

Department of Health  
State of Hawaii  
Notice of Public Hearing and Public Comment Period  
Triennial Review of Hawaii Water Quality Standards

Purpose of Public Notice

The purpose of this public notice is to schedule a public hearing and comment period to solicit public and other stakeholder comments on water quality standards revisions to be considered for the 2019 water quality standards triennial review.

Background

In order to meet its obligations under the Clean Water Act (“CWA”), the Department of Health (“DOH”) is required to review and consider all revisions to federal water quality standards and must review Hawaii’s Water Quality Standards contained in Hawaii Administrative Rules (“HAR”), Title 11, Chapter 54 (“11-54”), at least once every three years. As part of this review, DOH is soliciting input from the public and interested parties regarding standards topics and proposed changes to be considered during the review. Any amendments to HAR 11-54 following the review and public participation will be the subject of a future rules revision process.

Public Comments

Written public comments are invited during the 45-day period commencing on the date of this notice through the close of business at 4:30 p.m. on March 15, 2019. Written comments may be submitted to the DOH, Clean Water Branch (“CWB”) by email at: [cleanwaterbranch@doh.hawaii.gov](mailto:cleanwaterbranch@doh.hawaii.gov) or by mail to: Program Manager, Clean Water Branch, State of Hawaii, Department of Health, P.O. Box 3378, Honolulu, Hawaii, 96801-3378. Any recommendations for water quality standards revisions should include a rationale and any supporting information.

Comments and recommendations may also be submitted orally at the public hearing which will be held on Oahu at 10:00 a.m. on March 15, 2019 in the auditorium of the Department of Health, Laboratories Division, located at 2725 Waimano Home Road, Pearl City, Hawaii, 96782. Teleconference sites will also be open at 9:45 a.m. on March 15, 2019 at the following locations:

Kauai:	Kauai District Health Office, 3040 Umi Street, Lihue, 96766
Maui:	Lahaina Comprehensive Health Center, 1830 Honoapiilani Highway, Lahaina, 96761
Hawaii:	State Office Building, 75 Aupuni Street, Room 201, Hilo, 96720

Persons desiring to speak at the public hearing are asked to submit two (2) copies of a summary of their proposed statements in advance of the hearing to DOH at either the email or mailing address listed above.

Triennial Review Document

A copy of the Triennial Review can be obtained by contacting the CWB at (808) 586-4309 or by downloading it from the CWB website at <http://health.hawaii.gov/cwb/clean-water-branch->

[home-page/public-notice-and-updates/](#). A copy will also be available for public review Monday through Friday between 7:45 a.m. and 4:30 p.m. at:

Oahu: Clean Water Branch, 2827 Waimano Home Road, #225, Pearl City, 96782

Kauai: Kauai District Health Office, 3040 Umi Street, Lihue, 96766

Maui: Maui District Health Office, 54 South High Street, Wailuku, 96793

Hilo: Hawaii District Health Office, 1582 Kamehameha Avenue, Hilo, 96720

Kona: Hawaii District Health Office, 79-1015 Haukapila Street, Kealahou, 96750

INDIVIDUALS REQUIRING SPECIAL ASSISTANCE OR AUXILIARY AIDS OR SERVICES (e.g., sign language interpreter, computer-assisted note taking, wheel chair accessibility, or parking designated for the disabled) at the hearing, please contact Mr. Myron Honda of the CWB at least 72 hours prior to the hearing at 808-586-4309 so that arrangements can be made. For those persons who use at TTY/TDD, please call through 1-711 or 1-877-447-5991.

Bruce Anderson, Ph.D.  
Director of Health

## **Triennial Review of State Water Quality Standards**

The federal Clean Water Act (CWA) requires states to hold, at least once every three years, a public hearing for the purpose of reviewing applicable water quality standards (WQS), also known as a triennial review. The triennial review process allows for transparent involvement of the public and intergovernmental coordination with local, state, and federal entities.

Section 304(a) of the CWA requires EPA to develop and publish, and from time to time, revise criteria for protection of water quality and human health that accurately reflect the latest scientific knowledge. In some cases, the latest scientific information may lead to new or updated CWA section 304(a) criteria recommendations that are less stringent than the state's applicable water quality criteria. The water quality criteria developed under Section 304(a) are developed solely on data and scientific judgments on the relationship between pollutant concentration and environmental and human health effects; they do not reflect consideration of economic impacts or technological feasibility of meeting pollutant concentrations in ambient waters.

The CWA requires states to review and consider EPA's new or revised CWA section 304(a) criteria and consider adopting the new or revised criteria into state water quality standards. States are not required to adopt the new or updated criteria; however, if a state chooses not to adopt new or revised criteria for any parameter for which EPA has published new or revised criteria recommendations under CWA section 304(a), the state must explain their decision. States may adopt EPA's CWA section 304(a) criteria recommendations, modify EPA's CWA section 304(a) criteria recommendations, or establish criteria using other scientifically defensible methods. States are required to adopt criteria that protect applicable designated uses and that are based on sound scientific rationale.

