

Rationale for the Proposed Revisions

To Department of Health

Administrative Rules,

Title 11, Chapter 54

Water Quality Standards

Department of Health

Environmental Management Division

Clean Water Branch

Honolulu, Hawaii

June 2014

Background:

Hawaii's administrative rule for water quality standards (WQS) dates back to January 1968, when Chapter 37-A, Public Health Regulations first became effective. These regulations were authorized under the federal Water Quality Act of 1965. The first amendment to these regulations became effective in May 1974 following the amendments to the Water Quality Act which gave rise to the 1972 Federal Water Pollution Control Act, commonly known as the Clean Water Act (CWA). Much of the existing content of Hawaii's WQS rule is based on the 1968 and the 1974 WQS rules. Subsequent amendments to Hawaii's WQS were adopted in 1979 to satisfy the CWA Section 208 Basin Plan requirements. Later amendments incorporated the National Pollutant Discharge Elimination System (NPDES) permit program, the CWA Section 401 Water Quality Certifications (WQC), which in some cases accompany the Department of the Army's CWA 404 permit for constructions in waters of the U.S., and site specific amendments for the Kona (west) coast of the island of Hawaii. Some phrases and terms from the first Federal Water Pollution Control Act of 1948 have been retained in the existing Clean Water Act and existing WQS rule for Hawaii; for example the current designated uses have remained basically unchanged since 1948. The most recent amendment was adopted on December 6, 2013 and incorporated: grammatical and formatting revisions; the addition of Environmental Protection Agency (EPA) required antidegradation language to comply with section 316 of the CWA; provisions to use the Test of Significant Toxicity for interpreting and evaluating toxicity effects of effluents from NPDES permittees; and updates to various references cited in 11-54.

Proposed Revisions:

The proposed revisions to the Department of Health, Hawaii Administrative Rules (HAR), Title 11, Chapter 54, Water Quality Standards (here after referred to as HAR 11-54) includes, among other things, new definitions, clarification to the definition of State waters; clarification on the existing classification of State waters; corrected typo to specific criteria for embayments; modifications to the specific criteria for recreational areas; provisions for non-compliance with HAR 11-54; schedule of compliance clarification; provisions for intake credits; and minor writing mechanics revisions.

Definition of "Best Management Practices" or "BMPs"

Section: HAR §11-54-1 "Definition"

Original: None

Proposed: New

"Best management practices" or "BMPs" means schedules of activities, prohibitions or designations of practices, maintenance procedures, and other

management practices to prevent or reduce the pollution of State waters. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs include methods, measures or practices selected by the department to meet nonpoint source pollution control needs. BMPs also include but are not limited to structural and nonstructural controls. BMPs can be applied before, during and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving State waters.

Rationale:

The purpose in defining the term "best management practices" or "BMPs" is to ensure the consistent understanding of a general term used in DOH's statewide water pollution control programs. This definition closely tracks what is currently used in Federal Clean Water Act Sections:

- 121 (WET WEATHER WATERSHED PILOT PROJECTS),
- 208 (AREAWIDE WASTE TREATMENT MANAGEMENT),
- 319 (NONPOINT SOURCE MANAGEMENT PROGRAMS) ,
- 320 (THERMAL DISCHARGES), and
- 404 (PERMITS FOR DREDGED OR FILL MATERIAL),

and in federal Regulations, 40 Code of Federal Regulations (CFR):

- Part 122 (EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM),
- Part 123 (STATE PROGRAM REQUIREMENTS), and
- Part 130 (WATER QUALITY PLANNING AND MANAGEMENT),

as well as Hawaii Revised Statutes (HRS), Chapter 342E (NONPOINT SOURCE POLLUTION MANAGEMENT AND CONTROL), and Hawaii Administrative Rules (HAR), Chapter 11-55 (Water Pollution Control). HRS, §342D-1 defines "Management Practices" to "include treatment, processing, storage, transport, use, and disposal."

40 CFR §122.2 says the term **Best management practices ("BMPs")** means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

40 CFR §130.2(m) defines term **Best Management Practice (BMP)** as methods, measures or practices selected by an agency to meet its nonpoint source control needs. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters.

