

Justification for
Proposed Amendments to

Hawaii Administrative Rules
Title 11
Department of Health
Chapter 60.1
Air Pollution Control

Department of Health
Environmental Management Division
Clean Air Branch
Honolulu, Hawaii

March 29, 2023

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Introduction

This justification serves to explain and provide a rationale for the proposed revisions to Department of Health, Hawaii Administrative Rules (HAR), Title 11, Chapter 60.1, Air Pollution Control (hereafter referred to as Chapter 11-60.1).

More than 100 changes are proposed in over 40 sections of the chapter. The main changes, each of which has amendments to multiple sections, include the following:

- Change the status of non-major Covered Source Permits (CSP) to Noncovered Source Permits (NSP).
- Clarify that GHG emissions alone do not trigger Major Source (defined in Section 11-60.1-1) or Major Stationary Source (defined in Section 11-60.1-131).
- Require public participation prior to the issuance of certain NSP's.
- Clarify that major stationary sources proposing a modification must first evaluate whether the modification is a major modification using the methods defined in Section 11-60.1-131.
- Require public participation prior to the issuance of certain minor modifications at major stationary sources.
- Exempt nonroad engines from air permitting.
- Add test methods and remove director's discretion in the determination of air violations.
- Improve existing regulations, or add new ones, for open burning and agricultural burning.
- Add new categories of field citations.
- Make additional amendments such as mandatory updates or changes to correct, enhance, or clarify an existing rule

Additional information on these proposed rule amendments may be obtained by contacting Mr. Barry Ching or Valerie Ishihara of the Clean Air Branch (CAB) at the following:

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Proposed Changes and Justification

The proposed changes are shown in Ramseyer format where material to be deleted is bracketed and struck out and new material is underscored. To minimize the amount of paper used in this document the draft rules are not shown exactly as they would appear according to the Hawaii Administrative Rules Drafting Manual.

The amendments are presented in order and grouped by subchapter. Each proposed amendment is listed by section. Often, a section may have more than one change; when multiple purposes for the changes exist, each is addressed. A line of asterisks within a section indicates a portion of a section that is not affected and therefore not displayed.

The draft rules and the justifications refer to a number of acronyms or initialisms including the following:

EPA	U.S. Environmental Protection Agency
40 CFR	Title 40, Protection of Environment, Code of Federal Regulations
PSD	Prevention of Significant Deterioration
DOH	Hawaii Department of Health
CAB	Clean Air Branch, DOH
CSP	Covered Source Permit (also “Title V” permit)
NSP	Noncovered Source Permit
HAR	Hawaii Administrative Rules
NSPS	New Source Performance Standards
NESHAP	National Emission Standards for Hazardous Air Pollutants

1. Amendments to Subchapter 1 General Requirements

§11-60.1-1 Definitions. As used in this chapter, unless otherwise defined for purposes of a particular subchapter or section of this chapter:

* * *

"Covered source" means:

- ~~[(1) Any major source;~~
- ~~(2) Any source subject to a standard or other requirement under Section 111 of the Act;~~
- ~~(3) Any source subject to an emissions standard or other requirement for hazardous air pollutants pursuant to Section 112 of the Act, with the exception of those sources solely subject to regulations or requirements pursuant to Section 112(r) of the Act; and~~
- ~~(4) Any source subject to the rules for prevention of significant deterioration of air quality as established in subchapter 7.]~~
- (1) Prior to program approval:
 - (A) Any major source;
 - (B) Any source subject to a standard or other requirement under Section 111 of the Act;
 - (C) Any source subject to an emissions standard or other requirement for hazardous air pollutants pursuant to Section 112 of the Act, with the exception of those sources solely subject to regulations or requirements pursuant to Section 112(r) of the Act; and
 - (D) Any source subject to the rules for prevention of significant deterioration of air quality as established in subchapter 7.
- (2) Upon program approval and thereafter:
 - (A) Any major source;
 - (B) Any source subject to a standard or other requirement under Section 111 or 112 of the Act designated by the Administrator as requiring a Title V permit, such as subject solid waste incineration units; and
 - (C) Any source subject to the rules for prevention of significant deterioration of air quality as established in subchapter 7.

* * *

"Credible evidence" means various kinds of information other than reference test data, much of which is already available and utilized for other purposes, that may be used to determine compliance or noncompliance with emission standards.

* * *

"Gas-tight" means no detectable gaseous emissions.

* * *

"Greenhouse gases" means the air pollutant defined as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, [~~hydrofluorocarbons, perfluorocarbons~~] hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

* * *

"Major source" means:

- (1) For hazardous air pollutants, a source or a group of stationary sources that is located on one or more contiguous or adjacent properties, and is under common control of the same person (or persons under common control) and that emits or has the potential to emit considering controls and fugitive emissions, any hazardous air pollutant, except radionuclides, in the aggregate of ten tons per year or more of a single pollutant or twenty-five tons per year or more of any combination of pollutants; or
- (2) For any other pollutant, a source, or a group of stationary sources that is located on one or more contiguous or adjacent properties, and is under common control of the same person (or persons under common control) belonging to a single major industrial grouping (i.e., all having the same two-digit Standard Industrial Classification Code) and that emits or has the potential to emit, considering controls, one hundred tons per year or more of any air pollutant subject to regulation other than the pollutant greenhouse gases. Fugitive emissions from the stationary source shall be considered in determining whether the stationary source is major, if it belongs to one of the following categories of stationary sources:
 - (A) Coal cleaning plants (with thermal dryers);
 - (B) Kraft pulp mills;
 - (C) Portland cement plants;
 - (D) Primary zinc smelters;
 - (E) Iron and steel mills;
 - (F) Primary aluminum ore reduction plants;
 - (G) Primary copper smelters;
 - (H) Municipal incinerators capable of charging more than [~~two hundred~~] fifty tons of refuse per day;
 - (I) Hydrofluoric, sulfuric, or nitric acid plants;⁴
 - (J) Petroleum refineries;
 - (K) Lime plants;
 - (L) Phosphate rock processing plants;
 - (M) Coke oven batteries;
 - (N) Sulfur recovery plants;
 - (O) Carbon black plants (furnace process);
 - (P) Primary lead smelters;
 - (Q) Fuel conversion plants;
 - (R) Sintering plants;
 - (S) Secondary metal production plants;

- (T) Chemical process plants – the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- (U) Fossil fuel boilers (or combination thereof) totaling more than two hundred fifty million BTU per hour heat input;
- (V) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;
- (W) Taconite ore processing plants;
- (X) Glass fiber processing plants;
- (Y) Charcoal production plants;
- (Z) Fossil fuel fired steam electric plants of more than two hundred fifty million BTU per hour heat input; and
- (AA) Any other stationary source which as of August 7, 1980 is being regulated by a standard promulgated pursuant to Section 111 or 112 of the Act.

* * *

“Malfunction” means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation shall not be considered malfunctions.

* * *

“Monitoring device” means the total equipment, required under the monitoring of operations sections in all applicable subparts, used to measure and record (if applicable) process parameters. Nothing in these rules shall preclude the use, including the exclusive use, of any credible evidence information, relevant to whether a source would have been in compliance with any applicable requirements if the appropriate performance or compliance test or procedure had been performed.

* * *

“No detectable emissions” means less than 500 ppm above background levels, as measured by a detection instrument in accordance with Method 21 in Appendix A of 40 CFR Part 60.

* * *

“Nonroad engine” means:

- (1) Except as discussed in paragraph (2) of this definition, an internal combustion engine that meets any of the following criteria:
 - (A) It is (or will be) used in or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers).

- (B) It is (or will be) used in or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers).
 - (C) By itself or in or on a piece of equipment, it is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.
- (2) An internal combustion engine is not a nonroad engine if it meets any of the following criteria:
 - (A) The engine is used to propel a motor vehicle, an aircraft, or equipment used solely for competition.
 - (B) The engine is regulated under 40 CFR Part 60, or otherwise regulated by a federal New Source Performance Standard promulgated under section 111 of the Clean Air Act (42 U.S.C. 7411).
 - (C) The engine otherwise included in subparagraph (1)(C) of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. See 40 CFR Section 1068.31 for provisions that apply if the engine is removed from the location.

* * *

"PM_{2.5}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers. Gaseous emissions which condense to form particulate matter at ambient temperatures shall be included.

* * *

"PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers. Gaseous emissions which condense to form particulate matter at ambient temperatures shall be included.

* * *

"Program approval" means approval granted by the Administrator pursuant to 40 CFR Part 70 for revisions to the State of Hawaii covered source permit program.

"Significant" means in reference to a net emissions increase or the potential of a source to emit:

- (1) A rate of emissions that would equal or exceed any of the following pollutant emission rates:
 - (A) Carbon monoxide: one hundred tpy;
 - (B) Nitrogen oxides: forty tpy;
 - (C) Sulfur dioxide: forty tpy;
 - (D) Particulate matter: a total of twenty-five tpy of particulate matter of all sizes;
 - (E) PM₁₀: fifteen tpy;
 - (F) PM_{2.5}: ten tpy of direct PM_{2.5}, forty tpy of sulfur dioxide, forty tpy of nitrogen oxide;
 - (G) Ozone: forty tpy of volatile organic compounds or nitrogen oxides;
 - (H) Greenhouse Gases: forty thousand tpy CO₂e [~~(mass biogenic CO₂ emissions accounted for as provided in the "subject to regulation" definition)~~]; or
 - (I) Lead: 0.6 tpy.

* * *

"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 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 Title V or thresholds specified in Subchapter 7 for PSD.]~~

~~"Upon program approval" means the date the State of Hawaii covered source permit program is granted full or interim approval by the Administrator pursuant to 40 CFR Part 70 and thereafter.]~~

Justification:

The revision to the definition of "**covered source**" allows non-major CSP sources to be regulated as an NSP source, except where the source is required by an applicable subpart or the administrator to obtain a CSP. Hawaii currently requires the majority of non-major sources subject to a standard or other requirement under Sections 111 or 112 (NSPS and NESHAPS) of the Clean Air Act to obtain Title V or CSP. Amending the definition of "covered source" will allow these non-major sources to construct and operate under noncovered source permits (non-

Title V). Hawaii is the only state that requires Title V permitting for these non-major NSPS sources.

When Hawaii's Title V air permit program was first established in 1993, EPA deferred the requirement for certain non-major sources subject to a NSPS or NESHAP published on or prior to July 21, 1992 to obtain Title V permits (i.e. Title V permits were not required for these non-major sources). In addition, for NSPS or NESHAP published after July 21, 1992 the regulations specifically identify whether a nonmajor source is required to obtain a Title V permit. In contrast to 40 CFR Part 70 – State Operating Permit Program for Title V of the Clean Air Act, Hawaii's rules require nonmajor sources subject to a NSPS or NESHAP to obtain a Title V permit regardless of whether it is required by the federal regulation. The proposed change will allow Hawaii to regulate certain nonmajor sources through non-Title V (noncovered source) permits, consistent with the rest of the nation.

EPA must approve the above revisions to the Title V program before the change can be implemented. To allow for the delay in implementation, the second definition of "covered source" will become effective upon "program approval," as newly defined. The current definition of "upon program approval" and the use of "upon program approval" is no longer applicable and are being deleted.

Adding a new definition for "**credible evidence**" supports the proposed new definition "monitoring device" in this section, the addition of new §11-60.1-2.5 and amendment of §11-60.1-32(c), all of which make reference to this term. The cumulative effect of these additions will be to strengthen the use of credible evidence in CAB enforcement actions and to make the CAB rules more consistent with federal rules.

The new definition "**gas-tight**" is added to clarify existing text that references this term in §11-60.1-39 and -40.

The spelling of two pollutants under "**greenhouse gases**" is corrected.

The definition of "**major source**" is revised to clarify that GHG emissions of 100 tons per year is not a major source trigger, and to correct the size threshold that triggers major source for municipal incinerators to 50 tons of refuse per day.

A definition for "**malfunction**" is established to correspond with the amendments in §11-60.1-32 which addresses startup, shutdown, and malfunction of equipment. This amendment will make the CAB rules more consistent with federal rules.

The addition of "**monitoring device**" is needed because the term is referenced in a number of sections of the CAB rules. Moreover, this definition specifically includes "credible evidence" as a monitoring device. This will improve CAB's enforcement capabilities, and will make the CAB rules more consistent with federal rules.

The new definition "**no detectable emissions**" is added to clarify existing text found in the new definition of "**gas-tight**".

A definition for "**nonroad engine**" is added because that category will be explicitly exempted from air permit requirements. Owners of nonroad engines will be required to maintain a location log for this specific group of equipment, but they will not be required to obtain an air permit for their nonroad engine.

A specific group of engines categorized as “nonroad engines” are excluded from the Clean Air Act Section 302(z) definition of “stationary source” and are exempt from the stationary source permitting requirements for Federal Major and Minor New Source Review and Title V. The regulation of nonroad engines by pollution control agencies in the United States varies. Some agencies fully exempt nonroad engines from air permitting requirements, while others have established nonroad engine reporting programs or nonroad engine permitting programs. The proposed revisions will grant nonroad engines exemption from Hawaii’s air permitting requirements. The revised rules include a requirement for owners or operators of nonroad engines in Hawaii to maintain a log of location changes which provides the Clean Air Branch the means to verify the status of the unit as a nonroad engine.

Language is added to the definitions of “**PM2.5**” and “**PM10**” for consistency with the federal definition.

The reference to biogenic GHG emissions in §11-60.1-1(1)(H) of the definition for “**significant**” is removed because EPA’s work for regulating biogenic emissions is pending. Permitting issues involving biogenic emissions will be resolved on a case-by case basis as they arise. The Deferral Rule that deferred applicability of permitting programs to biogenic CO₂ emissions expired on July 21, 2014 and determinations on how to regulate biogenic GHG emissions are ongoing.

The definition for “**subject to regulation**” is amended in order to align with current federal guidance for regulating GHG emissions. A recent Supreme Court ruling has invalidated a portion of the federal Tailoring Rule which incorporated the first standards for Greenhouse Gases. This amendment removes the requirement for a source to obtain a Title V or PSD permit due solely to their GHG emissions. Current federal guidance for regulating GHGs is provided in EPA’s December 19,2014 Memorandum, Subject: Next Steps for Addressing EPA-Issued Step 2 Prevention of Significant Deterioration Greenhouse Gas Permits and Associated Requirements.

