

Department of Health

Rules Amending Title 11  
Hawaii Administrative Rules

(insert adoption date)

1. Chapter 55 of Title 11, Hawaii Administrative Rules, entitled "Water Pollution Control", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 55

WATER POLLUTION CONTROL

§11-55-01	Definitions
§11-55-02	General policy of water pollution control
§11-55-03	General prohibition
§11-55-04	Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion
§11-55-05	Receipt of federal information
§11-55-06	Transmission of information to regional administrator
§11-55-07	Identity of signatories to NPDES forms
§11-55-08	Formulation of tentative determinations and draft permit
§11-55-09	Public notice of applications
§11-55-10	Fact sheet
§11-55-11	Notice to other government agencies
§11-55-12	Public access to information
§11-55-13	Public hearings
§11-55-14	Public notice of public hearings
§11-55-15	Issuance of NPDES permits
§11-55-16	Modification or revocation and reissuance of NPDES permits

§11-55-01

§11-55-17 Termination of permits and denial of  
renewal

§11-55-18 Reporting discontinuance or dismantlement

§11-55-19 Application of effluent standards and  
limitations, water quality standards,  
and other requirements

§11-55-20 Effluent limitations in issued NPDES  
permits

§11-55-21 Schedule of compliance in issued NPDES  
permits

§11-55-22 Compliance schedule reports

§11-55-23 Other terms and conditions of issued  
NPDES permits

§11-55-24 National pretreatment standards and users  
of publicly owned treatment works

§11-55-25 Transmission to regional administrator of  
proposed NPDES permits

§11-55-26 Transmission to regional administrator of  
issued NPDES permits

§11-55-27 Renewal of NPDES permits

§11-55-28 Monitoring

§11-55-29 Recording of monitoring activities and  
results

§11-55-30 Reporting of monitoring results

§11-55-31 Sampling and testing methods

§11-55-32 Malfunction, maintenance, and repair of  
equipment

§11-55-33 Agency board membership

§11-55-34 General permit definitions

§11-55-34.01 General permit policy

§11-55-34.02 General permit authority and adoption

§11-55-34.03 General permit terms

§11-55-34.04 General permit conditions

§11-55-34.05 Requiring an individual permit

§11-55-34.06 Reserved

§11-55-34.07 Degree of waste treatment

§11-55-34.08 Notice of intent

§11-55-34.09 Notice of intent review, notice of  
general permit coverage, additional  
conditions, terms, renewals, effective  
dates, and automatic coverage

§11-55-34.10	Review of coverage issues and notice of intent and notice of general permit coverage decisions
§11-55-34.11	Notice of general permit coverage revocation and termination
§11-55-34.12	General permit compliance
§11-55-35	Penalties and remedies
§11-55-36	Hearings and appeals
§11-55-37	Severability clause
§11-55-38	Repealed
§11-55-39	Public interest
§11-55-40	Field Citations; non-compliance with NPDES requirements
§11-55-41	<u>Zones of mixing</u>
§11-55-42	<u>Intake credits</u>
Appendix A	Department of Health Standard General Permit Conditions
[Appendix B	NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities]
Appendix C	NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity
Appendix D	NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities
Appendix E	NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day
Appendix F	NPDES General Permit Authorizing Discharges of Hydrotesting Waters
Appendix G	NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering
Appendix H	NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals
Appendix I	NPDES General Permit Authorizing Discharges of Treated Process

§11-55-01

- Wastewater Associated with Well  
Drilling Activities
- Appendix J NPDES General Permit Authorizing  
Occasional or Unintentional Discharges  
from Recycled Water Systems
- [Appendix K NPDES General Permit Authorizing  
Discharges of Storm Water from Small  
Municipal Separate Storm Sewer  
Systems]
- Appendix L NPDES General Permit Authorizing  
Discharges of Circulation Water from  
Decorative Ponds or Tanks
- Appendix M NPDES General Permit Authorizing  
Point Source Discharges from the  
Application of Pesticides

Historical Note: Chapter 55 of Title 11 is based  
substantially on Public Health  
Regulations, Chapter 37, Water  
Pollution Control, Department of  
Health, State of Hawaii. [Eff  
5/25/74, am 1/20/75, 8/19/75, 1/31/81;  
R 11/27/81]

§11-55-01 Definitions

"13 CFR" means the Code of Federal Regulations,  
Title 13, Business Credit and Assistance, revised as of  
January 1, 2013 unless otherwise specified.

"40 CFR" means the Code of Federal Regulations,  
Title 40, Protection of Environment, revised as of  
July 1, 2018 unless otherwise specified.

"Act" means the Clean Water Act (formerly referred  
to as the Federal Water Pollution Control Act or  
Federal Water Pollution Control Act Amendments of 1972)  
Public Law 92-500, as amended by Public Law 95-217,  
Public Law 95-483 and Public Law 97-117, 33 U.S.C. 1251  
et. seq.

"Action threshold" means the point at which pest  
populations or environmental conditions necessitate  
that pest control action be taken based on economic,

human health, aesthetic, or other effects. An action threshold may be based on current and/or past environmental factors that are or have been demonstrated to be conducive to pest emergence and/or growth, as well as past and/or current pest presence. Action thresholds are those conditions that indicate both the need for control actions and the proper timing of such actions.

"Active ingredient" means any substance (or group of structurally similar substances if specified by the United States Environmental Protection Agency) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 2(a). (See 40 CFR 152.3). Active ingredient also means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance. (See 40 CFR 174.3).

"Administrator" means the Administrator of the U.S. Environmental Protection Agency or an authorized agent.

"Adverse incident" means an unusual or unexpected incident that an operator has observed upon inspection or of which the operator otherwise becomes aware, in which:

- (1) There is evidence that a person or non-target organism has likely been exposed to a pesticide residue; and
- (2) The person or non-target organism suffered a toxic or adverse effect.

The phrase "toxic or adverse effects" includes effects that occur within State waters on non-target plants, fish or wildlife that are unusual or unexpected (e.g., effects are to organisms not otherwise described on the pesticide product label or otherwise not expected to be present) as a result of exposure to a pesticide residue, and may include: distressed or dead juvenile and small fishes; washed up or floating fish; fish swimming abnormally or erratically; fish lying lethargically at water surface or in shallow water;

§11-55-01

fish that are listless or nonresponsive to disturbance; stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants; other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.). The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin rashes) or domesticated animals that occur either from direct contact with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or animals containing pesticides) to State waters that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

- (1) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
- (2) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Annual treatment area threshold" means the additive area (in acres) or linear distance (in miles) in a calendar year to which a decision-maker is authorizing and/or performing pesticide applications in that area for activities covered under Appendix M. For calculating annual treatment areas for mosquitoes and other flying insect pest control and forest canopy pest for comparing with any threshold in table 1 of Appendix M, count each pesticide application activity to a treatment area (i.e., that area where a pesticide application is intended to provide pesticidal benefits within the pest management area) as a separate area treated. For example, applying pesticides three times a year to the same three thousand acre site should be counted as nine thousand acres of treatment area for purposes of determining if such an application exceeds an annual treatment area threshold. Similarly, for calculating annual treatment areas for weed and algae

control and animal pest control for comparing with any threshold in table 1 of Appendix M, calculations should include either the linear extent of or the surface area of waters for each application made to State waters or at water's edge adjacent to State waters. For calculating the annual treatment area, count each treatment area as a separate area treated. Also, for linear features (e.g., a canal or ditch), count the length of the linear feature each time an application is made to that feature during the calendar year, including counting separately applications made to each bank of the water feature if pesticides are applied to both banks. For example, applications four times a year to both banks of a three-mile long reach of stream will count as a total of twenty four linear miles (three miles \* two banks \* four applications per year = twenty four miles to which pesticides are applied in a calendar year).

"Applicable effluent standards and limitations" means all state and federal effluent standards and limitations to which a discharge is subject under the Act; chapter 342D, HRS; and rules of the department including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

"Applicable water quality standards" means all water quality standards to which a discharge is subject under the Act; chapter 342D, HRS; rules of the department; and which have been:

- (1) Approved or permitted to remain in effect by the Administrator under Section 303(a) or Section 303(c) of the Act, 33 U.S.C. §1313(a) or §1313(c); or
- (2) Promulgated by the Administrator under Section 303(b) of the Act, 33 U.S.C. §1313(b).

"Applicator" means any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities) that results in a discharge to State waters.

"Best management practices" or "BMPs" means schedules of activities, prohibitions or designations of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of State waters. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Biological control agents" are organisms that can be introduced to your sites, such as herbivores, predators, parasites, and hyperparasites. (Source: US Fish and Wildlife Service (FWS) Integrated Pest Management (IPM) Guidance, 2004)

"Biological pesticides" (also called biopesticides) include microbial pesticides, biochemical pesticides and plant-incorporated protectants (PIP). "Microbial pesticide" means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or dessicant, that:

- (1) is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi;
- (2) is a procaryotic microorganism, including, but not limited to, eubacteria and archaebacteria; or
- (3) is a parasitically replicating microscopic element, including but not limited to, viruses. (See 40 CFR 158.2100(b)).

"Biochemical pesticide" means a pesticide that is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and has a non-toxic mode of action to the target pest(s). (See 40 CFR 158.2000(a)(1)).

"Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a



pesticidal substance. It also includes any inert ingredient contained in the plant, or produce thereof. (See 40 CFR 174.3).

"Bypass" means the same thing as defined in 40 CFR §122.41(m).

"Chemical Pesticides" means all pesticides not otherwise classified as biological pesticides.

"Concentrated animal feeding operation" or "CAFO" means an animal feeding operation that is defined as a large CAFO or as a medium CAFO under 40 CFR §122.23(b)(4) or (6), or that is designated as an AFO in accordance with 40 CFR §122.23(c). Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

"Continuous discharge" means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shut-downs for maintenance, process changes, or other similar activities.

"Cooling water" means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage of a facility's intake flow that is used for cooling purposes in 40 CFR §125.81(c).

"Cooling water intake structure" means the total physical structure and any associated constructed waterways used to withdraw cooling water from State waters. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, the intake pumps.

§11-55-01

"Cultural methods" means manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.

"Decision-maker" means any entity with control over the decision to perform pesticide applications including the ability to modify those decisions that result in a discharge to State waters.

"Decision-maker who is or will be required to submit an NOI" means any decision-maker covered under Appendix M who knows or should have known that an NOI will be required for those discharges beginning 60 calendar days from when section 11-55-34.02(b)(12) becomes effective ten days after filing with the office of the lieutenant governor. Excluded from this definition are those activities for which an NOI is required based solely on that decision-maker exceeding an annual treatment area threshold.

"Declared pest emergency situation" means the same thing as defined in section 11-54-4(f)(1).

"Department" means the state department of health.

"Director" means the director of the department or an authorized agent.

"Discharge" when used without qualification, means the "discharge of a pollutant". (See 40 CFR 122.2).

"Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to State waters from any point source, or any addition of any pollutant or combination of pollutants to the water of the contiguous zone or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation. This includes additions of pollutants into State waters from: surface runoff that is collected or channeled by man; or discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. (Excerpted from 40 CFR 122.2).

"Draft permit" means a document prepared under 40 CFR §124.6 indicating the director's tentative decision to issue or modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit as discussed in 40 CFR §124.5(d) and defined in 40 CFR §124.2, and a notice of intent to

deny a permit as defined in 40 CFR §124.2 are types of "draft permit." A denial of a request for modification, revocation and reissuance, or termination, as discussed in 40 CFR §124.5(b), is not a "draft permit."

"Effluent" means any substance discharged into State waters or publicly owned treatment works or sewerage systems, including but not limited to, sewage, waste, garbage, feculent matter, offal, filth, refuse, any animal, mineral, or vegetable matter or substance, and any liquid, gaseous, or solid substances.

"EPA" means the U.S. Environmental Protection Agency.

"EPA approved or established total maximum daily loads (TMDLs)" (EPA Approved TMDLs) means those that are developed by a state and approved by EPA.

"EPA established TMDLs" are those that are issued by EPA.

"Facility" or "activity" means any NPDES "point source" or any facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

"Federal facility" means any buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned, operated, or leased by, or constructed or manufactured for the purpose of leasing to, the federal government.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.

"General permit" means an NPDES permit issued as a rule or document that authorizes a category of discharges into State waters from a category of sources within a geographical area.

"HRS" means the Hawaii Revised Statutes.

"Hawaiian fishponds" means the same thing as defined in section 183B-1, HRS.

"Impaired water" (or "water quality impaired water" or "water quality limited segment") means waters that have been identified by the state pursuant to Section 303(d) of the Clean Water Act as not meeting applicable state water quality standards (these waters

§11-55-01

are called "water quality limited segments" under 40 CFR 130.2(j)). Impaired waters include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.

"Indirect discharge" means the introduction of pollutants into a publicly owned treatment works from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act.

