

Department of Health

Proposed Rules under Title 11  
Hawaii Administrative Rules

(insert adoption date)

Chapter 56 of Title 11, Hawaii Administrative Rules,  
entitled "Nonpoint Source Pollution Control", is  
proposed to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 56

NONPOINT SOURCE POLLUTION CONTROL

§11-56-01	Definitions
§11-56-02	General policy for nonpoint source pollution control
§11-56-03	Applicability
§11-56-04	Exemptions
§11-56-05	Registry requirements
§11-56-06	Water Pollution Prevention Plans
§11-56-07	Reporting requirements
§11-56-08	Recordkeeping requirements
§11-56-09	Compliance with requirements
§11-56-10	Public access to information
§11-56-11	Right to inspect
§11-56-12	Enforcement and penalties
§11-56-13	Hearings and appeals
§11-56-14	No effect on enforcement of other law
§11-56-15	Severability clause
§11-56-16	Field citations; noncompliance with nonpoint source pollution control requirements
§11-56-17	Public hearings

§11-56-18 Signatories

Appendix A Nonpoint Source Pollution Control  
Requirements for Agriculture  
Appendix B Nonpoint Source Pollution Control  
Requirements for Forestry  
Appendix C Nonpoint Source Pollution Control  
Requirements for Marinas and  
Recreational Boating

**§11-56-01 Definitions.** As used in this chapter, unless the context clearly requires otherwise:

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

"Activity" means the performance of functions, assumptions of risks, or use by a party of tangible or intangible property or other resources to create a result.

"Agriculture" means the science or practice of farming, including growing crops and raising animals for the production of food, fiber, fuel, and/or other products.

"Agricultural activity" means an activity primarily involved with agriculture.

"Agricultural land" means land that is used principally for agricultural activities.

"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.

Animal feeding operations include the animal confinement area, the manure storage area, the raw

materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Included in the definition is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities. Two or more animal facilities under common ownership are considered, for the purposes of Appendix A, to be a single animal facility for 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.

"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.

"BLNR" means the board of land and natural resources.

"Buffer area" or "buffer strip" means a designated area around a stream or waterbody, or a strip between a stream or waterbody and an area of disturbance, of sufficient width to control sediment and/or minimize entrance of forestry chemicals (fertilizers, pesticides, and fire retardants) into the waterbody.

"Cable yarding" means a system of transporting logs from stump to landing by means of steel cables and winch.

"Channel" means a natural or constructed waterway that continuously or periodically passes water.

"Commercial forestry" means forestry conducted for a commercial purpose.

"Commercial harvesting" means harvesting conducted for a commercial purpose.

"Commercial purpose" means those land uses which entail or comprise the exchange or buying and selling of commodities, or the providing of services, or relating to or connected with trade, traffic in goods and services, or commerce in general. The use of land for regulated public utility purposes shall not be considered a commercial purpose.

"Commercial species" means tree species grown for a commercial purpose.

"Contaminated runoff" means runoff which comes into contact with any raw materials, products, waste, or byproducts such that pollutants are transported within the storm water.

"Department" means the department of health unless explicitly qualified as another state or federal department.

"Developed/Urban" means those areas where the presence of man-made impervious surfaces results in increased peak runoff volumes and pollutant loadings that permanently alter one or more of the following: stream channels, natural drainageways, and in-stream and adjacent riparian habitat, so that predevelopment aquatic flora and fauna are eliminated or reduced to unsustainable levels and predevelopment water quality has been degraded. Increased bank cutting, streambed scouring, siltation damaging to aquatic flora and fauna, increases in water temperature, decreases in dissolved oxygen, changes to the natural structure and flow of the stream or river, and the presence of anthropogenic pollutants that are not generated from agricultural activities, in general, are indications of development and/or urbanization.

"Developed/Urban activity" means an activity located in a developed or urban area or primarily involved with a developed or urban area.

"Director" means the director of health or the director's duly authorized agent.

"Discharge" when used without qualification, means the "discharge of a water pollutant" including, but not limited to, causing or contributing to water pollution of State waters by way of runoff, drainage, seepage, escape, disposal, spilling, leaking, pumping, emitting, emptying, precipitation, atmospheric deposition, or hydrologic modification.

"Disturbed areas" means localized areas within harvest units or road systems where mineral soil is exposed or agitated. Disturbed areas include, but are not limited to, road cuts, fill slopes, landing surfaces, cable corridors, or skid trail ruts.

