



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
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In reply, please refer to:  
EMD/CWB

05023PDCL.18

May 10, 2018

**MEMORANDUM**

SUBJECT: Clean Water Branch Standard Project Comments

TO: Agencies and Project Owners

FROM: ALEC WONG, P.E., CHIEF *Alec Wong*  
Clean Water Branch

**This memo is provided for your information and sharing. You are encouraged to share this memo with your project partners, team members, and appropriate personnel.**

The Department of Health (DOH), Clean Water Branch (CWB) will no longer be responding directly to requests for comments on the following documents (Pre-consultation, Early Consultation, Preparation Notice, Draft, Final, Addendums, and/or Supplements):

- Environmental Impact Statements (EIS)
- Environmental Assessments (EA)
- Stream Channel Alteration Permits (SCAP)
- Stream Diversion Works Permits (SDWP)
- Well Construction/Pump Installation Permits
- Conservation District Use Applications (CDUA)
- Special Management Area Permits (SMAP)
- Shoreline Setback Areas (SSA)

For agencies or project owners requiring DOH-CWB comments for one or more of these documents, please utilize the DOH-CWB Standard Comments below regarding your project's responsibilities to maintain water quality and any necessary permitting. DOH-CWB Standard Comments are also available on the DOH-CWB website located at: <http://health.hawaii.gov/cwb/>.

### **DOH-CWB Standard Comments**

The following information is for agencies and/or project owners who are seeking comments regarding environmental compliance for their projects with the Hawaii Administrative Rules (HAR), Chapters 11-54 and 11-55. You may be responsible for fulfilling additional requirements related to our program.

1. Any project and its potential impacts to State waters must meet the following criteria:
  - a. Antidegradation policy (HAR, Section 11-54-1.1), which requires that the existing uses and the level of water quality necessary to protect the existing uses of the receiving State water be maintained and protected.
  - b. Designated uses (HAR, Section 11-54-3), as determined by the classification of the receiving State waters.
  - c. Water quality criteria (HAR, Sections 11-54-4 through 11-54-8).
2. You may be required to obtain National Pollutant Discharge Elimination System (NPDES) permit coverage for point source water pollutant discharges into State surface waters (HAR, Chapter 11-55). Point source means any discernible, confined, and discrete conveyance from which pollutants are or may be discharged.

For NPDES general permit coverage, a Notice of Intent (NOI) form must be submitted at least 30 calendar days before the commencement of the discharge. An application for a NPDES individual permit must be submitted at least 180 calendar days before the commencement of the discharge. To request NPDES permit coverage, you must submit the applicable form ("CWB Individual NPDES Form" or "CWB NOI Form") through the e-Permitting Portal and the hard copy certification statement with the respective filing fee (\$1,000 for an individual NPDES permit or \$500 for a Notice of General Permit Coverage). Please open the e-Permitting Portal website located at: <https://eha-cloud.doh.hawaii.gov/epermit/>. You will be asked to do a one-time registration to obtain your login and password. After you register, click on the Application Finder tool and locate the appropriate form. Follow the instructions to complete and submit the form.

Some of the activities requiring NPDES permit coverage include, but, are not limited to:

a. Discharges of Storm Water

- i. For Construction Activities Disturbing One (1) or More Acres of Total Land Area.

By HAR Chapter 11-55, an NPDES permit is required before the start of the construction activities that result in the disturbance of one (1) or more acres of total land area, including clearing, grading, and excavation. The total land area includes a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under a larger common plan of development or sale.

- ii. For Industrial Activities for facilities with primary Standard Industrial Classification (SIC) Codes regulated in the Code of Federal Regulations (CFR) at 40 CFR 122.26(b)(14)(i) through (ix) and (xi). If a facility has more than one SIC code, the activity that generates the greatest revenue is the primary SIC code. If revenue information is unavailable, use the SIC code for the activity with the most employees. If employee information is also unavailable, use the SIC code for the activity with the greatest production.
- iii. From a small Municipal Separate Storm Sewer System (along with certain non-storm water discharges).

b. Discharges to State surface waters from construction activity hydrotesting or dewatering

c. Discharges to State surface waters from cooling water applications

d. Discharges to State surface waters from the application of pesticides (including insecticides, herbicides, fungicides, rodenticides, and various other substances to control pest) to State waters

e. Well-Drilling Activities

Any discharge to State surface waters of treated process wastewater effluent associated with well drilling activities is regulated by HAR Chapter 11-55. Discharges of treated process wastewater effluent (including well drilling slurries,

lubricating fluids wastewater, and well purge wastewater) to State surface waters requires NPDES permit coverage.