§11-60.1-2.5 Credible evidence. Nothing in these rules shall preclude the use, including the exclusive use, of any credible evidence information, relevant to whether a source would have been in compliance with any applicable requirements if the appropriate performance or compliance test or procedure had been performed.

Justification:

This proposed amendment will give the CAB the specific authority to use credible evidence and will make the CAB rules comport with the federal rules in this area. In addition, this amendment supports the proposed amendment referencing “credible evidence” found in §11-60.1-32.

§11-60.1-11 Sampling, testing, and reporting methods. (a) All sampling and testing shall be made and the results calculated in accordance with the reference methods specified by EPA, or in the absence of an EPA reference method, test procedures approved by the director.

All tests shall be made under the direction of persons knowledgeable in the field of air ~~[pollution control]~~ emissions measurement testing.

(b) The department may conduct tests of emissions of air pollutants from any source. Upon request of the director, an owner or operator of a stationary source may be required to conduct tests of emissions of air pollutants at the owner or operator's expense. The owner or operator of the stationary source to be tested shall provide necessary ports in stacks or ducts and such other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the emissions of air pollutants.

(c) The director may require the owner or operator of any stationary source to maintain files on information concerning pertinent process and material flow, fuels used, nature and amount and time periods or durations of emissions, or any other information as may be deemed necessary by the director to determine whether the stationary source complies with applicable emission limitations, NAAQS, any state ambient air quality standard, or other provisions of this chapter in a permanent form suitable for inspection or in a manner authorized by the director.

(d) The information recorded shall be summarized and reported to the director as specified in the permit and in accordance with any requirement of this chapter. Recording periods shall be January 1 to June 30 and July 1 to December 31, or any other period specified by the director, except the initial recording period shall commence on the date the director issues the notification of the recordkeeping requirements. The director may require the owner or operator to submit any reported summary to the Administrator.

(e) Information recorded by the owner or operator of a stationary source and copies of the summarizing reports submitted to the director shall be retained by the owner or operator for a specified time period from the date on which the information is recorded or the pertinent report is submitted. The specified time period shall be as required in sections 11-60.1-68(5)(F) or 11-60.1-90(7)(H) or as identified within an applicable requirement ~~[of]~~ for the stationary source.

(f) Owners or operators of stationary sources shall correlate applicable emission limitations and other requirements within the report.

Justification:

The amendment improves clarity.

§11-60.1-12 Air quality models. (a) All required estimates of ambient concentrations shall be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W.

(b) Where an air quality model specified in ~~[Appendix A of]~~ 40 CFR Part 51, Appendix W is inappropriate, the model may be modified or another model substituted on written request to and written approval from the director. 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 proposed modifications or substitutions of an air quality model. Written approval from the director, and EPA through the director shall be obtained for any modification or substitution. Guidelines identified in 40 CFR Part 51, Appendix W for substituting or using alternate models shall be used in determining the acceptability of a substitute or alternate model.

Justification:

The amendment updates this section to indicate the correct reference.

§11-60.1-13 Operations of monitoring stations. The EPA monitoring requirements of ~~[Appendix B]~~ Appendices A, C, D and E to 40 CFR Part 58, "Ambient Air Quality Surveillance," shall be met as a minimum during the operation of any monitoring stations required by the director or this chapter.

Justification:

The amendment updates this section to reference the correct appendices.

2. Amendments to Subchapter 2 General Prohibitions

§11-60.1-31 Applicability. (a) All owners or operators of an air pollution source are subject to the requirements of this subchapter, whether or not the source is required to obtain a noncovered or covered source permit.

(b) In the event any federal or state laws, rules, or regulations are in conflict with the provisions of this subchapter, the most stringent requirement shall apply.

(c) This section shall apply to all federal and state laws, rules, or regulations implemented through this chapter.

Justification:

This section is being amended to ensure it is clear that in the event when any federal law, rule, or regulation incorporated by reference into the CAB rules creates a conflict with an existing CAB rule that the more stringent requirement(s) shall apply.

§11-60.1-32 Visible emissions. (a) Visible emission restrictions for stationary sources which commenced construction or were in operation before March 21, 1972, shall be as follows:

- (1) No person shall cause or permit the emission of visible air pollutants of a density equal to or darker than forty per cent opacity, except as provided in paragraph (2);
- (2) During start-up, shutdown, or when [~~breakdown~~] a malfunction of equipment occurs, a person may discharge into the atmosphere from any single source of emission, for a period aggregating not more than six minutes in any sixty minutes, air pollutants of a density not darker than sixty per cent opacity.

(b) Visible emission restrictions for stationary sources which commenced construction, modification, or relocation after March 20, 1972, shall be as follows:

- (1) No person shall cause or permit the emission of visible air pollutants of a density equal to or darker than twenty per cent opacity, except as provided in paragraph (2);
- (2) During start-up, shutdown, or when [~~breakdown~~] a malfunction of equipment occurs, a person may discharge into the atmosphere from any single source of emission, for a period aggregating not more than six minutes in any sixty minutes, air pollutants of a density not darker than sixty per cent opacity.

(c) Compliance with visible emission requirements shall be determined by evaluating opacity of emissions pursuant to 40 CFR Part 60, Appendix A, Method 9 [~~and~~], other EPA approved methods[~~;~~], or any other credible evidence.

(d) Emissions of uncombined water, such as water vapor, are exempt from the provisions of subsections (a) and (b), and do not constitute a violation of this section.

Justification:

This section is being revised to ensure that the CAB rules are clear about the consistently enforced CAB policy that any emission limit that is contained in a federal rule, that is incorporated by reference by the CAB rules, is incorporated into, and subject to, this instant CAB rule section as well.

The amendments also clarify the CAB rules' allowance of the use of credible evidence in enforcing all federal and state laws, regulations, and permits.

This section also incorporates the terminology "malfunction" in replacement of the term "breakdown" so that the section reflects the usage of the term "malfunction" instead of "breakdown" in the federal rules, and also, what is utilized in federal case law as well as the case law of most other states.

§11-60.1-33 Fugitive dust. (a) No person shall cause or permit visible fugitive dust to become airborne without taking reasonable precautions. Examples of reasonable precautions are:

- (1) Use of water or suitable chemicals for control of fugitive dust in the demolition of existing buildings or structures, construction operations, the grading of roads, or the clearing of land;
- (2) Application of asphalt, water, or suitable chemicals on roads, material stockpiles, and other surfaces which may result in fugitive dust;
- (3) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials. Reasonable containment methods shall be employed during sandblasting or other similar operations;
- (4) Covering all moving, open-bodied trucks transporting materials which may result in fugitive dust;
- (5) Conducting agricultural operations, such as tilling of land and the application of fertilizers, in such manner as to reasonably minimize fugitive dust;
- (6) Maintenance of roadways in a clean manner; and
- (7) Prompt removal of earth or other materials from paved streets which have been transported there by trucking, earth-moving equipment, erosion, or other means.

(b) Except for persons engaged in agricultural operations or persons who ~~can demonstrate to the director that~~ are implementing the best practical operation or treatment ~~[is being implemented]~~, no person shall cause or permit the discharge of visible fugitive dust beyond the property lot line on which the fugitive dust originates.

(c) Except for persons engaged in agricultural operations, no person shall cause or permit visible fugitive dust emissions equal to or in excess of twenty percent opacity for more than twenty-four individual readings recorded during any one hour period. Opacity observations shall be conducted in accordance with 40 CFR Part 51, Appendix M, Method 203B, "Visual Determination of Opacity of Emissions from Stationary Sources for Time-Exception Regulations." This rule shall be in addition to complying with paragraphs (a) and (b), including when reasonable precautions are applied and shall be applicable in all circumstances.

Justification:

The amendment to **§11-60.1-33(b)** removes director's discretion. The EPA has recommended that the CAB minimize the use of director's discretion in determining violations.

The proposed addition of new **§11-60.1-33(c)** is in response to the EPA's concerns that, in a rare and an extreme case, a situation may arise whereby a generator of fugitive dust, although generating fugitive dust, would still not be in violation of the current rules found in §§ 11-60.1-33(a) and (b) due its use of reasonable precautions to control fugitive dust. In addition to applying whether or not the generator is utilizing reasonable precautions to control fugitive

dust, § 11-60.1-33(c) applies a quantitative test method rather than relying on subjective measures to determine a violation. The proposed language found in § 11-60.1-33(c) was suggested by EPA counsel. EPA has stated that in their current form, sections 11-60.1-33(a) and (b) are not approvable for adoption into the federal State Implementation Plan for Hawaii. Thus the CAB has agreed to include § 11-60.1-33(c) in the rules.

§11-60.1-35 Incineration. (a) No person shall cause or permit the emissions of particulate matter to exceed 0.20 pounds per one hundred pounds (two grams per kilogram) of refuse charged from any incinerator.

(b) Compliance with particulate matter emissions requirements shall be determined by evaluating particulate matter emissions pursuant to 40 CFR Part 60, Appendix A-3, Method 5 or other EPA approved methods.

(c) All required emission tests shall be conducted at the maximum burning capacity of the incinerator ~~[or at other capacities, as approved by the director]~~.

~~[(e)](d)~~ The burning capacity of an incinerator shall be the manufacturer's or designer's guaranteed maximum rate ~~[or such other rate as may be determined by the director]~~.

~~[(d)](e)~~ For the purposes of this section, the total of the capacities of all furnaces within one system shall be considered as the incineration capacity.

§11-60.1-36 Biomass fuel burning boilers. (a) No person shall cause or permit the emissions of particulate matter from each biomass burning boiler and its drier or driers in excess of 0.40 pounds per one hundred pounds (four grams per kilogram) of biomass as burned.

(b) Compliance with particulate matter emissions requirements shall be determined by evaluating particulate matter emissions pursuant to 40 CFR Part 60, Appendix A-3, Method 5 or other EPA approved methods.

§11-60.1-37 Process industries. (a) No person shall cause or permit the emission of particulate matter in any one hour from any stack or stacks, except for incinerators and biomass fuel burning boilers, in excess of the amount determined by the equation $E = 4.10 p^{0.67}$, where E = rate of emission in pounds per hour and p = process weight rate in tons per hour, except that no rate of emissions shall exceed forty pounds per hour regardless of the process weight rate.

(b) Rate of emissions shall be determined by evaluating particulate matter emissions pursuant to 40 CFR Part 60, Appendix A-3, Method 5 or other EPA approved methods.

(c) Process weight per hour is the total weight of all materials introduced into any specific process that may cause any emission of particulate matter through any stack or stacks. Solid fuels charged shall be considered as part of the process weight, but liquid and gaseous fuels and combustion air shall not. For a cyclical or batch operation, the process weight per hour shall be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, including any time during which the equipment is idle. For a continuous operation, the process weight per hour shall be derived for a typical period of time by the number of hours of the period.

~~[(e)]~~(d) Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation, the interpretation that results in the minimum value for the allowable emission shall apply.

~~[(d)]~~(e) For purposes of this section, a process is any method, reaction, or operation whereby materials introduced into the process undergo physical or chemical change. A specific process is one which includes all of the equipment and facilities necessary for the completion of the transformation of the materials to produce a physical or chemical change. There may be several specific processes in series necessary to the manufacture of a product. However, where there are parallel series of specific processes, the similar parallel specific processes shall be considered as a single specific process.

§11-60.1-38 Sulfur oxides from fuel combustion. (a) No person shall burn any fuel containing in excess of two ~~[per cent]~~ percent sulfur by weight ~~[, except for fuel used in ocean-going vessels].~~

(b) No person shall burn any fuel containing in excess of 0.50 ~~[per cent]~~ percent sulfur by weight in any fossil fuel fired power and steam generating unit having a power generating output in excess of twenty-five megawatts or a heat input greater than two hundred fifty million BTU per hour.

(c) Compliance with sulfur by weight requirements shall be determined by evaluating sulfur by weight pursuant to American Society for Testing and Materials (ASTM) methods.

(1) For liquid fuels: ASTM D129-00(2005) Standard Test Method for Sulfur in Petroleum Products (General Bomb Method); D2622-05 Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry; D4294-03 Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry; D5453-05 Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence; or other EPA approved methods.

(2) For gaseous fuels: ASTM D1072-90(1999) Standard Test Method for Total Sulfur in Fuel Gases; D3246-05 Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry; D4810-88(1999) Standard Test Method for Hydrogen Sulfide in Natural Gas Using Length-of-Stain Detector Tubes; D6228-98(2003), D6667-01 or Gas Processors Association Standard 2377-86 Test for Hydrogen Sulfide and Carbon Dioxide in Natural Gas Using Length-of-Stain Tubes; or other EPA approved methods.

(d) The use of fuels prohibited in subsections (a) and (b) may be allowed at the director's sole discretion if it can be demonstrated that the use of these fuels will result in equivalent or lower emission rates of oxides of sulfur. Compliance with oxides of sulfur emissions requirements shall be determined by evaluating oxides of sulfur emissions pursuant to 40 CFR Part 60, Appendix A-4, Method 8 or other EPA approved methods.

§11-60.1-39 Storage of volatile organic compounds. (a) Except as provided in subsection (c), no person shall place, store, or hold in any stationary tank, reservoir, or other container of more than a forty thousand-gallon (one hundred fifty thousand-liter) capacity any

volatile organic compound which, as stored, has a true vapor pressure equal to or greater than 1.5 pounds per square inch absolute unless the tank, reservoir, or other container is pressurized and capable of maintaining working pressures sufficient at all times to prevent vapor or gas loss to the atmosphere or is designed and equipped with one of the following vapor loss control devices:

* * *

- (3) Other equipment or means of equal efficiency for purposes of air pollution control ~~[as]~~ may be approved by the director~~[-]~~ after demonstrating equivalence to the director by one of the following methods:

- (A) an actual emissions test in a full size or scale sealed tank facility which accurately collects and measures all hydrocarbon emissions associated with a given closure device, and which accurately simulates other emission variables, such as temperature, barometric pressure and wind. The test facility shall be subject to prior approval by the director, or
- (B) a pressure leak test, engineering evaluation or other means where the director determines that the same is an accurate method of determining equivalence.