"DLNR" means the state department of land and natural resources.

"DOFAW" means the DLNR division of forestry and wildlife.

"Drainage ditch" means a manmade structure designed to carry storm water runoff only, not sanitary sewage.

"Dump station" means a type of pumpout facility which receives vessel sewage from portable marine sanitation devices and from which sewage is delivered or transferred to an approved sewage disposal facility.

"eFOTG" means the electronic Field Office Technical Guide published by the United States Department of Agriculture, Natural Resources Conservation Service (NRCS), Pacific Islands Area Field Office.

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

"Erosion" means wearing away of the land surface by water, ice, wind, gravity, or other natural or anthropogenic agents.

"Existing activity" means an activity subject to regulation under this chapter that was in operation as of [insert the date of publication of this chapter].

"Existing animal feeding operation" means a facility that meets the definition of "animal feeding operation" in this chapter and that was in operation as of [insert date of public notice or effective date of regulation]

"Facility" means any facility (including land or appurtenances thereto) that is subject to regulation under this chapter.

"Felling" means the process of cutting down standing trees.

"Fertilizer" means any organic or inorganic material of natural or synthetic origin that is added to a soil to supply elements essential to plant growth.

"Fireline" means a barrier used to stop the spread of fire constructed by removing fuel or rendering fuel inflammable by use of fire retardants.

"Fish waste" means organic materials resulting from commercial or recreational fish cleaning or processing operations. Fish waste may include, but is not limited to, particles of flesh, skin, bones, entrails, or liquid stick water.

"Floodplain" means the area of land flooded at measurable recurrence intervals of 10, 50, 100, or 500 years or the area of land that is periodically inundated (often annually) by the overflow of rivers or streams.

"Forest" or "forest land" means land at least 120 feet (37 meters) wide and at least 1 acre (0.4 hectare) in size that contains at least 10 percent tree crown cover, or that formerly contained such cover and will be naturally or artificially restored. Forest land does not include land that is predominantly used for agricultural activities or predominantly under urban land use; tree-covered areas in agricultural production settings, such as fruit orchards, or tree-covered areas in urban settings, such as city parks, are not considered forest land.

"Forest product" means any saleable item made from wood that is taken and/or harvested from forest trees.

"Forestry" means the art, science, and practice of managing forests.

"Forestry activity" means an activity primarily involved with forestry.

"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.

"Groundskidding" means trailing or dragging trees along the ground.

"Habitat" means the place where an organism naturally lives or grows.

"HAR" means Hawaii Administrative Rules.

"Harvesting" means the felling, skidding, processing, loading, and transporting of forest products.

"Harvest unit" means an area of forest vegetation that has been harvested as a cohesive unit and generally has uniform distribution of retained vegetation.

"HRS" means Hawaii Revised Statutes.

"Hull" means the frame or body of a vessel, including its deck, but exclusive of the masts, sails, yards, and rigging.

"Hull maintenance area" means areas whose primary function is to provide a place for boats during the scraping, sanding, and painting of their bottoms.

"Hydromodification" means alteration of the hydrologic characteristics of coastal and non-coastal waters, which in turn could cause degradation of water resources. Any alteration to a stream or coastal waters, whether a diversion, channel, dam, or levee is considered a hydromodification.

"Hydromodification activity" means an activity primarily involved with hydromodification.

"Integrated pest management" or "IPM" means a pest population management system that anticipates and prevents pests from reaching damaging levels by using all suitable tactics including natural enemies, pest-resistant plants, cultural management, and the judicious use of pesticides, leading to an economically and environmentally safe agriculture.

"Intermittent stream" means a stream that carries water most of the time but ceases to flow occasionally because evaporation or seepage into its bed and banks exceed the available streamflow. Intermittent streams may also include ephemeral streams that carry water only after rains and interrupted streams that carry water generally through their length but may have sections with dry streambeds.

"Landing" means a place in or near the forest where logs are gathered for further processing, sorting, or transport. Also known as a log deck.

"Load allocation" means the portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources. Load allocations are best estimates of the loading, which may range from reasonably accurate estimates to gross allotments, depending on the availability of data and appropriate techniques for predicting the loading. Wherever possible, natural and nonpoint source loads should be distinguished.

