

**DEPARTMENT OF HEALTH (DOH) RESPONSE TO COMMENTS
AMENDMENTS TO THE HAWAII ADMINISTRATIVE RULES (HAR)**

Introduction

The State of Hawaii, DOH, has proposed amendments to HAR, Title 11, Chapter 60.1, Air Pollution Control. The main purpose of the rule amendments is to initiate the regulation of greenhouse gases (GHGs) emitted by Hawaii's stationary air pollution sources. The DOH has prepared this document in response to testimony and comments it received during the public comment period.

On October 19, 2012, the DOH published a notice of public hearing for proposed amendments to HAR, Title 11, Chapter 60.1, Air Pollution Control. In November 2012, the DOH held public hearings on Hawaii, Oahu, Kauai, and Maui. In response to a formal request, the DOH extended the public comment deadline from December 7, 2012 to January 14, 2013. Approximately eighteen (18) people provided oral testimony at the public hearings and twenty-three (23) written comments were submitted.

In drafting the rule amendments, the DOH held meetings with potentially affected sources and environmental organizations. During those meetings, the DOH informed participants of federal and state GHG requirements and shared preliminary ideas on the proposed rule amendments.

In a number of cases, the DOH has not changed its position on the proposed HAR amendments, but nevertheless seeks to provide a clear justification in response to comment. As a result of the comments received and additional research and review, the DOH has made changes on several key issues including:

1. Lowering the reduction required in the facility-wide GHG emissions cap from 25% to 16% of an affected source's 2010 emissions;
2. Requiring a public participation process as part of the DOH review of GHG Emission Reduction Plans, including requests for approval for an alternative baseline year, revised facility-wide GHG emissions cap, and all GHG control assessments;
3. Extending the deadline to submit GHG Emission Reduction Plans from nine (9) to twelve (12) months;
4. Conditionally exempting municipal solid waste (MSW) landfills with gas collection and control systems from GHG emissions reduction requirements;
5. Charging fees only after promulgation of the rules; and
6. Amending the definition of "subject to regulation" to better align with the federal definition and recent court ruling.

In preparing this response to comments, the DOH reviewed and considered all oral and written comments provided. However, the DOH did not provide a detailed response to every comment submitted. This response to comments should be viewed as

representative of general themes conveyed by each individual comment provided to the DOH. The DOH's response to comments, copies of all written testimony, and official transcripts from each of the four (4) public hearings, are posted online at the Clean Air Branch website at <http://health.hawaii.gov/cab/>.

Background

The GHG program outlined in the proposed rule amendments was created in accordance with federal and state law requirements. Under federal law, as provided in the Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (Title 40, Code of Federal Regulations (CFR) Parts 51, 52, 70, and 71), GHG emissions must be regulated. As a result of the Tailoring Rule, states must establish a permitting program for reducing GHG emissions. For implementing the Tailoring Rule and permitting purposes, GHGs are a single air pollutant defined as the aggregate group of six (6) gases: carbon dioxide (CO₂), nitrous oxide (N₂O), methane, (CH₄), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆). The mass amount of emissions for each of the six (6) GHGs is multiplied by the gas's associated global warming potential to determine the carbon dioxide equivalent (CO₂e) emissions. The sum of the CO₂e emissions are compared against emission thresholds for permit applicability determinations.

Under state law, as provided for in Act 234, 2007 Hawaii Session Laws, Relating to Greenhouse Gas Emissions, which was enacted in Sections 342B-71 to 73, Hawaii Revised Statutes (HRS), the DOH must regulate GHG emissions. The state GHG permitting program supports the GHG emission reduction goals outlined in these state laws. The rules follow the core directives from Act 234 by proposing the following: 1) adopting the statewide GHG emissions limit of 1990 levels, or lower, by 2020; 2) establishing the principle of seeking reductions that are the maximum practically and technically feasible and cost-effective; and 3) requiring reporting and verification of statewide GHG emissions to ensure compliance. The DOH also considered recommendations from the Greenhouse Gas Emissions Reduction Task Force's Report to the 2010 Legislature. The 2010 Report included the primary recommendation that the Hawaii Clean Energy Initiative, plus other actions (HCEI+), would reduce GHG emissions to 1990 levels, as well as other recommendations to consider backstops to ensure reduction goals would be met. Moreover, Sections 342B-71 to 73, HRS, which enacted Act 234, requires the DOH to enforce air pollution regulations. Under these sections, the DOH is granted authority to control air pollutants, establish a permit program to enforce reductions, and charge fees to support the air program.

The DOH drafted the proposed rule amendments in accordance with these federal and state mandates. The revisions to the proposed rule amendments outlined here further establish the GHG program framework and include a few housekeeping changes for consistency and clarification purposes.

1. Scope of Authority & Act 234

The DOH has two (2) separate sources of authority, found in Chapter 342B, HRS, to promulgate rules regulating GHG emissions.

The first source of authority is based on the general authority given the Director of the DOH (Director) to regulate all air pollution in the state. The Director has general powers to regulate air pollution under Section 342B-3, HRS, and specific powers to regulate air pollution under Section 342B-12, HRS.

The second source of DOH authority to promulgate rules regulating GHG emissions is found in Subpart VI, of Chapter 342B, HRS, which incorporates Act 234, Session Laws of Hawaii 2007. Section 342B-71, HRS, established a statewide GHG emissions limit to be achieved by 2020 that is equal to, or below, the statewide GHG emission in 1990. Section 342B-72, HRS, orders the DOH to adopt rules to establish GHG emissions reduction measures to achieve the maximum practically and technically feasible and cost-effective reductions in GHG emissions in furtherance of achieving the statewide GHG emissions limit.

The DOH, in proposing these GHG rules, has reviewed and interpreted these underlying sources of authority for promulgating the GHG rules, and has determined that these proposed rules are well within the authority and jurisdiction given the DOH by the Hawaii State Legislature. As part of this authority, the Director is afforded wide discretion to determine the proper means to best affect the DOH's statutes. In view of its scope of authority, the DOH has determined that these proposed rules will help ensure that GHG limits are achieved by the time proscribed by the Hawaii State Legislature.

First, while the proposed rules apply to all regulated sources of GHG emissions, the initial GHG emissions reduction requirements apply only to a small group of stationary sources (approximately twenty-five (25) stationary sources). These twenty-five (25) stationary sources are the largest stationary source GHG emitters, representing approximately 90 percent of Hawaii's stationary source GHG emissions. Therefore, the DOH determined that focusing on regulation of GHG emissions from these affected sources would provide the largest beneficial gain. Nevertheless, the DOH will continue to assess statewide GHG emissions to determine if it will later be necessary to apply the proposed rules to other sources to meet 1990 GHG emission limits.

