicating non-compliance with permit limits is already required to provide those monitoring results to the Department in a timely manner (i.e., within 24 hours (orally) and five days (in writing) of receiving (or "becoming aware of") the results). Such reports of non-compliance are sufficient to provide the Department with the information necessary "to ensure the Department's requirements are met". Continuing to allow submittal of the complete annual discharge monitoring report under the current schedule (i.e., within 60 days after the end of the monitoring year) would therefore have no impact on the Department's ability to protect human health and the environment or to take appropriate enforcement action. The current reporting schedule should therefore be retained.

In the event that the Department nevertheless desires to receive discharge monitoring reports as soon as possible after the completion of monitoring rather than after the end of the monitoring year, A&B strongly recommends revising the proposed language to allow permittees to submit monitoring reports within 30 calendar days after receipt of results rather than within 30 days after sample collection. Normal laboratory turnaround times for environmental analyses are typically up to two weeks after laboratory receipt of samples, and can be longer in some cases. The proposed reporting requirement provides insufficient time for permittees to receive and review monitoring results and to prepare, review, certify, and submit their discharge monitoring reports. The shortened timeframe is also inconsistent with the requirement of EPA's 2008 MultiSector General Permit (MSGP). Additionally, permittees required to monitor multiple outfalls would be unnecessarily burdened by having to submit multiple discharge monitoring reports at different times during the year rather than a single report at the end of the monitoring year. The MSGP allows permittees to submit monitoring reports up to 30 days receiving results for all monitored outfalls for the reporting period. Reporting requirements under Appendix B should be no more stringent than those under the MSGP.

Response to Comment 8.f:

Based on this comment and other comments received, the monitoring results submission timeframe has been revised to 60 days after sample collection.

The commenter stated: "The shortened timeframe is also inconsistent with the requirement of EPA's 2008 MultiSector General Permit (MSGP)." By law, DOH may require stricter monitoring requirements than EPA does in order to ensure compliance with the State Water Quality Standards.

Comment 8.g

Additional monitoring required under Appendix B following exceedance of a discharge limitation is excessive and should be reduced.

The proposed section 10(b)(2) of Appendix B requires that, in the event a permit limit is exceeded during monitoring, the permittee must continue to monitor every representative storm until limitations are met. This monitoring requirement is excessive, unduly burdensome, and is inconsistent with the requirements of EPA's 2008 Multi-Sector General Permit (MSGP). The proposed section 10(b)(2) should be revised to instead require quarterly monitoring (provided that a representative storm event occurs during the quarter) until compliance with the effluent limit is achieved or until the Department waives additional monitoring. Additionally, the proposed section 10(b)(2) should be revised to clarify that the requirement for follow-up monitoring is limited to the pollutant(s) for which an effluent limitation was exceeded.

Response to Comment 8.g

DOH believes this monitoring requirement is neither excessive nor unduly burdensome. If an effluent limit and/or applicable Water Quality Standards are violated, the treatment, BMPs, and other control measures need to be modified as soon as possible to come back into compliance with HRS Section 342D-50, HAR Chapter 11-54, HAR Chapter 11-55, and the NPDES permit. HAR Chapter 11-55, Appendix B, Section 9. The only way for the Permittee to determine if the modifications are working/not-working and to determine if they are still in violation of State law is to keep collecting and analyzing storm water samples from representative storm events until they are back into compliance. If they cannot come back into compliance, the Permittee has to cease their discharge.

For industrial storm water discharges, in many cases, the modifications to the treatment, BMPs, and other control measures have to be done as an iterative process. For this reason, all effluent limit parameters need to be analyzed because adding a BMP may help reduce one pollutant parameter but increase another. Example: If a Permittee decided to add a coagulant to their industrial storm water treatment process, this may bring them back into compliance for total suspended solids, but this could potentially put them out of compliance for pH and toxicity.

No changes to the proposed rules have been made as a result of this comment.

Comment 8.h

Proposed new discharge limitations specified in Table 34.1 of Appendix B are more restrictive than the water quality standards applicable to receiving state waters and should be revised.