HAR, §11-55-01 mirrors 40 CFR §122.2 and defined the term "Best management practices" or "BMPs" as schedules of activities, prohibitions or designations of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of State waters. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. Hawaii Administrative Rules Chapter 11-55, titled "Water Pollution Control," implements the National Pollution Discharge Elimination System (NPDES) permitting program for point source water pollution control in the State of Hawaii, under authority delegated to Hawaii by the federal Environmental Protection Agency (EPA) pursuant to the Clean Water Act (CWA), 33 U.S.C. §1342(b).

HAR Chapter 11-54, titled "Water Quality Standards," is the state water quality standards established by the DOH pursuant to CWA, Section 303, and HRS, Chapters 91, 342D and 342E for all State waters. HRS §342D-50(a) requires that "No person, including any public body, shall discharge any water pollutant into state waters, or cause or allow any water pollutant to enter state waters except in compliance with this chapter, rules adopted pursuant to this chapter, or a permit or variance issued by the director." As such, water pollutants that enter State waters from all sources, point or non-point, shall comply with applicable requirements as established in HAR, Chapter 11-54.

The proposed definition of the term ""Best management practices" or "BMPs" is based on the definitions contained in federal rules 40 CFR §§122.2 and 130.2 and would apply to both point and non-point source pollution control programs.

Other New Definitions

Section: HAR §11-54-1 "Definition"

Original: None

Proposed: New

"Person" has the meaning defined in HRS §342D-1.

"Pollution" means "water pollution" as defined in HRS §342D-1.

"Point source" has the meaning defined in HAR §11-55-01.

"Nonpoint source pollution" has the meaning defined in HRS §342E-1.

Rationale:

From HRS §342D-1

"Person" means any individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.

"Pollution" means water pollution.

"Water pollution" means:

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

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

From HAR section 11-55-01

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

"Nonpoint source pollution" means water pollution that does not originate from a point source.

The terms "person," "pollution," "point source," and "nonpoint source," are currently used but not defined in HAR, Chapter 11-54. The purpose in adding these definitions is to make clear the meaning of these terms in HAR, Chapter 11-54. As noted, the definitions of "person" and "pollution" are the same as in HRS §342D-1, the definition of "nonpoint source" is the same as in HRS § 342E-1, and the definition of "point source" is the same as in HAR, §11-55-01, titled "Water Pollution Control."

Definition of State Waters

Section: HAR §11-54-1 "Definition"

Original: HAR 11-54-1 Definitions

Proposed: Clarification of State waters.

Rationale:

Additions to definition of State waters are for clarification and to be protective of water quality. Added definition of “drainage ditch” from HRS § 342D-1 and clarified that it excludes sanitary sewage. Added definition of “water pollution control system” for clarification.

Non-Compliance with HAR 11-54

Section: HAR 11-54-4 Basic water quality criteria applicable to all waters

Original: Subsection 11-54-4

Proposed: New §11-54-4(b) (re-letter subsequent subsections of Section 4):

11-54-4(b). The director is authorized to impose by order the penalties and fines and corrective measures as specified in chapters 342D and 342E, HRS, against any person who discharges or otherwise causes or allows water pollutants to enter State waters and cause violation of this chapter, unless that person acted in compliance with a permit or variance issued by the director pursuant to chapters 342D, HRS, for that person's discharges. Each day that the person has caused each water quality standard not to be met shall constitute a separate offense.

Rationale:

Hawaii’s law currently requires compliance with HAR Sec. 11-54. HRS Sec. 342D-50(a) states that: “No person, including any public body, shall discharge any water pollutant into state waters, or cause or allow any water pollutant to enter state waters except in compliance with this chapter, **rules adopted pursuant to this chapter**, or a permit or variance issued by the director.” Since the Water Quality Standards are rules adopted pursuant to chapter 342D, causing or allowing a pollutant to enter State waters that leads to non-compliance with Water Quality Standards violates HRS Sec. 342D-50(a) and (d).

There can be a violation of Water Quality Standards whether a pollutant is discharged from a point source or a nonpoint source. Nonpoint sources are regulated under both HRS chapters 342D and 342E. The Water Quality Standards are being revised pursuant to both HRS chapters 342D and 342E.

The purpose of these revisions is not to change current law, but to state more clearly that:

1. The director may order penalties and fines in HRS chapter 342D against a person who discharges, or causes or allows water pollutants to enter State waters and cause violation of this chapter by point or non-point source,

- unless that person has a permit, variance, or authorization issued by the director for that person's discharges;
2. There can be violations of Water Quality Standards whether the discharge is from a point source or a nonpoint source; and
 3. Each day that a person has caused Hawai'i Water Quality Standards not to be met shall constitute a separate offense.