(b) Compliance with true vapor pressure requirements shall be determined by evaluating vapor pressure pursuant to ASTM Method D323-82 or other EPA approved methods.

(c) No person shall place, store, or hold in any new stationary storage tank, reservoir, or other container of more than a two hundred fifty-gallon (nine hundred fifty-liter) capacity any volatile organic compound unless such tank, reservoir, or other container is equipped with a permanent submerged fill pipe, is a pressure tank as described in subsection (a), or is fitted with a vapor recovery system as described in subsection (a)(2).

~~[(e)]~~(d) Underground tanks shall be exempted from the requirements of subsection (a) if the total volume of volatile organic compounds added to and taken from a tank annually does not exceed twice the volume of the tank. Any person claiming this exemption shall be responsible for maintaining records which substantiate this claim and make them available to the director upon request.

§11-60.1-40 Volatile organic compound water separation. (a) No person shall use any single or multiple compartment volatile organic compound water separator which receives effluent water containing two hundred gallons (seven hundred sixty liters) or more of any volatile organic compound a day from any equipment that is processing, refining, treating, storing, or handling volatile organic compounds having a Reid vapor pressure of 0.5 pounds per square inch or greater unless such compartment is equipped with a properly installed vapor loss control device described as follows and which is in good working order, and in operation:

- (1) A container having all openings sealed which totally encloses the liquid content. All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place;
- (2) A container equipped with a floating roof, consisting of a pontoon type roof, double deck-type roof, or internal floating cover roof, which will rest on the surface of the liquid contents and be equipped with a closure seal or seals to close

- the space between the roof edge and container wall. All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place;
- (3) A container equipped with a vapor recovery system consisting of a vapor gathering system capable of collecting the volatile organic compound vapors and gases discharged, and a vapor disposal system capable of processing such volatile organic compound vapors and gases to prevent their emission to the atmosphere. All container gauging and sampling devices shall be gas-tight except when gauging and sampling is taking place; or
 - (4) A container having other equipment of equal efficiency for purposes of air pollution control ~~[as]~~ may be approved by the director~~[-]~~ after demonstrating equivalence to the director by one of the following methods:
 - (A) an actual emissions test in a full size or scale sealed tank facility which accurately collects and measures all hydrocarbon emissions associated with a given closure device, and which accurately simulates other emission variables, such as temperature, barometric pressure and wind. The test facility shall be subject to prior approval by the director, or
 - (B) a pressure leak test, engineering evaluation or other means where the director determines that the same is an accurate method of determining equivalence.

(b) Compliance with Reid vapor pressure requirements shall be determined by evaluating Reid vapor pressure pursuant to ASTM Method D323-99 or other EPA approved methods.

§11-60.1-41 Pump and compressor requirements. (a) All pumps and compressors handling volatile organic compounds having a Reid vapor pressure of 1.5 pounds per square inch or greater which can be fitted with mechanical seals shall have mechanical seals or other equipment of equal efficiency for purposes of air pollution control as may be approved by the director. Pumps and compressors not capable of being fitted with mechanical seals, such as reciprocating pumps, shall be fitted with the best sealing system available for air pollution control given the particular design of pump or compressor as may be approved by the director. In either case, all pumps and compressors shall be vapor tight where the reading on a portable hydrocarbon meter is less than 500 parts per million (ppm), expressed as methane, above background.

(b) Compliance with Reid vapor pressure requirements shall be determined by evaluating Reid vapor pressure pursuant to ASTM Method D323-99 or other EPA approved methods.

(c) Compliance with vapor tight requirements shall be determined by evaluating vapor tightness pursuant to EPA Method 21 or other EPA approved methods.

§11-60.1-42 Waste gas disposal. (a) No person shall cause or permit the emissions of gas streams containing volatile organic compounds from a vapor blowdown system unless these gases are burned by smokeless flares, or abated by an equally effective control device as approved by the director.

(b) Compliance with smokeless flare or equally effective control device requirements shall be in accordance with section 11-60.1-32.

Justification:

The amendments to §§11-60.1-35 to 1-42 are proposed in accordance to EPA recommendations to: 1) remove subjective director's discretion, and 2) insert objective test methods in these determinations of violations. EPA has stated that in their current form, these sections are not approvable for adoption into the federal State Implementation Plan for Hawaii.

§11-60.1-43 All operation and maintenance of permitted source. Permittees shall, at all times, operate and maintain their permitted source, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions, at a minimum, to the levels required by their permits.

Determination of whether such operation and maintenance procedures are being used will be based on information available to the director, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

Justification:

The adoption of this new section, along with the amendments to §11-60.1-68 and §11-60.1-90, helps ensure that it is clear that the CAB rules require that all permittees operate and maintain their permitted source in a manner consistent with good air pollution control practices for minimizing emissions, at a minimum, to the levels required by their permits.

3. Amendments to Subchapter 3 Open Burning

§11-60.1-51 Definitions. As used in this subchapter:

* * *

"Attended" means to be physically present at the immediate location of the fire, to actively and physically look after, or to actively and physically take charge of.

* * *

"Auxiliary fuels" means butane, propane, pipeline quality natural gas, liquefied petroleum gas, or a petroleum liquid having an American Petroleum Institute gravity of at least 30.

* * *

"Cooking fuel" means any fuel that is processed, marketed, and sold by commercial establishments specifically for the cooking of food.

* * *

"Range" means an extensive area of open land on which domestic livestock or wild animals wander and graze.

* * *

"Range improvement" means physical modification or treatment of rangeland which is designed to: improve production of forages; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; and otherwise restore, protect, and improve the conditions of the rangeland ecosystems to benefit livestock, horses, and fish and wildlife.

* * *

"Recreational fire" means a fire used for social, cultural, or other activities including, but not limited to, campfires, bonfires, hand-warming fires, raku or pit pottery curing fires, or fires conducted as part of an unusual event such as fire dancing, provided the activity is not part of a business for gainful occupation.

Justification:

Amending the definition of "**attended**" strengthens a key condition under which open burning is allowed for the cooking of food in **§11-60.1-52(b)**. (see justification in §11-60.1-52(b))

The addition of new definitions for "**auxiliary fuels**," "**cooking fuel**," and "**recreational fire**" are necessary to support the amendments to **§11-60.1-52(d)(1)** and **§11-60.1-52(b)**. In both cases, the CAB is proposing, for the first time, to identify specific categories of fuels that

may be used in order to prevent malicious burning of trash, petroleum products, and other dangerous or undesirable fuels.

Adding a definition of “**Range**” prevents the misuse of the open burning exemption for range improvement as a means to conduct open burning on land that is not rangeland.

Amending the definition “**Range improvement**” ensures that the open burning exemption for rangeland applies solely to rangeland, and activities directly related to rangeland improvement.

§11-60.1-52 General provisions. (a) Except as provided in subsections (b), (c), (d), (e) and section 11-60.1-53, no person shall cause, permit, or maintain any open burning. Any open burning is the responsibility of the person owning, operating, or managing the property, premises, business establishment, or industry where the open burning is occurring. Subsections (b), (c), (d), (e) and section 11-60.1-53 shall not apply to the open burning of human remains or animal carcasses unless the activities fall under the exemptions found in paragraph (d)(2).

(b) Subsection (a) shall not apply to attended fires for the cooking of food[.] provided that:

- (1) Only untreated dry wood, charcoal, natural or synthetic natural gas, butane, propane, or cooking fuel is used, and
- (2) If visible smoke enters any residence, business or public area, best practical measures to eliminate the smoke, including extinguishing the fire, are taken.

(c) Subsection (a) shall not apply to the following, provided that notification is given to the director prior to the commencement of any burn:

- (1) Fires set to a building, structure or simulated aircraft for training personnel in firefighting methods.

(d) Subsection (a) shall not apply to the following, provided that the burning is approved by the director:

- (1) [Fires for recreational, decorative, or ceremonial purposes] Outdoor fires for recreational, religious, ceremonial, decorative, or related purposes including, but not limited to, campfires, bonfires, pottery curing fires, that are burning dry untreated wood, charcoal, or auxiliary fuels;
- (2) Fires for the disposal of human remains and animal carcasses and debris generated from a natural disaster or catastrophic event, where there is no reasonable alternative method of disposal; ~~[and]~~
- (3) [Other fires as approved by the director.] Outdoor fires set for cultural, traditional, or related purposes and fires within cultural or traditional structures including sweat houses or lodges; and
- (4) Pyrotechnics for the creation of special effects during filming or motion pictures, television programs, or other commercial video, photography, or creative arts production activities.

(e) Subsection (a) shall not apply to the following, provided that the burning is both approved by the director, and that the burning is allowed under either section 11-60.1-55 or 11-60.1-52(f):

- (1) Fires to abate a fire hazard, provided that the hazard is so declared by the fire department, forestry division, or federal agency having jurisdiction, and that a prescribed burning plan, if applicable, has been submitted to and approved by the jurisdictional agency;
- (2) Fires for prevention or control of disease ~~[or]~~, pests, invasive species or other natural threats to the environment or economy; and
- (3) Fires for the disposal of dangerous materials, where there is no alternate method of disposal;

(f) The director may provide a waiver to the section 11-60.1-55 “no-burn” period for any exemption to open burning found under subsection 11-60.1-52(e).

(g) Subsections (b), (c), (d), or (e) shall not exempt any activity from the application of any rules or requirements in any other section or chapter.

Justification:

The amendments to **§11-60.1-52(b)** are needed to address the visible smoke impacts from open burning for the cooking of food which in most cases are difficult to resolve. Examples of open fire cooking include barbecues, traditional imu, and grills at the beach – none of which would reasonably be prohibited. Yet people who endure smoke from inconsiderate and sometimes loophole-seeking neighbors continually seek relief. Because open fire cooking is so popular, it is the only category of open burning that is allowed without notification or approval. As such, it is susceptible to improper burning in the guise of legitimate cooking of food. The CAB continually seeks to strike a balance that allows proper cooking while preventing abuse and minimizing smoke impacts. The proposed changes would do four things:

- Specify, for the first time, categories of fuels that may be used in order to prevent improper burning of trash, petroleum products, and other undesirable fuels.
- Add a new definition for “cooking fuel” to support the amendment to §11-60.1-52(b).
- Address the issue of measures to take when “visible smoke” enters a residence, business, or public area due to the cooking of food in §11-60.1-52(b).
- Amend the definition of “Attended” to strengthen a key condition under which open burning is allowed for the cooking of food in §11-60.1-52(b).

In the proposed amendments to **§11-60.1-52(d)(1), (3), and (4)** the CAB is making the exemptions more specific by listing the areas where the exemption would apply, and listing non-exclusive, non-exhaustive examples of these exemptions. For §11-60.1-52(d)(1), the CAB is listing the specific fuels that may be used for these exemptions, in order to prevent the improper burning of trash, petroleum products, and other dangerous or undesirable fuels for these specific CAB-approved events.

We propose to repeal the current language in **§11-60.1-52(d)(3)** to eliminate the undefined discretion of the director to approve “other fires” for exemption. This amendment is being made in response to the EPA’s concerns that too much discretion is given to the director in this subsection.

The proposed amendment to **§11-60.1-52(e)(2)** would allow CAB to permit burning to control or eradicate invasive species, an expanding and difficult problem in Hawaii, in non-agricultural areas and by non-agricultural entities such as government agencies.

§11-60.1-55 Agricultural burning or conditionally allowed open burning from subsection 11-60.1-52(e): "no-burn" periods. (a) Except as provided in subsection (d), no person, with or without an agricultural burning permit, shall cause or allow agricultural burning or conditionally allowed open burning from subsection 11-60.1-52(e) ~~[under the following conditions:~~

- ~~(1) — When the director determines that meteorological conditions have resulted in widespread haze on any island or in any district on the island and that these meteorological conditions will continue or deteriorate. For the purposes of this section, widespread haze shall be considered to exist when all visible ridges:~~
 - ~~(A) — Within five to ten miles have a "smoky" or bluish appearance and colors are subdued; and~~
 - ~~(B) — Beyond ten miles have a blurred appearance; or~~
- ~~(2) — When a "no-burn" period has been declared in a district and smoke from any adjacent district, as determined by the director, may impact on the affected district, the "no-burn" period shall apply to both districts]~~

when a "no-burn" period has been declared by the director.

~~[(b) Notices of "no-burn" periods for the specified islands or districts may be provided by radio broadcast and shall apply for a specified "no-burn" period.]~~

(b) "No-burn" periods shall be determined by current and forecasted weather conditions which inhibit the dispersion of air pollutants. A no-burn period may be declared if unfavorable meteorological conditions such as high winds, temperature inversions and air stagnation are existing and forecasted to continue or deteriorate. If forecasting is unavailable, "no-burn" periods shall be determined based on visibility.

~~[(c) Verification that widespread haze exists in any district may be accomplished by consultation with personnel in the appropriate district fire or police stations.]~~

(c) Visibility shall be used as the basis for determining "no-burn" periods when forecasting is not possible or not available. A "no-burn" call based on visibility shall be made under the following conditions:

- (1) When the director determines that meteorological conditions have resulted in widespread haze on any island or in any district on the island and that these meteorological conditions will continue or deteriorate. For the purposes of this section, widespread haze shall be considered to exist when all visible ridges:
 - (A) Within five to ten miles have a "smoky" or bluish appearance and colors are subdued; and
 - (B) Beyond ten miles have a blurred appearance;
- (2) When a "no-burn" period has been declared in a district and smoke from any adjacent district, as determined by the director, may impact on the affected district, the "no-burn" period shall apply to both districts; or
- (3) On the island of Oahu either when the condition specified in paragraph (1) or (2) occurs or when meteorological conditions have resulted in a rise of the carbon

monoxide level exceeding five mg/m³ for an eight-hour average or the PM₁₀ level exceeding one hundred thirty five µg/m³ for twenty-four hours and when the director determines that these meteorological conditions will continue or deteriorate.

(d) Verification that widespread haze exists in any district may be accomplished by consultation with department personnel in the appropriate district.