"Individual permit" means an NPDES permit, other than a general permit, issued under this chapter to a specified person to conduct a discharge at a specified location.

"Industrial user" means a source of indirect discharge.

"Inert ingredient" means any substance (or group of structurally similar substances if designated by the EPA), other than an active ingredient, that is intentionally included in a pesticide product, (see 40 CFR 152.3). Inert ingredient also means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that the genetic material is intentionally introduced into a living plant in addition to the active ingredient (see 40 CFR 174.3).

"Large Entity" means any entity that is not a "small entity".

"Large municipal separate storm sewer system" means the same thing as defined in 40 CFR §122.26(b)(4).

"Major facility" means any NPDES facility or activity classified by the regional administrator in conjunction with the director.

"Mechanical/physical methods" means mechanical tools or physical alterations of the environment for pest prevention or removal.

"Medical waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes and potentially contaminated laboratory

wastes, dialysis wastes, and additional medical items as the Administrator shall prescribe by regulation.

"Medium municipal separate storm sewer system" means the same thing as defined in 40 CFR §122.26(b)(7).

"Minimize" means to reduce and/or eliminate pollutant discharges to State waters through the use of pest management measures to the extent technologically available and economically practicable and achievable.

"Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains as defined in 40 CFR §122.26(b)(8)).

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems under 40 CFR §122.26(b)(4), (b)(7), and (b)(16) or that the director designates consistently with 40 CFR §122.26(a)(1)(v). A "municipal separate storm sewer system" is also known as a "municipal separate storm water drainage system."

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318, and 405 of the Act.

"New discharger" means any building, structure, facility, activity, or installation:

- (1) From which there is or may be a discharge of pollutants;
- (2) That did not begin the discharge of pollutants at a particular site before August 13, 1979;
- (3) Which is not a new source; and
- (4) Which has never received a finally effective NPDES permit for discharges at the site.

"New source" means any building, structure, facility, activity, or installation from which there is or may be a "discharge of pollutants," the construction of which began:

§11-55-01

- (1) After the adoption, by the director, of rules prescribing a standard of performance which will be applicable to the source; or
- (2) After the publication by the Administrator of regulations prescribing a standard of performance which will be applicable to the source, if the standard is thereafter promulgated by the administrator, whichever occurs first.

"No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, or runoff or any combination of the above. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

"Non-target Organisms" includes the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

"Notice of cessation" or "NOC" means a form used to notify the director, within a specified time, that a discharge or activity, or phase of discharge or activity has ceased. Submission of this form means that the permittee is no longer authorized to discharge from the facility or project under the NPDES program.

"Notice of general permit coverage" or "NGPC" means a notice to the owner/operator by the department that they are authorized to discharge and are covered under and must comply with the general permit.

"Notice of intent" or "NOI" means a form used to notify the director, within a specified time, that a person seeks coverage under a general permit.

"NPDES form" means any form provided by the Administrator or director for use in obtaining or

complying with the individual permit, notice of general permit coverage, or conditional "no exposure" exclusion. These forms include the NPDES permit applications, notice of intent forms, "no exposure" certification form, NPDES discharge monitoring report form, notice of cessation form, and other forms as specified by the director.

"NPDES permit" means an authorization, license, or equivalent control document issued by the EPA or the director to implement the requirements of 40 CFR Parts 122, 123, and 124. NPDES permit includes an NPDES general permit according to 40 CFR §122.28 and a notice of general permit coverage or NGPC, as the context requires. NPDES permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit.

"NPDES permit application" means a form used to apply for an individual permit.

"Once-through cooling water system" means a system designed to withdraw water from a natural or other water source, use it at the facility to support contact or noncontact or both cooling uses, and then discharge it to a waterbody without recirculation. Once-through cooling systems sometimes employ canals, channels, ponds, or nonrecirculating cooling towers to dissipate waste heat from the water before it is discharged.

"Operator" for the purpose of Appendix M, means any entity associated with the application of pesticides which results in a discharge to State waters that meets either of the following two criteria:

- (1) Any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities; or
- (2) Any entity with control over the decision to perform pesticide applications including the ability to modify those decisions.

"Owner" or "operator" means the person who owns or operates any "facility" or "activity" subject to regulation under the NPDES program.

"Person" means the same thing as defined in section 342D-1, HRS.

§11-55-01

"Permittee" means the person to whom the individual permit or notice of general permit coverage is issued or the person who obtains automatic general permit coverage under section 11-55-34.09(e) (2).

"Pest" means the same thing as defined in section 11-54-4(f) (1).

"Pest management area" means the area of land, including any water, for which an operator has responsibility and is authorized to conduct pest management activities as covered by Appendix M (e.g., for an operator who is a mosquito control district, the pest management area is the total area of the district).

"Pest management measure" means any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to State waters.

"Pesticide" means the same thing as defined in section 11-54-4(f) (1).

"Pesticide product" means a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

"Pesticide residue" includes that portion of a pesticide application that is discharged from a point source to State waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

"Point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated



agriculture or agricultural storm water runoff, except return flows from agriculture irrigated with reclaimed water. (See 40 CFR §122.2).

"Publicly owned treatment works" or "POTW" means any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

"R-1 water" means recycled water that has been oxidized, filtered, and disinfected to meet the corresponding standards set in chapter 11-62.

"Recycled water" or "reclaimed water" means treated wastewater that by design is intended or used for a beneficial purpose.

"Regional Administrator" means the regional administrator of the U.S. Environmental Protection Agency Region 9 or an authorized agent.

"Representative storm" means a rainfall that accumulates more than 0.1 inch of rain and occurs at least seventy-two hours after the previous measurable (greater than 0.1 inch) rainfall event.

"Sewage sludge" means the same thing as defined in section 342D-1, HRS.

"Silvicultural point source" means the same thing as defined in 40 CFR §122.27.

"Site" means the land or water area where any "facility" or "activity" is physically located or conducted, including adjacent land used in connection with the "facility" or "activity."

"Small entity" means any:

- (1) private enterprise that does not exceed the Small Business Administration size standard as identified at 13 CFR 121.201, or
- (2) local government that serves a population of 10,000 or less.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are:

- (1) Owned or operated by the United States, a state, city, town, borough, county, parish,

district, association, or other public body (created by or under state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Act that discharges to State waters;

- (2) Not defined as "large" or "medium" municipal separate storm sewer systems under 40 CFR §122.2(b)(4) and (b)(7), or designated under section 11-55-04(a)(4) or 11-55-34.08(k)(2) or 40 CFR §122.26(a)(1)(v); and
- (3) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Standard of performance" means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the director determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants; provided that the standard shall not be less stringent than required under Section 306 of the Act, 33 U.S.C. §1316.

"State waters" means the same thing as defined in section 11-54-1.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the same thing as defined in 40 CFR §122.26(b)(14).

"Target pest" means the organism(s) toward which pest management measures are being directed.

"Total maximum daily loads (TMDLs)" is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges; load allocations (LAs) for nonpoint sources and/or natural background, and must include a margin of safety (MOS) and account for seasonal variations. (See section 303(d) of the Clean Water Act and 40 CFR 130.2 and 130.7).

"Treatment area" means the entire area, whether over land or water, where a pesticide application is intended to provide pesticidal benefits within the pest management area. In some instances, the treatment area will be larger than the area where pesticides are actually applied. For example, the treatment area for a stationary drip treatment into a canal includes the entire width and length of the canal over which the pesticide is intended to control weeds. Similarly, the treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

"Treatment works" means the plant or other facility and the various devices used in the treatment of wastes including the necessary intercepting sewers, outfall sewers or outlets, pumping, power, and other equipment.

"Treatment works treating domestic sewage" or "TWTDS" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

"Upset" means the same thing as defined in 40 CFR §122.41(n).

§11-55-01

"Waste" means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive substance, whether treated or not, which may pollute or tend to pollute State waters.

"Water pollution" means the same thing as defined in section 342D-1, HRS.

"Water quality impaired" see "Impaired Water".

"Wetlands" means the same thing as defined in section 11-54-1.

The definitions of the following terms contained in Section 502 of the Act, 33 U.S.C. §1362, shall be applicable to the terms as used in this part unless the context otherwise requires: "biological monitoring," "contiguous zone," "discharge," "discharge of a pollutant," "effluent limitations," "municipality," "navigable waters," "ocean," "pollutant," "schedule of compliance," "territorial seas," and "toxic pollutant." [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp 2/9/19; and comp ]

(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 183B-1, 342D-1, 342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subpart A and D; Part 125; §122.2)

- §11-55-02 General policy of water pollution control.
- (a) It is the public policy of this State:
- (1) To conserve State waters;
  - (2) To protect, maintain, and improve the quality of State waters:
    - (A) For drinking water supply, and food processing;
    - (B) For the growth, support, and propagation of shellfish, fish, and other desirable species of marine and aquatic life;
    - (C) For oceanographic research;
    - (D) For the conservation of coral reefs and wilderness areas; and
    - (E) For domestic, agricultural, industrial, and other legitimate uses;
  - (3) To provide that no waste be discharged into any State waters without first being given the degree of treatment necessary to protect the legitimate beneficial uses of the waters;
  - (4) To provide for the prevention, abatement, and control of new and existing water pollution; and
  - (5) To cooperate with the federal government in carrying out the objectives listed in paragraphs (1) through (4).
- (b) Any industrial, public, or private project or development which could be considered a new source of pollution or an increased source of pollution shall, in its initial project design and subsequent construction, provide the highest and best degree of waste treatment practicable under existing technology.
- (c) Permits issued under this chapter, and the related applications, processing, issuance, and post-issuance procedures and requirements, shall be at least as stringent as those required by 40 CFR §123.25(a).

§11-55-03

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1251, 1288, 1311, 1312, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.25(a))

§11-55-03 General prohibition. No person shall violate any provision of section 342D-50, HRS, or any NPDES permit issued under this chapter. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5, 603-23; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50, 603-23; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-04 Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion. (a) Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, or substantially altering the quality of any discharges, or substantially increasing the quantity of any discharges, or for regulated small municipal separate storm sewer systems, unless the director waives NPDES permit coverage in accordance with 40 CFR §122.32(d) or (e), a person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in

40 CFR §122.21(j)(5)), submit a complete notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M) or, for certain storm water discharges, meet all requirements for a conditional "no exposure" exclusion. Submittal of a notice of intent for coverage under a general permit shall comply with and be regulated by sections 11-55-34.08 through 11-55-34.10. Conditional "no exposure" exclusions shall comply with and be regulated by subsection (e). An NPDES permit application shall be submitted:

- (1) At least one hundred eighty days before the discharge or construction begins or, for renewals, at least [one hundred eighty] three hundred sixty days before the expiration date of the existing permit. The director may waive this [one hundred eighty] three hundred sixty day requirement by issuing the permit with an effective date before the [one hundred eighty] three hundred sixty days expire;
- (2) In sufficient time prior to the beginning of the discharge of pollutants to ensure compliance with the requirements of new source performance standards under Section 306 of the Act, 33 U.S.C. §1316, or with any applicable zoning or site requirements established under Section 208(b)(2)(C) of the Act, 33 U.S.C. §1288(b)(2)(C), and any other applicable water quality standards and applicable effluent standards and limitations;
- (3) For any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill;
- (4) For any discharge from an existing regulated small municipal separate storm sewer system

which is not qualified to obtain coverage under the general permit. The permit application shall be made under 40 CFR §122.33 if the small municipal separate storm sewer system is designated under 40 CFR §122.32(a)(1). A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas shall submit an NPDES permit application if the department determines that the system's storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The department shall evaluate the small municipal separate storm sewer system with the following elements, at a minimum: discharge to sensitive waters, high growth or growth potential, high population density, contiguity to an urbanized area, significant contributor of pollutants to State waters, and ineffective protection of water quality by other programs. The NPDES permit application shall be submitted within one hundred eighty days of notice from the department;

- (5) For any discharge from a regulated concentrated animal feeding operation. The



permit application shall be made under 40 CFR §122.21;

- (6) (Reserved); or
- (7) At least one hundred eighty days before the construction activity as identified in 40 CFR §122.26 (b) (14) (x) or small construction activity as defined in 40 CFR §122.26(b) (15) (i) begins and is not qualified to obtain coverage under the general permit.

(b) Application for an individual permit shall be made by the owner or operator on an NPDES permit application provided by the director. The NPDES permit application shall be submitted with complete data, site information, plan description, specifications, drawings, and other detailed information. The information submitted shall comply with 40 CFR §§122.21(f) through (l) and (r) to determine in what manner the new or existing treatment works or wastes outlet, including a facility described in 40 CFR §§122.23, 122.24, 122.25, 122.26, or 122.27, will be constructed or modified, operated, and controlled. When a facility or activity is owned by one person, but is operated by another person, it is the operator's duty to obtain a permit on behalf of the owner. The operator shall provide written evidence that the owner authorizes the operator to apply on behalf of the owner and that the owner agrees to comply with all permit conditions. Only one permit is required for a single facility or activity.