During the triennial review, states must consider EPA's new or revised CWA 304(a) criteria. The triennial review is the process in which the state publicly proposes its course of action after reviewing the updated criteria. If a state chooses not to adopt EPA's new or revised CWA section 304(a) criteria, they must provide a justification for their decision to EPA and the public when reporting the results of their triennial review. The triennial review is also a process that allows public participation by receiving public comments on existing state water quality criteria.

The Hawaii Department of Health (DOH) has reviewed the latest EPA water quality standards regulatory revisions rule, published in the Federal Register (80 FR 51019) on August 21, 2015. Those regulations clarified the requirement for states to review any updated water quality criteria recommendations, since May 30, 2000. There are several topical areas in the revised water quality standards regulations where the DOH is now considering for commensurate changes to the Hawaii Administrative Rules, Title 11, Chapter 54 (HAR 11-54). The DOH is also considering adopting the updates to the federal water quality numeric criteria made since May 2000. The DOH intends to revise HAR 11-54 to reflect EPA's revised Human Health Criteria and will be evaluating EPA's revised recommended Aquatic Life Criteria, both of which include new or updated numeric criteria for chemical pollutants. All revisions to state WQS are subject to the public participation process and must be approved by the EPA.

The DOH proposes to amend the Water Quality Standards at HAR 11-54 as a result of its triennial review process. The DOH has evaluated the changes to the water quality standards

regulations published at Title 40, Code of Federal Regulations (40 CFR) Part 131 on August 21, 2015 and is considering incorporating the proposed changes into future revisions of HAR 11-54.

The updated EPA WQS regulations include a refined description of how states assign and revise designated uses for individual waterbodies; establish stronger antidegradation requirements; update regulatory structure for variances to water quality standards; and include clarification to provisions authorizing the use of schedules of compliance for Water Quality Based Effluent Limitations (WQBEL) in National Pollutant Discharge Elimination System (NPDES) permits. The State is also considering amending HAR 11-54 to authorize Use Attainability Analyses.

### **Designated Uses**

The CWA section 303(c)(2)(A) requires that new or revised WQS consist of designated uses and water quality criteria based on such uses. It also requires that such WQS protect the public health or welfare, enhance the quality of the water and serve the purposes of the CWA. The ultimate objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters with the national goal of water quality that provides for the protection and propagation of fish, shellfish, and wildlife, for recreation in and on the water, and protecting human health when consuming fish wherever attainable. These uses, identified in CWA section 101(a)(2), must be protected unless the state shows that those uses are unattainable through a use attainability analysis (UAA) consistent with EPA's regulation. The CWA 101(a)(2) uses are currently protected in HAR 11-54. If the State adopts a new or revised WQS based on a required UAA, the State must adopt the highest attainable use (HAU), as defined in 40 CFR 131.3(m). The State does not currently authorize UAAs in HAR 11-54 and this provision is under consideration in this triennial review (see below).

A UAA is not required to remove uses that are not specified under section 101(a)(2), i.e., any use unrelated to the protection and propagation of fish, shellfish, wildlife, or recreation in or on the water, such as public water supply, agriculture, industry, and navigation. Although a UAA is not required to remove such uses, the State must submit documentation consistent with section 303(c)(2)(A) to support any action to remove any non-101(a)(2) use. The State is considering including language consistent with section 303(c)(2)(A) or require a UAA to remove any use, regardless of whether or not it is a 101(a)(2) use.

States may remove a designated use which is not an existing use or establish sub-categories of a use if the state can demonstrate that attaining the designated use is not feasible due to any of the six conditions listed in 40 CFR 131.10(g); however, states must adopt the highest attainable use, as defined in 40 CFR 131.3(m), after demonstrating that the current use is not attainable. States may not remove designated uses under the conditions specified in 40 CFR 131.10 (h). Existing uses are defined as those uses that are actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards. A designated use is defined as a use specified in water quality standards for each water body or segment whether or not they are attained. Existing use is defined in HAR 11-54-1. Designated uses are specified in HAR 11-54-3.

### **Use Attainability Analysis**

In order to demonstrate that a designated CWA section 101(a)(2) use cannot be attained, EPA's regulation at 40 CFR part 131 requires a Use Attainability Analysis (UAA). A UAA is defined as a "structured scientific assessment of the use which may include physical, biological, and economic factors as described in 40 CFR 131.10(g)."

A UAA is required when removing or revising a use specified in section 101(a)(2) and when removing or revising a subcategory of such a use. A UAA is also required whenever the state designates uses for the first time that do not include 101(a)(2) uses.

