

**Rationale for the Proposed Revisions**

**To Department of Health**

**Administrative Rules,**

**Title 11, Chapter 55**

**Water Pollution Control**

**Department of Health**

**Environmental Management Division**

**Clean Water Branch**

**Honolulu, Hawaii**

**May 2014**

The Department of Health (DOH) proposes to re-adopt Hawaii Administrative Rules (HAR), Title 11, Chapter 55, Water Pollution Control (hereafter referred to as Chapter 11-55) with the following amendments:

### **Intake Credits**

Section: 11-55-19(a)(9) Application of effluent standards and limitations, water quality standards, and other requirements.

Original: None

Proposed: Intake credits in accordance with 40 CFR §122.45(g) and HAR section 11-54-12.

#### **Rationale:**

Effluent discharges from facilities that utilize intake water for industrial cooling and processing can be affected by pollutants in the intake water. Federal NPDES permit regulations at 40 CFR 122.45(g) establish conditions under which credit can be given for pollutants in the intake water when computing technology-based effluent limits. 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 reference to 40 CFR 122.45(g) is being proposed to allow intake credits to be applied to NPDES technology-based effluent limits in HAR 11-55.

### **Recreational Criteria**

Section: 11-55-19(a)(10) Application of effluent standards and limitations, water quality standards, and other requirements.

Original: None

Proposed: Recreational criteria for all state waters in HAR section 11-54-8. A minimum of six samples collected on every fifth day over the thirty day sampling period as specified in the permit, shall be required to comply with HAR sections 11-54-8(b) and (c).

**Rationale:**

The purpose of this revision is to align DOH's rules, here and in HAR §11-54-8, 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. Based on the RWQC, DOH believes that the recommended standards<sup>1</sup> will protect the public from exposure to harmful levels of pathogens while participating in water activities such as swimming, wading, and surfing in all waters designated for such recreational uses. The proposed addition of HAR 11-55-19(a)(10) is to establish a minimum number of samples in the NPDES permits for compliance with the proposed standards (HAR §11-54-8 geometric mean and STV.)

**Field Citations**

Section: 11-55-40 Field citations.

Original:

§11-55-40 Field citations. This section authorizes citations to effectively and quickly settle easily verifiable violations of chapter 342D, HRS, and this chapter.

- (1) Offer to settle; penalties.
  - (A) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director may, in the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to:
    - (i) Any person who discharges or causes or allows a discharge of pollutants into state waters or municipal separate storm sewer systems without coverage under an NPDES permit, or in excess of limitations established by an NPDES permit;
    - (ii) Any person who begins an activity and/or discharges pollutants prior to obtaining the required individual NPDES permit, coverage under a general permit, and/or authorization from the director;
    - (iii) Any person who fails to correctly install, implement, maintain, or repair site best management practices as called for in their storm water pollution control plan or best

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<sup>1</sup> The proposed standards are 35 CFU/100 mL geometric mean over any thirty day interval and 130 CFU/100 mL Statistical Threshold Value (STV) which is not to be exceeded in more than ten percent of samples taken within the same thirty day interval in which the geometric mean is calculated.

- (iv) management practices plan or other plan;  
Any person who fails to retain a copy of the NPDES permit application or notice of intent or "no exposure" certification; storm water pollution control plan\_or best management practices plan or other plan, and all subsequent revisions; individual NPDES permit or notice of general permit coverage or conditional "no exposure" exclusion on-site or at a nearby office or field office;
  - (vi) Any person who fails to submit documents, reports, and/or submittals required by the applicable NPDES permit, whole or in part, including but not limited to discharge monitoring reports, monthly compliance information, pollution prevention plans, notification to the director, and/or notices of cessation.
- (B) A field citation shall assess the following penalties for violations:
- (i) Any person who violates paragraph (1)(A)(i) shall be fined \$500 for first violation, and \$1,000 for a subsequent violation;
  - (ii) Any person who violates paragraph (1)(A)(ii) shall be fined \$500 for the first violation, and \$1,000 for a subsequent violation;
  - (iii) Any person who violates paragraph (1)(A)(iii) shall be fined \$500 for first violation, and \$1,000 for a subsequent violation;
  - (iv)] Any person who violates paragraph (1)(A)(iv) shall be fined \$100 for first violation, and \$200 for a subsequent violation;
  - (v) Any person who violates paragraph 1(A)(v) shall be fined \$500 for first violation, and \$1,000 for a subsequent violation.
- (2) Resolution of field citation.
- (A) A person issued a field citation may accept the citation by:
- (i) Signing the field citation;
  - (ii) Paying the full amount assessed by the field citation. Payment shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director;
  - (iii) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full

- payment within twenty days after the person receives the field citation; and
  - (iv) Correction within seven days, or unless otherwise specified on the field citation, of any violation of section 11-55-03;
  - (B) By signing the field citation, the person to whom it was issued agrees to:
    - (i) Give up the right to a contested case hearing under chapter 91 or 342D, HRS, or otherwise challenge the field citation;
    - (ii) Pay the penalty assessed; and
    - (iii) Correct the violation;
  - (C) If the field citation is not accepted in compliance with paragraph (2)(A), the director may seek for that cited violation any remedies available under this chapter; chapter 342D, HRS; or any other law. For all other violations the director retains authority to seek any available remedies.
- (3) Form of citation. The department shall prescribe a field citation form.