(c) The director may require the submission of additional information after an NPDES permit application has been submitted, and shall ensure that, if an NPDES permit application is incomplete or otherwise deficient, processing of the application shall not be completed until the owner or its duly authorized representative has supplied the missing information or otherwise corrected the deficiency.

(d) Every owner or operator applying for an individual permit or renewal of an individual permit shall pay a filing fee of \$1,000. This filing fee shall be submitted with the NPDES permit application

§11-55-04

and shall not be refunded nor applied to any subsequent NPDES permit application following final action of denial of the NPDES permit application.

- (1) When an NPDES permit application is submitted for an individual permit for a substantial alteration or addition to a treatment works or waste outlet and where an individual permit had previously been granted for the treatment works or waste outlet, the owner or operator shall pay a \$1,000 filing fee which shall be submitted with the NPDES permit application;
- (2) A new owner of a discharge facility covered by an individual permit shall submit a new NPDES permit application for a new individual permit unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The owner or operator shall pay a \$500 filing fee which shall be submitted with the NPDES permit application or notice of automatic transfer that meets 40 CFR §122.61(b);
- (3) An NPDES individual permittee shall submit a new NPDES permit application for the transfer of discharge from one permanent location to another permanent location. The owner or operator shall pay the \$1,000 filing fee which shall be submitted with the NPDES permit application;
- (4) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.
- (e) Discharges composed entirely of storm water are not storm water discharges associated with industrial activity, and do not require an individual permit or general permit coverage, if there is "no exposure" of industrial materials and activities to rain, snow, snowmelt or runoff or any combination of the above, and the owner or operator of the discharge:

- (1) Meets the conditions of 40 CFR §§122.26(g) (1) through 122.26(g) (4), except 40 CFR §122.26(g) (1) (iii);
- (2) Submits a properly completed and signed "no exposure" certification on a form provided by the director;
- (3) Submits a properly completed and signed "no exposure" certification form at least once every five years, or earlier if specified by the director or upon the change of ownership, operator, or location; and
- (4) Provides any additional information requested by the director after a "no exposure" certification has been submitted.

The conditional "no exposure" exclusion is effective upon receipt by the department of the certification, assuming all other conditions are met, and the director may specify the term of a conditional "no exposure" exclusion, or any renewal, for any period not to exceed five years. There is no filing fee for submittal of a "no exposure" certification.

(f) (Reserved)

(g) Industrial activities, except construction activities under 40 CFR §122.26(b) (14) (x) and 40 CFR §122.26(b) (15), which provide calculations and certify that they do not discharge storm water to State waters are not required to obtain an individual permit or general permit coverage.

(h) (Reserved) [Eff 11/27/81; am and comp 10/29/92; am 09/23/96; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; am and comp 6/25/09; am and comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp 2/9/19; am and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1288(b) (2) (C), 1316, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21, 122.23, 122.24, 122.25, 122.26, 122.27, 122.61, 123.25(a), 124.3)

§11-55-06

§11-55-05 Receipt of federal information. The director shall receive any relevant information collected by the regional administrator prior to participation in the NPDES in a manner as the director and the regional administrator shall agree. Any agreement between the director and the regional administrator shall provide for at least the following:

- (1) Prompt transmittal to the director from the regional administrator of copies of any NPDES permit applications, or other relevant information collected by the regional administrator prior to the state or interstate agency's participation in the NPDES; and
- (2) A procedure to ensure that the director will not issue an individual permit on the basis of any NPDES permit application received from the regional administrator which the regional administrator has identified as incomplete or otherwise deficient until the director has received information sufficient to correct the deficiency to the satisfaction of the regional administrator. [Eff 11/27/81; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/25/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.42)

§11-55-06 Transmission of information to regional administrator. The director shall transmit to the regional administrator copies of NPDES forms received by the State in a manner as the director and regional

administrator shall agree. Any agreement between the State and the regional administrator shall provide for at least the following:

- (1) Prompt transmittal to the regional administrator of a complete copy of any NPDES form received by the State;
- (2) Procedures for the transmittal to the national data bank of a complete copy, or relevant portions thereof, of any appropriate NPDES forms received by the State;
- (3) Procedures for acting on the regional administrator's written waiver, if any, of the regional administrator's rights to receive copies of NPDES forms with respect to classes, types, and sizes within any category of point sources and with respect to minor discharges or discharges to particular State waters or parts thereof subject to the limits in 40 CFR §123.24(d);
- (4) An opportunity for the regional administrator to object in writing to deficiencies in any NPDES permit application or reporting form received by the regional administrator and to have the deficiency corrected. If the regional administrator's objection relates to an NPDES permit application, the director shall send the regional administrator any information necessary to correct the deficiency and shall, if the regional administrator so requests, not issue the individual permit until the department receives notice from the regional administrator that the deficiency has been corrected;
- (5) Procedures for the transmittal, if requested by the regional administrator, of copies of any notice received by the director from publicly owned treatment works under section 11-55-23(7) and 11-55-23(8); and
- (6) Variance applications shall be processed in accordance with the procedures set forth in

§11-55-07

section 342D-7, HRS, and 40 CFR §§122.21(m) through (o), 124.62, and 403.13. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; **comp 2/9/19; and comp** ] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21(m), 122.21(n), 122.21(o), 123.25(a), 123.43, 123.44, 124.62, 403.13)

§11-55-07 Identity of signatories to NPDES forms.

(a) Any NPDES form and its certification, as stated in 40 CFR §122.22(d), submitted to the director shall be signed as follows:

- (1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
  - (A) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or
  - (B) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures

to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

- (2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or
- (3) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:
  - (A) The chief executive officer of the agency, or
  - (B) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrators of EPA);
- (4) For a trust. By a trustee; or
- (5) For a limited liability company (LLC). By a manager or a member authorized to make management decisions for the LLC and who is in charge of a principal business function, or who performs similar policy- or decision-making functions for the LLC.

(b) All other reports or information required to complete the application or information to comply with the conditions of the individual permit or notice of general permit coverage or responses to requests for information required by the director shall be signed by a person designated in subsection (a) or by a duly authorized representative of that person. A person is a duly authorized representative only if:

§11-55-08

- (1) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company, (A duly authorized representative may thus be either a named individual or any individual occupying a named position.);
- (2) The authorization is made in writing by a person designated under subsection (a); and
- (3) The written authorization is submitted to the director.

(c) If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.22, 123.25(a))

§11-55-08 Formulation of tentative determinations and draft permit. (a) The director shall formulate and prepare tentative staff determinations with respect to an NPDES permit application in advance of public notice of the proposed issuance or denial of an



individual permit. Tentative determinations shall include at least the following:

- (1) A proposed determination, including those contained in 40 CFR §122.44(m) if applicable, to issue or deny an individual permit for the discharge described in the NPDES permit application; and
- (2) If the determination is to issue the individual permit, the following additional tentative determinations:
  - (A) Proposed effluent limitations, identified under sections 11-55-19 and 11-55-20 for those pollutants proposed to be limited;
  - (B) A proposed schedule of compliance, if required, including interim dates and requirements, for meeting the proposed effluent limitations, identified under sections 11-55-21 and 11-55-22;
  - (C) Monitoring requirements identified under sections 11-55-28, 11-55-29, and 11-55-30; and
  - (D) A brief description of any other proposed special conditions (other than those required in section 11-55-23) which will have a significant impact upon the discharge described in the NPDES permit application.

(b) If a tentative determination is to issue an individual permit, the director shall organize the tentative determination under subsection (a) into a draft permit.

(c) The director shall prepare draft permits when required by 40 CFR §124.5(c) or (d). [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp ]

(Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts

§11-55-09

122; 123; 124, Subparts A and D; 125; §§122.44(m),  
123.25(a), 124.5, 124.6)

§11-55-09 Public notice of applications. (a)  
The director shall notify the public of every complete application for an individual permit in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue an individual permit for the proposed discharge. Public notification of an application for a variance from an individual permit, under Section 316(a) of the Act, 33 U.S.C. §1326(a), and section 342D-7, HRS, shall also comply with the requirements contained in 40 CFR §124.57(a). Public notice procedures shall include at least the following:

- (1) [Notice shall be circulated within the geographical areas of the proposed discharge; circulation includes any or all of the following:
  - (A) Posting in the post office and public places of the municipality nearest the premises of the owner or operator in which the effluent source is located;
  - (B) Posting near the entrance to the owner's or operator's premises and in nearby places; or
  - (C) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation.] Notice shall comply with section 1-28.5, HRS.
- (2) Notice shall be mailed or emailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v); and
- (3) The director shall add the name of any person, including those specified in 40 CFR §§124.10(c)(1)(ix) and (x), or group upon request to a mailing list to receive copies of notices for all NPDES permit

applications within the State or within a certain geographical area.

(b) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the NPDES permit application. All written comments submitted during the thirty-day comment period shall be retained by the director and considered in the formulation of the director's final determination with respect to the NPDES permit application. The director shall respond to comments, at a minimum, when and as required by

40 CFR §§124.17(a) and (c). The comment period may be extended at the discretion of the director.

(c) The public notice shall include at least the following:

- (1) Name and address of the agency issuing the public notice;
- (2) Name and address of each owner or operator or both and the name and address of the facility or activity;
- (3) A brief description of the activities or operations which result in the discharge described in the NPDES permit application;
- (4) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;
- (5) A statement of the tentative determination to issue or deny an individual permit for the discharge described in the NPDES permit application;
- (6) A brief description of the procedures for the formulation of final determinations, including the procedures for public comment, requesting a public hearing, and any other means of public participation offered;
- (7) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:

§11-55-09

- (A) Obtain further information;
  - (B) Request a copy of the draft permit prepared under section 11-55-08(b);
  - (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
  - (D) Inspect and copy NPDES forms and related documents; and
- (8) Requirements applicable to cooling water intake structures under section 316(b) of the Act, in accordance with Part 125, Subparts I and J.

(d) All publication and mailing costs associated with the public notification of the director's tentative determinations with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and am and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1326(a), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.13, 124.17, 124.57)

§11-55-10 Fact sheet. (a) The director shall prepare a fact sheet for every draft permit for a major facility or activity, for every class I sludge management facility, for every draft permit that incorporates a variance or requires an explanation under 40 CFR §124.56(b), and for every draft permit

which the director finds is the subject of widespread public interest or raises major issues. The director shall send the fact sheet to the owner or operator, its authorized representative, and, upon request, to any other person.

(b) Fact sheets shall include at least the following information:

- (1) A sketch or detailed description of the location of the discharge described in the NPDES permit application; a brief description of the type of facility or activity which is the subject of the draft permit;
- (2) A quantitative description of the discharge described in the NPDES permit application which includes at least the following:
  - (A) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day or cubic feet per second;
  - (B) For thermal discharges subject to limitation under the Act, the average summer and winter temperatures in degrees Fahrenheit or Celsius; and
  - (C) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under Sections 301, 302, 306, or 307 of the Act, 33 U.S.C. §§1311, 1312, 1316 or 1317, and regulations published under those sections;
- (3) The tentative determinations required under section 11-55-08;
- (4) A brief citation, including a brief identification of the uses for which the receiving State waters have been classified, of the water quality standards, and effluent standards and limitations applied to the proposed discharge;

§11-55-10

- (5) A more detailed description of the procedures for the formulation of final determinations than that given in the public notice including:
  - (A) The thirty-day comment period required by section 11-55-09(b);
  - (B) Procedures for requesting a public hearing and the nature thereof; and
  - (C) Any other procedures by which the public may participate in the formulation of the final determinations;
- (6) The name and telephone number of a person to contact for additional information; and
- (7) The information required by 40 CFR §§124.8(b)(5), 124.56(a), 124.56(b), 124.56(c), 124.56(e), and Part 125, subpart M.

(c) The director shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; **comp 2/9/19; and comp** ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1311, 1312, 1316, 1317, 1342, 1370, 1252-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 501; §§123.25(a), 124.8, 124.56, 501.15(d)(4))

§11-55-11 Notice to other government agencies.

(a) The director shall notify other appropriate government agencies of each complete NPDES permit application for an individual permit and shall provide the agencies an opportunity to submit their written views and recommendations.

(b) When notifying the public under section 11-55-09, a fact sheet shall be transmitted to the appropriate District Engineer of the Army Corps of

Engineers of NPDES permit applications for discharges into State waters.

(c) The director and the District Engineer for each Corps of Engineers district within the State or interested area may arrange for:

- (1) Waiver by the District Engineer of the District Engineer's right to receive fact sheets with respect to classes, types, and sizes within any category of point sources and with respect to discharges to particular State waters or parts thereof; and
- (2) Any procedures for the transmission of forms, period for comment by the District Engineer (e.g., thirty days), and for objections of the District Engineer.