The State is considering revising HAR 11-54 to add provisioning language to authorize and require the use of UAAs to demonstrate that an existing 101(a)(2) use or any designated use cannot be attained. Any provisions to allow UAAs will be consistent with 40 CFR 131.10(g). The State is also considering requiring a UAA to remove any use, regardless of whether or not it is a 101(a)(2) use.

### **Antidegradation**

HAR 11-54-1.1 contains an existing antidegradation policy that is consistent with EPA's final 1983 regulations. EPA revised the antidegradation regulation in 40 CFR 131.12 to enhance the protection of high quality waters to promote consistency in implementation. "High quality" waters are defined as those with water quality that is better than necessary to support the uses specified in CWA 101(a)(2). The rule requires the state to follow a more structured process when making decisions about preserving high water quality, which include identification of high quality waters, analysis of alternatives, and antidegradation implementation methods.

The State is considering developing antidegradation implementation methods that will be consistent with the revised regulations at 40 CFR 131.12. The antidegradation implementation methods may not be specifically incorporated into HAR 11-54, but may be developed as a stand-alone implementation document, which, when developed, will be subject to the public participation process.

### **Water Quality Standards Variances**

EPA recognizes that states can face substantial uncertainty as to what designated use may ultimately be attainable in their waters. Pollutants that impact such waters can result from large-scale land use changes, extreme weather events, or environmental stressors related to climate change that can hinder restoration and maintenance of water quality. In addition, pollutants can be persistent in the environment and, in some cases, lack economically feasible control options. A variance is a mechanism or provision which allows the modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA, including provisions which allow the establishment of alternative limitations based on factors specified in the CWA. WQS variances are customized, temporary water quality standards that must identify the highest attainable condition applicable throughout the variance term. The intent of this process is to develop an accountable framework that is transparent that allow states to work with stakeholders and to assure the public that water quality standards variances facilitate progress toward attaining designated uses.

The State is considering adding provisioning language to HAR 11-54 to allow the use of variances, which will be mostly consistent with the provisions specified in 40 CFR 131.14 and 40 CFR 131.10. At this time, the State does not intend to allow variances to be applied to a water body or waterbody segment, opting to allow WQS variances to a single permitted discharger or multiple permitted dischargers only. All variance requests must be submitted to and approved by EPA as temporary modifications to state water quality standards and are subjected to the public participation process. Once approved, variances will apply for the purposes of developing NPDES permit limits and requirements under CWA section 301(b)(1)(C), and for issuing certifications under CWA section 401. If a WQS variance is granted, any limitations and requirements necessary to implement the WQS variance will be included as enforceable conditions of the implementing NPDES permit. The pollutant(s) or water quality parameter(s), the water body/waterbody segment(s) to which the WQS variance applies, and the identity of the discharger(s) or the specific eligibility requirements will be specified. The term of the variance, interim requirements, and the reevaluation frequency for all variances with a term longer than five years will also be specified.

### **Schedules of Compliance**

A Schedule of Compliance is defined as a schedule of remedial measures included in an NPDES permit, including enforceable sequence of interim requirements such as actions, operations, or milestone events leading to compliance with the CWA and regulations. Schedules of Compliance are currently authorized in HAR 11-54 and no changes are proposed.

### **Revised Human Health Criteria**

As part of this triennial review, the State also reviewed EPA's final updated ambient water quality criteria for the protection of human health, published on June 29, 2015. In this update, EPA revised its recommended ambient water quality criteria for ninety-four chemical pollutants to reflect the latest scientific information. The State is proposing to adopt the 2015 EPA recommended criteria for the ninety-four chemical pollutants for the protection of human health as specified at: <https://www.epa.gov/wqc/2015-epa-updated-ambient-water-quality-criteria-protection-human-health>. The State proposes to revise HAR 11-54 to include EPA's updated numeric criteria as well as the addition of chemical pollutants that are not currently listed in HAR 11-54. In addition to the updated recommended criteria, the State is also considering revising the pollutant list in HAR 11-54 to be consistent with the chemical nomenclature referenced by EPA, where applicable, and to provide the Chemical Abstracts Services (CAS) numbers for the pollutants, where applicable.

In 2012, EPA revised its recommended recreational water quality criteria for the protection of human health. The revised criteria were adopted by the State in the 2014 revision to HAR 11-54 and no further changes are proposed.

### **Revised Aquatic Life Criteria**

The State is in the process of evaluating EPA's revised Aquatic Life Criteria for acrolein, ammonia (in freshwater), cadmium, carbaryl, copper, diazinon, nonylphenol, selenium (in freshwater), and tributyltin. EPA's updated aquatic life criteria can be found at: <https://www.epa.gov/wqc/national-recommended-water-quality-criteria-aquatic-life-criteria->

[table](#). The State will also evaluate the use of the Biotic Ligand Model for copper for the development of site-specific criteria.