A person can "cause or allow" "through a discharge a failure to meet Water Quality Standards" even if that person's discharge alone does not exceed a water quality standard, where the waters already contain the pollutant(s) the person is discharging and that person's discharge pushes the waters into non-compliance with water quality standards. The director has discretion to decide when to enforce or not against a person who causes or allows through a discharge the failure to meet water quality standards.

Clarification on Existing Classification of State Waters

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

HAR §11-54-6 Uses and specific criteria applicable to all marine waters.

Original: HAR §11-54-5.1 includes descriptions of Class 1.a waters.

HAR 11-54-6 includes the specific water body names that are Class AA embayments, Class A embayments, and Class AA open coastal waters.

Proposed: Added a reference in HAR §11-54-5.1 to a new Appendix A which lists specific Class 1.a water body names.

Removed the specific water body names in HAR §11-54-6. Added references to new Appendices B, C, and D for Class AA embayments, Class A embayments, and Class AA open coastal waters, respectively.

Rationale:

The existing HAR Chapter 11-54 divides inland and marine State waters into different classifications for the purpose of applying water quality standards and for the selection of appropriate quality parameters and uses to be protected in these waters. For example: The uses to be protected in Class 1.a waters are scientific and educational purposes, protection of native breeding stock, baseline references from which human-caused changes can be measured, compatible recreation, aesthetic enjoyment, and other non-degrading uses. The existing HAR §11-54-5.1 refers to other regulations (e.g. HRS Chapter 195) to determine

Class 1 waters. DOH is proposing to revise §11-54-5.1 for clarification purposes only by listing the specific water bodies that are Class 1. DOH is proposing to do this so that the public and the applicants for NPDES permits and Section 401 WQCs do not have to research other regulations to determine the Class 1 water bodies. The water bodies in the proposed Appendix A are based on the existing requirements in HAR §11-54-5.1.

DOH is proposing to remove the specific water body names in HAR 11-54-6 and add them to the new Appendices B, C, and D. This is to be consistent with the proposed revision in HAR 11-54-5.1 and to improve the readability of HAR 11-54.

Specific Criteria for Embayments (HAR 11-54-6(a)(2)(B)(3))

Section: HAR§11-54-6(a)(2)(B)(3) Specific criteria for embayments

Original: Total phosphorus, not to exceed the given value more than ten per cent of the time (dry criteria), 40.00* ug/L, and chlorophyll a, not to exceed the given value more than ten per cent of the time (wet criteria), 4.50** ug/L.

Proposed: Total phosphorus, not to exceed the given value more than ten per cent of the time (dry criteria), 40.00** ug/L, and chlorophyll a, not to exceed the given value more than ten per cent of the time (wet criteria), 4.50* ug/L.

Rationale

Corrects a typographical error.

Specific Criteria for Recreational Areas (HAR 11-54-8)

Section: 11-54-8 Specific criteria for recreational waters

Original: Specific criteria for recreational areas.

(a) The specific criteria for enterococcus shall be expressed in colony forming units (CFU) per one hundred milliliters or as a most probable number (MPN) per one hundred milliliters, as specified by the analytical method used. In inland recreational waters:

(1) Enterococcus content shall not exceed a geometric mean of 33 per one hundred milliliters in not less than five samples which shall be spaced to cover a period between twenty five and thirty days. No single sample shall exceed the single sample maximum of