(d) A copy of any written agreement between the director and the District Engineer shall be forwarded to the regional administrator and shall be made available to the public for inspection and copying.

(e) The director shall mail copies of public notice (or, upon specific request, copies of fact sheets) of applications for individual permits to any federal, state, or local agency, upon request, and shall provide the agencies an opportunity to respond, comment, or request a public hearing. The notice and opportunity shall extend to at least the following:

- (1) The agency responsible for the preparation of an approved plan under Section 208(b) of the Act, 33 U.S.C. §1288(b); and
- (2) The state agency responsible for the preparation of a plan under an approved continuous planning process under Section 303(e) of the Act, 33 U.S.C. §1313(e), unless the agency is under the supervision of the director.

(f) The director shall notify and coordinate with appropriate public health agencies for the purpose of assisting the owner or its duly authorized representative in coordinating the applicable requirements of the Act with any applicable requirements of the public health agencies. [Eff

§11-55-12

11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; **comp 2/9/19; and comp** ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1288(b), 1313(e), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

§11-55-12 Public access to information. (a) In accordance with chapter 2-71, the director shall ensure that any NPDES forms (including the draft permit prepared under section 11-55-08(b)), any public comment upon those forms under section 11-55-09(b), or information required, kept, or submitted under section 11-55-24 shall be available to the public for inspection and copying during established office hours. The director, at the director's discretion, may also make available to the public any other records, reports, plans, or information obtained by the state agency under its participation in NPDES.

(b) The director shall protect any information (other than effluent data) as confidential upon a request and showing by any person at the time of submission that the information, if made public, would divulge methods or processes entitled to protection as trade secrets of a person. Any information obtained from a state and subject to a claim of confidentiality shall be treated in accordance with the regulations in 40 CFR Part 2 and section 92F-13, HRS. Claims of confidentiality shall be denied regarding the following: name and address of any owner or operator or permittee applying for an individual permit, notice of general permit coverage, or "no exposure" certification; NPDES permits; and effluent data. Information required by NPDES permit application forms may not be claimed confidential. This includes information supplied in attachments to the NPDES permit application forms. If, however, the information being



considered for confidential treatment is contained in an NPDES form, the director shall forward the information to the regional administrator for the regional administrator's concurrence in any determination of confidentiality. If the regional administrator advises the director that the regional administrator does not concur in the withholding of the information, the director shall then make available to the public, upon request, that information determined by the regional administrator not to constitute trade secrets.

(c) Any information accorded confidential status, whether or not contained in an NPDES form, shall be disclosed, upon request, to the regional administrator, who shall maintain the disclosed information as confidential.

(d) The director shall provide facilities for the inspection of information relating to NPDES forms and shall ensure that state employees honor requests for inspection with due regard for the dispatch of other public duties. The director shall either:

- (1) Ensure that a machine or device for the copying of papers and documents is available for a reasonable fee; or
- (2) Otherwise provide for or coordinate with copying facilities or services so that requests for copies of nonconfidential documents may be honored promptly. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; **comp 2/9/19; and comp** ] (Auth: HRS §§342D-4, 342D-5, 342D-14; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-14, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 2; 122; 123; 124, Subparts A and D; 125; §§122.7, 123.25(a), 123.41)

§11-55-13

§11-55-13 Public hearings. (a) The owner or operator, regional administrator, any interested agency, person, or group of persons may request or petition for a public hearing with respect to NPDES permit applications. Any request or petition for public hearing shall be submitted within the thirty-day period prescribed in section 11-55-09(b) and shall indicate the interest of the party submitting the request and the reasons why a hearing is warranted.

(b) The director shall provide the public notice of public hearing to the owner or operator or its duly authorized representative for publication according to section 11-55-14. The public notice shall include the information required by 40 CFR §§124.10(d)(1) and (d)(2).

(c) The director shall hold a hearing if the director determines that there is a significant public interest (including the submitting of requests or petitions for a hearing) in holding a hearing. Instances of doubt should be resolved in favor of holding the hearing. Any hearing brought under this subsection shall be held in the geographical area of the proposed discharge or other appropriate area, at the director's discretion, and may, as appropriate, consider related groups of NPDES permit applications.

(d) Any person may submit [oral or ]written statements and data concerning the draft permit. The public comment period under section 11-55-09 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and am and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-57; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.11, 124.12)

§11-55-14 Public notice of public hearings. (a) Public notice of any hearing held under section 11-55-13 shall be circulated as widely as the notice of the draft permit. Public notice for hearings held under section 11-55-13 shall be:

- (1) Published [at least once in a newspaper of general circulation within the geographical area of the discharge] in accordance with section 1-28.5, HRS;
- (2) Sent to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES permit application;
- (3) Mailed or emailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v), (ix), and (x); and
- (4) Effected under paragraphs (1) and (3) at least thirty days in advance of the hearing.

(b) The public notice of any hearing held under section 11-55-13 shall include at least the following information:

- (1) Name and address of the agency holding the public hearing;
- (2) Name and address of each owner or operator or both whose NPDES permit application will be considered at the hearing and the name and address of the facility or activity;
- (3) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;
- (4) A brief reference to the public notice for proposed action issued for each NPDES permit application, including identification number and date of issuance, if applicable;
- (5) Information regarding the date, time, and location of the hearing;
- (6) The purpose of the hearing, including a concise statement of the issues raised by the

§11-55-14

persons requesting the hearing, as applicable:

- (7) A brief description of the nature of the hearing, including the rules and procedures to be followed; and
- (8) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:
  - (A) Obtain further information;
  - (B) Request a copy of each draft permit prepared under section 11-55-08(b);
  - (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
  - (D) Inspect and copy NPDES forms and related documents.

(c) All publication and mailing costs associated with the public notification of the director's determinations to hold public hearing with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and am and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

§11-55-15 Issuance of NPDES permits. (a) The director may issue an NPDES permit for any period not

exceeding five years and may renew a permit for any additional periods not exceeding five years. The director may administratively extend the permit until the effective date of the new permit for discharges that the permit covered prior to expiration. If the director administratively extends the permit, all permit limitations and conditions remain in force and effect. Projects that do not submit a renewal NPDES application prior to the expiration date may not be administratively extended.

(b) The director shall issue or renew an NPDES permit on the following basis:

- (1) The existing treatment works or waste outlet is designed, built, and equipped in accordance with:
  - (A) The best practicable control technology currently available or the best available technology economically achievable or the best conventional pollutant control technology for point sources other than publicly owned treatment works; and
  - (B) For publicly owned treatment works, secondary treatment or the best practicable waste treatment technology, so as to reduce wastes to a minimum;
- (2) New treatment works or waste outlets are designed and built in compliance with the applicable standards of performance;
- (3) The new or existing treatment works or waste outlet is designed and will be constructed or modified to operate without causing a violation of applicable rules of the department;
- (4) The new or existing treatment works or waste outlet will not endanger the maintenance or attainment of applicable water quality standards;
- (5) The facility shall comply with effluent standards and limitations, water quality standards and other requirements, as

§11-55-15

applicable in sections 11-55-19, 11-55-20, and 11-55-22; and

(6) The facility shall comply with sections 11-55-27 through 11-55-32.

(c) NPDES permits at a minimum shall include conditions and requirements at least as stringent as:

(1) Those conditions contained in sections 11-55-16, 11-55-17, 11-55-23, and 40 CFR §122.41;

(2) The requirement that the owner or operator provide the facilities as necessary for monitoring of the authorized waste discharge into State waters and the effects of the wastes on the receiving State waters. The monitoring program shall comply with sections 11-55-28 through 11-55-32;

(3) The requirement of compliance with any applicable effluent standards and limitations, water quality standards, and other requirements imposed by the director under sections 11-55-19, 11-55-20, and 11-55-22; and

(4) Conditions requested by the Corps of Engineers and other government agencies as described in 40 CFR §124.59.

(d) In permits where more stringent effluent limitations are included, compliance schedules may be provided in the permits if the requirements of 11-55-21 and 40 CFR 122.2 and 122.47 are met.

(e) In acting upon an NPDES permit application for an individual permit the director shall deny the application unless the information submitted shows that the new or existing treatment works or waste outlet described in the NPDES permit application can, conditionally or otherwise, meet the conditions of subsection (b) or (c).

(f) Notwithstanding the provisions of subsections (a) through (e), the director shall not issue a permit or grant a modification or variance for any of the following:

- (1) Discharge of any radiological or biological warfare agent, or high-level radioactive waste into State waters;
- (2) Discharge which the Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage and navigation;
- (3) Discharge to which the regional administrator has objected in writing under any right to object provided the Administrator in Section 402(d) of the Act, 33 U.S.C. §1342(d);
- (4) Discharge from a point source which is in conflict with a plan or amendment thereto approved under Section 208(b) of the Act, 33 U.S.C. §1288(b); or
- (5) When prohibited by 40 CFR §122.4.

(g) The issuance of a permit does not convey any property rights of any sort or any exclusive privilege. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

(h) Within 30 days from the date of issuance of the NPDES final permit, any interested party who submitted comments during the public notice period described by 40 CFR §25.5(b) or submitted testimony in the public hearing may appeal the NPDES final permit decision issued under this chapter by filing a request for a contested case hearing, in accordance with HRS Chapter 91. "Interested" means any person with "standing" as defined by the Hawaii Constitution, statutes, rules, and Court decisions. The appeal shall be limited to specific issues raised during the public comment period or public hearing for the NPDES permit being appealed.

- (1) All publication and mailing costs associated with any public notification of any permit modification during the appeal shall be paid by the appellant to the appropriate publishing agency or agencies determined by the director. The appellant shall submit the

original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to deny an appeal.

- (2) Any revisions made to the permit during the appeals process shall comply with HAR 11-55-16. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; **comp 2/9/19; and comp** ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.4, 122.5, 122.41, 122.43, 122.44, 122.45, 122.46, 123.25(a), 124.5, 124.59)

**(i) The director may deny applications for a permit from persons who are respondents in open enforcement actions associated with water pollution, who fail to make payments as required for permit fees or penalties, or who have a history of violating water pollution laws.**

§11-55-16 Modification or revocation and reissuance of NPDES permits. (a) Each NPDES permit shall be subject to modification or revocation and reissuance by the director after notice and opportunity for a contested case hearing.

(b) Permits may be modified for the reasons and under the procedures specified in 40 CFR §§122.62 and 122.63.

(c) Permits may be revoked and reissued for the reasons and under the procedures specified in 40 CFR §122.62.

(d) The procedures and criteria for minor permit modifications are those specified in 40 CFR §122.63.



(e) All applications made under section 342D-7, HRS, for a variance from the terms and conditions of an NPDES permit shall also be deemed as applications for a modification under this section. Any variances, if granted, shall be for a period not to exceed five years.

(f) Changes from paper to electronic reporting requirements including those specified in 40 CFR Part 3 (Cross-Media Electronic Reporting Regulation) and 40 CFR Part 127 (Electronic Reporting Requirements for the NPDES Program) may be incorporated by minor modification as defined in 40 CFR 122.63.

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; **am and comp 2/9/19; and comp** ] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-7; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-7, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.62, 122.63, 123.25(a), 124.5)

§11-55-17 Termination of permits and denial of renewal. (a) On the expiration date specified in the NPDES permit, the NPDES permit shall automatically terminate and the permittee shall be divested of all rights therein.

(b) Each NPDES permit renewal application shall be subject to denial and each issued NPDES permit shall be subject to termination by the director after notice and opportunity for a contested case hearing.

(c) The following are causes for terminating a permit during its term or for denying a permit renewal application:

- (1) Noncompliance by the permittee with any condition of the permit;
- (2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the

permittee's misrepresentation of any relevant facts at any time;

- (3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
- (4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a publicly owned treatment works).
- (5) The permittee's failure to comply with enforcement orders associated with the applicable NPDES permit.
- (6) The permittee's failure to pay penalties or fees, as required by law.