Proposed revisions to Table 34.1 of Appendix B would impose new discharge limitations on total suspended solids, total nitrogen, total phosphorous, and nitrate + nitrate nitrogen based on water quality standards for the applicable classification of the receiving state water (previously, only monitoring and reporting was required for these parameters). The proposed revised Note 3 to the table requires that the monitored value of these parameters shall not exceed the applicable "not to exceed the given value more than ten per cent of the time" wet or dry season limit specified in HAR Chapter 11-54. A&B believes that it would be more appropriate to use the "not to exceed the given value more than two per cent of the time" wet season or dry season limit, since storms meeting the criteria for a representative storm event (i.e., rainfall that accumulates more than 0.1 inches of rainfall and occurs at least 72 hours after the previous measurable rainfall event) are relatively infrequent. Discharge flows associated with such storm events are likely to occur closer to two percent of the time (i.e., seven to eight days per year) than ten percent of the time (37 days per year). A&B recommends revising the proposed Note 3 to Table 34.1 accordingly. The proposed language would otherwise impose limits upon the discharge that are more stringent than the numerical water quality standards applicable to the receiving state water.

It should be noted that other appendices also contain proposed revisions to discharge limitations similar to those in Appendix B (e.g., see Note 2 to Table 34.5 of Appendix G and Note 2 to Table 34.8 in Appendix L). In these appendices, however, the proposed revised language does not specify which of the "not to exceed" values in HAR Chapter 11-54 is to be used as the effluent limitation. Since discharges under Appendix G (for construction dewatering) and Appendix L (for circulation water from decorative ponds or tanks) would be expected to be as or more infrequent than those under Appendix B, A&B believes that the "not to exceed the given value more than two per cent of the time" wet season or dry season limit would also be an appropriate discharge limit to specify in these general permits.

Response to Comment 8.h

The 10% criterion applies to all storm events, not only to representative storm events. Since storm events occur 10% or more of the time, the 10% criteria shall be used.

The other NPDES general permits do not specify the “not to exceed” values in HAR Chapter 11-54 because these discharges may be continuous or intermittent. The 10% or 2% criteria need to be determined on a case-by-case basis.

No change required.

Comment 8.i

Provisions of Appendix C should be revised for consistency with proposed changes to EPA's Construction General Permit.

The Department of Health has proposed to revise Appendix C to be consistent with EPA's Construction General Permit (CGP) and Effluent Limit Guidelines and Standards for the Construction and Development Point Source Category (40 CFR Part 450). A&B concurs with this approach. However, we note that in some cases the proposed revisions to Appendix C are not entirely consistent with the CGP and appear to impose more stringent requirements. Additionally, EPA has proposed changes to 40 CFR Part 450, pursuant to a settlement agreement between EPA and the National Association of Home Builders, etal. (78 FR 19434; April1, 2013), that are expected to be finalized in early 2014 and that are likely to be adopted in their entirety due to the terms of the settlement agreement. We refer the Department to comments submitted by the General Contractors Association of Hawaii, and incorporate those comments relating to Appendix C by reference.

Additionally, we note that multiple requirements under Appendix C (and the CGP) require permittees to implement certain controls "unless infeasible". Within the context of the CGP, by "infeasible" EPA means that there is a site-specific constraint that makes it technically infeasible to implement the requirement, or that implementing the requirement would be cost-prohibitive. In the April 1, 2013 proposed rule, EPA expressed a concern that there may be inconsistent interpretation by permitting authorities of what constitutes infeasibility, and noted that including a definition of what EPA means by infeasible in the rule would provide clarity and consistency for permittees. Accordingly, EPA proposed to incorporate a definition of “infeasible” into 40 CFR Part 450 as follows:

Infeasible means not technologically possible, or not economically practicable and achievable in light of best industry practices.

A&B recommends that a similar definition for the term "infeasible" be considered for incorporation into section 11-55-01, for the reasons identified by EPA.

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Response to Comment 8.i

Please see the responses to Comment Set 6.

Section 1.7 has been added to Appendix C to include the following definition of infeasible: "Infeasible means not technologically possible, or cost prohibitive and not achievable in light of best industry practices."

Comment 8.j

Clarification of requirements for discharges which initially enter separate stormwater drainage systems is needed in Appendices D, E, F, G, H, I, J, K, and L.

All general permits in Appendices B through L include provisions stating that the general permit does not cover discharges which initially enter separate stormwater drainage systems "unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s)". A revision to Appendix B, section 2(a)(4) is proposed to clarify that such approval is not required when the permittee is the owner of the drainage system. Similar clarifications should be included in Appendices D through L (this clarification is already made in the proposed Appendix C).

Response to Comment 8.j

DOH agrees. The quoted language has been added to Appendices D through L.