

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

October 4, 2024

Hawaii Revised Statutes §342G-44: Double-sided copying shall be standard operating practice for all state and county agencies, offices, and facilities, as available and appropriate.

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).

These include five amendments to Chapter 11-60.1: three revisions remove the Emergency Affirmative Defense provision (as mandated by EPA) and remaining two improve and clarify the Open Burning provisions. The amendments include the following:

1. Emergency Affirmative Defense Provision:

- Remove the definition for “Emergency” in section 11-60.1-1, Hawaii Administrative Rules.
- Remove exception for emergencies in section 11-60.1-16, Prompt reporting of deviations, Hawaii Administrative Rules.
- Remove section 11-60.1-16.5, Emergency provision, Hawaii Administrative Rules.

2. Open Burning:

- Amend language from section 11-60.1-52, Hawaii Administrative Rules, to allow for non-structural types of firefighting training, with proper advanced notification to the director.
- Clarify that no-burn periods include both stagnant weather conditions which inhibit the dispersion of air pollutants and high wind events that could increase pollutants and can increase fire danger as strong winds may accelerate the spread and intensity of fires.

Additional information on these proposed rule amendments may be obtained by contacting Ms. Catherine Lopez or Lisa Young 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. Sections 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.

1. Emergency Affirmative Defense Provision

Amendments to Subchapter 1 General Requirements

Subchapter 1, General Requirements, §11-60.1-1 Definitions...

~~"Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error, and shall not include an exceedance of a health-based emission limitation.~~

Justification:

The amendment removes the definition of "Emergency" as described in section 11-60.1-1, Hawaii Administrative Rules, as this definition is specifically for the emergency affirmative defense provision. Other instances of "emergency" found in Chapter 11-60.1, are either not related to the above definition or already define the emergency conditions. For example as shown in **red below**, subsection 11-60.1-62, Applicability (d)(8), Hawaii Administrative Rules, states:

- (8) Standby generators used exclusively to provide electricity, standby sewage pump drives, and other **emergency equipment** used to protect the health and welfare of personnel and the public, all of which **are used only during power outages, emergency equipment maintenance and testing**, and which:
 - (A) Are fired exclusively by natural or synthetic gas; or liquified petroleum gas; or fuel oil No. 1 or No. 2; or diesel fuel oil No. 1D or No. 2D; and
 - (B) Do not trigger a PSD or covered source review, based on their potential to emit regulated or hazardous air pollutants;

~~§11-60.1-16 Prompt reporting of deviations. (a) [Except for emergencies which result in noncompliance with any technology-based emission limitation pursuant to section 11-60.1-16.5, i] In the event any emission unit, air pollution control equipment, or~~

related equipment malfunctions or breaks down in such a manner as to cause the emission of air pollutants in violation of this chapter or a permit, the owner or operator shall immediately notify the department of the malfunction or breakdown, unless the protection of personnel or public health or safety demands immediate attention to the malfunction or breakdown and makes such notification infeasible. In the latter case, the notice shall be provided as soon as practicable. (b)

Justification:

The amendment removes allowed exception for, and reference to, section 11-60.1-16.5.

~~§11-60.1-16.5 Emergency provision. (a) An emergency constitutes an affirmative defense to any action brought for noncompliance with any technology-based emission limitation, if it can be demonstrated to the director through properly signed, contemporaneous operating logs, or other relevant evidence that:~~

- ~~(1) An emergency occurred and the owner or operator of the source can identify the cause or causes of the emergency;~~
- ~~(2) The permitted facility was at the time being properly operated;~~
- ~~(3) During the period of the emergency, the owner or operator of the source took all reasonable steps to minimize emission levels that exceeded the emission limitations or other requirements in the covered or noncovered source permit; and~~
- ~~(4) The owner or operator of the source submitted written notice of the emergency to the director within two working days of the time when emission limitations were exceeded due to the emergency, provided that the notice contained a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.~~

~~(b) In any proceedings for enforcement action, the owner or operator of the source seeking to establish the occurrence of an emergency has the burden of proof.~~

~~(c) This emergency provision is in addition to any emergency or upset provision in any applicable requirement. [Eff and comp 9/15/01; comp 11/14/03, comp 1/13/12; comp 6/30/14; comp 02/08/24] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70) (Imp: HRS~~

~~§§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)~~

~~Historical note: §11-60.1-16.5 is based substantially upon §11-60.1-97. [Eff 11/26/93; comp 10/26/98; R 9/15/01]]~~

Justification:

As mandated by EPA, because EPA has removed the subject provision from Title V operating permit program regulations, as of August 21, 2023, the amendment removes the Emergency affirmative defense provision from HAR section 11-60.1-16.5,

2. Amendments to Subchapter 3 Open Burning

§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 training of personnel in firefighting methods [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]].

Justification:

Change wording of 11-60.1-52 General Provisions (c), to allow for other training methods by not limiting fire fighting training to only include buildings, structures, or aircraft.

§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 (f), 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) when a "no-burn" period has been declared by the director.

(b) "No-burn" periods shall be determined by current and forecasted weather conditions which could increase air pollutants or 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.

Justification:

High winds are already included in no-burn provision, HAR 11-60.1-55(b). Amendment will add clarity that the high winds will not inhibit the dispersion of air pollutants, but rather can contribute and add air pollutants in the form of particulate matter from dust and/or fire.