(d) The director shall follow the applicable state procedures in terminating any NPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a publicly owned treatment works (but not by land application or disposal into a well), the director may terminate the permit by notice to the permittee. Termination by notice shall be effective thirty days after notice is sent ("expedited termination"), unless the permittee objects in writing during that time. If the permittee objects during that period, the director shall follow applicable state procedures for termination. Expedited termination is not available to permittees who are subject to pending state or federal or both enforcement actions including citizen suits brought under state or federal law. If requesting expedited termination, a permittee shall certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under

40 CFR §124.6. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.64, 122.64(b), 123.25(a), 124.5, 124.5(d), 124.15(a))

§11-55-18 Reporting discontinuance or dismantlement.  
An NPDES permittee shall report within thirty days after the permanent discontinuance or dismantlement of that treatment works or waste outlet for which the NPDES permit had been issued by submitting a notice of cessation. [Eff 11/27/81; comp 10/29/92; comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1252, 1342, 1370, 1251-1387; 40 CFR 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.64, 124.5)

§11-55-19 Application of effluent standards and limitations, water quality standards, and other requirements. (a) NPDES permits shall apply and ensure compliance with the following whenever applicable:

- (1) Effluent limitations under Sections 301 and 302 of the Act, 33 U.S.C. §§1311 and 1312;
- (2) Standards of performance for new sources;
- (3) Effluent standards, effluent prohibitions, and pretreatment standards under Section 307 of the Act, 33 U.S.C. §1317;
- (4) More stringent limitation, including those:

- (A) Necessary to meet water quality standards, treatment standards, or schedules of compliance, established under any state law or rules (under authority preserved by Section 510 of the Act, 33 U.S.C. §1370); or
  - (B) Necessary to meet any other federal law or regulations including, but not limited to:
    - (i) Toxic pollutant effluent standards in 40 CFR Part 129;
    - (ii) Secondary treatment regulation in 40 CFR Part 133;
    - (iii) Effluent guidelines and standards in 40 CFR Chapter I, subchapter N, Parts 400 to 471;
    - (iv) Criteria and standards in 40 CFR Part 125, Subparts A, B, C, D, H, I, J, K, and M;
    - (v) Standards for sludge handling in 40 CFR §122.44(b)(2), 40 CFR Part 503 and state rules; and
    - (vi) Nutrient management requirements and technical standards for concentrated animal feeding operations in 40 CFR §123.36, 40 CFR §122.42, and 40 CFR Part 412; or
  - (C) Required to implement any applicable water quality standards; the limitations to include any legally applicable requirements necessary to implement total maximum daily loads established under Section 303(d) of the Act, 33 U.S.C. §1313(d), or incorporated in the continuing planning process approved under Section 303(e) of the Act, 33 U.S.C. §1313(e), and any regulations and guidelines issued pursuant thereto;
- (5) More stringent legally applicable requirements necessary to comply with a plan

approved under Section 208(b) of the Act, 33 U.S.C. §1288(b);

- (6) Prior to promulgation by the Administrator of applicable effluent standards and limitations under Sections 301, 302, 306, and 307 of the Act, 33 U.S.C. §§1311, 1312, 1316, and 1317, the conditions, as the director determines are necessary to carry out the provisions of the Act; and
- (7) If the NPDES permit is for the discharge of pollutants into the State waters from a vessel or other floating craft, any applicable regulations promulgated by the secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.
- (8) Other requirements developed under the continuing planning process under Section 303(e) of the Act and any regulations and guidelines issued under it.
- (9) Intake credits in accordance with 40 CFR §122.45(g) and HAR section 11-54-12.
- (10) Recreational criteria for all State waters in HAR section 11-54-8. To comply with HAR sections 11-54-8(b) and (c) requirements, at least one sample shall be collected on every fifth day of the thirty day sampling period. Each sample shall be collected and analyzed pursuant to 40 CFR Part 136. The director may require samples to be collected more frequently within the thirty day period.

(b) In any case where an issued NPDES permit applies the effluent standards and limitations described in subsection (a)(1), (2), and (3), the director shall state that the discharge authorized by the permit shall not violate applicable water quality standards and shall have prepared some explicit verification of that statement. In any case where an issued NPDES permit applies any more stringent effluent

§11-55-19

limitation based upon applicable water quality standards, a waste load allocation shall be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1311, 1312, 1313, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125, Subparts A, B, C, D, H, I, J, K, L, M; 129; 133; 136; 401; 403; 405-432; 434-436; 439-440; 443; 446-447; 454-455; 457-460; 503; 400-471, Subparts N; §§122.42, 122.43, 122.44, 122.45(g), 123.25(a))

§11-55-20 Effluent limitations in issued NPDES permits. In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements under section 11-55-19, each issued NPDES permit shall specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The director, at the director's discretion, in addition to the specification of daily quantitative limitations by weight, may specify other limitations, such as average or maximum concentration limits. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C.

§§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.45(f), 123.25(a))

§11-55-21 Schedule of compliance in issued NPDES permits. (a) With respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in section 11-55-19, the permit shall require the permittee to take specific steps to achieve compliance with the following:

- (1) In accordance with any legally applicable schedule of compliance contained in:
  - (A) Applicable effluent standards and limitations;
  - (B) If more stringent, effluent standards and limitations needed to meet water quality standards; or
  - (C) If more stringent, effluent standards and limitations needed to meet legally applicable requirements listed in section 11-55-19; or
- (2) In the absence of any legally applicable schedule of compliance, in the shortest, reasonable period of time, which shall be consistent with the guidelines and requirements of the Act.

(b) When a schedule specifies compliance longer than one year after permit issuance, the schedule of compliance shall specify interim requirements and the dates for their achievement and in no event shall more than one year elapse between interim dates. If the time necessary for completion of the interim requirement (such as the construction of a treatment facility) exceeds one year and is not readily divided into stages for completion, the schedule shall specify interim dates for the submission of reports of progress towards completion of the interim requirements. For each NPDES permit schedule of compliance, interim dates, reporting dates, and the final date for

§11-55-21

compliance shall, to the extent practicable, fall on the last day of the month of March, June, September, and December. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a))

§11-55-22 Compliance schedule reports. (a)

Either before or up to fourteen days following each interim date and the final date of compliance, the permittee shall provide the director with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

(b) On the last day of the months of February, May, August, and November, the director shall transmit to the regional administrator a Quarterly Noncompliance Report (QNCR) which is a list of all instances, as of thirty days prior to the date of the report, of failure or refusal of a permittee to comply with an interim or final requirement or to notify the director of compliance or noncompliance with each interim or final requirement (as required under subsection (a)). The list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

- (1) Name, address, and permit number of each noncomplying permittee;
- (2) A short description of each instance of noncompliance for which 40 CFR §123.45(a)(2) requires reporting (e.g., failure to submit preliminary plans; two weeks delay in beginning construction of treatment facility; failure to notify director of compliance with



interim requirement to complete construction by June 30th, etc.);

- (3) The date(s) and a short description of any actions or proposed actions by the permittee or the director to comply or enforce compliance with the interim or final requirement; and
- (4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objection from state fish and wildlife agency, etc.).

(c) The first NPDES permit issued to a new source shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after beginning construction but less than three years before beginning the relevant discharge. For permit renewals, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before beginning the discharge again.

(d) If a permittee fails or refuses to comply with an interim or final requirement in an NPDES permit, noncompliance shall constitute a violation of the permit for which the director may modify, revoke and reissue, or terminate the permit under sections 11-55-16 and 11-55-17 or may take direct enforcement action. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; **comp 2/9/19; and am and comp** ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a), 123.45)

§11-55-23

§11-55-23 Other terms and conditions of issued NPDES permits. In addition to the requirements previously specified, each permit shall be subject to the following terms and conditions:

- (1) All discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the NPDES permit;
- (2) The permittee shall report at least as required by 40 CFR §122.41(l), and where applicable, 40 CFR §122.42(a), (b), (c), (d), and (e);
- (3) Facility expansions, production increase, or process modifications which result in new or increased discharges of pollutants shall be reported by submission of a new NPDES permit application, or, if the discharge does not violate effluent limitations specified in the NPDES permit, by submission to the director of notice of the new or increased discharges of pollutants under 40 CFR §122.42(a);
- (4) The discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the NPDES permit shall constitute a violation of the terms and conditions of the NPDES permit;
- (5) The permittee shall allow the director or an authorized agent, including a contractor of the Administrator, upon the presentation of credentials to:
  - (A) Enter the permittee's premises in which an effluent source is located or in which any records are kept under terms and conditions of the NPDES permit;
  - (B) Have access to and copy any records kept under terms and conditions of the NPDES permit;
  - (C) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the NPDES permit; or

- (D) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location;
- (6) Any treatment facility treating domestic sewage and also receiving industrial waste from one or more indirect dischargers may be required to develop for the director's approval a pretreatment program in accordance with applicable requirements in 40 CFR Part 403. The pretreatment program approved by the director may then be incorporated into the NPDES permit as a permit condition;
- (7) If the NPDES permit is for a discharge from a publicly or privately owned treatment works, the permittee shall notify the director in writing of the following:
  - (A) Any new introduction of pollutants into a publicly or privately owned treatment works from an indirect discharger which would be subject to Sections 301 and 306 of the Act, 33 U.S.C. §1311 and §1316, if the indirect discharger were directly discharging those pollutants;
  - (B) Any substantial change in volume or character of pollutants being introduced into the treatment works by a source introducing pollutants into the treatment works at the time of issuance of the permit;
  - (C) The quality and quantity of effluent to be introduced into a treatment works; and
  - (D) Any anticipated impact caused by a change in the quality or quantity of effluent to be discharged from a publicly or privately owned treatment works;
- (8) If the NPDES permit is for a discharge from a publicly owned treatment works with an

approved pretreatment program under section 11-55-24, the director shall incorporate the approved pretreatment program into the NPDES permit as a permit condition. The permittee shall require any industrial user of the treatment works to comply with the requirements contained in the approved pretreatment program and the requirements of Sections 204(b), 307, and 308 of the Act, 33 U.S.C. §§1284, 1317, and 1318. The permittee shall also require each industrial user subject to the requirements of Section 307 of the Act, 33 U.S.C. §1317, to forward copies of periodic reports (over intervals not to exceed nine months) of progress towards full compliance with Section 307 of the Act, 33 U.S.C. §1317 requirements, to the permittee and the director;

- (9) The permittee at all times shall maintain in good working order and operate as efficiently as possible any facility or system of control installed by the permittee to achieve compliance with the terms and conditions of the NPDES permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit; and
- (10) If a toxic effluent standard or prohibition (including any schedule of compliance specified in the effluent standards or prohibition) is promulgated under Section 307(a) of the Act, 33 U.S.C. §1317(a), for a toxic pollutant which is present in the permittee's discharge and the standard or prohibition is more stringent than any limitation upon the pollutant in the NPDES

- permit, the director shall revise or modify the permit in accordance with the toxic effluent standard or prohibition and notify the permittee; and
- (11) A copy of the NPDES permit application, notice of intent, "no exposure" certification, individual permit, notice of general permit coverage, and conditional "no exposure" exclusion, as applicable, shall be retained on-site or at a nearby office or field office. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; **comp 2/9/19; and comp** ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-8, 342D-50, 342D-55; 33 U.S.C. §§1251, 1284, 1311, 1316, 1317, 1318, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 403; §§122.41, 122.42, 122.44, 123.25(a))

§11-55-24 National pretreatment standards and users of publicly owned treatment works. (a) Any county desiring to administer its own publicly owned treatment works pretreatment program shall submit to the director for approval a program description which shall at a minimum include the information set forth in 40 CFR §403.9(a) or 403.9(c).

(b) The director, upon receipt of the request for an approval of a pretreatment program, shall review and decide on the request in accordance with procedures described in 40 CFR §403.11.

(c) Any person discharging any pollutant or effluent into a publicly owned treatment works shall permit the director, upon presentation of credentials, to:

§11-55-25

- (1) Enter the premises of a person subject to pretreatment requirements in which an effluent source is located or in which any records are kept under terms and conditions of a pretreatment requirement;
  - (2) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations required by a pretreatment requirement; and
  - (3) Sample any discharge of pollutants or effluent.
- (d) No person shall introduce into any publicly owned treatment works any pollutant or effluent in violation of 40 CFR §403.5.
- (e) The director may require any person discharging any pollutant or effluent into a publicly owned treatment works to:
- (1) Establish and maintain records;
  - (2) Make reports;
  - (3) Install, use, and maintain monitoring equipment or methods;
  - (4) Sample effluent and State waters;
  - (5) Provide access to and copying of any records which are maintained; and
  - (6) Provide other information as the department may require. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; **comp 2/9/19; and comp** ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-8, 342D-50, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 403, §§122.41(i))

§11-55-25 Transmission to regional administrator of proposed NPDES permits. The director shall transmit to the regional administrator copies of NPDES permits

proposed to be issued by the agency in a manner as the director and regional administrator shall agree upon or as stated in 40 CFR §123.44(j). Any agreement between the State and regional administrator shall provide for at least the following:

- (1) Except as waived under paragraph (4), the transmission by the director of any and all terms, conditions, requirements, or documents which are a part of the proposed NPDES permit or which affect the authorization by the proposed NPDES permit of the discharge of pollutants;
- (2) A period of time (up to ninety days) in which the regional administrator, under any right to object provided in Section 402(d) of the Act, 33 U.S.C. §1342(d), may comment upon, object to, or make recommendations with respect to the proposed NPDES permit;
- (3) Procedures for state acceptance or rejection of a written objection by the regional administrator; and
- (4) Any written waiver by the regional administrator of the regional administrator's rights to receive, review, object to, or comment upon proposed NPDES permits for classes, types, or sizes within any category of point sources. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; **comp 2/9/19; and comp** ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.24(d), 123.43, 123.44)

§11-55-26 Transmission to regional administrator of issued NPDES permits. The director shall transmit

§11-55-26

to the regional administrator a copy of every issued NPDES permit, immediately following issuance, along with any and all terms, conditions, requirements, or documents which are a part of the NPDES permit or which affect the authorization by the NPDES permit of the discharge of pollutants. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; **comp 2/9/19; and comp** ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 123.43(a)(3))

§11-55-27 Renewal of NPDES permits. (a) The director shall review applications for reissuance of NPDES permits. Any permittee who wishes to continue to discharge after the expiration date of the permittee's NPDES permit shall submit for renewal of the permit at least one hundred eighty days prior to its expiration.