"Management measures" means economically achievable measures for control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

"Marinas" means facilities and their associated shore-based services that support recreational boats and boats for hire.

"Marine sanitation device" means any equipment for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage.

"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 Clean Water Act.

"New activity" means an activity subject to regulation under this chapter which commenced regulated activities after [insert date of publication of this chapter].

"New animal feeding operation" means a facility that meets the definition of "animal feeding operation" in this chapter and that began operation after [insert date of public notice or effective date of regulation]

"Nonpoint source pollution" means water pollution that does not originate from a point source. Nonpoint source pollution may include pollution from sources exempt from regulation as point sources, including but not limited to facilities or activities related to agriculture, forestry, developed areas, marinas and recreational boating, hydromodification, and wetlands, riparian areas, and vegetated treatment systems. Nonpoint source pollution may be delivered to State waters through processes including but not limited to discharges, land runoff, precipitation, atmospheric deposition, drainage, seepage, or hydrologic modification.

"Notice of general permit coverage" or "NGPC" means an authorization issued to the owner or operator by the department to comply with the NPDES general permit.

"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 (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.

"Party" means each person or agency named as a party or properly entitled to be a party in any agency or court proceeding.

"Pasture" means lands that are primarily used for the production of forage plants for livestock. Pasture

includes lands that have been seeded with forage plants for livestock and lands that are intensively managed using agronomy practices for the production or control of livestock.

"Perennial stream" means a stream that carries water all the time.

"Person" means any individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions including the several counties and any public agencies thereof and any legally organized districts therein, trust, estate, or any other legal entity. "Person" includes the plural where appropriate and needed.

"Pesticide" means any substance or mixture of substances used for preventing, destroying, repelling, or mitigating any pest or intended for use as a plant regulator, defoliant, or desiccant.

"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, or vessel or any other floating craft, from which pollutants are or may be discharged. Point source does not include agricultural storm water discharges and return flows from irrigated agriculture.

"Pollution" means water pollution.

"Precommercial thinning" means cutting trees from a young stand so that the remaining trees will have more room to grow to marketable size. Trees cut in a precommercial thinning have no commercial value and normally none of the felled trees are removed for utilization. The primary intent is to improve growth potential for the trees left after thinning.

"Privately-owned agricultural land" means agricultural land owned by an individual or non-governmental, private party.

"Privately-owned entity" means an entity owned by an individual or non-governmental, private party.

"Privately-owned forest land" means land owned by an individual or non-governmental, private party,

which is used principally for silvicultural activities.

"Publicly-owned agricultural land" means agricultural land owned by a federal, state, or local government agency, authority, or subdivision.

"Publicly-owned entity" means an entity that is owned by a federal, state or local government including government agencies or departments.

"Publicly-owned forest land" means land owned by a federal, state, or local government agency, authority, or subdivision, which is used principally for silvicultural activities.

"Pumpout" means a mechanical device which is temporarily connected to a vessel for the purpose of removing vessel sewage from its holding tank or head to an approved sewage disposal facility.

"Range" means land(s) that support a cover of herbaceous or shrubby vegetation suitable for grazing or browsing by livestock.

"Regeneration" means the process of replacing older trees removed by harvest or disaster with young trees.

"Riparian areas" means vegetated ecosystems along a waterbody through which energy, materials, and water pass. Riparian areas characteristically have a high water table and are subject to periodic flooding and influence from the adjacent waterbody. These systems encompass wetlands, uplands, or some combination of these two land forms; they will not in all cases have all of the characteristics necessary for them to be classified as wetlands.

"Runoff" means the portion of rainfall, snow melt, or irrigation water that drains off the land into State waters.

"Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

"Shoreline erosion" means erosion that occurs at the shoreline in in the State's domain.

"Silviculture" means the art and science of controlling the establishment, growth, composition, health, and quality of forests to meet the diverse needs and values of landowners and society on a sustainable basis. Silviculture includes the theory and practice of planting, thinning, pruning, growing, and harvesting of trees.

"Skid trail" means a temporary, nonstructural pathway over forest soils used to drag felled trees or logs to the landing.

"Solid waste" means garbage, refuse, and other discarded materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations, sludge from waste treatment plants and water supply treatment plants, and residues from air pollution control facilities and community activities, but does not include solid or dissolved material in domestic sewage, irrigation return flows, or industrial discharges which are subject to permit under chapter 342D.