(e) Notices of "no-burn" periods for the specified islands or districts may be posted on a department web page and shall apply to a specified "no burn" period.

~~(d)~~(f) In a district where a long-term "no burn" declaration is in effect, the director may provide a waiver during an agricultural "no burn" period for the control of plant diseases or infestations when burning is determined to be the ~~[sole]~~ best available method of control.

Justification:

The current **§11-60.1-55(b)** would be replaced by proposed §11-60.1-55(e) because sharing information on the Internet is much more effective than via radio broadcast. Information can be posted immediately without relying on others (i.e., the radio station) and can be updated throughout the day if necessary. In addition, the information remains available for an extended period; an interested party does not have to rely on catching the radio announcement at the exact right time. The rule amendment does not preclude CAB from using other social or broadcast media from sharing "no-burn" information.

The proposed **§§11-60.1-55(b), (c) (d) and (e)** would make a significant change in the method of making "no-burn" determinations. The new requirement to use forecasting would supersede the current visibility-based method since forecasting is more scientifically based. Visibility would be used as the basis for making a "no-burn" call only if forecasting is not possible or available. Subsection 11-60.1.55(c)(3) reincorporates text that was previously removed. This strengthens the language in combination with new subsections 11-60.1-55(b) and (c) and addresses EPA concerns about a SIP relaxation.

The proposed **§11-60.1-55(d)** would replace the existing §11-60.1-55(c) as the method for determining a "no-burn" period based on visibility. Local DOH/CAB staff, rather than county fire or police department personnel, would make the determination.

The change in **§11-60.1-55(f)** is proposed because in many circumstances, open burning is not the sole control method, and would not be allowed as worded, but it is the best method among other options.

4. Amendments to Subchapter 4 Noncovered Sources

§11-60.1-61 Definitions. As used in this subchapter, unless otherwise defined for purposes of a particular section or subsection of this subchapter:

"Applicable requirement" means all of the following as they apply to emissions units in a noncovered source:

- (1) Any NAAQS or state ambient air quality standard;
- (2) Any standard or other requirement approved pursuant to Section 111 of the Act, including Section 111(d);
- (3) Any standard or other requirement approved pursuant to Section 112 of the Act, including any requirement concerning accident prevention approved pursuant to Section 112(r)(7) of the Act;
- ~~[(2)]~~(4) The application of best available control technology to control a regulated air pollutant, but only as best available control technology would apply to new noncovered sources and modifications to noncovered sources that have the potential to emit or increase emissions above significant amounts considering any limitations, enforceable by the director, on the noncovered source to emit a pollutant; and
- ~~[(3)]~~(5) Any standard or other requirement provided for in chapter 342B, HRS; this chapter; or chapter 11-59.

Justification:

The definition of “**applicable requirement**” pertaining to noncovered sources in Subchapter 4 of the HAR is being revised to clarify CAB’s intent to regulate certain nonmajor sources subject to NSPS or NESHAP under the noncovered source permit program.

§11-60.1-62 Applicability. (a) Except as provided in subsections (d) and (g) and section 11-60.1-66, no person shall burn used or waste oil or begin construction, reconstruction, modification, relocation, or operation of an emission unit or air pollution control equipment of any noncovered source without first obtaining a noncovered source permit from the director. The construction, reconstruction, modification, relocation, or operation shall continue only if the owner or operator of a noncovered source holds a valid noncovered source permit. An owner or operator of a grandfathered noncovered source, one constructed, modified, or relocated on or prior to March 20, 1972, may be required by the director to obtain a noncovered source permit if the source is found to operate in violation of an applicable requirement, or is found to have improper or inadequate air pollution controls.

* * *

(c) A noncovered source permit shall not constitute, nor be construed to be an approval of the design of a noncovered source. Noncovered source permits shall be issued in accordance with this chapter and it is the responsibility of the applicants to ~~[insure]~~ ensure compliance with all applicable requirements in the construction and operation of any noncovered source.

(d) The following are exempt from the requirements of subsection (a), provided that no exemption interferes with the imposition of any requirement of subchapter 5 or the determination of whether a stationary source is subject to any requirement of this chapter. Sources or activities exempt from the requirements of subsection (a) shall not relieve the owner or operator from complying with any other applicable requirement, including provisions of subchapter 2. Any fuel burning equipment identified shall not include equipment burning off-spec used oil or fuel classified as hazardous waste. The director shall reserve the right to disallow any exemption and impose the requirements of subsection (a), if the source or activity requires additional controls or monitoring to ensure compliance with the applicable requirements.

- (1) Stationary sources with potential emissions of less than:
 - (A) 500 pounds per year for each hazardous air pollutant, except lead;
 - (B) 300 pounds per year for lead;
 - (C) five tons per year of carbon monoxide;
 - (D) 3,500 tons per year CO₂e for greenhouse gases; and
 - (E) two tons per year of each regulated air pollutant not already identified above;

* * *

- (21) Internal combustion engines propelling mobile sources such as automobiles, trucks, cranes, forklifts, front-end loaders, graders, trains, helicopters, and airplanes;
- ~~(22)~~ Nonroad engines. Owners of nonroad engines, except for those exempt engines listed in subsection (d) of this section, must maintain a Nonroad Engine Location Log to demonstrate the engine meets subparagraph (1)(C) of the nonroad engine definition of Subchapter 1. The Nonroad Engine Location Log shall include:
 - ~~(A)~~ Owner's Name;
 - ~~(B)~~ Engine Manufacturer and Model;
 - ~~(C)~~ Engine Serial Number;
 - ~~(D)~~ Engine Date of Manufacture; and
 - ~~(E)~~ For each location to which the engine is moved, the location of the engine, initial date at the location, and the date moved off the location;
- ~~[(22)]~~(23) Diesel fired portable ground support equipment used exclusively to start aircraft or provide temporary power or support service to aircraft prior to start-up;
- ~~[(23)]~~(24) Plant maintenance and upkeep activities (e.g., grounds-keeping, general repairs, cleaning, painting, welding, plumbing, re-tarring roofs, installing insulation, and paving parking lots), including equipment used to conduct these activities, provided these activities are not conducted as part of a manufacturing process, are not related to the source's primary business activity, and are not otherwise subject to an applicable requirement triggering a permit modification;
- ~~[(24)]~~(25) Fuel burning equipment which is used in a private dwelling or for space heating, other than internal combustion engines, boilers, or hot furnaces;
- ~~[(25)]~~(26) Ovens, stoves, or grills used solely for the purpose of preparing food for human consumption operated in private dwellings, restaurants, or stores;
- ~~[(26)]~~(27) Stacks or vents to prevent escape of sewer gases through plumbing traps;

- ~~[(27)]~~(28) Air conditioning or ventilating systems not designed to remove air pollutants generated by or released from equipment, and that do not involve the open release or venting of CFC's into the atmosphere;
- ~~[(28)]~~(29) Woodworking shops with a sawdust collection system; and
- ~~[(29)]~~(30) Other sources as may be approved by the director.

* * *

(f) An owner or operator of a stationary source that becomes subject to the requirements of subchapter 5 pursuant to a new or amended regulation under ~~[section]~~ Section 111 or 112 of the Act, HRS chapter 342B, or this chapter shall submit a complete and timely covered source permit application to address the new requirements. For purposes of this subsection, "timely" means:

- (1) by the date required under subchapter 8 or 9 of this chapter, or the applicable federal regulation, whichever deadline is earlier; or
- (2) within twelve months after the effective date of the new or amended regulation, if not specified in the applicable regulation.

The owner or operator of the source may continue to construct or operate and shall not be in violation for failing to have a covered source permit addressing the new requirements only if the owner or operator has submitted to the director a complete and timely covered source permit application, and any additional information that the director deems necessary to evaluate or take final action on the application, including additional information required pursuant to sections 11-60.1-83(d) and 11-60.1-84.

Justification:

A specific group of engines categorized as “**nonroad engines**” are excluded from the Clean Air Act Section 302(z) definition of “**stationary source**” and are exempt from the stationary source permitting requirements for Federal Major and Minor New Source Review and Title V. The regulation of nonroad engines by pollution control agencies in the United States varies. Some states fully exempt nonroad engines from air permitting requirements, while others have established nonroad engine reporting programs or nonroad engine permitting programs. The proposed revisions will grant nonroad engines exemption from Hawaii’s air permitting requirements. The revised rules include a requirement for owners or operators of nonroad engines in Hawaii to maintain a log of location changes which provides CAB the means to verify the status of the unit as a nonroad engine.

§11-60.1-63 Initial noncovered source permit application. (a) Every application for an initial noncovered source permit shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application. Information submitted shall include:

* * *

- (7) Citation and description of all applicable requirements, and a description of or reference to any method and/or applicable test method for determining compliance with each applicable requirement;
- ~~[(7)]~~(8) A schedule for construction or modification of the noncovered source, if applicable;
- ~~[(8)]~~(9) All calculations and assumptions on which the information in paragraphs (2), (4), (5), and (6) is based;
- ~~[(9)]~~(10) If requested by the director, an assessment of the ambient air quality impact of the noncovered source or modification. The assessment shall include all supporting data, calculations and assumptions, and a comparison with the NAAQS and state ambient air quality standards;
- ~~[(10)]~~(11) If requested by the director, a risk assessment of the air quality related impacts caused by the noncovered source or modification to the surrounding environment;
- ~~[(11)]~~(12) If requested by the director, results of source emission testing, ambient air quality monitoring, or both;
- ~~[(12)]~~(13) If requested by the director, information on other available control technologies;
- ~~[(13)]~~(14) An explanation of all proposed exemptions from any applicable requirement;
- ~~[(14)]~~(15) A compliance plan in accordance with section 11-60.1-65; and
- ~~[(15)]~~(16) Other information:
- (A) As required by any applicable requirement or as requested and deemed necessary by the director to make a decision on the application; and
- (B) As may be necessary to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of such requirements.

* * *

(e) The director, in writing, shall approve, conditionally approve, or deny an application for a noncovered source permit within six months after receipt of a complete application. A noncovered source permit application for a new noncovered source or a modification shall be approved only if the director determines that the construction or operation of the new noncovered source or modification will be in compliance with all applicable requirements~~[-]~~ and will not interfere with attainment or maintenance of the NAAQS.

Justification:

Currently, the HAR requires nonmajor sources subject to NSPS to obtain a Title V (covered source) permit prior to construction and operation of the source. As described previously, the proposed revisions are intended to allow certain nonmajor sources subject to NSPS or NESHAPs to obtain a noncovered source permit rather than a Title V permit. The addition of this language will require noncovered source permit applicants to identify any applicable requirements (i.e. NSPS or NESHAP) and any required testing.

§11-60.1-68 Permit content. The director shall consider and incorporate the following elements into a noncovered source permit as applicable:

* * *

(7) General provisions including:

* * *

- (L) Certification requirements pursuant to section 11-60.1-4; ~~and~~
- (M) A requirement that the owner or operator allow the director or an authorized representative, upon presentation of credentials or other documents required by law:
 - (i) To enter the owner or operator's premises where a source is located or emission-related activity is conducted, or where records must be kept under the conditions of the permit and inspect at reasonable times all facilities, equipment, including monitoring and air pollution control equipment, practices, operations, or records covered under the terms and conditions of the permit and request copies of records or copy records required by the permit; and
 - (ii) To sample or monitor at reasonable times substances or parameters to assure compliance with the permit or applicable requirements; and
- (N) A requirement that at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the director which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

Justification:

The proposed language ensures that the requirement for the proper operation and maintenance (O&M) of a permitted source is expressly placed into the permit itself. Although a number of the federal rules and statutes incorporated into the HAR have explicit requirements for proper O&M, there appears to be nothing requiring proper O&M explicitly listed in the HAR. Placing a specific requirement for proper O&M into a permit will ensure that in any future equipment failure, the lack of a specific written requirement for proper O&M in the permit will not be an issue for determining a violation.

§11-60.1-73 Public participation. (a) ~~[Except for administrative permit amendments, in] In~~ considering ~~[any] an~~ application for a noncovered source permit, the director~~[, at the director's sole discretion, may]~~ shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment ~~[if the director is of the opinion that public comment would aid in the director's decision.]~~ for permits that result in a net increase in emissions of any air pollutant at or above the "significant" emission rates of 11-60.1-131, paragraph (1) of the definition. The fugitive emissions of a stationary source shall not be included in determining the increase in emissions of the source for the purposes of this section, unless the source belongs to one of the categories of stationary sources listed in paragraph (2) of the definition of "major source" in section 11-60.1-1. ~~[If a public comment period is provided, any]~~ Any person requesting a public hearing shall do so during the public comment period. Any request from a person for ~~[a public comment period,]~~ a public hearing~~[, or both]~~ shall indicate the interest of the person filing the request and the reasons why a public ~~[comment period or]~~ hearing is warranted.

Justification:

The proposed revision was recommended by the EPA to ensure compliance with the provisions of 40 CFR §51.160(e) Requirements for Preparation, Adoption, and Submittal of Implementation Plans – Review of New Sources and Modifications – Legally enforceable procedures. The revision will remove "at the director's sole discretion," and instead set a public noticing trigger level at or above significant emission rates for minor (<100 TPY PTE) noncovered source permits. The public participation trigger levels in §11-60.1-73 are also used by other air agencies in the United States.

§11-60.1-74 Noncovered source permit renewal applications. (a) Every application for a noncovered source permit renewal is subject to the same requirements for an initial application of a noncovered source permit including the requirements of section 11-60.1-63. Applications shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application. Information submitted shall include:

- (1) Name, address, and phone number of:
 - (A) The company;
 - (B) The facility, if different from the company;
 - (C) The owner and owner's agent; and
 - (D) The plant site manager or other contact;
- (2) Statement certifying that no changes have been made in the design or operation of the source as proposed in the initial and any subsequent noncovered source permit applications. If changes have occurred or are being proposed, the applicant shall provide a description of those changes such as work practices, operations, equipment design, and monitoring procedures;
- (3) A compliance plan in accordance with section 11-60.1-65; and

- (4) Other information as may be necessary:
- (A) ~~[necessary by]~~ for the director to make a decision on the application; and
 - (B) ~~[As may be necessary]~~ to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of such requirements.