(b) The scope and manner of any review of an application for renewal of an NPDES permit shall be within the discretion of the director and shall be sufficiently detailed as to ensure the following:

- (1) The permittee is in compliance with or has substantially complied with all the terms, conditions, requirements, and schedules of compliance of the current or expired NPDES permit;
- (2) That the director has current information on the permittee's production levels; permittee's waste treatment practices; nature, contents, and frequency of permittee's discharge through the submission of new forms and applications or from monitoring records and reports submitted to the director by the permittee; and
- (3) That the discharge is consistent with applicable effluent standards and



limitations, water quality standards, and other legally applicable requirements, including any additions to, revisions, or modifications of the effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

(c) The director shall follow the notice and public participation procedures specified in this chapter in connection with each request for reissuance of an NPDES permit.

(d) Notwithstanding any other provision in this section, any point source, the construction of which began after October 18, 1972 and which is constructed to meet all applicable new source performance standards, shall not be subject to any more stringent new source performance standard, except as specified in 40 CFR §122.29(d)(2), for the earliest ending of the following period;

- (1) A ten-year period beginning on the date of completion of the construction;
- (2) A ten-year period from the date the source begins to discharge process or other non-construction related wastewater; or
- (3) During the period of depreciation or amortization of the facility for the purposes of Section 167 or 169 or both of the Internal Revenue Code of 1954, whichever period ends first.

(e) Application for renewal of an NPDES permit shall comply with section 11-55-04. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21(d), 122.29, 122.41(b), 122.41(1), 122.44, 123.25(a))

§11-55-28

§11-55-28 Monitoring. (a) Any discharge authorized by an NPDES permit may be subject to monitoring requirements as may be reasonably required by the director, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods).

(b) Any discharge authorized by an NPDES permit which:

- (1) Is not a minor discharge;
- (2) The regional administrator requests, in writing, be monitored; or
- (3) Contains toxic pollutants for which an effluent standard has been established by the Administrator under Section 307(a) of the Act, 33 U.S.C. §1317, shall be monitored by the permittee for at least the items listed in subsection (c).

(c) Monitored items:

- (1) Flow (in gallons per day or cubic feet per second); and
- (2) All of the following pollutants:
  - (A) Pollutants (either directly or indirectly through the use of accepted correlation coefficient or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the NPDES permit;
  - (B) Pollutants which the director finds, on the basis of available information, could have a significant impact on the quality of State waters;
  - (C) Pollutants specified by the Administrator in regulations issued under the Act, as subject to monitoring; and
  - (D) Any pollutants in addition to the above which the regional administrator requests, in writing, to be monitored.

(d) Each effluent flow or pollutant required to be monitored under subsection (c) shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels shall be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; **comp 2/9/19; comp** ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.41, 122.43, 122.48, 123.25(a))

§11-55-29 Recording of monitoring activities and results. When any NPDES permit requires monitoring of the authorized discharge:

- (1) The permittee shall maintain records of all information resulting from any monitoring activities required by the NPDES permit;
- (2) Any records of monitoring activities and results shall include for all samples:
  - (A) The date, exact place, and time of sampling or measurements;
  - (B) The individual(s) who performed the sampling or measurements;
  - (C) The date(s) the analyses were performed;
  - (D) The individual(s) who performed the analyses;
  - (E) The analytical techniques or methods used; and
  - (F) The results of the analyses; and
- (3) The permittee shall retain for a minimum of five years any records of monitoring activities and results including all original strip chart recording for continuous

§11-55-30

monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or regional administrator. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 122.41(j))

§11-55-30 Reporting of monitoring results. The director shall require periodic reporting (at a frequency of not less than once per year) on the proper NPDES discharge monitoring report form, or other form as specified by the director, of monitoring results obtained by a permittee under monitoring requirements in an NPDES permit. In addition to the NPDES discharge monitoring report form, or other form as specified by the director, the director may require submission of any other information regarding monitoring results as determined to be necessary. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 122.41(1)(4), 122.44(i))

§11-55-31 Sampling and testing methods. (a) All sampling and testing shall be done in accordance with test procedures approved under 40 CFR Part 136 unless other test procedures have been specified in the permit or approved by the director and, when applicable, with guidelines establishing test procedures for the analysis of pollutants published by the Administrator in accordance with Section 304(h) of the Act, 33 U.S.C. §1314(h). All tests shall be made under the direction of persons knowledgeable in the field of water pollution control.

(b) The director may conduct tests of waste discharges from any source. Upon request of the director, the person responsible for the source to be tested shall provide necessary sampling stations and other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the waste discharge. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; **comp 2/9/19; and comp** ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1314, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.41(j)(4), 136)

§11-55-32 Malfunction, maintenance, and repair of equipment. (a) There shall be no shut-down of water pollution treatment facilities for purposes of maintenance unless a schedule or plan for the maintenance has been submitted to and approved by the director prior to the shut-down.

(b) In the case of a shut-down of water pollution control equipment for necessary maintenance, the intent to shut down the equipment shall be reported to and approved by the director at least twenty-four hours

§11-55-32

prior to the planned shut-down. The prior notice shall include, but is not limited to, the following:

- (1) Identification of the specific facility to be taken out of service, as well as its location and NPDES permit number;
- (2) The expected length of time that the water pollution control equipment will be out of service;
- (3) The nature and quantity of discharge of water pollutants likely to be emitted during the shut-down period;
- (4) Measures that will be taken to minimize the length of the shut-down period, such as the use of off-shift labor and equipment;
- (5) Identification of any adverse impacts to the receiving State waters which could be caused by the wastes which are to be bypassed; and
- (6) The reasons that it would be impossible or impractical to shut down the source operation during the maintenance period.

(c) In the event that any water pollution control equipment or related facility breaks down in a manner causing the discharge of water pollutants in violation of applicable rules, the person responsible for the equipment shall immediately notify the director of the failure or breakdown and provide a statement giving all pertinent facts, including the estimated duration of the breakdown. The director shall be notified when the condition causing the failure or breakdown has been corrected and the equipment is again in operation.

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-33 Agency board membership. (a) Any board or body which approves NPDES permit applications, notices of intent, or "no exposure" certifications, or portions thereof shall not include as a member any person who receives, or has during the previous two years received, a significant portion of the person's income directly or indirectly from permittees or persons applying for an NPDES permit.

(b) For the purposes of this section, the term "board or body" includes any individual, including the director, who has or shares authority to approve permit applications or portions thereof either in the first instance or on appeal.

(c) For the purposes of this section, the term "significant portion of the person's income" shall mean ten per cent or more of gross personal income for a calendar year, except that it shall mean fifty per cent or more of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving that portion under retirement, pension, or similar arrangement.

(d) For the purposes of this section, the term "permittees or persons applying for an NPDES permit" shall not include any state department or agency.

(e) For the purposes of this section, the term "income" includes retirement benefits, consultant fees, and stock dividends.

(f) For the purposes of this section, income is not received "directly or indirectly from permittees or persons applying for an NPDES permit" where it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary sources of income.

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251,

§11-55-34

1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 123.25(c))

§11-55-34 General permit definitions. As used in sections 11-55-34.01 through 11-55-34.12:

"Category of sources" means either:

- (1) Storm water point sources; or
- (2) A group of point sources other than storm water point sources if all sources in the group:
  - (A) Involve the same or substantially similar types of operations;
  - (B) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;
  - (C) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;
  - (D) Require the same or similar monitoring; and
  - (E) In the opinion of the director, are more appropriately controlled under a general permit than under an individual permit.

"Geographical area" means existing geographical or political boundaries such as:

- (1) Designated planning areas under Sections 208 and 303 of the Act;
- (2) Sewer districts or sewer authorities;
- (3) City, county, or state political boundaries;
- (4) State highway systems;
- (5) Standard metropolitan statistical areas as defined by the Office of Management and Budget;
- (6) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 Federal Register 15202 (May 1, 1974); or
- (7) Any other appropriate division or combination of boundaries. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp



10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.2, 122.28, 123.25(a)(11))

§11-55-34.01 General permit policy. It is the policy of the State that general permits shall comply, at a minimum, with federal requirements for general permits, especially 40 CFR §122.28. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.02 General permit authority and adoption. (a) The director may adopt general permits.

(b) The appendices located at the end of this chapter are adopted and incorporated by reference as general permits for the following applicable categories of sources:

- (1) Appendix B, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities" for discharges composed entirely of storm water associated with certain industrial activities as identified in 40 CFR §§122.26(b)(14)(i) through 122.26(b)(14)(ix) and §122.26(b)(14)(xi), dated December 6, 2013;
- (2) Appendix C, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity" for

storm water discharges from construction activities which result in the disturbance of five acres or more of total land area or small construction activities which result in the disturbance of one to less than five acres of total land area or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, dated February 9, 2019;

- (3) Appendix D, titled "NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities" for the discharge of treated effluent from the leaking underground storage tank remedial activities, dated July 13, 2018;
- (4) Appendix E, titled "NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day" for the discharge of once-through, non-contact cooling water for one million gallons per day or less, dated July 13, 2018;
- (5) Appendix F, titled "NPDES General Permit Authorizing Discharges of Hydrotesting Waters" for the discharge of non-polluted hydrotesting water, dated July 13, 2018;
- (6) Appendix G, titled "NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering" for the discharge of dewatering effluent from a construction activity, dated July 13, 2018;
- (7) Appendix H, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals" for the discharge of treated process wastewater effluent from

- petroleum bulk stations and terminals, dated July 13, 2018;
- (8) Appendix I, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities" for the discharge of treated process wastewater effluent associated with well drilling activities, dated July 13, 2018;
  - (9) Appendix J, titled "NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems" for the discharge of treated process wastewater effluent from recycled water distribution systems, dated February 9, 2019;
  - (10) Appendix K, titled "NPDES General Permit Authorizing Discharges of Storm Water and Certain Non-Storm Water Discharges from Small Municipal Separate Storm Sewer Systems" for the discharge of storm water and certain non-storm water discharges from a small municipal separate storm sewer system as defined in 40 CFR §122.26(b)(16), dated December 6, 2013;
  - (11) Appendix L, titled "NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks" for the discharge of circulation water from decorative ponds or tanks, dated February 9, 2019; and
  - (12) Appendix M, titled "NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides, dated July 13, 2018." [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; am and comp 12/6/13; comp 11/15/14; am and comp 2/9/19; and am and comp ]

§11-55-34.02

(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28)  
(Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122;; 124; 125; §§122.26, 122.28, 123.25(a)(11))

§11-55-34.03 General permit terms. General permits shall be for terms of not more than five years. [Eff and comp 10/29/92; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp ]  
(Auth: HRS

§§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.46, 123.25(a) (11))

§11-55-34.04 General permit conditions.

(a) Discharges covered by general permits shall comply with the applicable sections of state water quality standards in chapter 11-54, and the applicable provisions of this chapter, including, but not limited to, sections 11-55-18, 11-55-19, 11-55-20, 11-55-21, 11-55-22, 11-55-23, 11-55-28, 11-55-29, 11-55-30, 11-55-31, 11-55-32, and 11-55-34.07.

(b) Appendix A, titled "Department of Health Standard General Permit Conditions" and located at the end of this chapter is adopted, incorporated by reference, and applies to each general permit.

(c) Special conditions apply as specified in each general permit, e.g., appendices B through M, respectively. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; am and comp 12/6/13; comp 11/15/14; **comp 2/9/19; and comp** ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1318, 1319, 1321, 1323, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.41, 122.42, 123.25(a) (11))

§11-55-34.05 Requiring an individual permit.

(a) Notwithstanding the provisions of a general permit, the director may require any person covered by a general permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

§11-55-34.05

- (1) The discharger or "treatment works treating domestic sewage" is not in compliance with the conditions of the general permit;
  - (2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;
  - (3) Effluent limitation guidelines are promulgated for point sources covered by the general permit;
  - (4) A water quality management plan containing requirements applicable to the point sources is approved;
  - (5) Circumstances have changed since the time of the request to be covered so that the permittee is no longer appropriately controlled under the general permit or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
  - (6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general permit; or
  - (7) The discharge(s) is a significant contributor of pollutants to State waters. In making this determination, the director may consider the following factors:
    - (A) The location of the discharge with respect to State waters;
    - (B) The size of the discharge;
    - (C) The quantity and nature of the pollutants discharged to the State waters; and
    - (D) Other relevant factors.
- (b) The director may require any owner or operator authorized by a general permit to apply for an individual NPDES permit as provided in section 11-55-34.05(a), only if the owner or operator has been notified in writing that a permit application is

required. This notice shall include a brief statement of the reasons for this decision, application information, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES the general permit as it applies to the individual permittee shall automatically terminate, unless coverage under a general permit had already been terminated by the director in accordance with 11-55-34.11. The director may grant additional time upon request of the applicant.