Second, the proposed rules subject affected sources to reductions that could take them below their actual 1990 GHG emissions levels. This is not unreasonably burdensome because Chapter 342B, HRS, established a statewide GHG emissions limit. This statewide limit can only be achieved with combined efforts from a collection of individual sources. Nothing in Chapter 342B, HRS, prevents the DOH from requiring reductions that might take an individual source below its own 1990 GHG emissions level, in pursuit of reaching the overall statewide goal. Nor does it

prevent the DOH from determining what will constitute a violation and what levels of exceedances over the GHG limits will be considered violations.

Third, the proposed rules are part of a framework that the DOH determined was necessary to ensure that DOH's statutory requirements were met. This framework is supported by directives from the GHG Emissions Reduction Task Force and its 2009 Report to the Legislature, "Work Plan for Greenhouse Gas Emissions Reductions." In the 2009 Report, the Task Force unanimously recommended a strategy of following the Hawaii Clean Energy Initiative with additional policies (HCEI+) that would meet and exceed the reduction target "providing that its elements are met on time." In addition, several supporting recommendations were made by a majority of the Task Force (seven (7) of ten (10) members, in different combinations), one of which suggested "backstop" mechanisms including DOH rules on sources and categories of sources to achieve Act 234 limits.

2. Life Cycle Assessment & Biogenics

At this time, the DOH will not incorporate Life Cycle Assessment (LCA) into the proposed rules because LCA standards and formulas have not yet been fully developed for stationary sources. Neither the U.S. Environmental Protection Agency (EPA) nor any other state agency nationwide applies LCA to stationary sources. Therefore, the DOH determined that developing and applying its own LCA would be premature at this time.

However, the DOH recognizes the merits of LCA and its applicability to alternative fuels including biogenics. The DOH also anticipates that LCA standards and formulas will be developed during the initial period when sources are preparing their GHG Emission Reduction Plans according to these proposed rules. Therefore, the DOH retains, and clarifies below, the proposed rule language providing that the biogenic GHG emissions exemption is subject to change after the EPA adopts rules on that subject. Affected sources should take this into consideration when developing their GHG Emission Reduction Plans.

For clarification purposes, the DOH makes the following changes to HAR 11-60.1-204(d)(6)(B):

Except for fee assessments and determining applicability to this section, biogenic CO₂ emissions will not be included when determining compliance with the facility-wide emissions cap until further guidance can be provided by EPA, or the director, through rulemaking.

3. Facility-Wide GHG Emissions Cap

a. GHG Cap Change from 25% to 16%

The initial 25% GHG emission reduction percentage for the facility-wide GHG emissions cap was based on DOH's 2010 GHG emissions inventory for all of Hawaii's covered sources and the 2008 report entitled "Hawaii Greenhouse Gas Inventory: 1990 and 2007" prepared by ICF International for the Hawaii Department of Business, Economic Development & Tourism (DBEDT). The difference between the 1990 and 2007 CO₂e emissions was used to determine the reduction from the 2010 baseline year needed to achieve the 1990 GHG CO₂e emissions level. The GHG emission levels of 8,930,000 metric tons CO₂e from 1990, and 10,860,000 metric tons of CO₂e from 2007, were used to represent emission levels for 1990 and 2010, respectively. The emissions levels were determined by adding CO₂e emissions among the power, waste, industrial, commercial, and residential sectors. The following equation was used to calculate the GHG reduction percentage, a_T :

$$a_T = \frac{(T_S^{2010} - T_S^{1990} + (E^{2010} + T_S^{2010} - L^{2010}) \times g^{10})}{(L^{2010} - E^{2010})}$$

where,

T_S^{1990} : 1990 state-wide total emissions

T_S^{2010} : 2010 state-wide total emissions

L^{2010} : DOH covered source emissions from affected facilities with total potential GHG emissions greater than 100,000 CO₂e short tons

E^{2010} : Large DOH covered source emissions exempted from reductions

g^{10} : DOH estimate for uncontrolled growth fraction from 2010 to 2020

Note 1: This equation estimates the GHG reduction percentage required from large covered sources that are not exempted by DOH, termed "affected sources," and includes the effect of estimated emissions growth from stationary sources that are not affected by the rules.

In determining the initial 25% CO₂e emission reduction percentage, DOH used 2007 emissions data to represent the 2010 baseline level. The 2007 emissions were used due to discrepancies found when comparing 2010 emissions reported under the Greenhouse Gas Reporting Program (GHGRP) to those projected by ICF International for 2010. The 2010 projected emissions were obtained from a report on "Proposed GHG Reduction Work Plans for Hawaii" prepared by ICF International in 2009 for Hawaii DBEDT. The discrepancy was that the 9,978,285 metric tons of CO₂e emissions reported in 2010 under the GHGRP

exceeded the 9,945,000 metric tons CO₂e emissions projected by ICF International for 2010. Under the GHGRP, only large sources with CO₂e emissions greater than 25,000 metric tons per year are required to report annual GHG emissions. Emissions projected by ICF International should have been larger than those reported under the GHGRP because the projected emissions were based on all sources (both large and small). Therefore, the DOH decided to use the 2007 estimated emissions to calculate the GHG emissions reduction percentage because these emissions were higher (and deemed to be more accurate) than those projected for 2010.

The initial 25% CO₂e emissions cap would apply to all affected covered sources with maximum potential CO₂e emissions (biogenic and non-biogenic) greater than or equal to 100,000 short tons per year. Emissions inventory data for these affected sources, less exempt municipal waste combustion (MWC) operations, indicated total combined CO₂e emissions for 2010 of approximately 9,829,000 metric tons. Although DOH emission estimates were made for all affected sources, the total combined GHG emissions from affected sources were based almost exclusively on GHGRP data from EPA. The GHG emissions reduction consisted of a 1,930,000 metric ton CO₂e difference between 2007 and 1990, plus a 12% estimated emissions growth in stationary sources that would not be regulated under the proposed draft rules. This would add about 124,000 metric tons of CO₂e emissions, bringing the estimated total reduction to about 2,054,000 metric tons of CO₂e emissions, or about 20.9% of the total GHG emissions estimated from the affected sources. The 25% GHG emissions reduction was established with a 4.1% buffer in recognition of the fact that setting the reduction at 20.9% would mean that every affected facility would need to and actually achieve its reduction percentage to reach the 1990 GHG emission level.