Justification:

The proposed change provides clarity and does not change the meaning of the section.

§11-60.1-76 Applications for modifications. (a) Every application for a modification to a noncovered source shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application. Information submitted shall include:

* * *

- ~~(7)~~ Citation and description of all applicable requirements, and a description of or reference to any method and/or applicable test method for determining compliance with each applicable requirement;
- ~~[(7)](8)~~ Operational limitations or work practices which the owner or operator of the noncovered source plans to implement that affect emissions of any regulated or hazardous air pollutants at the source;
- ~~[(8)](9)~~ A schedule for construction or modification of the noncovered source;
- ~~[(9)](10)~~ All calculations and assumptions on which the information in paragraphs (3), (5), (6), and (7) is based;
- ~~[(10)](11)~~ If requested by the director, an assessment of the ambient air quality impact of the noncovered source or modification. The assessment shall include all supporting data, calculations and assumptions, and a comparison with the national and state ambient air quality standards;
- ~~[(11)](12)~~ If requested by the director, a risk assessment of the air quality related impacts caused by the noncovered source or modification to the surrounding environment;
- ~~[(12)](13)~~ If requested by the director, results of source emission testing, ambient air quality monitoring, or both;
- ~~[(13)](14)~~ If requested by the director, information on other available control technologies;
- ~~[(14)](15)~~ An explanation of all proposed exemptions from any applicable requirement;
- ~~[(15)](16)~~ A compliance plan in accordance with section 11-60.1-65; and
- ~~[(16)](17)~~ Other information:
 - (A) As requested and deemed necessary by the director to make a decision on the application; and
 - (B) As may be necessary to implement and enforce other applicable

requirements of the Act or of this chapter or to determine the applicability of such requirements.

* * *

(e) The director, in writing, shall approve, conditionally approve, or deny an application for modification to a noncovered source within six months after receipt of a complete application. An application for modification shall be approved only if the director determines that the modification will be in compliance with all applicable requirements[.] and will not interfere with attainment or maintenance of the NAAQS.

Justification:

Currently, the HAR requires nonmajor sources subject to NSPS to obtain a Title V permit prior to construction and operation of the source. As described previously, the proposed revisions are intended to allow certain nonmajor sources subject to NSPS or NESHAPs to obtain a noncovered source permit rather than a Title V permit, consistent with the rest of the nation. The addition of this language will require noncovered source permit applicants to identify any applicable requirements (i.e. NSPS or NESHAP) and any required testing.

5. Amendments to Subchapter 5 Covered Sources

§11-60.1-81 Definitions. As used in this subchapter, unless otherwise defined for purposes of a particular section or subsection of this subchapter:

* * *

"Minor modification" means a modification which:

- (1) Does not increase the emissions of any air pollutant above the permitted emission limits[;] and for existing major stationary sources does not result in a major modification as defined in section 11-60.1-131;
- (2) Does not result in or increase the emissions of any air pollutant not limited by permit to levels equal to or above[;] the following, and for existing major stationary sources does not result in a major modification as defined in section 11-60.1-131:
 - (A) 500 pounds per year of a hazardous air pollutant, except lead;
 - (B) 300 pounds per year of lead;
 - (C) twenty-five percent of significant amounts of emission as defined in section 11-60.1-1, paragraph (1) in the definition of "significant"; or
 - (D) two tons per year of each regulated air pollutant not already identified above;
- (3) Does not violate any applicable requirement;
- (4) Does not involve significant changes to existing monitoring requirements or any relaxation or significant change to existing reporting or recordkeeping requirements in the permit. Any change to the existing monitoring, reporting, or recordkeeping requirements that reduces the enforceability of the permit is considered a significant change;
- (5) Does not require or change a case-by-case determination of an emission limitation or other standard, a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
- (6) Does not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement, and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:
 - (A) A federally enforceable emissions cap assumed to avoid classification as a modification pursuant to any provision of Title I of the Act or subchapter 7; and
 - (B) An alternative emissions limit approved pursuant to regulations promulgated pursuant to Section 112(i)(5) of the Act or subchapter 9; and
- (7) Is not a modification pursuant to any provision of Title I of the Act.

Justification:

Added language is to ensure Hawaii's rules are clear that major stationary sources must first evaluate whether a proposed modification is a major modification using a past actual emissions to future potential or projected actual emissions evaluation; and if not a major modification, proceed to determine whether it is a significant or minor modification using a past potential-to-emit to future potential-to-emit evaluation.

§11-60.1-82 Applicability. (a) Except as provided in subsections (d), (e), and (k) and section 11-60.1-87, no person shall burn used or waste oil or begin construction, reconstruction, modification, relocation, or operation of an emission unit or air pollution control equipment of any covered source without first obtaining a covered source permit from the director. The construction, reconstruction, modification, relocation, or operation shall continue only if the owner or operator of a covered source holds a valid covered source permit.

* * *

(c) The covered source permit shall not constitute, nor be construed to be an approval of the design of the covered source. The covered source permit shall be issued in accordance with this chapter and it is the responsibility of the applicant to ~~[insure]~~ ensure compliance with all applicable requirements in the construction and operation of any covered source.

(d) The following are exempt from the requirements of subsection (a):

- (1) All sources and source categories that would be required to obtain a permit solely because they are subject to the "Standards of Performance for New Residential Wood Heaters," 40 CFR Section 60.530 et seq.;
- (2) All sources and source categories that would be required to obtain a permit solely because they are subject to the "Standards for Demolition and Renovation" pursuant to the "National Emission Standard for Asbestos," 40 CFR Section 61.145;
- (3) Ocean-going vessels, except for ocean-going vessels subject to any standard or other requirement for the control of air pollution from outer continental shelf sources, pursuant to 40 CFR Part 55;
- (4) Internal combustion engines propelling mobile sources such as automobiles, trucks, cranes, forklifts, front-end loaders, graders, trains, helicopters, and airplanes;
- (5) Nonroad Engines. Owners of nonroad engines, except for those exempt engines listed in subsections (f) and (g) of this section, must maintain a Nonroad Engine Location Log to demonstrate the engine meets subparagraph (1)(C) of the nonroad engine definition of Subchapter 1. The Nonroad Engine Location Log shall include:
 - (A) Owner's Name;
 - (B) Engine Manufacturer and Model;
 - (C) Engine Serial Number;
 - (D) Engine Date of Manufacture; and
 - (E) For each location to which the engine is moved, the location of the engine, initial date at the location, and the date moved off the location;
- ~~[(5)]~~(6) Diesel fired portable ground support equipment used exclusively to start aircraft or provide temporary power or support service to aircraft prior to start-up; and
- ~~[(6)]~~(7) Air-conditioning or ventilating systems that do not contain more than 50 pounds of any Class I or Class II ozone depleting substance regulated under Title

VI of the Act and are not designed to remove air pollutants generated by or released from equipment.

(e) The owner or operator of any insignificant activity identified in subsections (f) and (g) may begin construction, reconstruction, modification, or operation of the activity without first obtaining a covered source permit, provided:

~~[(1)]~~ ~~The insignificant activity is not by itself subject to subchapters 8 or 9;~~

~~(2)]~~(1) The insignificant activity does not cause a noncovered stationary source to become a major source;

~~[(3)]~~(2) The insignificant activity does not cause the stationary source to become subject to provisions of ~~[subchapters 7, 8, or 9;]~~ subchapter 7; and

~~[(4)]~~(3) The owner or operator can demonstrate to the director's satisfaction that each activity meets the size, emission level, or production rate criteria~~[-]~~ contained in subsections (f) and (g).

The insignificant activities listed in subsection (f) shall be identified in the covered source permit application. The insignificant activities listed in subsection (g) need not be identified in the covered source permit application, unless subject to an applicable requirement. Any fuel burning equipment identified shall not include equipment burning off-spec used oil or fuel classified as hazardous waste. The director may request additional information on any insignificant activity to determine the applicability of, or to impose, any applicable requirement. Action to incorporate applicable requirements for insignificant activities into a covered source permit shall be in accordance with section 11-60.1-88.5.

* * *

(k) The director, upon written request and submittal of adequate support information from the owner or operator of a covered source, may provide written approval of the following activities to proceed without prior issuance or amendment of a covered source permit. Under no circumstances will these activities be approved if the activity interferes with the imposition of any applicable requirement or the determination of whether a stationary source is subject to any applicable requirement.

(1) Installation and operation of air pollution control devices. The director may allow the installation and operation of an air pollution control device prior to issuing a covered source permit or amendment to a covered source permit if the owner or operator of the source can demonstrate that the control device reduces the amount of emissions previously emitted, does not emit any new air pollutants, and does not adversely affect the ambient air quality impact assessment. The owner or operator of the covered source shall submit with the written request, a complete covered source permit application to install and operate the air pollution control device. The application shall include the proposed operating parameters, including any parametric monitoring to ensure that the control device is operating properly.

(2) Test burns. The director may allow an owner or operator of a covered source to test alternate fuels not allowed by permit if the following conditions are met:

(A) The test burn period does not exceed one week, unless the director, upon reasonable justification, approves a longer period, not to exceed three months;

- (B) The purpose of the test burn is to establish emission rates, to determine if alternate fuels are feasible with the existing covered source facility, or as an investigative measure to research the operational characteristics of a fuel;
- (C) A stack performance test, a pre-approved monitoring program, or both, if requested by the director, are conducted during the test burn to record and verify emissions;
- (D) The owner or operator of the covered source provides emission estimates of the test burn and demonstrates that no violation of the NAAQS and state ambient air quality standards will occur;
- (E) The owner or operator of the covered source demonstrates that the use of the alternate fuel is allowed or not restricted by any applicable requirement, other than the permit condition(s) restricting the alternate fuel use; and
- (F) If a performance test or monitoring is required, the owner or operator of the covered source provides written test or monitoring results within sixty days of the completion of the test burn or such other time as approved by the director. The results shall include the operational parameters of the covered source at the time of the test burn, and any other significant factors that affected the test or monitoring results.

If the director approves the test burn, the director may set operational limitations or other conditions for the test burn. Deviations from those limits or conditions shall be considered a violation of this chapter.

Justification:

The addition of **§11-60.1-82(d)(1)** will allow non-major sources subject to NSPS or NESHAP regulations, unless required by an applicable subpart or the administrator to obtain a covered source permit, to be regulated under the noncovered source permit program.

With the addition of **§11-60.1-82(d)(6)**, a specific group of engines categorized as “nonroad engines” are excluded from the Clean Air Act Section 302(z) definition of “stationary source” and are exempt from the stationary source permitting requirements for Federal Major and Minor New Source Review and Title V. The regulation of nonroad engines varies by state. Some states fully exempt nonroad engines from air permitting requirements, while others have established nonroad engine reporting programs or nonroad engine permitting programs. The proposed revisions will fully grant nonroad engines exemption from Hawaii’s air permitting requirements. The revisions include a requirement for owners or operators of nonroad engines in Hawaii to maintain a log of location changes to provide CAB the means to verify the status of the unit as a nonroad engine.

The revision to **§11-60.1-82(e)(1) and (3)** removes language that requires an insignificant activity subject to subchapters 8 or 9 to obtain a covered source permit before construction, reconstruction, modification, or operation of the insignificant activity can occur. Note that the owner or operator must still ensure that the insignificant activity does not cause a noncovered source to become a major source and does not cause a stationary source to become subject to subchapter 7. The proposed change is consistent with the changes to the definition of “covered source.”

The change to **§11-60.1-82(e)(3)** is added for clarity.

The proposed addition to **§11-60.1-82(k)(1)** will allow the CAB to incorporate enforceable monitoring requirements into the air permit to ensure the proposed control device achieves stated emission reductions.

The added language requires the applicant to submit information on the proposed air pollution control device. This will allow the CAB to include verifiable conditions in the permit and ensure the effective and proper operation of the air pollution control device.

§11-60.1-83 Initial covered source permit application. (a) Every application for an initial covered source permit shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application and to determine the fee requirements specified in subchapter 6. Information submitted shall include:

* * *

- (7) Citation and description of all applicable requirements, and a description of or reference to any method and/or applicable test method for determining compliance with each applicable requirement;

* * *

(h) A covered source permit application for a new covered source or a significant modification shall be approved only if the director determines that the construction or operation of the new covered source or significant modification will be in compliance with all applicable requirements[-] and will not interfere with attainment or maintenance of a NAAQS.

Justification:

The change to **§11-60.1-83(a)(7)** is made to be consistent with the language in **§11-60.1-76(a)(7)**

The added language in **§11-60.1-83(h)** is to clarify that a covered source permit for a new covered source or a significant modification can only be approved if the CAB determines that the proposed source demonstrates it will not interfere with attainment or maintenance of the National Ambient Air Quality Standards. This addition does not change what was already required by the CAB.

§11-60.1-90 Permit content. The director shall consider and incorporate the following elements into all covered source permits, as applicable:

* * *

(10) General provisions including:

* * *

- (L) Certification requirements pursuant to section 11-60.1-4; ~~and~~
- (M) A requirement that the owner or operator allow the director or an authorized representative, upon presentation of credentials or other documents required by law:
 - (i) To enter the owner or operator's premises where a source is located or emission-related activity is conducted, or where records must be kept under the conditions of the permit and inspect at reasonable times all facilities, equipment, including monitoring and air pollution control equipment, practices, operations, or records covered under the terms and conditions of the permit and request copies of records or copy records required by the permit; and
 - (ii) To sample or monitor at reasonable times substances or parameters to assure compliance with the permit or applicable requirements; and
- (N) A requirement that at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the director which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

Justification:

The proposed language ensures that the requirement for the proper operation and maintenance (O&M) of a permitted source is expressly placed into the permit itself. Although a number of the federal rules and statutes incorporated into the HAR have explicit requirements for proper O&M, there appears to be nothing requiring proper O&M explicitly listed in the HAR. Placing a specific requirement for proper O&M into a permit will ensure that in any future equipment failure, the lack of a specific written requirement for proper O&M in the permit will not be an issue for determining a violation.

§11-60.1-92 Covered source general permits. (a) The director, at the director's sole discretion may, after providing for public notice, including the method by which a hearing can be requested, and an opportunity for public comment in accordance with section 11-60.1-99, issue a

covered source general permit for similar nonmajor covered sources. The general covered source permit expiration date shall apply to all sources covered under this permit.