(c) Any owner or operator covered by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application with reasons supporting the request to the director.

(d) When an individual permit is issued to an owner or operator otherwise covered by a general permit, the coverage of the general permit to the individual permittee is automatically terminated on the effective date of the individual permit.

(e) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

(f) The director may require any activity and/or discharge that has commenced prior to obtaining the required coverage under a general permit to apply for an individual NPDES permit. For construction activities which have commenced prior to obtaining general permit coverage, restoration of the site to preconstruction conditions may re-qualify it for coverage under the general permit. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-

§11-55-34.06

1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28(b)(3), 123.25(a)(11))

§11-55-34.06 (Reserved)

§11-55-34.07 Degree of waste treatment. All discharges covered by a general permit shall receive treatment or corrective action to ensure compliance with the terms and conditions of the issued permit and with the following, whenever applicable:

- (1) Effluent limitations established by the EPA under Sections 301, 302, 306, 307, 318, and 405 of the Act;
- (2) Criteria and standards for best management practices established by the EPA under Section 304(e) of the Act;
- (3) Notwithstanding paragraphs (1) and (2), more stringent effluent limitations may be required as deemed necessary by the director:
  - (A) To meet any existing federal laws or regulations; or
  - (B) To ensure compliance with any applicable state water quality standards, effluent limitations, treatment standards, or schedule of compliance; and
- (4) Calculations and specifications of effluent limits and standards shall be made in accordance with the provisions of federal regulations, 40 CFR §122.45. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; **comp 2/9/19; and comp** ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C.



§§1311, 1312, 1314, 1316, 1317, 1318, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.08 Notice of intent. (a) Persons seeking coverage under a general permit shall submit a notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M).

(b) A notice of intent shall:

- (1) Be submitted on forms provided by the director;
- (2) Comply with the notice of intent requirements of the respective general permit; and
- (3) Be accompanied by all pertinent information which the director may require in order to establish effluent limitations or best management practices, including, but not limited to, complete engineering reports, schedule of progress, plans, specifications, maps, measurements, quantitative and qualitative determinations, records, and all related materials.

(c) The director may require that all reports, plans, specifications, and other material submitted to the director be prepared by a licensed professional engineer.

(d) Material submitted shall be complete and accurate.

(e) Any notice of intent form submitted to the director shall be signed in accordance with section 11-55-07(a).

(f) All other reports or responses to requests for information required by the director shall be signed in accordance with section 11-55-07(b).

(g) Any change in the written authorization submitted to the director under subsection (f) which occurs after the issuance of a permit shall be reported to the director by submitting a copy of a new written

§11-55-34.08

authorization which meets the requirements of subsections (e) and (f).

(h) Any person signing a document under subsections (e) and (f) shall make a certification in accordance with 40 CFR §122.22(d).

(i) Each owner or operator who submits a notice of intent to be covered under the general permit provisions or for renewal of general permit coverage shall pay a filing fee of \$500. This filing fee shall be submitted with the notice of intent and shall not be refunded nor applied to any subsequent NPDES individual permit application following final action denying coverage under the general permit provisions.

- (1) When a notice of intent is submitted to the director for a substantial alteration or addition to the treatment works or waste outlet and where a general permit authorization has previously been granted for the treatment works or waste outlet, the owner or operator shall be assessed the fee of \$500;
- (2) A new owner or operator or both of a discharge facility covered by the general permit provisions shall submit a new notice of intent unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The new owner or operator shall be assessed the fee of \$500;
- (3) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.

(j) A notice of intent shall be submitted to the director at least thirty days before the earlier of:

- (1) The beginning of any discharge, which is not covered under Appendix C or except for coverage under Appendix M for a declared pest emergency situation where the notice of intent shall be submitted no later than thirty days after beginning the pesticide discharge;

- (2) The beginning of any construction activity which is covered under Appendix C, unless coverage is required for an emergency-related construction activity where an NOI shall be submitted no later than 30 calendar days after the start of construction activities;
- (3) The expiration date of the existing general permit; or
- (4) The expiration date of the existing notice of general permit coverage.
- (k) (Reserved).
- (l) (Reserved).
- (m) A notice of intent shall be submitted to the director for:
  - (1) Any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill; or
  - (2) Any discharge from an existing regulated small municipal separate storm sewer system which is qualified to obtain coverage under the general permit. A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas are designated to submit a notice of intent if the department determines that the storm water discharge results in or has the potential to result in exceedances of

§11-55-34.08

water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The notice of intent shall be submitted within thirty days of notice from the department.

(n) (Reserved).

(o) The submittal date is the date the department receives the notice of intent. The thirty day period includes weekends and holidays. If the director notifies the owner or operator or its duly authorized representative that the notice of intent is incomplete, the thirty day period shall start over upon receipt of the revised notice of intent. The director may waive this thirty day requirement by notifying the owner or operator in writing of a notice of general permit coverage before the thirty days expire. [Eff and comp 10/29/92; am 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; am and comp 6/15/09; am and comp 10/21/12; am and comp 12/6/13; comp 11/15/14; **comp 2/9/19; and comp** ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.22, 122.26, 122.28(b)(2)(ii) and (iii), 123.25(a)(11))

§11-55-34.09 Notice of intent review, notice of general permit coverage, additional conditions, terms, renewals, effective dates, and automatic coverage. (a) After receipt of a notice of intent, the director may notify the owner or operator or its duly authorized representative in writing that the notice of intent is complete or incomplete, whether the proposed activity or discharge(s) is covered under a general permit, or whether an individual permit application is required. The director may deny without prejudice the notice of intent to be covered by a general permit if the owner or operator or its duly authorized representative does

not respond or failed to respond in writing within thirty days of the date of the director's written notification that the notice of intent is incomplete.

(b) After receipt of the complete notice of intent, the director may notify the owner or operator in writing of a notice of general permit coverage. This includes issuing a notice of general permit coverage after automatic coverage applies under subsection (e) (2) even if the owner or operator has not waived automatic coverage. The director may impose conditions in a notice of general permit coverage or add conditions to an issued notice of general permit coverage to ensure that the activity or discharge(s) complies with the terms and conditions of the general permit and to ensure that state water quality standards will not be violated.

(c) A notice of general permit coverage may limit coverage under the general permit to a term of less than five years.

(d) The director may, automatically or by notification, administratively extend a notice of general permit coverage [upon receipt of a complete notice of intent for renewal of a notice of general permit coverage before the expiration of the general permit or when the notice of general permit coverage specifies, whichever occurs first]. A notice of general permit coverage shall be considered to have been automatically extended unless the department informs the Permittee otherwise. The department will inform the Permittee of any deadlines to submit a complete NOI to request authorization to discharge under the new general permit. Any Permittee granted coverage under the general permit that receives an administrative extension for coverage, will remain covered by the general permit until the earlier of:

- Authorization for coverage under reissuance or replacement of the general permit;
- The Permittee's submittal of a Notice of Cessation;
- The issuance of an individual NPDES permit;

- A formal permit decision by the Director not to reissue this general permit, at which time the Permittee must seek coverage under an alternative general or individual permit; or
- A formal permit decision by the Director to terminate the administrative extension due to the Permittee failing to submit by the deadline specified by the Director, a complete NOI to request authorization to discharge under the new general permit.

The DOH will notify the permittee in writing that it's administrative extension is being terminated and the reason(s) why. An administrative extension of an NGPC granted, automatically or by notification, for a project which later is found to be in non-compliance [will]may be [automatically] terminated and may be required to apply for individual NPDES permit coverage. [If administratively extended, the terms and conditions of the expired permit will continue to be effective for projects that submitted NOIs prior to the expiration date. The department intends that projects that do not submit NOIs prior to the expiration date will not be administratively extended.]

The permittee who submits a notice of intent for renewal of the notice of general permit coverage shall be treated as an owner or operator applying for permit renewal under section 342D-6(h), HRS.

(e) Authorization to discharge under the general permit is effective upon the earlier of:

- (1) Notification by the department of general permit coverage under subsection (b); or
- (2) The thirtieth day after receipt at the clean water branch of the department of a complete notice of intent for a new notice of general permit coverage and the applicable filing fee, unless before the thirtieth day the director notifies the owner or its duly authorized representative that the notice of intent is incomplete. This paragraph does not apply to a notice of intent for renewal of a notice of general permit coverage. This

paragraph does not apply to a notice of intent for small municipal separate storm sewer systems.

(f) A person claiming coverage in writing under the automatic provision of subsection (e)(2), instead of under an issued notice of general permit coverage under subsections (a) through (d), assumes the risks that:

- (1) The notice of intent may later be found to be incomplete by the director or by a court;
- (2) The person may not be covered under the terms of the general permit, even if the notice of intent is complete;
- (3) The person may be acting in noncompliance with the general permit or this chapter, even if the person is complying with its notice of intent; and
- (4) The director may modify, revoke and reissue, or terminate a notice of general permit coverage under section 11-55-34.11. The director may revoke automatic coverage and issue a notice of general permit coverage or terminate an automatic coverage under section 11-55-34.11.

The person claiming automatic coverage on the notice of intent shall submit all site-specific plans, general contractor information, and all necessary permits and approvals (i.e., county-approved erosion and sediment control plan or approved substitute, approval to connect or discharge to a separate storm sewer system, etc.). Nothing in or with the notice of intent shall be submitted less than thirty days before the start of construction activities.

(g) A person may waive automatic coverage under subsection (e)(2) by notifying the director in writing that the person will wait for a notice of general permit coverage before starting the activity or discharge.

(h) Written notification by the department under this section is complete upon mailing or sending a facsimile transmission or electronic mailing of the

§11-55-34.10

document or actual receipt of the document by the owner or its duly authorized representative.

(i) All submittals in compliance with a condition of the notice of general permit coverage shall be signed in accordance with section 11-55-34.08(e), (f), or (g) and include a certification in accordance with 40 CFR §122.22(d). [Eff and comp 10/29/92; am 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; comp 2/9/19; and am and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.10 Review of coverage issues and notice of intent and notice of general permit coverage decisions. Any interested person may petition the director under section 91-8, HRS, for a declaratory ruling on whether an individual permit is required for, or a general permit covers, a discharge. The director's decision requiring a person to apply for an individual permit or excluding a person from general permit coverage shall remain effective pending the outcome of the petition. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; §11-55-34.1; am, ren, and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.11 Notice of general permit coverage revocation and/or termination. A notice of general



permit coverage and automatic coverage under section 11-55-34.09(e)(2) may be revoked and/or terminated in accordance with section 11-55-34.05 or as determined by the director. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.12 General permit compliance. Any person who discharges under a general permit shall comply with section 11-55-34.04, all general permit standard conditions, all applicable special conditions, and all applicable additional notice of general permit coverage conditions. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-35 Penalties and remedies. Any person who violates any provision of this chapter or the terms or conditions of any permit issued under this chapter shall be subject to the penalties and remedies provided in chapter 342D, HRS. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-30, 342D-31, 342D-32, 342D-33, 342D-34, 342D-35; 33 U.S.C. §§1251, 1342, 1370) (Imp:

§11-55-35

HRS §§342D-2, 342D-4, 342D-5, 342D-9, 342D-11, 342D-17, 342D-30, 342D-31, 342D-32, 342D-33, 342D-34, 342D-35; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-36 Hearing and appeals. Hearings before the director on any violations of these rules and appeals from any of the director's decisions shall comply with chapters 91 and 342D, HRS. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-12, 342D-56, 342D-57; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS Ch. 91 and §§342D-2, 342D-4, 342D-5, 342D-6, 342D-9, 342D-11, 342D-12, 342D-31; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-37 Severability clause. If any provision of this chapter, or its application to any person or circumstance, is held invalid, the application of the provision to other persons or circumstances, and the remainder of this chapter, shall not be affected. [Eff 11/27/81; comp 10/29/92; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-38 Repealed. [Eff and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; R 6/15/09] (Auth: HRS ch. 6E, §§6E-1, 6E-42(a)) (Imp: HRS ch. 6E, §§6E-1, 6E-42(a))

§11-55-39 Public interest. (a) A person submitting an NPDES permit application shall explain in writing why the proposed action meets the public interest as defined in section 342D-6(g), HRS. The explanation shall address:

- (1) The environmental impact of the proposed action beside the water quality effects already covered in the application and supporting materials;
- (2) Any adverse environmental effects which cannot be avoided should the action be implemented;
- (3) The alternatives to the proposed action;
- (4) The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity;
- (5) Any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented; and
- (6) The optimum balance between economic development and environmental quality.