The 25% GHG reduction percentage was recalculated and revised after further review of data from DOH's 2010 GHG emission inventory. It was found that DOH 2010 emission estimates, used for the percent reduction calculations, were larger than those reported under the GHGRP for three (3) affected sources. The differences for two (2) facilities were relatively small, about 3,627 and 324 metric tons of CO₂e emissions. However, the difference in CO₂e emissions for the third (3rd) facility was 152,221 metric tons greater than the value reported under the GHGRP. This third (3rd) facility was a landfill with a gas collection and control system, and the emission value estimated by DOH would be consistent with uncontrolled GHG emissions. For two (2) of the three (3) facilities, DOH used 2010 GHGRP values for the revised calculations. The DOH has decided to conditionally exempt landfills with gas collection and control systems from GHG reduction requirements; therefore, 2010 GHG emissions from the third (3rd) source were not used for the revised calculations.

There was also an inconsistency with a fourth (4th) facility when comparing GHGRP values from 2010 to those reported in 2011 and 2012. The 2010, 2011, and 2012 fuel usages for this facility were very similar, but the 2010 GHGRP

emission estimate was approximately 59% higher than that expected using EPA emission factors, while 2011 and 2012 GHGRP values were only about 2% and 3% higher than estimated using the same emission factors. Through discussions with a facility representative, it was revealed that while continuous emissions monitoring system data was applied for 2011 and 2012 GHGRP values, emission factors were used for 2010. It appears that an emission factor used by the facility to predict 2010 GHG emissions was anomalously high. Therefore, the DOH used EPA emission factors for the revised percent reduction calculations. Using EPA emission factors, the 2010 CO₂e emissions for this facility were 744,067 metric tons less than reported under the GHGRP.

When the changes detailed in the two previous paragraphs are made, 2010 CO₂e emissions from all of Hawaii's covered sources reduced from 10,254,915 metric tons to 9,354,675 metric tons. In addition to being large in magnitude, this reduction also brings the estimated covered source emissions well below ICF International's 2010 state-wide CO₂e emission projection of 9,945,000 metric tons. For this reason, DOH determined that it was more appropriate to use 2010 state-wide CO₂e emissions projected by ICF International to calculate the GHG reduction percentage. When the revised covered source CO₂e value is coupled with the ICF International state-wide CO₂e emissions level, the reduction required by affected sources to reach the 1990 stationary source CO₂e emissions is reduced from approximately 2,054,000 to 1,137,000 metric tons.

Due to changes in 2010 facility emissions used for the percent reduction calculations, the total combined 2010 CO₂e emissions for affected sources reduces from approximately 9,829,000 metric tons to 8,929,000 metric tons. As a result, the reduction percentage required by affected sources changes from 20.9% to 12.7%. While the original 25% emissions reduction proposed in the draft rules was appropriate when the actual reduction percentage needed was 20.9%, the DOH believes that a 16% GHG reduction provides a similar margin of error level for reducing GHG emission based on the revised calculations (with an actual reduction percentage between 12.2% and 13.2% needed). Emissions estimates for determining the facility-wide emissions cap are provided in Appendix A.

Two (2) additional scenarios were evaluated to determine effects on the required reduction percentage if municipal solid waste (MSW) landfills and MWC operations were exempted from the requirements of Section 11-60.1-204(c), HAR. In the draft rules, the DOH exempted MWC operations from the emissions reduction requirement. The DOH maintains that exemption. In addition, the DOH will also exempt MSW landfills from GHG emissions reduction requirements. Emissions inventory data indicated that 2010 CO₂e emissions for MWC operations were approximately 192,000 metric tons, and approximately 161,000 CO₂e metric tons for MSW landfills. Based on this data, if both MSW landfills and MWC operations are included on the list of affected sources, the emission reduction percentage needed to achieve the 1990 stationary source emissions

level is 12.2%. If both MSW landfills and MWC operations are excluded, the calculated emission reduction percentage is 13.2%. Since the changes associated with both these scenarios are minor, the 16% revised reduction percentage is believed to be an appropriate level for reducing GHG emissions from affected facilities.

Using the equation for GHG reduction percentage, the original (a_T^{orig}) and revised (a_T^{rev}) reduction percentages are calculated as follows:

$$a_T^{orig} = 20.9\% = \frac{(10,860 - 8,930 + (192 + 10,860 - 10,021) \times 12\%)}{(10,021 - 192)}$$

$$a_T^{rev} = 13.2\% = \frac{(9,945 - 8,930 + (353 + 9,945 - 9,121) \times 12\%)}{(9,121 - 353)}$$

Note 1: Units of emissions are in 1,000 metric tons.

Note 2: For the revised reduction percentage, both MSW landfills and MWC operations are excluded.

Section 11-60.1-204(c) (partial), HAR, will be amended as follows:

[. . .] The minimum facility-wide GHG emissions cap shall be **sixteen percent (16%)** below the facility's total baseline GHG emission levels less biogenic CO₂ emissions, as follows:

$\frac{\text{Facility-wide cap (tpy CO}_2\text{e)}}{(1-0.16) \times \text{Facility Total Baseline Emissions (tpy CO}_2\text{e)}} - \frac{\text{Facility Baseline Biogenic CO}_2\text{ Emissions (tpy CO}_2\text{e)}}{\text{Facility Total Baseline Emissions (tpy CO}_2\text{e)}}$	$\frac{\text{Facility Total Baseline Emissions (tpy CO}_2\text{e)}}{\text{Facility Total Baseline Emissions (tpy CO}_2\text{e)}} - \frac{\text{Facility Baseline Biogenic CO}_2\text{ Emissions (tpy CO}_2\text{e)}}{\text{Facility Total Baseline Emissions (tpy CO}_2\text{e)}}$
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Where:

$$\frac{\text{Facility Total Baseline Emissions (tpy CO}_2\text{e)}}{\text{Facility Total Baseline Emissions (tpy CO}_2\text{e)}} = \frac{\text{Facility Total Baseline Emissions (tpy CO}_2\text{e)}}{\text{Facility Total Baseline Emissions (tpy CO}_2\text{e)}} - \frac{\text{Facility Baseline Biogenic CO}_2\text{ Emissions (tpy CO}_2\text{e)}}{\text{Facility Total Baseline Emissions (tpy CO}_2\text{e)}}$$

Section 11-60.1-204(d)(2), HAR, will be amended as follows:

The 2020 facility-wide GHG emissions cap. Determine the facility-wide GHG emissions cap in accordance with subsection(c), using calendar year 2010 or the proposed GHG baseline emission rate determined by paragraph (1) above. If the required emissions cap requiring a **sixteen percent (16%)** emission reduction from baseline year

emissions is deemed unattainable, the owner or operator shall provide, as part of the Reduction Plan:

b. Alternate Cap Proposal and GHG Control Assessment

Under the proposed rules, owners and operators of permitted covered sources with potential GHG emissions (biogenic plus non-biogenic) equal to or above 100,000 short tons per year CO₂e must submit a GHG Emission Reduction Plan, which will be used to evaluate and establish an annual facility-wide GHG emissions cap. The minimum facility-wide GHG emissions cap is 16% below a facility's total baseline GHG emission levels less biogenic CO₂e emissions. To implement GHG reductions, the emissions cap will be incorporated into a facility's air permit as a metric (long) ton or short ton per year CO₂e emissions limit, to be achieved by January 1, 2020 and annually maintained thereafter. If the 16% GHG emissions cap is considered unattainable, the proposed rules allow owners and operators of affected sources to propose an alternate GHG emissions cap upon Director's approval only after careful consideration of all available control options that have the potential for practical application to reduce GHG emissions.

To determine whether or not the required facility-wide GHG emissions cap is attainable, the owner or operator of an affected source must conduct a GHG control assessment. The GHG control assessment is similar, but not identical to, the EPA GHG Best Available Control Technology (BACT) analysis for major Prevention of Significant Deterioration (PSD) sources. However, the GHG control assessment is different from BACT in that it will apply to sources exceeding a 100,000 short ton per year CO₂e emissions threshold rather than significant emissions thresholds and other GHG emissions thresholds involved with BACT applicability determinations. Also, the GHG control assessment will not require complex netting evaluations to determine applicability like those found in the PSD regulations. Additionally, under the GHG control assessment, the Director may consider improvements made at a facility prior to the baseline year of actual GHG emissions.

Similar to a BACT analysis, the GHG control assessment will include the following: 1) identify all available GHG control options; 2) eliminate technically infeasible options; 3) rank remaining technically feasible control options; 4) evaluate most effective control options and document results (consider economic, energy, and environmental impacts arising from each option remaining under consideration); and 5) select control option.

To clarify the meaning of "unattainable" as it applies to the facility-wide GHG emissions cap, the DOH proposes the following change to Section 11-60.1-204(c), HAR:

Unless substantiated by the owner or operator of an affected source and approved by the director to be unattainable **pursuant to section 11-60.1-204(d)**, each GHG Emission Reduction Plan shall establish a minimum facility-wide GHG emissions cap in tons per year CO₂e, to be achieved by 2020 and maintained thereafter. The minimum facility-wide GHG emissions cap shall be sixteen (16%) below the facility's total baseline GHG emission levels less biogenic CO₂ emissions

The GHG control assessment, as a method similar to BACT, was chosen in establishing the facility-wide GHG emissions cap due to the long history of BACT requirements and the available guidance for selecting BACT. This ensures that individual GHG reduction determinations are reasoned and faithful to the rules and provides a consistent approach for the DOH to determine the most effective measures for reducing GHG emissions.

The EPA has developed BACT guidelines for selecting control technologies and techniques to reduce GHG emissions. The BACT guidance and previous BACT determinations will help affected sources conduct their GHG control assessments.

c. Facility-Wide GHG Cap Baseline Year

Calendar year 2010 serves as the baseline year for the actual GHG annual emissions rate in calculating the facility-wide GHG emissions cap. If calendar year 2010 is deemed unrepresentative of normal operations, then affected sources may propose an alternate baseline emission rate for the Director's approval as provided in Section 11-60.1-204(d)(1)(A), HAR. These options include emissions based on the most recent representative year during the five-year (5-year) period ending in 2010, average emissions over any consecutive two-year (2-year) period during the five-year (5-year) period ending in 2010, average emissions for the five-year (5-year) period ending in 2010, and other comparable methods. These options allow affected sources to take into account and possibly avoid using as their baseline an anomalous year where emissions might have been particularly low.

Requirements for determining the baseline annual emission rate for newly permitted sources without a 2010 operating history are outlined in Section 11-60.1-204(d)(1)(B), HAR. To project emissions, the owner or operator of a newly permitted source shall make the best estimate of normal operations based on information available (e.g., contract agreements, market forecast, operational records, etc.). Potential emissions shall not be used unless the facility will continuously operate at maximum capacity.

Baseline annual emissions are represented by the facility's actual yearly emissions. The baseline actual emissions are necessary to determine the effectiveness of the GHG control measures. Although existing controls will lower a facility's baseline emissions for establishing an emissions cap that is more stringent than if the controls were not there, the Director may consider GHG improvements prior to the baseline emissions for GHG control assessments. As mentioned in **Section 3.b** of the response to comments, the GHG control assessment is used to determine the emissions cap used in permitting to reduce GHG emissions. The applicant's proposed emissions cap may be lower than the 16% target cap if the Director takes into consideration improvements prior to a facility's baseline year.

4. GHG Emission Reduction Plan

a. Director's Discretion & Public Participation

Each owner or operator of an affected source will be required to submit a GHG Emission Reduction Plan to the director in accordance with Section 11-60.1-204, HAR. A GHG Emission Reduction Plan is comprised of six parts: 1) Facility-wide baseline annual emission rate; 2) The 2020 facility-wide GHG emissions cap; 3) Available control measures; 4) Technically feasible measures; 5) Control effectiveness and cost evaluation; and 6) Proposed control strategy.

Part of the Director's discretion in promulgating rules that will best achieve the intent of Chapter 342B, HRS, includes the ability to make decisions on and revisions to the GHG Emission Reduction Plans submitted by the affected sources, as deemed necessary. However, this discretion is not unfettered, and is subject to review and public participation as outlined below.

GHG Emission Reduction Plan. Since the DOH recognizes the need for public participation in the review of the Director's decisions on GHG Emission Reductions Plans, it amends the proposed draft rules by adding a new **Section 11-60.1-205 (Public participation) and 206 (Public petitions)**, HAR, which is provided in full in **Appendix B**.

Also, the public may have access to and the opportunity for inspection of GHG Emission Reduction Plans. Therefore, the DOH amends Section 11-60.1-14(a), HAR, as follows:

Except as provided in subsection (b), the following information shall be considered government records and as such shall be available for public inspection pursuant to chapter 92F, HRS, unless access is restricted or closed by law:

- (1) All permit applications;

- (2) All supporting information for permit applications;
- (3) Compliance plans and schedules;
- (4) Reports and results associated with performance tests and continuous emission monitors;
- (5) Ambient air monitoring data and emissions inventory data;
- (6) Certifications;
- (7) Any other information submitted to the department pursuant to the noncovered and covered source permit program;
- (8) Proposed Greenhouse Gas Emission Reduction Plans**
 - ~~[-8-]~~ (9) Permits; and
 - ~~[-9-]~~ (10) Public comments or testimonies received during any public comment period or public hearing.