"State waters" means all waters, fresh, brackish, or salt, around and within the State including, but not limited to, coastal waters, wetlands, streams, rivers, drainage ditches, ponds, reservoirs, canals, groundwaters, lakes, and Hawaiian fishponds (*loko i'a*; as defined in §183B-1, HRS); provided that drainage ditches, canals, ponds, wetlands, and reservoirs required as a part of a water pollution control system or an irrigation system are excluded.

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

"Stream" means any natural water course in which water usually flows in a defined bed or channel. The flow can be constant, uniform, or uninterrupted, regardless of whether the stream has been altered or channelized.

"Streamside Management Zone" or "SMZ" means a designated area that consists of the stream itself and an adjacent area of varying width that mitigates the movement of sediment, nutrients, and other chemicals generated from forestry activities into streams. The

SMZ is not an area of exclusion, but an area of closely managed activity.

"Timber land" means forest land that is capable of producing crops of industrial wood and not withdrawn from timber utilization by statute or administrative regulation.

"Total maximum daily load" or "TMDL" 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.

"Total suspended solids" or "TSS" means the very fine soil particles that remain in suspension in water for a considerable period of time.

"Tree" means a woody plant having a more or less erect perennial stem(s) capable of achieving at least 3 inches (in) (7.6 centimeters [cm]) in diameter at breast height, or 5 in (12.7 cm) diameter at root collar, and a height of 16.4 ft (5 m) at maturity in situ.

"Tree farm" means any publicly-owned or privately-owned forest land that is capable of sustaining commercial tree species.

"Vessel" means every description of watercraft or other artificial contrivance being used as a means of transportation on waters of the U.S.

"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.

"Wastewater" means any liquid waste, including waste-contaminated storm water runoff, whether treated or not, and whether animal, mineral, or vegetable, including agricultural, industrial, and thermal wastes. Specific to Appendix A of this chapter (Nonpoint Source Pollution Control Requirements for Agriculture), "wastewater" means water directly or

indirectly used in the operation of the animal feeding operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other associated facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

"Water pollutant" or "pollutant" means, but is not limited to, dredged spoil, solid refuse, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, sediment, and industrial, municipal, and agricultural waste.

"Water pollution" means:

- (1) Such contamination or other alteration of the physical, chemical, or biological properties of any State waters, including change in temperature, taste, color, turbidity, or odor of the waters, or
- (2) Such addition of any liquid, gaseous, solid, radioactive, or other substances into any State waters,

as will or is likely to create a nuisance or render such waters unreasonably harmful, detrimental, or injurious to public health, safety, or welfare, including harm, detriment, or injury to public water supplies, fish and aquatic life and wildlife, recreational purposes and agricultural and industrial research and scientific uses of such waters or as will or is likely to violate any water quality standards, effluent standards, treatment and pretreatment standards, or standards of performance for new sources adopted by the department.

"Water pollution control system" means a system designed and constructed specifically for the purpose of collecting, handling, storing, treating, or disposing of domestic wastewater and industrial wastewater, to prevent water pollution.

"Watershed" means a geographically defined land area that drains to a common waterbody, such as a stream, lake, estuary, wetland, or the ocean.

"Watershed plan" means a document developed to guide the implementation of practices and activities in a watershed to protect, maintain, and restore the quality of State waters. A watershed plan provides assessment and management information for a geographically defined watershed, including the analyses, actions, participants, and resources related to development and implementation of the plan.

"Wetland" means land that is transitional between terrestrial and aquatic ecosystems where the water table is usually at or near the surface or the land is covered by shallow water. A wetland shall have one or more of the following attributes:

- 1) At least periodically, the land supports predominantly hydrophytic vegetation;
- 2) The substratum is predominantly undrained hydric soil; or
- 3) The substratum is nonsoil (gravel or rocks) and is at least periodically saturated with water or covered by shallow water.

Wetlands may be fresh, brackish, or saline and generally include swamps, marshes, bogs, and associated ponds and pools, mud flats, isolated seasonal ponds, littoral zones of standing water bodies, and alluvial floodplains.