* * *

(c) The owner or operator of a nonmajor covered source requesting coverage for some or all of its emission units under the terms and conditions of the covered source general permit must submit an application to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application and to evaluate the fee requirements specified in subchapter 6. Information submitted shall include:

* * *

- (6) Citation and description of all applicable requirements and a description of or reference to any method and/or applicable test method for determining compliance with each applicable requirement;

Justification:

The change to **§11-60.1-92(c)(6)** is made to be consistent with the language in **§11-60.1-76(a)(7)**

§11-60.1-99 Public participation. (a) Except for administrative permit amendments and permit amendments reflecting certain minor modifications, 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 covered source permits for ~~[initial issuance, for permit renewal, or for the significant modification of a covered source.]:~~

(1) initial issuance;

(2) renewal;

(3) significant modification; or

(4) minor modifications to major stationary sources that result in a net emissions increase, as defined in 40 CFR Part 52.21, equal to or exceeding fifty percent of the significant amounts of emissions in the definition of significant in section 11-60.1-131, paragraph (1) of the definition.

(b) 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](c) 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 applicant, 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 application;
 - (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 permittee;
 - (C) The name and address of the agency of the department processing the permit;
 - (D) The activity or activities involved in the permit action;
 - (E) The emissions change involved in any permit amendment reflecting a modification to the covered source;
 - (F) The name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft permit, the application, all relevant supporting materials including any compliance plan, and monitoring and compliance certification reports, and all other materials available to the department that are relevant to the permit 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.

Justification:

The revision specifies that certain minor modifications at major stationary sources are subject to public noticing. Minor modifications at major stationary sources that have a net increase in emissions, using an actual-to-potential or actual-to-projected actual emissions test, that equals or exceeds 50% of the Significant definition are subject to public noticing.

§11-60.1-100 Public petitions. (a) ~~[Upon program approval, persons]~~ A person may object to the issuance of any proposed covered source permit by petitioning the Administrator pursuant to 40 CFR Section 70.8(d).

(b) ~~[Upon program approval, if]~~ If the Administrator objects to the proposed covered source permit as a result of a public petition, the director shall not issue the permit until the Administrator's objection has been resolved. However, a permit that was issued after the end of the forty-five-day review period and prior to the Administrator's objection, and except as provided in subsection (h), shall remain in effect at least until the objection is resolved. ~~[Upon program approval, if]~~ If the Administrator amends or terminates the permit based on the public petition, the director may issue only an amended permit that satisfies the Administrator's objection. If an amended permit 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.

Justification:

These revisions improve clarity.

§11-60.1-104 Applications for significant modifications. (a) Every application for a significant modification to a covered source is subject to the same requirements as for an initial covered source permit application pursuant to §11-60.1-83 as it pertains to the proposed significant modification. Applications shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application and to determine the fee requirements specified in subchapter 6. Information submitted shall include:

* * *

- (8) Citation and description of all applicable requirements, and a description of or reference to any method and/or applicable test method for determining compliance with each applicable requirement;

* * *

(h) The director shall provide reasonable procedures and resources to complete the review of the majority of the applications for a significant modification within nine months after receipt of a complete application. An application for significant modification shall be approved

only if the director determines that the significant modification will be in compliance with all applicable requirements[-] and will not interfere with attainment or maintenance of the NAAQS.

Justification:

The change to **§11-60.1-104(a)(8)** is made to be consistent with the language in **§11-60.1-76(a)(7)**

6. Amendments to Subchapter 6 Fees For Covered Sources, Noncovered Sources, And Agricultural Burning

§11-60.1-111 Definitions. As used in this subchapter:

* * *

~~["Nonmajor modification" means any physical change in or change in method of operation of a major stationary source that is not classified as a major modification.]~~

Justification:

The definition is no longer needed.

§11-60.1-112 General fee provisions for covered sources. (a) Every applicant for a covered source permit shall pay an application fee as set forth in section 11-60.1-113.

* * *

(e) All annual fees for covered sources required by this chapter shall be submitted by check or money order, made payable to:

- (1) The Clean Air Special Fund-COV, for fees determined by the dollar per ton charge pursuant to sections 11-60.1-114(i)(1), (3) and (4), and (j); and
- (2) The Clean Air Special Fund-NON, for fees determined by the dollar per ton charge pursuant to sections 11-60.1-114(i)(2), (3) and (5), and (j);

and are not refundable, except for any amount that constitutes an overpayment, as determined by the director.

* * *

(g) The department shall reevaluate the provisions of this subchapter at least every three years to ensure that adequate fees are being generated to cover the direct and indirect costs to develop, support, and administer the air permit program. ~~[Notwithstanding the]~~ If fee adjustments are required based on the director's reevaluation, the director shall afford the opportunity for public comment in accordance with chapters 91 and 342B, HRS. Any fee adjustments pursuant to [section] subsection 11-60.1-114(j), and fee waivers allowed in subsection (h) below, [if fee adjustments are required based on the director's reevaluation, the director shall afford the opportunity for public comment in accordance with chapters 91 and 342B, HRS] shall not require that the director afford the opportunity for public comment in accordance with chapters 91 and 342B, HRS.

(h) With EPA's approval, the director may waive annual fees due from owners or operators of covered sources for the following calendar year, provided that funds in excess of \$6 million will exist in the Clean Air Special Fund-COV account as of the end of the current calendar year. Nothing in this subsection shall be construed to allow a waiver of any application fee, or a waiver of any other requirements under this chapter, including reporting requirements,

such as annual emissions reporting. The owner or operator of a covered source shall continue to report the source's actual emissions of regulated air pollutants, including toxic pollutants, in tons per year. For greenhouse gases, biogenic CO₂ emissions shall be identified separately; and actual emissions shall be reported in both mass tons and CO₂e tons of each greenhouse gas emitted (e.g., carbon dioxide, nitrous oxide, methane, [~~hydrofluorocarbons, perfluorocarbons~~] hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride), and the resulting total mass tons and CO₂e tons emitted. The emissions report shall show the method, assumptions, emissions factors, and calculations used to obtain the tons per year emissions of each regulated air pollutant, including the CO₂e tons of GHGs. The reporting of annual emissions shall be submitted within the time frame specified in the applicable permit.

Justification:

The amendment improves clarity without changing the meaning. The spelling of two pollutants is corrected.

§11-60.1-115 Basis of annual fees for covered sources. (a) For purposes of calculating annual fees for covered sources under section 11-60.1-114, the covered source actual emissions in tons and CO₂e tons per year shall be determined by using the following parameters:

- (1) Data from continuous emission monitoring (CEMS) or predictive emission monitoring (PEM) certified in accordance with the applicable EPA Performance Specifications shall always be used if available. The PEM data shall not be used if CEMS data is available;
- ~~[(4)]~~(2) An emission factor derived from the actual rate of emissions as substantiated through stack test reports, continuous emissions monitoring data, or any other certified record as deemed acceptable by the director;
- ~~[(2)]~~(3) The actual production, operating hours, amount of materials processed or stored, or fuel usage of the covered source during the prior calendar year the annual fee is due. Other operating parameters of the covered source may be used in the fee calculation if approved by the director; and
- ~~[(3)]~~(4) If not already included in the emission factor identified in paragraph (1), a percentage reduction factor based upon the efficiency of the air pollution control equipment, as provided by AP-42 or any verifiable documentation demonstrating the actual performance of the air pollution control equipment.

* * *

Justification:

Site-specific CEMS data provides a detailed record of emissions over time and is expected to provide the most accurate estimate of a source's actual emissions. Since emissions are not directly measured on a continuous basis by PEM over the period of interest, use of the PEM data is not preferred for estimating emissions if CEMS data is available.

7. Amendments to Subchapter 7 Prevention Of Significant Deterioration Review

§11-60.1-131 Definitions. All of the definitions in 40 CFR 52.21(b) as they existed on ~~November 19, 2013~~ May 1, 2023 are hereby incorporated by reference. This section incorporates these definitions to support the implementation of 40 CFR Section 52.21, Prevention of Significant Deterioration of Air Quality. Selected definitions are included here for convenience. If a conflict is found, the definition in 40 CFR Section 52.21 shall apply.

* * *

"Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase as defined in 40 CFR 52.21(b)(40) of a regulated NSR pollutant, and a significant net emissions increase as defined in 40 CFR 52.21(b)(3) of that pollutant from the major stationary source. Any significant emissions increase from any emissions unit or net emissions increase at a major stationary source that is significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

A physical change or change in the method of operation shall not include:

- (1) Routine maintenance, repair, and replacement;
- (2) Use of an alternative fuel or raw material by reason of an order pursuant to Sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 or any superseding legislation or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
- (3) Use of an alternative fuel by reason of an order or rule under Section 125 of the Act;
- (4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
- (5) Use of an alternative fuel or raw material by a stationary source which:
 - (A) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited pursuant to any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR Section 52.21 or to regulations approved pursuant to 40 CFR Part 51 Subpart I or 40 CFR Section 51.166; or
 - (B) The source is approved to use under any permit issued pursuant to 40 CFR Section 52.21 or regulations approved pursuant to 40 CFR Section 51.166;
- (6) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR Section 52.21 or regulations approved pursuant to 40 CFR Part 51 Subpart I or 40 CFR Section 51.166;
- (7) Any change in ownership at a stationary source;
- (8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project as defined in 40 CFR 52.21(b)(36), provided the project complies with:
 - (A) Hawaii state implementation plan; and

- (B) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;
- (9) The installation or operation of a permanent clean coal technology demonstration project as defined in 40 CFR 52.21(b)(34-35) that constitutes repowering as defined in 40 CFR 52.21(b)(37), provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis; or
- (10) The reactivation of a very clean coal-fired electric utility steam generating unit as defined in 40 CFR 52.21(b)(38);

This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 40 CFR Paragraph 52.21[(a)(a)] (aa) for a Plant Applicability Limitation (PAL) for that pollutant. Instead, the definition at 40 CFR Paragraph 52.21[(a)(a)] (aa) (2)(viii) shall apply.

* * *

"Major stationary source" means:

- (1) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any regulated NSR pollutant[?] other than the pollutant greenhouse gases:

- (A) Fossil fuel fired steam electric plants of more than two hundred fifty million BTU per hour heat input;
- (B) Coal cleaning plants (with thermal dryers);
- (C) Kraft pulp mills;
- (D) Portland cement plants;
- (E) Primary zinc smelters;
- (F) Iron and steel mills;
- (G) Primary aluminum ore reduction plants (with thermal dryers);
- (H) Primary copper smelters;
- (I) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;
- (J) Hydrofluoric, sulfuric, and nitric acid plants;
- (K) Petroleum refineries;
- (L) Lime plants;
- (M) Phosphate rock processing plants;
- (N) Coke oven batteries;
- (O) Sulfur recovery plants;
- (P) Carbon black plants (furnace process);
- (Q) Primary lead smelters;
- (R) Fuel conversion plants;
- (S) Sintering plants;
- (T) Secondary metal production plants;
- (U) Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140);

- (V) Fossil fuel boilers (or combinations thereof) totaling more than two hundred fifty million BTU per hour heat input;
- (W) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;
- (X) Taconite ore processing plants;
- (Y) Glass fiber processing plants; and
- (Z) Charcoal production plants;

(2) Notwithstanding the stationary source size specified in this definition, any stationary source which emits, or has the potential to emit two hundred fifty tons per year or more of a regulated NSR pollutant~~;~~ other than the pollutant greenhouse gases; or

* * *

"Significant" means in reference to a net emissions increase or the potential of a source to emit any of the following pollutants:

- (1) A rate of emissions that would equal or exceed any of the following pollutant emission rates:
 - (A) Carbon monoxide: one hundred tpy;
 - (B) Nitrogen oxides: forty tpy;
 - (C) Sulfur dioxide: forty tpy;
 - (D) Particulate matter: twenty-five tpy of particulate matter emissions;
 - (E) PM₁₀: fifteen tpy;
 - (F) PM_{2.5}: ten tpy of direct PM_{2.5} emissions; forty tpy of sulfur dioxide emissions; forty tpy of nitrogen oxide emissions unless demonstrated not to be a PM_{2.5} precursor under 40 CFR 52.21(b)(50);
 - (G) Ozone: forty tpy of volatile organic compounds or nitrogen oxides;
 - (H) Lead: 0.6 tpy;
 - (I) Fluorides: three tpy;
 - (J) Sulfuric acid mist: seven tpy;
 - (K) Hydrogen sulfide (H₂S): ten tpy;
 - (L) Total reduced sulfur (including H₂S): ten tpy;
 - (M) Reduced sulfur compounds (including H₂S): ten tpy;
 - (N) Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2×10^{-6} megagrams per year (3.5×10^{-6} tpy);
 - (O) Municipal waste combustor metals (measured as particulate matter): fourteen megagrams per year (fifteen tpy);
 - (P) Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): thirty-six megagrams per year (forty tpy);
 - (Q) Municipal solid waste landfills emissions (measured as nonmethane organic compounds): forty-five megagrams per year (50 tpy); or
 - (R) Greenhouse gases: as specified in paragraph (3) under the definition of "Subject to Regulation" of this subchapter.