Proposed:

§11-55-40 Field citations; non-compliance with NPDES requirements. This section authorizes citations to effectively and quickly settle easily verifiable violations of chapter 342D, HRS, and this chapter. Settlements under this section are an additional remedy and do not supplant the director's authority to issue orders under section 342D-9, HRS.

- (1) Offer to settle.
  - (A) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director may, in the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to:
    - (i) Any person who discharges or causes or allows a discharge of pollutants into State waters or municipal separate storm sewer systems without coverage under an NPDES permit, or in excess of limitations established by an NPDES permit;
    - (ii) Any person who begins an activity prior to obtaining the required individual NPDES permit, coverage under a general permit, and/or authorization from the director;
    - (iii) Any person who fails to correctly install, implement, maintain, or repair site best management practices as called for in their storm water pollution control plan or best management practices plan or other plan;
    - (iv) Any person who fails to monitor as required by the applicable NPDES permit, in whole or in part;

- (v) Any person who fails to retain on-site or at a nearby office or field office:
    - a) a copy of the NPDES permit application or notice of intent or "no exposure" certification,
    - b) storm water pollution control plan, best management practices plan or other plan and all subsequent revisions, or
    - c) individual NPDES permit, notice of general permit coverage, or conditional "no exposure" exclusion;
  - (vi) Any person who fails to submit documents, reports, and/or submittals as required by the applicable NPDES permit, in whole or in part, including but not limited to discharge monitoring reports, monthly compliance information, pollution prevention plans, notification to the director, and/or notices of cessation.
- (B) A field citation shall indicate the following amounts:
- (i) \$500 for any person who violates paragraphs (1)(A)(i), (ii), (iii), or (iv) for first violation, and \$2,000 for a subsequent violation;
  - (ii) \$100 for any person who violates paragraph (1)(A)(v) for first violation, and \$200 for a subsequent violation;
  - (iii) \$500 for any person who violates paragraph (1)(A)(vi) for first violation, and \$1,000 for a subsequent violation.
- (2) Resolution of field citation.
- (A) A person issued a field citation may accept the citation by:
- (i) Signing the field citation;
  - (ii) Paying the full amount indicated on the field citation. Payment shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director;
  - (iii) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty days after the person receives the field citation; and
  - (iv) Correction within seven days, or unless otherwise specified on the field citation, of any violation of section 11-55-03;
- (B) By signing the field citation, the person to whom it was issued agrees to:
- (i) Give up the right to a contested case hearing under chapter 91 or 342D, HRS, or otherwise challenge the field citation;
  - (ii) Pay the amount indicated; and
  - (iii) Correct the violation;
- (C) If the field citation is not accepted in compliance with paragraph (2)(A), the director may seek for that cited violation any remedies available under this

chapter; chapter 342D, HRS; or any other law. For all other violations the director retains authority to seek any available remedies.

- (3) Form of citation. The department shall prescribe a field citation form.

**Rationale:**

The changes are mainly to improve readability of this section. The only notable change is to the second violation for paragraphs (1)(A)(i), (ii), (iii), or (iv) which increases field citation from \$1,000 to \$2,000. The DOH believes that a second offense for these violations warrants a larger amount as the person was already aware of the previous offense.

11-55-40: Addition of “; non-compliance with NPDES requirements” to the section title for clarification.

11-55-40(1)(A)(i): Clarify that a discharger as well as a person who causes or allows a discharge are subject to this section.

11-55-40(1), (1)(B), 1(B)(i)-(iii), (2)(B)(ii): Removal of the terms “penalty,” “penalties,” “fined,” and “penalty assessed” to clarify that a field citation is an offer to settle a violation.

11-55-40(1)(A)(2): Removal of the phrase “and/or discharges pollutants” as it is assumed a person who discharges pollutants has also initiated.

11-55-40(1)(B)(iv): Allows field citation of a failure to monitor as required by an NPDES permit. A failure to monitor is a violation.

11-55-40(1)(B)(i)-(iii): Sections reworded for readability.

11-55-40(2)(B)(i): Second violation under 11-55-40(1)(B)(i)-(iv) made consistent with the seriousness of the violation and with citations in 11-54-15.

**Minor Formatting Revisions**

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