"Yarding" means a method of transport of felled trees from harvest area to storage landing. [Eff ??/??/19] (Auth: HRS §§342E-1, 342E-3)

**§11-56-02 General policy for nonpoint source pollution control.** It is the department's policy:

- (1) To conserve State waters;
- (2) To protect, maintain, and restore the quality of State waters:
  - (A) For recreational uses;
  - (B) For the growth, support, and propagation of shellfish, fish, and

- other desirable species of aquatic life;
  - (C) For marine, estuarine and fresh water research;
  - (D) For the conservation of natural aquatic ecosystems such as coral reefs and streams; and
  - (E) For domestic, agricultural, industrial, and other legitimate uses.
- (3) To provide for the prevention, abatement, and control of new and existing nonpoint sources of pollution;
  - (4) To cooperate with county, state, and federal agencies in carrying out these objectives;
  - (5) To encourage and facilitate implementation of holistic water quality improving management measures and best management practices for the benefit of Hawaii; and
  - (6) To consider compliance with plans or requirements developed or implemented pursuant to this chapter, as compliance with Hawaii water pollution control programs.  
[Eff ??/??/19] (Auth: HRS §§ 205A-2, 342D-1, 342D-4, 342D-50, 342E-2, 342E-3, 342D-4; 16 U.S.C. §§1455b et seq.; 33 U.S.C. §§1251, 1329, 1370)

**§11-56-03 Applicability.** (a) This chapter applies to person(s) as identified below:

- (1) Publicly-owned entities owning land or conducting the activities below, as identified in Appendices A through C of this chapter:
  - (A) Agriculture (Appendix A);
  - (B) Forestry (Silviculture) (Appendix B); and
  - (C) Marinas and recreational boating (Appendix C)
- (2) Privately-owned entities that cause or contribute to nonpoint source pollution due



to operation or management of lands used for the activities identified in section 11-56-03(a)(1) are subject to this chapter and applicable requirements set forth in Appendices A through C of this chapter upon written notification by the director.

(b) At the discretion of the director, specific provisions of this chapter, additional management measures, or other remedies, may be applied to any persons who are found to be causing or contributing to nonpoint source pollution. In these cases, the director shall issue a nonpoint source order (hereafter "NPS Order") to affected persons that includes:

- (1) A notice of findings specifying the source(s) of nonpoint source pollution involved and the conduct that is causing or caused it;
- (2) A requirement to register under section 11-56-05;
- (3) A requirement to develop and implement a Water Pollution Prevention Plan under section 11-56-06(a)(1);
- (4) A time schedule for compliance with provisions of this chapter; and
- (5) Any other specific requirements for controlling the nonpoint source pollution deemed necessary by the director.

It is at the sole discretion of the director to determine whether this chapter shall apply to persons not identified in §11-56-03 subsections (a) and (b) based on risk of harm to human or environmental health.

(c) Affected persons may appeal the decision of the director to require compliance with the provisions of this chapter in accordance with section 11-56-13. [Eff ??/??/19] (Auth: HRS §§ 205A-2, 342D-5, 342E-3; 16 U.S.C. §§1455b et seq.; 33 U.S.C. §§1251, 1329, 1370)

**§11-56-04 Exemptions.** If any discharge of a pollutant to State waters subject to this chapter is otherwise subject to regulation as a point source under an NPDES permit, the requirements in this chapter shall not apply to that discharge. [Eff ??/??/19] (Auth: HRS §§342D-4, 342D-5, 342E-3; 33 U.S.C. §§1251, 1329, 1342, 1370)

**§11-56-05 Registry requirements.** (a) All persons subject to this chapter, as specified in sections 11-56-03(a) through (c), shall register with the department. The purpose of the registration is to notify the department of person(s) subject to this regulation and that a Water Pollution Prevention Plan under section 11-56-06 is required for the activity(ies) responsible for causing or contributing to nonpoint source pollution.

(b) It is the responsibility of the owner of the parcel or operator of the activity(ies) associated with the nonpoint source discharge to register with the department.

(c) At a minimum, registration shall include the following:

- (1) Legal name(s), street address, contact person's name and position title, telephone number and email address for the land owner;
- (2) Ownership status as federal, state, private, public or other entity;
- (3) Name, street address, and tax map key number(s) for the location of the property(ies) or activity(ies) subject to this chapter, and the contact person's name and position title, telephone number and email address;
- (4) As applicable, a listing of all entities, other than the land owner, who are responsible for the activity(ies) associated with a nonpoint source discharge;

- (5) General description of the activity(ies) associated with a nonpoint source discharge; and
- (6) The following certification, signed in accordance with section 11-56-18:  
"I certify that this registration was prepared under my direction or supervision. I am familiar with the content of this registration and am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment for violations."