* * *

"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)] paragraph (4) of this definition[-] and shall not be subject to regulation if the stationary source maintains its total source-wide emissions below the GHG PAL level, meets the requirements of paragraphs 40 CFR 52.21(aa)(1) through (15), and complies with the PAL permit containing the GHG PAL.
- (2) For purposes of [paragraphs (3) through (5)] paragraphs (3) and (4) 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.
 - (B) Sum the resultant value from paragraph (2)(A) above for each gas to compute a tpy CO₂e.
- (3) The term "emissions increase" as used in [paragraphs (4) and (5)] paragraph (4) of this definition shall mean that both a significant emissions increase (as calculated using the procedures in 40 CFR 52.21(a)(2)(iv)) and a significant net emissions increase (as defined in 40 CFR 52.21(b)(3) and (b)(23)) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO₂e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO₂e instead of applying the value in 40 CFR 52.21(b)(23)(ii).
- ~~[(4) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:~~
 - ~~(A) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO₂e or more; or~~
 - ~~(B) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO₂e or more; and,~~
- ~~(5) Beginning July 1, 2011, in addition to the provisions in paragraph (4) of this definition, the pollutant GHGs shall also be subject to regulation at:~~
 - ~~(A) A new stationary source that will emit or have the potential to emit 100,000 tpy or more CO₂e; or~~
 - ~~(B) An existing stationary source that emits or has the potential to emit~~

~~100,000 tpy or more CO₂e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO₂e or more.]~~

- (4) GHGs are subject to regulation for major stationary source prevention of significant deterioration permits as follows:
- (A) For existing stationary sources, GHGs are subject to regulation (GHG BACT analysis) only if:
- (i) the stationary source is major due to the potential to emit of a non-GHG pollutant;
 - (ii) the project would cause both a significant emissions increase and significant net emissions increase for a non-GHG pollutant; and
 - (iii) the project would cause both CO₂e emissions increase and CO₂e net emissions increase equal to or greater than 75,000 tpy.
- (B) For new stationary sources, GHGs are subject to regulation (BACT analysis for GHGs) only if the stationary source:
- (i) is major due to the potential to emit another pollutant; and
 - (ii) would have the potential to emit equal to or greater than 75,000 tpy of CO₂e emissions.

Justification:

The federal law that will apply in the HAR chapter 11-60.1 rules will always be the federal law as it existed at the time when the new/amended rules are officially promulgated, or that existed on a certain date that is noted in the amended HAR chapter 11-60.1 rules. Any future amended federal law will not be applicable through the HAR chapter 11-60.1 rules, unless and until the rules are amended and adopted again in the future, specifically incorporating the amended federal laws. Otherwise, to allow any federal law that has been incorporated into the HAR chapter 11-60.1 rules to be automatically updated in the rules, by future amendments of the law by the federal government, without the DOH (State), specifically incorporating the future amended federal law into new rules, would be an improper delegation of legislative authority, as proscribed by the Hawaii Supreme Court in *State v. Tengan*, 67 Haw. 451, 691 P.2d 365.

In this case, because of the delay in finalizing the amended rules, the DOH-CAB is changing the date of the existing federal law to be incorporated by reference by these amended HAR chapter 11-60.1 rules. We are changing the incorporation date of the federal laws to the latest date possible so that we incorporate by reference the latest, most recent version of the federal laws.

The proposed change to “**Major modification**” corrects an omission of the word “in” and typographical errors in the citations.

The proposed change to “**Major stationary source**” is to clarify that greenhouse gas emissions alone cannot trigger “Major stationary source” applicability.

The definition of “**Significant**” was revised to reference section (3) and (4) under the definition of “Subject to Regulation.”

The definition for “**Subject to regulation**” was amended in order to align with current federal guidance for addressing PSD. A recent Supreme Court ruling has invalidated a portion of the federal Tailoring Rule which incorporated the first standards for GHGs. This definition is being amended for PSD sources to align with current and future federal guidance for regulating

GHGs. Current federal guidance for regulating GHGs is provided in EPA's December 19, 2014 Memorandum, Subject: Next Steps for Addressing EPA-Issued Step 2 Prevention of Significant Deterioration Greenhouse Gas Permits and Associated Requirements.

§11-60.1-132 Source applicability. (a) This subchapter incorporates by reference, provisions of 40 CFR Section 52.21, Prevention of Significant Deterioration of Air Quality, as it existed on [~~November 19, 2013~~] May 1, 2023 and applies to owners or operators planning to construct a major stationary source or to make a major modification to such a stationary source. Provisions of 40 CFR Section 52.21 are additional requirements for considering an application for a covered source permit required by subchapter 5.

(b) No stationary source or modification to which the requirements of this subchapter apply shall begin actual construction without a covered source permit which states that the stationary source or modification would meet the requirements of 40 CFR Section 52.21.

Justification:

The federal law that will apply in the HAR chapter 11-60.1 rules will always be the federal law as it existed at the time when the new/amended rules are officially promulgated, or that existed on a certain date that is noted in the amended HAR chapter 11-60.1 rules. Any future amended federal law will not be applicable through the HAR chapter 11-60.1 rules, unless and until the rules are amended and adopted again in the future, specifically incorporating the amended federal laws. Otherwise, to allow any federal law that has been incorporated into the HAR chapter 11-60.1 rules to be automatically updated in the rules, by future amendments of the law by the federal government, without the DOH (State), specifically incorporating the future amended federal law into new rules, would be an improper delegation of legislative authority, as proscribed by the Hawaii Supreme Court in *State v. Tengan*, 67 Haw. 451, 691 P.2d 365.

In this case, because of the delay in finalizing the amended rules, the DOH-CAB is changing the date of the existing federal law to be incorporated by reference by these amended HAR chapter 11-60.1 rules. We are changing the incorporation date of the federal laws to the latest date possible so that we incorporate by reference the latest, most recent version of the federal laws.

8. Amendments to Subchapter 8 Standards Of Performance For Stationary Sources

§11-60.1-161 New source performance standards. (a) This section applies to an owner or operator subject to a promulgated federal standard of performance for new stationary sources. An owner or operator of an affected facility shall comply with all applicable provisions of 40 CFR Part 60, entitled "Standards of Performance for New Stationary Sources," including the following subparts:

* * *

- (13) Subpart Ja, Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007;
- [(13)](14) Subpart K, Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978;
- [(14)](15) Subpart Ka, Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984;
- [(15)](16) Subpart Kb, Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984;
- [(16)](17) Subpart O, Standards of Performance for Sewage Treatment Plants;
- [(17)](18) Subpart Y, Standards of Performance for Coal Preparation Plants;
- [(18)](19) Subpart AA, Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983;
- [(19)](20) Subpart AAa, Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983;
- [(20)](21) Subpart GG, Standards of Performance for Stationary Gas Turbines;
- (22) Subpart UU, Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture;
- [(21)](23) Subpart VV, Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry[;] for which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006;
- (24) Subpart VVa, Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006;
- [(22)](25) Subpart WW, Standards of Performance for the Beverage Can Surface Coating Industry;
- [(23)](26) Subpart XX, Standards of Performance for Bulk Gasoline Terminals;
- [(24)](27) Subpart GGG, Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries[;] for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or Before November 7, 2006;

- (28) Subpart GGGa, Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006;
- ~~[(25)]~~(29) Subpart JJJ, Standards of Performance for Petroleum Dry Cleaners;
- ~~[(26)]~~(30) Subpart NNN, Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations;
- ~~[(27)]~~(31) Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants;
- ~~[(28)]~~(32) Subpart QQQ, Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems;
- ~~[(29)]~~(33) Subpart VVV, Standards of Performance for Polymeric Coating of Supporting Substrates Facilities;
- ~~[(30)]~~(34) Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills;
- (35) Subpart XXX, Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014;
- ~~[(31)]~~(36) Subpart AAAA, Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction Commenced After June 6, 2001; ~~[and]~~
- ~~[(32)]~~(37) Subpart CCCC, Standards of Performance for Commercial and Industrial Solid Waste Incineration Units ~~[for Which Construction is Commenced After November 30, 1999 or for Which Modification or Reconstruction is Commenced on or After June 1, 2001.];~~
- (38) Subpart EEEE, Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006;
- (39) Subpart IIII, Standards of Performance for Stationary Compression Ignition Internal Combustion Engines;
- (40) Subpart JJJJ, Standards of Performance for Stationary Spark Ignition Internal Combustion Engines;
- (41) Subpart KKKK, Standards of Performance for Stationary Combustion Turbines;
- (42) Subpart LLLL, Standards of Performance for New Sewage Sludge Incineration Units; and
- (43) Subpart TTTT, Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units.

(b) ~~[Each federal standard of performance for new stationary sources (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources. Unless specifically exempted from Title V permitting requirements by an applicable federal standard, any] Any~~ owner or operator who constructs, reconstructs, modifies, or operates an affected facility subject to covered source permitting is subject to the application and permitting requirements of subchapter 5. If there is a conflict between the application deadlines in subchapter 5 and the applicable federal standard,

the earlier deadline shall apply. Each federal standard of performance for new stationary sources (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources. If there is a conflict between an applicable requirement of subchapter 5, or any other subchapter of these rules, and the applicable federal standard, the most stringent requirement shall apply. "Affected facility" as used in this section shall have the same meaning as in 40 CFR §60.2.

(c) Any owner or operator who constructs, reconstructs, modifies, or operates an affected facility subject to Noncovered Source permitting requirements is subject to the application and permitting requirements of subchapter 4. Each federal standard of performance for new stationary sources (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 4, Noncovered Sources. "Affected facility" as used in this section shall have the same meaning as in 40 CFR §60.2.

Justification:

This action updates Chapter **11-60.1-161** by adding new CFR subparts applicable to stationary air emissions sources.

The proposed changes to **§11-60.1-161(b)** and the addition of new **§11-60.1-161 (c)** clarify that affected facilities subject to Covered Source permitting or Noncovered Source permitting are subject to the application and permitting requirements for Covered and Noncovered Sources, as appropriate.

§11-60.1-163 Federal plans. (a) This section applies to an owner or operator subject to a promulgated federal plan for designated or affected facilities, where the facility is not covered by an EPA approved state plan. "State plan" as used in this subsection means a plan submitted pursuant to section 111(d) and section 129(b)(2) of the Clean Air Act and 40 CFR Part 60, subpart B that implements and enforces 40 CFR Part 60, subpart C.

(b) An owner or operator of a designated or affected facility, as defined in the applicable federal plan, shall comply with all applicable requirements of the federal plan, including the following:

- (1) 40 CFR Part 62, Subpart FFF, Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994;
- (2) 40 CFR Part 62, Subpart GGG, Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991;
- (3) 40 CFR Part 62, Subpart HHH, Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or Before June 20, 1996; ~~and~~
- (4) 40 CFR Part 62, Subpart III, Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999;

- [4](5) 40 CFR Part 62, Subpart JJJ, Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999[-];
(6) 40 CFR Part 62, Subpart LLL, Federal Plan Requirements for Sewage Sludge Incineration Units Constructed on or Before October 14, 2010; and
(7) 40 CFR Part 62, Subpart OOO, Federal Plan Requirements for Municipal Solid Waste Landfills that Commenced Construction On or Before July 17, 2014 and Have Not Been Modified or Reconstructed Since July 17, 2014.

(c) ~~[Each federal plan for designated or affected facilities (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources. Unless specifically exempted from Title V permitting by an applicable federal plan, any owner or operator of a designated or affected facility]~~ Any owner or operator who constructs, reconstructs, modifies, or operates a designated or affected facility subject to Covered Source permitting is subject to the application and permitting requirements of subchapter 5. Each federal plan for designated or affected facilities (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources.

(d) Any owner or operator who constructs, reconstructs, modifies, or operates an affected facility subject to Noncovered Source permitting requirements is subject to the application and permitting requirements of subchapter 4. Each federal plan for designated or affected facilities (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 4, Noncovered Sources.

Justification:

The proposed changes clarify that Title V permitting is required for sources not exempted from Title V by the federal regulations and that noncovered source permitting is required for sources exempt from Title V, but not exempt from the noncovered source permitting.

9. Amendments to Subchapter 9 Hazardous Air Pollutant Sources

§11-60.1-171 Definitions. As used in this subchapter:

* * *

"TLV book" means the "Documentation of the Threshold Limit Value and Biological Exposure Indices," [~~sixth~~] seventh edition, published by the American Conference of Governmental Industrial Hygienists, Inc.

Justification:

This amendment updates the proper reference.

§11-60.1-172 List of hazardous air pollutants. The following are hazardous air pollutants:

	<u>CAS number</u>	<u>Chemical name</u>
(1)	75070	Acetaldehyde
(2)	60355	Acetamide
(3)	75058	Acetonitrile

* * *

(189)	<u>106945</u>	<u>1-Bromopropane (1-BP)</u>
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Justification:

In December 2021, 1-Bromopropane (1-BP) was added as a hazardous air pollutant regulated under Section 112 of the Clean Air Act.

§11-60.1-174 Maximum achievable control technology (MACT) emission standards.

(a) This section applies to an owner or operator of a major or area source of hazardous air pollutants that has or will have affected source(s) in a category or subcategory subject to a promulgated MACT emission standard. An owner or operator of an affected source shall comply with all applicable provisions of 40 CFR Part 63, entitled "National Emission Standards for Hazardous Air Pollutants for Source Categories," including the following subparts:

* * *

- (4) Subpart M, National [~~Perchloroethylene~~] Perchloroethylene Air Emission Standards for Dry Cleaning Facilities;

* * *

- (23) Subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process;
- ~~[(23)]~~(24) Subpart VV, National Emission Standards for Oil-Water Separators and Organic Water Separators;
- (25) Subpart WW, National Emission Standards for Storage Vessels (Tanks)—Control Level 2;
- ~~[(24)]~~(26) Subpart JJJ, National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins;
- ~~[(25)]~~(27) Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units;
- ~~[(26)]~~(28) Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works;
- (29) Subpart AAAA, National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills;
- ~~[(27)]~~(30) Subpart HHHH, National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production;[-and]
- ~~[(28)]~~(31) Subpart VVVV, National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing[-];
- (32) Subpart YYYY, National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines;
- (33) Subpart ZZZZ, National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines;
- (34) Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters;
- (35) Subpart PPPPP, National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stand;
- (36) Subpart UUUUU, National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units;
- (37) Subpart BBBBBB, National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities;
- (38) Subpart CCCCCC, National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities;
- (39) Subpart HHHHHH, National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources; and
- (40) Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources.

(b) ~~[Each MACT emission standard (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources.]~~ Any owner or operator who constructs, reconstructs, modifies, or operates an affected source subject to covered source permitting is subject to the application and permitting

requirements of subchapter 5. Each MACT emission standard (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources.

(c) Any owner or operator who constructs, reconstructs, modifies, or operates an affected source subject to noncovered source permitting requirements is subject to the application and permitting requirements of subchapter 4. Each MACT emission standard (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 4, Noncovered Sources.