The intent of these new provisions is to allow for open review of an applicant's proposed GHG Emission Reduction Plan and associated calculations.

Facility-wide Baseline Annual Emission Rate. In addition, as to the facility-wide baseline annual emission rate, for clarification purposes the DOH amends Section 11-60.1-204(d)(1), HAR, as follows:

The facility-wide baseline annual emission rate (tpy CO₂e). Calendar year 2010 annual emissions shall be used as the baseline emissions to calculate the required facility-wide GHG emissions cap, unless another baseline year or period is approved by the director. Baseline emissions shall be determined in accordance with section 11-60.1-115, separated between biogenic and non-biogenic emissions, and exclude all emissions of noncompliance with an applicable requirement or permit limit. **The owner or operator shall include the data and calculations used to determine the baseline emissions.** If calendar year 2010 is deemed unrepresentative of normal operations, then the owner or operator may propose an alternate baseline annual emission rate for the director's approval, as follows:

- (A) The owner or operator shall clearly document why calendar year 2010 is not representative of

normal operations and why the proposed alternate year or period is more suitable based on trends, existing equipment and controls, scheduled maintenance, operational practices, and any other relevant information. Acceptable methods for determining alternate facility-wide baseline annual emissions include:

[. . .]

(iv) comparable methods as approved by the director. The director will not consider the use of periods greater than five-years from 2010, except for extreme cases **such as** where an affected source may not have been fully operational for an extended period of time.

These changes make clear the fact that the facility-wide baseline annual emissions rate calculations are subject to the Director's review and approval.

The 2020 Facility-wide GHG Emissions Cap. In regards to the 2020 facility-wide GHG emissions cap, any revision to the cap will be considered a significant permit modification subject to the application and review requirements of Section 11-60.1-104, HAR. This review will take place in lieu of the review provided in the newly proposed Sections 11-60.1-205 and 206, HAR.

Proposed Control Strategy. The proposed control strategy and partnering will be discussed further in **Section 5**. Relevant to public participation, it should be noted that in the event that two (2) sources decide to partner, each source's GHG Emission Reduction Plan, whether or not it requires a permit modification, is subject to public review.

b. GHG Emission Reduction Plan Deadline Extension

The DOH recognizes the time and effort needed to prepare a GHG Emission Reduction Plan, and therefore amends the proposed draft rules by changing the nine (9) month deadline to twelve (12) months and allowing the owner or operator to request for an extension if necessary. Any request for an extension will be subject to the approval of the Director and will require a written request. Section 11-60.1-204(a), HAR, will be amended as follows:

[. . .]Each owner or operator of an affected source shall submit a GHG reduction plan **for the director's approval within twelve (12) months of the effective date of this section. An owner or operator may submit a written**

request for an extension 30 days prior to the deadline.

5. Proposed Control Strategy – Partnering

The DOH appreciates comment on, and acknowledges the benefits of, market incentives such as allowances, trading, and offsets. However, due to the relatively small amount of affected sources, partnering was determined to be the most reasonable approach to follow for reducing GHG emissions. Partnering provides added flexibility for affected facilities to achieve the required GHG emissions reductions, and incentives to reduce GHG emissions below the required reduction levels for the affected sources.

Affected sources may propose to combine their facility-wide GHG emissions caps to leverage emissions reductions among partnering facilities in meeting the combined GHG emission caps. If approved by the Director, each partnering facility will be responsible for complying with its own individual adjusted facility-wide GHG emissions cap. A partnering facility that reduces emissions below the minimum 16% of the facility's total baseline GHG emission levels can still be found in violation if it fails to reduce emissions by the amount offered in credit to its partner, as reflected in its permit. Under partnering, the owner or operator of each affected source would be responsible for the terms of its own permit. When two (2) or more sources partner, each affected source must identify the quantity of its planned emissions above or below its initial facility-wide GHG emissions cap. Each partner would agree to revised emissions levels that balance the levels of its partner's. The revised levels would be incorporated into each source's permit as a new, adjusted facility-wide GHG emissions cap. Each partner would be responsible for meeting its own adjusted cap, and would not be affected by a partner source that fails to meet its own adjusted cap as reflected in its permit.

For clarification purposes, Section 11-60.1-204(d)(6), HAR, will be amended as follows:

(6) The proposed Control Strategy.
Present the listing of control
measures to be used for
implementation in meeting the
required or proposed alternate 2020
facility-wide emissions cap.
Include discussion of the control
effectiveness, control
implementation schedule, and the
overall expected GHG CO₂e emission

reductions (tpy) for the entire facility. Owners or operators shall also consider the following:

- (A) **Affected** sources may propose to combine their facility-wide GHG emission caps to leverage emission reductions among partnering facilities in meeting the combined GHG emission caps. If approved by the director, **each partnering facility will be responsible for complying with its own adjusted GHG facility-wide emission cap.**

6. MWC Operations & MSW Landfills

The proposed draft rules exempted MWC operations, but did not exempt MSW landfills, from the requirements of Section 11-60.1-204, HAR. In response to public comments regarding MWC operations and MSW landfills, the DOH determined that MWC operations will continue to be exempt, and that MSW landfills will now be conditionally exempt.

The DOH will continue to exempt MWC operations from the requirements of Section 11-60.1-204, HAR, because these operations ultimately lower GHG emissions from landfills by diverting or reducing waste going into landfills. Also, during the evaluation conducted as provided in **Section 3**, the DOH determined that exempting MWC operations had a minor effect on the percentage of GHG reductions needed to achieve the 1990 GHG emissions level.

The DOH is amending the proposed draft rules by conditionally exempting MSW landfills subject to controls under NSPS from the requirements of Section 11-60.1-204, HAR. Requirements for gas collection and control systems are provided in 40 CFR Part 60, Subpart Cc, for MSW landfills that commenced construction, reconstruction, or modification before May 30, 1991, and 40 CFR Part 60, Subpart WWW, for MSW landfills that commenced construction, reconstruction, or modification on or after May 30, 1991. In addition, 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants (NESHAP), Subpart AAAA, applies to new and existing MSW landfills that reference control requirements from NSPS.

The DOH recognizes that gas collection and control systems make significant reductions to GHG emissions from MSW landfills. Also, the evaluation conducted as

provided in **Section 3** revealed that exempting MSW landfills had a minor effect on the percentage of GHG reductions needed to achieve the 1990 GHG emissions level. The contribution of GHG emissions from landfills is minimized from gas collection and control systems used at these facilities to reduce landfill gas emissions.