NPDES permit coverage is not required for well pump testing. For well pump testing, the discharger shall take all measures necessary to prevent the discharge of pollutants from entering State waters. Such measures shall include, if necessary, containment of initial discharge until the discharge is essentially free of pollutants. If the discharge is entering a stream or river bed, best management practices (BMPs) shall be implemented to prevent the discharge from disturbing the clarity of the receiving water. If the discharge is entering a storm drain, the discharger must obtain written permission from the owner of the storm drain prior to discharge. Furthermore, BMPs shall be implemented to prevent the discharge from collecting sediments and other pollutants prior to entering the storm drain.

3. A Section 401 Water Quality Certification (WQC) is required if your project/activity:
  - a. Requires a federal permit, license, certificate, approval, registration, or statutory exemption; and
  - b. May result in a discharge into State waters. The term “discharge” is defined in Clean Water Act, Subsections 502(16), 502(12), and 502(6).

Examples of “discharge” include, but are not limited to, allowing the following pollutants to enter State waters from the surface or in-water: solid waste, rock/sand/dirt, heat, sewage, construction debris, any underwater work, chemicals, fugitive dust/spray paint, agricultural wastes, biological materials, industrial wastes, concrete/sealant/epoxy, and washing/cleaning effluent.

Determine if your project/activity requires a federal permit, license, certificate, approval, registration, or statutory exemption by contacting the appropriate federal agencies (e.g. Department of the Army (DA), U.S. Army Corps of Engineers (COE), Pacific Ocean Division Honolulu District Office (POH) Tel: (808) 835-4303; U.S. Environmental Protection Agency, Region 9 Tel: (415) 947-8021; Federal Energy Regulatory Commission Tel: (866) 208-3372; U.S. Coast Guard Office of Bridge Programs Tel: (202) 372-1511). If your project involves work in, over, or under waters of the United States, it is highly recommended that you contact the Army Corp of Engineers, Regulatory Branch regarding their permitting requirements.

To request a Section 401 WQC, you must complete and submit the Section 401 WQC application. This application is available on the e-Permitting Portal website located at: <https://eha-cloud.doh.hawaii.gov/epermit/>.

Please see HAR, Chapter 11-54 for the State's Water Quality Standards and for more information on the Section 401 WQC. HAR, Chapter 11-54 is available on the CWB website at: <http://health.hawaii.gov/cwb/>.

4. Please note that all discharges related to the project construction or operation activities, whether or not NPDES permit coverage and/or Section 401 WQC are required, must comply with the State's Water Quality Standards. Noncompliance with water quality requirements contained in HAR, Chapter 11-54, and/or permitting requirements, specified in HAR, Chapter 11-55, may be subject to penalties of \$25,000 per day per violation and up to two (2) years in jail.
5. It is the State's position that all projects must reduce, reuse, and recycle to protect, restore, and sustain water quality and beneficial uses of State waters. Project planning should:
  - a. Treat storm water as a resource to be protected by integrating it into project planning and permitting. Storm water has long been recognized as a source of irrigation that will not deplete potable water resources. What is often overlooked is that storm water recharges ground water supplies and feeds streams and estuaries; to ensure that these water cycles are not disrupted, storm water cannot be relegated as a waste product of impervious surfaces. Any project planning must recognize storm water as an asset that sustains and protects natural ecosystems and traditional beneficial uses of State waters, like community beautification, beach going, swimming, and fishing. The approaches necessary to do so, including low impact development methods or ecological bio-engineering of drainage ways must be identified in the planning stages to allow designers opportunity to include those approaches up front, prior to seeking zoning, construction, or building permits.
  - b. Clearly articulate the State's position on water quality and the beneficial uses of State waters. The plan should include statements regarding the implementation of methods to conserve natural resources (e.g. minimizing potable water for irrigation, gray water re-use options, energy conservation through smart design) and improve water quality.
  - c. Consider storm water Best Management Practice (BMP) approaches that minimize the use of potable water for irrigation through storm water storage and reuse, percolate storm water to recharge groundwater to revitalize natural hydrology, and treat storm water which is to be discharged.

- d. Consider the use of green building practices, such as pervious pavement and landscaping with native vegetation, to improve water quality by reducing excessive runoff and the need for excessive fertilization, respectively.
- e. Identify opportunities for retrofitting or bio-engineering existing storm water infrastructure to restore ecological function while maintaining, or even enhancing, hydraulic capacity. Consideration should be given to areas prone to flooding, or where the infrastructure is aged and will need to be rehabilitated.