- 89 CFU per 100 milliliters or the site-specific one-sided 82 per cent confidence limit.
- (2) Inland recreational waters in which enterococcus content does not exceed the standard shall not be lowered in quality.
 - (3) At locations where sampling is less frequent than five samples per twenty-five to thirty days, no single sample shall exceed the single sample maximum nor shall the geometric mean of these samples taken during the 30-day period exceed 33 CFU per 100 milliliters.
 - (4) Raw or inadequately treated sewage, sewage for which the degree of treatment is unknown, or other pollutants of public health significance, as determined by the director of health, shall not be present in natural public swimming, bathing or wading areas. Warning signs shall be posted at locations where human sewage has been identified as temporarily contributing to the enterococcus count.
- (b) In marine recreational waters:
- (1) Within 300 meters (one thousand feet) of the shoreline, including natural public bathing or wading areas, enterococcus content shall not exceed a geometric mean of 35 CFU per 100 milliliters in not less than five samples which shall be spaced to cover a period between twenty-five and thirty days. No single sample shall exceed the single sample maximum of 104 CFU per 100 milliliters or the site-specific one-sided 75 per cent confidence limit. Marine recreational waters along sections of coastline where enterococcus content does not exceed the standard, as shown by the geometric mean test described above, shall not be lowered in quality.
 - (2) At locations where sampling is less frequent than five samples per twenty-five to thirty days, no single sample shall exceed the single sample maximum nor shall the geometric mean of these samples taken during the thirty-day period exceed 35 CFU per 100 milliliters.]
 - (3) Raw or inadequately treated sewage, sewage for which the degree of treatment is unknown, or other pollutants of public health significance, as determined by the director of health, shall not be present in natural public swimming, bathing or wading areas. Warning signs shall be posted at locations where

human sewage has been identified as temporarily contributing to the enterococcus count.

Proposed:

Delete criteria for inland and marine recreational areas. Include the Statistical Threshold Value and geometric mean for enterococcus.

Recreational criteria for all state waters.

- (a) These criteria are designed to protect the public from exposure to harmful levels of pathogens while participating in water-contact activities. The specific criteria for enterococcus shall be expressed in colony forming units (CFU) per one hundred milliliters or as a most probable number (MPN) per one hundred milliliters, as specified by the analytical method used.
- (b) Enterococcus content shall not exceed a geometric mean of 35 colony forming units per one hundred milliliters over any thirty day interval.
- (c) A Statistical Threshold Value (STV) of 130 per one hundred milliliters shall be used for enterococcus. The STV shall not be exceeded by more than ten percent of samples taken within the same thirty day interval in which the geometric mean is calculated.
- (d) State waters in which enterococcus content does not exceed the standard shall not be lowered in quality.
- (e) Raw or inadequately treated sewage, sewage for which the degree of treatment is unknown, or other pollutants of public health significance, as determined by the director of health, shall not be present in natural public swimming, bathing or wading areas. Warning signs shall be posted at locations where human sewage has been identified as temporarily contributing to the enterococcus count.

Rationale:

This proposed revision is to be consistent with EPA's 2012 Recreational Water Quality Criteria (RWQC) recommendations (DPA-820-F-12-061, December 2012) for protecting human health in all coastal and non-coastal waters (<http://water.epa.gov/scitech/swguidance/standards/criteria/health/recreation/>).

EPA's recommendations are intended to protect the public from exposure to water that contains organisms that indicate the presence of fecal contamination. Based on the RWQC, DOH believes that the recommended 35 CFU/100 mL geometric mean and 130 CFU/100 mL STV for enterococcus (entero) will protect the public from exposure to harmful levels of pathogens as a result of human sewage contamination while participating in water activities such as swimming, wading, surfing, and other water contact activities.

Schedule of Compliance

Section: 11-54-1 and 11-54-11 Schedule of Compliance

Original: None

Proposed:

Definition of "Schedule of Compliance" in 11-54-1

"Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

New Section 11-54-11

§11-54-11 Schedule of compliance.

- (a) The director may issue a schedule of compliance in an individual NPDES permit for the implementation of effluent limits derived from the water quality criteria in this chapter if the director makes a finding that the discharger cannot immediately comply with the water quality based effluent limitations upon the effective grant of the permit.
- (b) A schedule of compliance may be included in an individual NPDES permit issued by the director pursuant to chapter 342D, HRS.
- (c) A schedule of compliance in an NPDES permit is allowed only for water quality-based effluent limits based upon a new, revised, or newly interpreted water quality standard and must:
 - (1) Comply with the provisions in 40 CFR section 122.47, revised as of July 1, 2012, and;
 - (2) Include an enforceable final effluent limitation that is within the timeframe allowed as specified in sections 11-55-08(a)(1)(b), 11-55-15(d), 11-55-21, 11-55-22, 11-55-23(10), and 11-55-34.07(3)(B).
- (d) A schedule of compliance that exceeds one year in duration must set forth interim requirements and a date by which the required water quality criteria must be achieved.