(d) A registration is not complete until the necessary information and requirements under section 11-56-05(c) have been satisfied. If a submitted registration is found to be incomplete or otherwise deficient, the director will require additional information. Submission of missing information and/or information to correct identified deficiencies shall be in accordance with the schedule specified by the director. Delays in completing the registration do not relieve entities from enforcement and penalties specified in section 11-56-12 for violations of this chapter.

(e) Deadlines for registration with the department are as follows:

- (1) For existing facilities, within 120 days from date of publication of this chapter.
- (2) For new facilities, within 30 days prior to initiation of operations.

(f) A person submitting a registration shall submit a filing fee of \$500.00. This filing fee shall be submitted with the registration and shall not be refunded. 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.

(g) The owner or their duly authorized representative shall submit a complete registration to the director at the following address or as otherwise specified:

Director of Health  
Surface Water Protection Branch  
Environmental Management Division  
State Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378

(h) Registrations submitted in accordance with this chapter expire 5 years from the date of submission to the department. Prior to registration expiration, all persons subject to this chapter, as specified in sections 11-56-03(a) through (c), shall renew their registration with the department no later than 30 days prior to the expiration of their existing registration. The submittal date is the date the department receives the registration. The 30-day period includes weekends and holidays.

(1) Where the information submitted with the previous registration in accordance with section 11-56-05(c), as well as the associated Water Pollution Prevention Plan developed in accordance with section 11-56-06(a)(1), has not changed, the registration renewal shall include the following:

- (A) Legal name(s), street address, contact person's name and position title, telephone number and email address for the land owner;
- (B) Facility identification number;
- (C) Certification that previous registration information and the associated Water Pollution Prevention Plan have not changed; and
- (D) The following certification, signed in accordance with section 11-56-18:  
"I certify that this renewal registration was prepared under my direction or supervision. I am familiar with the content of this registration and am aware that there are significant penalties for knowingly submitting false information, including the

possibility of fine and imprisonment for violations."

- (2) Where the information submitted with the previous registration in accordance with section 11-56-05(c), as well as the associated Water Pollution Prevention Plan developed in accordance with section 11-56-06(a)(1), has changed, the registration renewal shall include the following:
  - (A) Legal name(s), street address, contact person's name and position title, telephone number and email address for the land owner;
  - (B) Facility identification number;
  - (C) As applicable, updated section 11-56-05(c) registration information and an updated copy of the existing Water Pollution Prevention Plan, including any amendments, required under section 11-56-06; and
  - (D) The following certification, signed in accordance with section 11-56-18:

"I certify that this registration was prepared under my direction or supervision. I am familiar with the content of this registration and am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment for violations."
- (3) A person submitting a registration renewal shall submit a filing fee in accordance with section 11-56-05(f).
  - (i) Persons that wish to terminate their registration must notify the director in writing within 30 days following the cessation of activity(ies) associated with the nonpoint source discharge. The notification of termination shall describe the steps taken to ensure that the discharge of pollutants from the activity(ies) associated with the nonpoint source is eliminated and that any further

discharges from the site will not pose an unacceptable threat to human health, the quality of State waters, and the environment. If the director determines that the steps taken are not adequate, the director may take enforcement action, including imposition of penalties.

(j) A registration submitted in accordance with this chapter may be transferred to a new owner. The current owner shall notify the department in writing at least 30 days in advance of the proposed transfer date. The notice of transfer shall include the following:

- (1) The legal name(s) of the new land owner, and the new owner contact person's name, telephone number and email address for the land owner;
- (2) Facility identification number; and
- (3) A written agreement between the current owner and the new owner of the facility or operator of the activity(ies) associated with the nonpoint source discharge; the agreement shall specify the date for the transfer of the Water Pollution Prevention Plan implementation responsibility and liability from the current owner to the new owner.

The director shall notify the current owner and the proposed new owner of the intent to deny the transfer. If a transfer is denied, then the new owner of the parcel associated with the nonpoint source discharge shall register with the department in accordance with sections 11-56-05(a) through (g) of this chapter.