~~[(e)]~~(d) The deadlines for submitting the required initial notification, and applying for or obtaining a noncovered or covered source permit to address the MACT emission standard are as follows:

- (1) The owner or operator of a new affected source subject to noncovered or covered source permitting shall submit a complete noncovered or covered source permit application for and obtain a noncovered or covered source permit prior to commencing construction or reconstruction of an affected source, except as provided below.
- (2) The owner or operator of a new major affected source for which construction or reconstruction had commenced, and initial startup had not occurred before the standard's effective date, shall submit a complete and timely covered source permit application within sixty calendar days after the standard's effective date. The covered source permit application may be used to fulfill the initial notification requirements of 40 CFR §63.9(b).
- (3) The owner or operator of:
 - (A) an existing affected source;
 - (B) a new nonmajor affected source for which construction or reconstruction had commenced and initial startup had not occurred before the standard's effective date; or
 - (C) a new affected source for which construction or reconstruction had commenced and initial startup had occurred before the standard's effective date;

shall submit written notification to the director of being subject to the MACT emission standard within 120 calendar days after the effective date of the applicable standard or within 120 calendar days after the source becomes subject to the applicable standard. The owner or operator may submit an initial notification later than the deadline required above, if the applicable MACT standard sets a later deadline. Notification shall be provided pursuant to 40 CFR §63.9(b)(2). The owner or operator shall also submit a complete and timely noncovered or covered source permit application, as applicable, within twelve months after the effective date of the standard, or within twelve months after the source becomes subject to the standard.

~~[(d)]~~(e) In addressing the MACT emission standard, the owner or operator of an affected source shall provide as part of the noncovered or covered source permit application, any other additional information listed in 40 CFR 63.5(d)(1)(ii), (2), and (3).

Justification:

This action updates Chapter **11-60.1-174** by adding new CFR subparts applicable to air permitting.

The proposed changes to **§11-60.1-174(b) and (c)** clarify that affected facilities subject to Covered Source permitting or Noncovered Source permitting are subject to the application and permitting requirements for Covered and Noncovered Sources, as appropriate.

§11-60.1-180 National emission standards for hazardous air pollutants. (a) This section applies to an owner or operator of a major or area source of hazardous air pollutants that has or will have source(s) that emit designated hazardous air pollutants listed in 40 CFR Part 61. An owner or operator of a stationary source shall comply with all applicable provisions of 40 CFR Part 61, entitled National Emission Standards for Hazardous Air Pollutants, including the following subparts:

- (1) Subpart A, General Provisions;
- (2) Subpart C, National Emission Standard for Beryllium;
- (3) Subpart D, National Emission Standard for Beryllium Rocket Motor Firing;
- (4) Subpart E, National Emission Standard for Mercury;
- (5) Subpart J, National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene;
- (6) Subpart V, National Emission Standard for Equipment Leaks (Fugitive Emission Sources);
- (7) Subpart Y, National Emission Standard for Benzene Emissions From Benzene Storage Vessels;
- (8) Subpart BB, National Emission Standard for Benzene Emissions from Benzene Transfer Operations; and
- (9) Subpart FF, National Emission Standard for Benzene Waste Operations.

(b) ~~[Each emission standard in 40 CFR Part 61 (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources.]~~ Any owner or operator who constructs, reconstructs, modifies, or operates an applicable source subject to covered source permitting is subject to the application and permitting requirements of subchapter 5. Each emission standard in 40 CFR Part 61 (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources.

c) Any owner or operator who constructs, reconstructs, modifies, or operates an applicable source subject to noncovered source permitting requirements is subject to the application and permitting requirements of subchapter 4. Each emission standard in 40 CFR Part 61 (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 4, Noncovered Sources.

Justification:

The proposed changes clarify that applicable sources subject to Covered Source permitting or Noncovered Source permitting are subject to the application and permitting requirements for Covered and Noncovered Sources, as appropriate.

10. Amendments to Subchapter 10 Field Citations

§11-60.1-192 Offer to settle; penalties. (a) A field citation is an offer to settle an administrative case. In lieu of issuing a formal notice and finding of violation and order, the director may, at the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to a person who:

- (1) Causes or permits visible fugitive dust to become airborne without taking reasonable precautions, in violation of ~~[section]~~ subsection 11-60.1-33(a);
- (2) Causes or permits the discharge of visible fugitive dust beyond the property lot line on which the fugitive dust originates, in violation of ~~[section]~~ subsection 11-60.1-33(b);
- (3) Cause or permit visible fugitive dust emissions equal to or in excess of twenty percent opacity for more than twenty-four individual readings recorded during any one hour period, as determined by using EPA 40 CFR 51 Appendix M, Method 203B, in violation of subsection 11-60.1-33(c);
- ~~[(3)]~~(4) Causes or allows open burning in violation of ~~[section]~~ subsection 11-60.1-52(a);
- ~~[(4)]~~ Fails to submit timely location change information for the permittee's temporary noncovered or covered source permit, in violation of subsection 11-60.1-69(c) or 11-60.1-91(f), respectively;
- (5) Fails to comply with the notification requirement for fires found in subsection 11-60.1-52(c);
- (6) Fails to comply with any approved condition or requirement for fires described in subsection 11-60.1-52(d);
- (7) Fails to comply with any approved condition or requirement for fires described in subsection 11-60.1-52(e) and allowed under subsections 11-60.1-52(f) and 11-60.1-55;
- (8) Fails to comply with any condition found in a permittee's agricultural burning permit, in violation of the specific condition found in the permittee's applicable agricultural burning permit;
- (9) Fails to comply with any condition or requirement found in a permittee's noncovered source permit, in violation of the specific condition or requirement found in the permittee's applicable noncovered source permit;
- (10) Fails to comply with any condition or requirement found in a permittee's covered source permit, in violation of the specific condition or requirement found in the permittee's applicable covered source permit;
- ~~[(5)]~~(11) Fails to obtain a noncovered source permit, in violation of subsection 11-60.1-62(a); or
- ~~[(6)]~~(12) Fails to obtain a covered source permit, in violation of subsection 11-60.1-82(a).

(b) The notice of citation shall assess the following penalties for the violations in subsection (a):

- (1) Any person who violates paragraph (a)(1) shall be fined \$300 for a first violation, and \$500 for a subsequent violation.
- (2) Any person who violates paragraph (a)(2) shall be fined \$500 for a first violation, and \$1000 for a subsequent violation.

- (3) Any person who violates paragraph (a)(3) shall be fined \$200 for a first violation, and \$400 for a subsequent violation.
- [(3)](4) Any person who violates paragraph (a)[(3)](4) shall be fined \$100 for a first violation, and \$300 for a subsequent violation.
- [(4) Any person who violates paragraph (a)(4) shall be fined \$500 for a first violation, and \$1000 for a subsequent violation.]
- (5) Any person who violates paragraph (a)(5) shall be fined \$250 for a first violation, and \$500 for a subsequent violation.
- (6) Any person who violates paragraph (a)(6) shall be fined \$250 for a first violation, and \$500 for a subsequent violation.
- (7) Any person who violates paragraph (a)(7) shall be fined \$250 for a first violation, and \$500 for a subsequent violation.
- (8) Any person who violates paragraph (a)(8) shall be fined \$250 for a first violation, and \$500 for a subsequent violation.
- (9) Any person who violates paragraph (a)(9) shall be fined \$500 for a first violation, and \$1,000 for a subsequent violation.
- (10) Any person who violates paragraph (a)(10) shall be fined \$750 for a first violation, and \$1,500 for a subsequent violation.
- [(5)](11) Any person who violates paragraph (a)[(5)](11) shall be fined \$750 for a first violation, and \$1500 for a subsequent violation.
- [(6)](12) Any person who violates paragraph (a)[(6)](12) shall be fined \$1000 for a first violation, and \$2000 for a subsequent violation.

Justification:

Field citations were created as an intermediate option to CAB issuing an informal Notice of Violation and a formal Notice and Finding of Violation and Order. An Informal Notice of Violation carries no monetary penalty and can be ineffective. Processing and issuing a formal Notice and Finding of Violation and Order can be a lengthy, time consuming and resource intensive process, especially if the violation is challenged. It may also involve negotiating a Consent Order if the violation(s) cannot be settled, or may include legal hearings, a final decision by the Director, and appeals to the Circuit and Supreme Court if the violation(s) is contested. A formal Notice of Violation and Order will also most likely entail a higher penalty amount for a Violator. In comparison, a field citation is an admission of guilt by the Violator, has a set fine amount that is generally less than a penalty for a formal Notice and Finding of Violation and Order, and allows both the Violator and CAB to settle the violation in an expedited manner with much less time and cost involved. A violation of any field citation category may be upgraded to a formal Notice and Finding of Violation and Order by CAB if the circumstances warrant it. By having the option of an expedited settlement through the issuance of a field citation, the CAB is better equipped to bring a source into compliance in a more efficient manner. A field citation provides a measured and reasonable fine amount that is more substantial than an Informal Notice of Violation, yet not as time consuming and costly for all parties as filing a Formal Notice of Violation and Order.

When the field citations were first codified in 2001, CAB intentionally limited their applicability to just four (4) specific violations, then added a few more in subsequent years. This amendment proposes to add seven (7) violation categories in §11-60.1-192(a). The proposed **§11-60.1-192(a)(3)** category, relates to violations of the newly added subsection 11-60.1-33(c) on fugitive dust. The **proposed §11-60.1-192(a)(5), (6), and (7)** categories are for violations of fires which require notification and approval by the Director found in subsection 11-60.1-52(c), (d) and (e). The proposed **§11-60.1-192(a)(8), (9), and (10)** categories are for violations of a

permittee's agricultural burning, noncovered and/or covered source permit, respectively. The existing §11-60.1-192(a)(4), which applies to one requirement of a temporary noncovered or covered source permit, is being removed because this will be more broadly covered by the newly proposed §11-60.1-192(a)(6) and (7). The amendment also sets forth additional monetary penalties for each of the new violation categories found in §11-60.1-192(b).

§11-60.1-193 Acceptance or withdrawal of citation. (a) To accept the director's offer to settle, the person to whom a field citation was issued must, within twenty days of its issuance, correct the violations, sign the settlement agreement, and deliver the signed agreement with payment of the penalty by check or money order to the State of Hawaii. The director, on the director's own initiative, or upon request from the person to whom a field citation was issued, may extend the deadline to accept the offer to settle if the director determines that reasonable justification exists for the extension.

(b) By signing the settlement agreement, the person to whom a field citation was issued agrees to:

- (1) waive the person's right to a contested case hearing pursuant to chapter 91, HRS;
- (2) waive any challenge to the field citation;
- (3) pay the penalty assessed;
- (4) correct the violation; and
- (5) enter into the settlement agreement.

(c) The settlement agreement is not effective until it is signed by both the person to whom the field citation was issued and by the director. Approval by the director shall be at the director's sole discretion.

(d) The director may withdraw the field citation if the person to whom it is issued:

- (1) declines to accept the director's offer to settle;
- (2) fails to satisfactorily meet any of the conditions set forth in subsection 11-60.1-193(a); or
- (3) fails to satisfactorily meet any of the conditions set forth in [§11-60.1-193(b),] subsection 11-60.1-193(b), in which case the director may bring a formal administrative action under HRS, §342B-42 and pursue any remedies available under this chapter, HRS, chapter 342B, or any other law.

Justification:

The proposed amendments are for consistency and clarification.

11. Amendments to Subchapter 11 Greenhouse Gas Emissions

§11-60.1-204 Greenhouse gas emission reduction plan. (a) This section applies to an owner or operator of a permitted covered source, except for municipal waste combustion operations, with the potential to emit GHG emissions (biogenic plus non-biogenic) equal to or above 100,000 tons per year CO₂e. Each owner or operator of an affected source shall submit a GHG emission 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.

* * *

(c) Unless substantiated by the owner or operator of an affected source and approved by the director to be unattainable pursuant to the GHG control assessment described in subsection 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 percent (16%) below the facility's total baseline GHG emission levels less biogenic CO₂ emissions, as follows:

$$\begin{array}{l} \text{Facility-} \\ \text{wide cap} = (1 - 0.25)) \\ (1-0.16) \times \\ (\text{tpy CO}_2\text{e}) \end{array} \left| \begin{array}{cc} \text{Facility} & \text{Facility} \\ \text{Total} & - \text{Baseline} \\ \text{Baseline} & \text{Biogenic} \\ \text{Emissions} & \text{CO}_2 \text{ Emissions} \\ (\text{tpy CO}_2\text{e}) & \end{array} \right|$$

Where:

Facility Total Baseline Emissions (tpy CO₂e) =
Baseline[Biogenic [CO₂] + Non-Biogenic GHG Emissions]

Calendar year 2010 shall be used as the baseline year, unless the owner or operator can provide records for the director's approval demonstrating another year or an average of other years to be more representative of normal operations. Newly permitted sources without an operating history, shall estimate normal operations for the director's approval in establishing the facility-wide GHG emissions cap.

Justification:

Subchapter 11 was promulgated on June 30, 2014 to establish the Greenhouse Gas (GHG) program. The text to be deleted in the note below the equation was mistakenly included in the 2014 action.

§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 as it existed on ~~[November 19, 2013]~~ May 1, 2023.

(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.

Justification:

The federal law that will apply in the HAR chapter 11-60.1 rules will always be the federal law as it existed at the time when the new/amended rules are officially promulgated, or that existed on a certain date that is noted in the amended HAR chapter 11-60.1 rules. Any future amended federal law will not be applicable through the HAR chapter 11-60.1 rules, unless and until the rules are amended and adopted again in the future, specifically incorporating the amended federal laws. Otherwise, to allow any federal law that has been incorporated into the HAR chapter 11-60.1 rules to be automatically updated in the rules, by future amendments of the law by the federal government, without the DOH (State), specifically incorporating the future amended federal law into new rules, would be an improper delegation of legislative authority, as proscribed by the Hawaii Supreme Court in *State v. Tengan*, 67 Haw. 451, 691 P.2d 365.

In this case, because of the delay in finalizing the amended rules, the DOH-CAB is changing the date of the existing federal law to be incorporated by reference by these amended HAR chapter 11-60.1 rules. We are changing the incorporation date of the federal laws to the latest date possible so that we incorporate by reference the latest, most recent version of the federal laws.