Rationale:

On March 18, 2013, the DOH-CWB obtained CWA Section 303(c) approval from the EPA to issue schedules of compliance in NPDES permits for the purpose of achieving technology based effluent limitations in HAR 11-55 and water quality-based effluent limitations in HAR 11-54. Section 303(c) of the CWA requires EPA to approve or disapprove of new or revised State-adopted water quality standards.

HAR 11-55 already contains provisions to implement schedules of compliance in 11-55-01, 11-55-08(a)(2)(B), 11-55-15(d), 11-55-19(a)(4)(A), 11-55-21, and 11-55-22. HAR 11-54 does not contain any reference to schedules of compliance. The proposed revision to HAR 11-54 is to clarify that Hawaii's NPDES permits

can include schedule of compliance for water quality-based effluent limitations in HAR 11-54 if the federal requirements in 40 CFR §122.47 are complied with.

Intake Credits

Section: HAR §11-54-12 Intake Credits

Original: None

Proposed: New Section 11-54-12

§11-54-12 Intake credits.

(a) As used in this section:

“Background pollutant concentration” means the water body concentration immediately upstream/upcurrent of a permitted discharge, regardless of whether those pollutants are natural or result from anthropogenic upstream activity.

“Intake pollutant” means the background pollutant concentration that is present in the intake water body, which must be the same water body as the receiving water for the discharge at the time it is withdrawn from such waters.

“Same body of water” means an intake pollutant is considered to be from the “same body of water” as the discharge if the department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period of time had it not been removed by the permittee. This finding may be deemed established if:

- (1) The background pollutant concentration in the receiving water (excluding any amount of the pollutant in the facility’s discharge) is similar to that in the intake water; and
- (2) There is a direct hydrologic connection between the intake and discharge points; and
- (3) Water quality characteristics (e.g. temperature, pH, hardness) are similar in the intake and receiving waters.

The department may consider other site-specific factors relevant to the transport and fate of the pollutant in deciding whether a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

(b) The director may, upon request of the discharger, adjust water quality-based effluent limitations or standards to reflect credit for intake pollutants in the discharger’s intake water only:

- (1) To the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the intake pollutant value; and
- (2) If there is no net increase in the concentration of the intake pollutant for which the credit is given. A discharger may add to the mass of

- the background pollutant concentration if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water.
- (c) Intake credit is not applicable to any pollutant for which a Total Maximum Daily Load (TMDL) and waste load allocation (WLA) have been developed and have been approved by the U.S. Environmental Protection Agency unless the TMDL and WLA provide for such an intake credit.
 - (d) The director shall grant credit for water quality-based effluent limits only if:
 - (1) One hundred per cent of the intake water containing the intake pollutant is withdrawn from the same body of water into which the discharge is made;
 - (2) The facility does not chemically or physically alter the intake pollutant in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutant was left in-stream;
 - (3) The timing and location of the discharge would not cause adverse water quality impacts to occur that would not occur if the intake pollutant were left in-stream; and,
 - (4) The director finds that the discharge of intake pollutants into the same body of water will not adversely impact narrative or numeric water quality criteria specified in this chapter.
 - (e) Effluent limitations must be established so that they comply with all other applicable state and federal laws and regulations including water quality-based requirements and anti-degradation policies.
 - (f) All requests for the establishment of credit for intake pollutants shall be made on forms furnished by the department and shall be accompanied by:
 - (1) Documentation showing a complete and detailed description of present conditions and how present conditions do not conform to standards; and
 - (2) Documentation showing that the intake and discharge waterbodies are the "same body of water;" and
 - (3) Documentation showing that pollutant(s) for which credits are being request actually come(s) from the intake water.
 - (g) Credit for intake pollutants shall be specified in the discharger's NPDES permit and shall become effective with the department's issuance of the permit for the specified permittee.
 - (1) All permits that include intake credits issued by the department shall include monitoring of all influent, effluent, and ambient water to demonstrate that the conditions in this section are maintained during the permit term.
 - (2) All credit for intake pollutants developed under this section shall be re-evaluated upon permit renewal.
 - (h) Credit for intake pollutants established under this section apply in the vicinity of the discharge for purposes of establishing permit limits for a specified pollutant for the specified permittee.
 - (i) All other water quality criteria established under this chapter continue to apply.

Rationale:

Effluent discharges from facilities that utilize intake water for industrial cooling and processing can be affected by pollutants in the intake water. This credit is called an intake credit. Intake credits allow the NPDES permit effluent limit to be adjusted based on the concentration of that pollutant in the intake water.