Therefore, a new Section 11-60.1-204(i), HAR, will be added as follows [the current proposed paragraph (i) will change to (j)]:

(i) Municipal solid waste landfills required by 40 CFR Part 60, Subpart Cc or 40 CFR Part 60, Subpart WWW to use gas collection and control systems are conditionally exempt from the GHG emission reduction requirements of Subsection 11-60.1-204 (c) .

It should be noted that California also does not currently require GHG reductions from its waste sector. To comply with California Assembly Bill 341, which requires recycling 75% of solid waste by 2020, the California Environmental Protection Agency Air Resources Board (CARB) is examining alternatives to its current approach of including waste-to-energy non-biogenic emissions and exempting California MSW landfills from cap-and-trade. CARB's proposed goal for 2035 is to achieve net-zero GHG emissions for the waste sector. CARB's proposed goal for 2050 is to reduce direct emissions by 25% beyond the 2035 goal. While it was recognized that the situations in Hawaii and California are not identical, the fact that California is not planning for waste sector GHG reductions until after 2035 was both compelling and consistent with the Hawaii GHG Emissions Reduction Task Force Report, Table 4 (page 29), which presents an estimated growth in non-biogenic CO₂e waste emissions (including waste combustion) of approximately 20% from 2010 to 2020.

7. BACT Applicability Threshold

The BACT applicability threshold will remain at 40,000 tpy CO₂e, as provided in the original **proposed draft rules, because the DOH would like to better manage future growth by** evaluating emissions and employing the most effective emission control options, considering cost and environmental factors, for a broad range of new and/or modified facilities. Emissions growth will be most reasonably managed by expanding the domain of sources subject to BACT.

8. GHG Fees

The DOH understands and agrees with the concern that under the proposed draft rules, fees would be charged retroactively. The DOH therefore amends the proposed draft rules to charge fees only after promulgation of the rules. Therefore, the proposed text on payments for calendar year 2013 has been removed.

Section 11-60.1-114(a), will be amended by deleting the portion that appears in double strikethrough below:

(a) Except as specified in [~~section~~] subsection 11-60.1-112(h), subsection (b), and below, an annual fee shall be paid in full within the first [~~sixty~~] one-hundred twenty days of each calendar year and a closure fee shall be paid within thirty days after the permanent discontinuance of the covered source. ~~Annual fees assessed for GHG emissions due in calendar year 2013, shall be paid in full by October 1, 2013, unless an extension is provided by the director pursuant to subsection (b).~~

Correspondingly, Section 11-60.1-114(g), will be amended as follows:

(g) The annual fee assessed for each regulated air pollutant shall be determined by multiplying the appropriate dollar per ton charge pursuant to subsections (i) and (j) by the covered source emissions in tons or CO₂e tons per year pursuant to section 11-60.1-115. The dollar per ton charge assessed for all regulated air pollutants (both toxic and non-toxic) shall be determined pursuant to the following subsections:

<u>Annual Fees Due</u>	<u>Subsection(s)</u>
Prior to 2002	As provided for in subchapter 6, amended October 26, 1998
2002, <u>except GHGs</u>	(i) (1) and (2)
2003 and thereafter, <u>except GHGs</u>	(i) (1) and (2), and (j)
<u>2015 for GHGs</u>	(i) (4) and (5)
<u>2016 and thereafter for GHGs</u>	(i) (4) and (5), and (j)

9. Definition of “Subject to Regulation”

One of the goals for the Tailoring Rule is to reduce the permitting burden for regulating GHGs under the federal Clean Air Act (CAA). To reduce the burden, the Tailoring Rule increases the GHG emissions thresholds that require PSD and Title V permitting of stationary sources. Under the CAA, new or modified major sources must obtain PSD permits and implement BACT if the source emits at least 100 or 250 tpy (depending on type of source) of a regulated pollutant and the project results in a significant emissions increase. Also, Title V permitting requirements apply to sources that emit at least 100 tpy of a regulated pollutant. These thresholds are appropriate for criteria pollutants, such as particulate matter and sulfur dioxide; however, the thresholds are not feasible for GHGs, that are emitted at much higher volumes.

The Tailoring Rule established thresholds for GHG emissions that define when PSD and Title V permits are required. After July 1, 2011, under Step 2 of the Tailoring Rule, PSD permitting requirements apply to new projects that emit GHGs of at least 100,000 tpy of CO₂e even if they do not exceed the permitting thresholds for any other pollutant. Modifications at existing major source facilities that increase CO₂e emissions by at least 75,000 tpy, and any amount on a mass basis are subject to PSD permitting requirements, even if they do not significantly increase emissions of any other pollutant. Also, new and existing facilities that emit at least 100,000 tpy CO₂e and GHGs that exceed or equal 100 tpy on a mass basis are subject to Title V permitting requirements. In Step 3 of the Tailoring Rule, EPA decided not to lower the current GHG applicability thresholds from Step 1 and Step 2 levels.

Title V and PSD GHG permitting thresholds established by the Tailoring Rule are provided in Subchapters 1 and 7, HAR, under the definition of “Subject to Regulation.” The definition in Subchapter 1, HAR, was intended to be all encompassing and provide thresholds for both Title V and PSD sources. The 100,000 tpy CO₂e emission threshold specified in the definition under Subchapter 1 proposed amendments, however, only addressed Title V applicability. Therefore, the DOH revised Section 11-60.1-1, HAR, as provided below, to also reference the PSD definition of “Subject to Regulation” from Subchapter 7, HAR.

The outcomes of EPA rule making for regulating biogenic CO₂ emissions is uncertain. In the final Tailoring Rule, no exemptions were provided for applicability determinations (major source or major modification) under PSD and Title V for certain GHG emission sources, including biogenic emissions. In the July 20, 2011, final rule making (Federal Register 76), EPA deferred until July 21, 2014, the consideration of CO₂ emissions from bioenergy and other biogenic sources when determining whether a stationary source meets PSD and Title V applicability thresholds (Deferral Rule). On July 12, 2013, the United States Court of Appeals for the District of Columbia Circuit vacated the Deferral Rule. The definition of “Subject to Regulation” of the proposed HAR amendments excluded biogenic CO₂ emissions from air permit applicability determinations in both Subchapters 1 and 7, HAR. Since outcomes for regulating

biogenic CO₂ emissions are unknown, the DOH decided to delete portions of the “Subject to Regulation” definitions that exclude biogenic CO₂ emissions from regulation. This provides flexibility for the DOH to regulate biogenic CO₂ emissions outside the HAR depending on final EPA rule decisions.