§11-55-41

(b) The person submitting an NPDES permit application may submit a document prepared for another permit, license, or approval, including an environmental assessment or environmental impact statement prepared under chapter 343, HRS, or other similar document. The person submitting the NPDES permit application may also submit supplementary documents to meet this section. In either case, the department shall review the document(s) submitted for compliance with this section. The department shall seek to avoid redundant work.

(c) The department may consider other information relevant to the public interest, including information in an environmental assessment; environmental impact statement; other document prepared for another permit, license, or approval; or elsewhere. If the department considers information unknown to the applicant, the department shall notify the applicant and allow the applicant to respond in a timely manner. [Eff and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-55-40 Field citations; non-compliance with NPDES requirements. This section authorizes citations to effectively and quickly settle easily verifiable violations of chapter 342D, HRS, and this chapter. Settlements under this section are an additional remedy and do not supplant the director's authority to issue orders under section 342D-9, HRS.

(1) Offer to settle.

(A) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director may, in the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to:

- (i) Any person who discharges or causes or allows a discharge of pollutants into State waters or municipal separate storm sewer systems without coverage under an NPDES permit, or in excess of limitations established by an NPDES permit;
- (ii) Any person who begins an activity prior to obtaining the required individual NPDES permit, coverage under a general permit, and/or authorization from the director;
- (iii) Any person who fails to correctly install, implement, maintain, or repair site best management practices as called for in their storm water pollution control plan or best management practices plan or other plan;
- (iv) Any person who fails to monitor as required by the applicable NPDES permit, in whole or in part;
- (v) Any person who fails to retain on-site or at a nearby office or field office:
  - a) a copy of the NPDES permit application or notice of intent or "no exposure" certification,
  - b) storm water pollution control plan, best management practices plan or all other plans required in the NPDES permit and NGPC and all subsequent revisions,
  - c) individual NPDES permit, notice of general permit

- coverage, or conditional "no exposure" exclusion, or
  - d) discharge monitoring reports;
  - (vi) Any person who fails to submit documents, reports, and/or submittals as required by the applicable NPDES permit, in whole or in part, including but not limited to discharge monitoring reports, monthly compliance information, pollution prevention plans, notification to the director, and/or notices of cessation.
- (B) A field citation shall indicate the following amounts:
- (i) \$500 for any person who violates paragraphs (1) (A) (i), (ii), (iii), or (iv) for the first violation, and \$2,000 for a subsequent violation;
  - (ii) \$100 for any person who violates paragraph (1) (A) (v) for the first violation, and \$200 for a subsequent violation;
  - (iii) \$500 for any person who violates paragraph (1) (A) (vi) for the first violation, and \$1,000 for a subsequent violation.
- (2) Resolution of field citation.
- (A) A person issued a field citation may accept the citation by:
- (i) Signing the field citation;
  - (ii) Paying the full amount indicated on the field citation. Payment shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as

- otherwise specified by the director;
- (iii) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty days after the person receives the field citation; and
  - (iv) Correction within seven days, or unless otherwise specified on the field citation, of any violation of section 11-55-03;
- (B) By signing the field citation, the person to whom it was issued agrees to:
- (i) Give up the right to a contested case hearing under chapter 91 or 342D, HRS, or otherwise challenge the field citation;
  - (ii) Pay the amount indicated; and
  - (iii) Correct the violation;
- (C) If the field citation is not accepted in compliance with paragraph (2)(A), the director may seek for that cited violation any remedies available under this chapter; chapter 342D, HRS; or any other law. For all other violations the director retains authority to seek any available remedies.
- (3) Form of citation. The department shall prescribe a field citation form." [Eff and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp 2/9/19; and comp] (Auth: HRS §§321-11, 342D-1, 342D-4, 342D-5) (Imp: HRS §§321-11, 342D-2, 342D-4, 342D-5, 342D-9, 342D-18, 342D-30, 342D-31, 342D-50, 603-23)

§11-55-41 Zones of mixing. (a) Zones of mixing are defined and authorized for use in discharge permits in section 11-54-1. Zones of mixing allow for dilution of wastes before compliance with the applicable water quality criteria must be met. Zones of initial dilution are a subset of zones of mixing that are applied to toxic pollutants.

(b) Establishment, renewal, and termination.

(1) Application for establishment of a zone of mixing shall be made concurrently with any discharge permits whenever applicable and the conditions of a zone of mixing shall be incorporated as conditions of the discharge permits. Every application for a zone of mixing shall be made on forms furnished by the director and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and other information as the director may prescribe.

(2) Each application for a zone of mixing shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information as may be submitted upon the request of the director, and in light of the effect or probable effect upon water quality standards established pursuant to chapter 11-54.

(3) Whenever an application is approved, the director shall establish the zone of mixing, taking into account the environmental impact, including but not limited to factors such as the protected uses of the body of water, existing natural conditions of the receiving water, character of the effluent, and the adequacy of the design of the outfall and diffuser system to achieve maximum dispersion and assimilation of the treated or controlled waste with a minimum of undesirable or noticeable effect on the receiving water.

(4) Approval of a zone of mixing shall be made either after a public hearing is held by the director in the county where the source is



situated, in accordance with chapters 91 and 92, HRS and the rules of practice and procedures of the department, or after the public notification and comment process duly established for a discharge permit in the case when the zone of mixing is being considered concurrently with the discharge permit.

- (5) No zone of mixing shall be established by the director unless the application and the supporting information clearly show that:
- (A) The continuation of the function or operation involved in the discharge by the granting of the zone of mixing is in the public interest;
  - (B) The discharge occurring or proposed to occur does not substantially endanger human health or safety;
  - (C) Compliance with the existing water quality standards from which a zone of mixing is sought would produce serious hardships without equal or greater benefits to the public; and
  - (D) The discharge occurring or proposed to occur does not violate the basic standards applicable to all waters, will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control.
  - (E) The capacity of the receiving water to dilute a pollutant or assimilative capacity is available in the receiving water for the pollutant in which a zone of mixing is being requested.
- (6) Any zone of mixing or renewal thereof shall be established within the requirements of this section and for time periods and under conditions consistent with the reasons within the following limitations:
- (A) If the zone of mixing is established on the grounds that there is no reasonable

means known or available for the adequate prevention, control, or abatement of the discharge involved, it shall be allowed only until the necessary means for prevention, control or abatement become practicable, and subject to the taking of any substitute or alternative measures that the director may prescribe. No renewal of a zone of mixing established under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the discharge involved;

(B) The director may issue a zone of mixing for a period not exceeding five years;

(C) The director may establish conditions requiring the applicant to perform appropriate effluent and receiving water sampling including monitoring of bottom biological communities and report the results of each sampling to the director. A program of research to develop reasonable alternatives to the methods of treatment or control in use by the applicant may be required if research is deemed prudent by the director; and

(D) In order to prevent high temperature discharges from violating section 11-54-04(a)(4), no new or increased domestic, industrial, or other controllable source shall discharge at a maximum temperature which will cause temperatures to exceed three degrees Celsius above ambient, or thirty degrees Celsius, whichever is less, within one meter of the bottom within a zone of mixing. For discharges with or without submerged outfalls, the director may make a limited allowance for higher discharge temperatures if there is satisfactory demonstration that the elevated temperature will not cause damage to the local aquatic community.

- (7) Any zone of mixing established pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial establishment of a zone of mixing, provided that the applicant for renewal meets the requirements in section 11-55-41. Any new zones of mixing or requests for zone of mixing renewals for wastewater treatment plants (WWTP) performing primary treatment shall comply with section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251). No renewal shall be allowed except upon application. Any renewal application shall be made at least three hundred and sixty days prior to the expiration of the zone of mixing.
- (8) No zone of mixing established pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.
- (9) Each mixing zone may be subject to revocation, suspension, or modification if, after notice and opportunity for a hearing pursuant to chapter 91, HRS and the rules of practice and procedures of the department, the director determines that the terms specified in section 342D-6, HRS have been violated. In taking any action, the director may consider operating records, compliance investigations, or other information regarding discharge quality or impact on receiving waters. The action shall be effected by giving written notice to the permittee, which shall contain the reasons for the action.
- (10) The director shall be notified within thirty days of the permanent discontinuance of a discharge. The zone of mixing shall terminate thirty days after such notification has been received.
- (11) Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall

become vested in the designee. [Eff  
] (Auth: HRS §§342D-1, 342D-4, 342D-5)  
(Imp: HRS §§342D-4, 342D-5)

§11-55-42 Intake credits. (a) An intake credit is an NPDES implementation tool that applies to the implementation of water quality standards through NPDES permits only.

(b) As used in this section:

"Background pollutant concentration" means the water body concentration, regardless of whether those pollutants are natural or result from anthropogenic upstream activity.

"Intake pollutant" means the background pollutant that is present in the intake water body.

"Same body of water" means an intake pollutant is considered to be from the "same body of water" as the discharge if the department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period of time had it not been removed by the permittee. This finding may be deemed established if:

- (1) The background pollutant concentration in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water; and
- (2) There is a direct hydrologic connection between the intake and discharge points; and
- (3) Water quality characteristics (e.g. temperature, pH, hardness) are similar in the intake and receiving waters.

The department may consider other site-specific factors relevant to the transport and fate of the pollutant in deciding whether a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

(c) The director may, upon request of the discharger, adjust water quality-based effluent limitations or standards to reflect credit for intake pollutants in the discharger's intake water only:

- (1) To the extent necessary to meet the

applicable limitation or standard, up to a maximum value equal to the intake pollutant value; and

- (2) If there is no net increase in the mass of the intake pollutant for which the credit is given. A discharger may increase the concentration of the intake pollutant if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water, and the higher concentration discharge is demonstrated to not cause acute toxicity or detrimental effects.

(d) Intake credit is not applicable to any pollutant for which a Total Maximum Daily Load (TMDL) and waste load allocation (WLA) have been developed and have been approved by the U.S. Environmental Protection Agency unless the TMDL and WLA provide for such an intake credit.

(e) The director shall grant credit for water quality-based effluent limits only if:

- (1) The intake water containing the intake pollutant is withdrawn from the same body of water into which the discharge is made, or the director may waive this requirement if the director finds that no environmental degradation will result;
- (2) The facility does not chemically or physically alter the intake pollutant in a manner that would cause adverse water quality impacts to occur;
- (3) The timing and location of the discharge of the intake pollutant would not cause adverse water quality impacts to occur; and,
- (4) The director finds that the discharge of intake pollutants into the receiving water will not adversely impact narrative or numeric water quality criteria specified in this chapter.

(f) Effluent limitations must be established so that they comply with all other applicable state and federal laws and regulations including water quality-based requirements and anti-degradation policies.

- (g) All requests for the establishment of credit

for intake pollutants shall be made on forms furnished by the department and shall be accompanied by:

- (1) Documentation showing a complete and detailed description of present conditions and how present conditions do not conform to standards; and
- (2) Documentation showing that the intake and discharge waterbodies are the "same body of water" or request a waiver and demonstrate that no additional environmental degradation will occur in the receiving water; and
- (3) Documentation showing that pollutant(s) for which credits are being requested actually come(s) from the intake water.

(h) Credit for intake pollutants shall be specified in the discharger's NPDES permit and shall become effective with the department's issuance of the permit for the specified permittee.

- (1) All permits that include intake credits issued by the department shall include monitoring of all influent, effluent, and ambient water to demonstrate that the conditions in this section are maintained during the permit term.
- (2) All credit for intake pollutants developed under this section shall be re-evaluated upon permit renewal.

(i) Credit for intake pollutants established under this section apply in the vicinity of the discharge for purposes of establishing permit limits for a specified pollutant for the specified permittee.

(j) All other water quality criteria established under this chapter continue to apply.

[Eff ] Auth: HRS §§342D-4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, 342D-6, Ch. 342E)

Chapter 11-55, Hawaii Administrative Rules, entitled "Water Pollution Control" dated \_\_\_\_\_, was adopted following a public hearing held [September 18, 2018] \_\_\_\_\_, after public notice was given in the Honolulu Star-Advertiser, West Hawaii Today, Hawaii Tribune Herald, Maui News and The Garden Isle on [August 16, 2018] \_\_\_\_\_.

The adoption of chapter 11-55 shall take effect ten days after filing with the office of the Lieutenant Governor.

\_\_\_\_\_  
BRUCE S. ANDERSON, Ph.D.  
Director  
Department of Health

Approved:

APPROVED AS TO FORM:

*Dale K. Sakata*

\_\_\_\_\_  
DAVID Y. IGE  
Governor  
State of Hawaii

\_\_\_\_\_  
Dale K. Sakata  
Deputy Attorney General

Dated: \_\_\_\_\_

---

Filed

55-104