The proposed intake credit language is based on 40 CFR §122.45(g). This proposed revision is being included in HAR 11-54 so that intake credits can be applied to both technology-based effluent limits in HAR 11-55 and water quality-based effluent limits in HAR 11-54.

Field Citations

Section: HAR 11-54-15 Field Citations; non-compliance.

Original: None

Proposed: New Section 11-54-15

§11-54-15 Field citations; non-compliance.

- (a) This section authorizes field citations to effectively and quickly settle easily verifiable violations of chapter 342D, HRS, and this chapter. Settlements under this section are an additional remedy and do not supplant the director's authority to issue orders under section 342D-9, HRS.
- (b) Offer to settle.
 - (1) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director may, in the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to:
 - (A) Any person who discharges or otherwise causes or allows water pollutants to enter State waters and cause violation of this chapter, unless that person acted in compliance with a permit or variance issued by the director pursuant to chapter 342D for that person's discharges;
 - (B) Any person who fails to correctly install, implement, maintain, or repair site best management practices as called for in this chapter;
 - (C) Any person who violates monitoring requirements as required by the director;
 - (D) Any person who violates record keeping requirements as required by the director.
 - (2) A field citation shall indicate the following amounts for violations:

- (A) \$500 for any person who violates paragraph (a)(1)(A), (B), or (C) for first violation, and \$2,000 for a subsequent violation;
and
 - (B) \$100 for any person who violates paragraph (a)(1)(D) for first violation, and \$200 for a subsequent violation.
- (c) Resolution of field citation.
- (1) A person issued a field citation may accept the citation by:
 - (A) Signing the field citation;
 - (B) Paying the full amount indicated on the field citation.
Payment shall be made to the “State of Hawaii” in the form of a pre-printed check, cashier’s check, money order, or as otherwise specified by the director;
 - (C) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty days after the person receives the field citation; and
 - (D) Correction within seven (7) days, or unless otherwise specified on the field citation, of the violation of this chapter.
 - (2) By signing the field citation, the person to whom it was issued agrees to:
 - (A) Give up the right to a contested case hearing under chapter 91 or 342D, HRS, or otherwise challenge the field citation;
 - (B) Pay the full amount indicated; and
 - (C) Correct the violation.
 - (3) If the field citation is not accepted in compliance with paragraph (1), the director may seek for that cited violation any remedies available under this chapter; chapter 342D, HRS; or any other law. For all other violations the director retains authority to seek any available remedies.
- (d) Form of citation. The department shall prescribe a field citation form.

Rationale:

Section 11-54-15 proposes that Field Citations may be used to settle violations triggered by the failure to comply with conditions set forth in Chapter 11-54. This proposal is consistent with and upholds the intent of HRS §342D-9(a), which provides for enforcement “if the director determines that any person has violated or is violating this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter...”

Section 11-54-15(a)(2) establishes amounts to be paid for each easily verified violation of HRS §342D for which Field Citations may be used. The amounts established are fair and consistent with Sections 11-55-40(1)(B)(i) through (v).

Addition of HRS §342E Authority

- Section: All sections except 11-54-9 and 11-54-9.1.
- Original: None
- Proposed: Authority of HRS §342E Nonpoint Source Pollution Management and Control added to sections indicated.
- Rationale: Clarify that the indicated sections of Chapter 11-54 apply to nonpoint sources as well as point sources.

Minor Revisions to Formatting

Capitalized “State” in “State waters” (various sections) to maintain consistency.

Replaced “Stormwater” with “Storm water” [section 11-54-3(b)(2)(B)] to maintain consistency.

First usage of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in section 11-54-4(e) is spelled out and subsequent uses utilize the acronym “FIFRA” to maintain consistency.

Use “director” (lower case) in 11-54-4(e) to maintain consistency.

Revised citations of 40 CFR in sections 11-54-1, 11-54-3(b)(2)(B), 11-54-3(c)(2)(B) & (C) to maintain consistency.

Revised citations of HRS in sections 11-54-1, 11-54-4(e)(2)(D) to maintain consistency.

First usage (non-definition) of National Pollutant Discharge Elimination System (NPDES) in section 11-54-3(b)(2)(C) is spelled out and subsequent use in section 11-54-3(c)(2)(C) utilizes the acronym “NPDES” to maintain consistency.