Subchapter 1, Section 11-60.1-1, HAR, is amended as follows (the portion that appears in double strikethrough is deleted, the remaining text is adjusted as appropriate):

“Subject to regulation” means for any pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified in 40 CFR Subchapter C of Chapter I, Air Programs, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that~~+~~

~~—(1)~~ GHG emissions shall be subject to regulation from a stationary source emitting or having the potential to emit 100,000 tpy or more of CO₂ equivalent emissions and GHGs that equal or exceed 100 tpy on a mass basis for the Title V or thresholds specified in Subchapter 7 for PSD.

~~(2) The mass of GHG CO₂ emissions prior to July 21, 2014 or such earlier time as specified by the director or 40 CFR 52.21, shall not include CO₂ emissions resulting from the combustion or decomposition of non fossilized and biodegradable organic material originating from plants, animals, or micro organisms (including products, by products, residues and waste from agriculture, forestry and related industries as well as the non-~~

~~fossilized and biodegradable organic fractions of industrial and municipal waste, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material). Otherwise known as biogenic CO₂ emissions, this deferral does not apply for application, fee, and reporting purposes as specified in subchapters 4, 5, and 6; and applicability determinations under subchapter 11.~~

Subchapter 7, Section 11-60.1-131, HAR, is amended as follows (the portion that appears in double strikethrough is deleted):

"Subject to Regulation" means for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified in Title 40 CFR Chapter I, Subchapter C, Air Programs, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

~~(1)~~ Greenhouse gases (GHGs), the air pollutant defined in 40 CFR Subsection 86.1818-12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraphs (4) to (5) of this definition.

(2) For purposes of paragraphs (3) through (5) of this definition, the term tpy CO₂ equivalent emissions (CO₂e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40

~~CFR Part 98—Global Warming Potentials. For purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro organisms (including products, by products, residues and waste from agriculture, forestry and related industries as well as the non fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non fossilized and biodegradable organic material).~~

- (B) Sum the resultant value from paragraph (2) (A) above for each gas to compute a tpy CO₂e.

10. Statewide GHG Emission Limit

Pursuant to HAR, Section 11-60.1-203 and HRS Chapter 342B-71, the statewide emission limit to be achieved by 2020, is equal to or below 13.66 million metric tons (or 15.06 million tons) per year of CO₂e, based on Hawaii's 1990 GHG emission estimates prepared under Act 234, 2007 Hawaii Session Laws. The emission limit excludes aviation and international bunker fuel emissions, and includes carbon sinks. To determine compliance with the statewide emission limit, actual and projected GHG emissions will be periodically compiled. If statewide annual GHG emissions are determined to be equal or lower than 13.66 million metric tons of CO₂e per year by 2020 and emission projections indicate ongoing compliance with the statewide emission limit, the objectives of Hawaii Act 234 would be considered satisfied and no facility-wide GHG cap would apply to affected facilities. An opportunity for public comment will be provided prior to finalizing any determination that the statewide emission limit has been met. Emission reductions from other state programs such as the Energy Efficiency Portfolio Standard, Renewable Portfolio Standard, and Hawaii Clean Energy Initiative would be accounted for in statewide emission inventories. The director will monitor, verify, and report ongoing GHG emissions until 2020 and beyond to ensure continuous compliance with the statewide emission limit. The GHG Rules would be amended as applicable based on information from periodic GHG emission inventories.

Subchapter 11, Section 11-60.1-1, HAR, is amended by adding a provision in a new Subsection 11-60.1-204(k), HAR as follows:

(k) The director shall conduct an evaluation in 2016, and annually thereafter, to determine the progress of achieving and if applicable, ongoing maintenance of the statewide GHG emissions limit specified in HRS, Chapter 342B-71 and section 11-60.1-203. The evaluation of the statewide GHG emission limit shall be conducted in a manner consistent with the procedures used to prepare the 1990 emission estimates under Act 234, 2007 Hawaii Session Laws. The director shall produce and make public annual progress reports listing GHG emissions levels for each affected facility and the statewide progress relative to the statewide GHG emission limit. If the director determines that statewide GHG emission limit is met prior to 2020 and GHG emission projections indicate ongoing maintenance of the limit, the requirements of this section shall no longer be applicable to the affected facilities. Prior to finalizing any determination that the statewide GHG emission limit has been met, the director shall provide for public notice and an opportunity for public comment in accordance with the requirements specified in section 11-60.1-205. Upon achieving the statewide GHG emission limit, the director may revise or adopt additional rules to ensure the ongoing maintenance of the statewide GHG emission limit.

Appendix A – Calculation Summary Spreadsheet

Hawaii GHG Emission Reduction Percentage Calculation Information	Draft Rules	Corrected Draft Rules	Revised Rules	Comments
	1000 CO2e Metric Ton	1000 CO2e Metric Ton	1000 CO2e Metric Ton	
1990 ICF Non-Biogenic Emissions Goal	8,930	8,930	8,930	ICF 1990 estimate (Ref. 1 & 2)
2010 ICF Non-Biogenic Emissions Estimate	10,860	9,945	9,945	Draft: ICF 2007 estimate (Ref. 2)
				Corrected & Revised: ICF 2010 estimate (Ref. 1)
2010 DOH Permitted Stationary Facilities	10,255	9,355	9,355	Corrected & Revised: 4 changed emission estimates
2010 DOH Large Permitted Stat. Fac.	10,021	9,121	9,121	Affected + Exempted
2010 DOH Affected Stationary Facilities	9,829	8,929	8,768	Corrected & Revised: 4 changed emission estimates
				Revised: exempts both MWC & MSW landfills
2010 DOH Exempted Stationary Facilities	192	192	353	Revised: exempts both MWC & MSW landfills
DOH Estimated Growth percentage for uncontrolled Emissions	12%	12%	12%	Draft Rules growth for uncontrolled emissions unchanged
GHG Reduction Percentage Calculation Results	20.9%	12.7%	13.2%	See equation in text

Table A-1: Hawaii GHG Emission Reduction Percentage Calculation Information

2010 GHG Facility Emission Information	Draft Rules	Corrected Draft Rules	Comments
	CO2e Metric Ton	CO2e Metric Ton	
Affected: Unchanged Emissions	6,653,331	6,653,331	Total emissions estimate for 20 affected facilities
Affected: Facility Estimate Change #1	36,271	32,644	Corrected Draft Rules use 2010 GHGRP estimate (Ref. 3)
Affected: Facility Estimate Change #2	953,742	953,418	Corrected Draft Rules use 2010 GHGRP estimate (Ref. 3)
Affected: Facility Estimate Change #3	180,137	27,915	Draft: DOH estimate not consistent with controlled landfill emissions
			Corrected Draft: uses 2010 GHGRP estimate (Ref. 3)
Affected: Facility Estimate Change #4	2,005,978	1,261,911	Draft: Key emission factor used in GHGRP estimate was anomalously high
			Corrected Draft: used EPA emission factors (Ref. 4)
Unaffected: Unchanged Emissions Estimates	425,455	425,455	Total emissions estimate for 81 unaffected facilities (includes exempted MWC facility)
Total Affected	9,829,460	8,929,220	Both Draft and Corrected Draft only exempt MWC
Total Permitted (Affected + Unaffected)	10,254,915	9,354,675	Corrected Draft Permitted emissions consistent with ICF 2010 estimate

Table A-2: 2010 GHG Facility Emission Information

Ref. 1: ICF Report (10 Nov 2009) from *The Greenhouse Gas Emissions Reduction Task Force report to the 25th Legislature, State of Hawaii*; THE GREENHOUSE GAS EMISSIONS REDUCTION TASK FORCE, STATE OF HAWAII, "REPORT TO THE TWENTY-FIFTH LEGISLATURE STATE OF HAWAII, WORK PLAN FOR GREENHOUSE GAS EMISSIONS REDUCTIONS", December 30, 2009; <http://hawaii.gov/dbedt/main/about/annual/2009-reports/2009-sid-ghgrtf.pdf> (Note: direct link to web address fails. Need to search for title and link through search engine)

Ref. 2: ICF International, "Hawaii Greenhouse Gas Inventory: 1990 and 2007", December 10, 2008; <http://energy.hawaii.gov/wp-content/uploads/2011/10/ghg-inventory-20081.pdf>

Ref. 3: US Environmental Protection Agency, "Greenhouse Gas Reporting Program: 2010 Data Sets"; <http://www.epa.gov/ghgreporting/ghgdata/2010data.html>

Ref. 4: US Environmental Protection Agency, "Emission Factors for Greenhouse Gas Inventories", 7 November 2011; <http://www.epa.gov/climateleadership/documents/emission-factors.pdf>

Appendix B – Public Participation and Public Petitions

§11-60.1-205 Public participation. (a) The director shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment on all draft greenhouse gas emission reduction plans. Any person requesting a public hearing shall do so during the public comment period. Any request from a person for a public hearing shall indicate the interest of the person filing the request and the reasons why a public hearing is warranted.

(b) Procedures for public notice, public comment periods, and public hearings shall be as follows:

- (1) The director shall make available for public inspection in at least one location in the county affected by the proposed action, or in which the source is or would be located:
 - (A) Information on the subject matter;
 - (B) Information submitted by the proposing party, except for that determined to be confidential pursuant to section 11-60.1-14;
 - (C) The department's analysis and proposed action; and
 - (D) Other information and documents determined to be appropriate by the department;
- (2) Notification of a public hearing shall be given at least thirty days in advance of the hearing date;
- (3) A public comment period shall be no less than thirty days following the date of the public notice, during which time interested persons may submit to the department written comments on:
 - (A) The subject matter;
 - (B) The greenhouse gas emission reduction plan;
 - (C) The department's analysis;
 - (D) The proposed actions; and

- (E) Other considerations as determined to be appropriate by the department;
- (4) Notification of a public comment period or a public hearing shall be made:
 - (A) By publication in a newspaper which is printed and issued at least twice weekly in the county affected by the proposed action, or in which the source is or would be located;
 - (B) To persons on a mailing list developed by the director, including those who request in writing to be on the list; and
 - (C) If necessary by other means to assure adequate notice to the affected public;
- (5) Notice of public comment and public hearing shall identify:
 - (A) The affected facility;
 - (B) The name and address of the proposing party;
 - (C) The name and address of the agency of the department reviewing the plan;
 - (D) The activity or activities involved in the plan, including, but not limited to, whether the proposing party proposes:
 - (i) an alternate baseline year;
 - (ii) an alternate facility-wide GHG emissions cap;
 - (iii) a control strategy involving partnering with one or more facilities.
 - (E) The emissions change involved in the plan;
 - (F) The name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft plan, all relevant supporting materials, and all other materials available to the department that are relevant to the decision, except for

- information that is determined to be confidential, including information determined to be confidential pursuant to section 11-60.1-14;
- (G) A brief description of the comment procedures;
 - (H) The time and place of any hearing that may be held, including a statement of procedures to request a hearing if one has not already been scheduled; and
 - (I) The availability of the information listed in paragraph (1), and the location and times the information will be available for inspection; and
- (6) The director shall maintain a record of the commenters and the issues raised during the public participation process and shall provide this information to the Administrator upon request.

§11-60.1-206 Public petitions. (a) The applicant and any person who participated in the public comment or hearing process and objects to the grant or denial of a draft GHG emission reduction plan, may petition the department for a contested case hearing by submitting a written request to the director.

(b) The petition shall be based solely upon objections to the draft GHG emission reduction plan, that were raised with reasonable specificity during the public participation process, unless the petitioner demonstrates that it was impracticable to raise such objections; for example, the grounds for such objections arose after the public participation process.

(c) Any petitioner shall file a petition for a contested case hearing within ninety days of the date

of the department's approval or disapproval of the proposed draft GHG emission reduction plan.

(d) Notwithstanding the provisions of subsection (b), if based solely on objections which were impracticable to raise during the public participation process, a petition for a contested case hearing may be filed up to ninety days after the objections could be reasonably raised.

(e) Except as provided in subsection (f), any draft GHG emission reduction plan that has been issued shall not be invalidated by a petition for a contested case hearing. If a draft GHG emission reduction plan is issued by the director, the owner or operator of the source shall not be in violation of the requirement to have submitted a timely and complete application.

(f) The effective date of draft GHG emission reduction plan shall be as specified for permits in 40 CFR Part 124.15.

(g) Any person may petition for a contested case hearing for the director's failure to take final action on an application for draft GHG emission reduction plan, within the time required for permits by this chapter. Such petition shall be submitted in writing and may be filed any time before the director issues a proposed draft GHG emission reduction.

(h) Any person aggrieved by a final administrative decision and order, including the denial of any contested case hearing, may petition for judicial review pursuant to section 91-14, HRS. A petition for judicial review shall be filed no later than thirty days after service of the certified copy of the final administrative decision and order.