(k) The director shall make available to the public for inspection copies of registrations submitted in accordance with this chapter. Release of information to the public under this subsection shall be done in accordance with the provisions in section 11-56-10. [Eff ??/??/19] (Auth: HRS §§342D-5, 342E-3; 33 U.S.C. §§1251, 1329, 1370)

**§11-56-06 Water Pollution Prevention Plans.**

(a) Any person subject to this chapter as defined in sections 11-56-03(a) through (c) must develop, submit, and implement a Water Pollution Prevention Plan, in writing, and in accordance with the requirements contained in this section and in Appendices A through C of this chapter.

(1) The Water Pollution Prevention Plan shall be developed and implemented to effectively control nonpoint source pollution from the subject property(ies) or activity(ies). Each Water Pollution Prevention Plan must, at a minimum, include:

- (A) Legal name(s), street address, contact person's name and position title, telephone number, and email address for the land owner;
- (B) Ownership status as federal, state, private, public, or other entity;
- (C) Name, street address, and tax map key number(s) for the location of the activity(ies) subject to this chapter, and the contact person's name and position title, telephone number, and email address;
- (D) As applicable, a listing of all entities other than the land owner or prime operator responsible for the activity(ies) associated with a nonpoint source discharge;
- (E) Brief facility description, including area(s) at the location that generate or transport nonpoint source pollution;
- (F) Identification of the watershed name and location of State waters which may receive nonpoint source pollution within or from the facility;
- (G) Description of the type(s) of specific activities that generate the nonpoint source discharge;
- (H) Description of the authorized management measure(s) identified in

chapter 11-56, Appendices A through C, that will be implemented to control nonpoint source pollution at the location;

- (I) Description of the authorized management practice(s) identified in chapter 11-56, Appendices A through C, that will be implemented to meet each management measure's requirements. For each management practice to be implemented, the following information shall be provided:
  - (i) Name of the practice;
  - (ii) Issuing entity of the practice;
  - (iii) Location (internet address or other) where the practice can be retrieved;
  - (iv) Code number or standard number of the practice, if applicable;
  - (v) Description of the practice;
  - (vi) Location(s) the practice will be implemented; and
  - (vii) Description of how the practice meets the requirements of the management measure.
- (J) Implementation schedule of the applicable management measures and management practice(s);
- (K) Long-term operation and maintenance schedule that provides for inspection of management practices, including the repair, replacement, or other routine maintenance of the management practices to ensure proper function and operation;
- (L) A monitoring strategy consistent with section 11-56-06(a)(2);
- (M) Description of any other plan required by federal, State, or local regulatory agencies that is being implemented to control nonpoint source pollution; and



- (N) The following certification signed in accordance with section 11-56-18:  
"I certify that this Water Pollution Prevention Plan and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly developed this Water Pollution Prevention Plan in accordance with the requirements of chapter 11-56. I am familiar with the content of this Water Pollution Prevention Plan and agree to implement it as developed and submitted to the department. I will maintain a copy of this Water Pollution Prevention Plan on-site or at a nearby office so as to be available at all times to operations personnel. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment for violations."
- (2) A monitoring strategy shall be included as a component of the Water Pollution Prevention Plan to determine whether the required management measures are being properly implemented and maintained, and whether the management measures are effective in reducing and controlling nonpoint source pollution at the location(s) specified in the Water Pollution Prevention Plan. A monitoring strategy shall include the following, as applicable:
- (A) Routine periodic visual monitoring and inspection of management measures;
  - (B) Routine periodic visual monitoring and inspection of State waters affected by the nonpoint source pollution from the facility;
  - (C) Water quality monitoring of nonpoint source discharges from the facility;

- (D) Water quality monitoring of State waters affected by the nonpoint source pollution from the facility; and/or
  - (E) Other monitoring methods and activities, as deemed necessary.
- (3) If the monitoring strategy is found to be inadequate for determining whether the required management measures are being properly implemented and maintained and whether the management measures are effective in reducing and controlling nonpoint source pollution at the location(s) specified in the Water Pollution Prevention Plan, the director may specify monitoring requirements that shall be implemented. Inadequate or ineffective monitoring strategies cannot be used as a defense in any enforcement action specified in section 11-56-12 for violations of this chapter.
- (4) If a submitted Water Pollution Prevention Plan is found to be incomplete or otherwise deficient, the director may require additional information. Submission of missing information and/or information to correct identified deficiencies shall be in accordance with the schedule specified by the director. Delays in Water Pollution Prevention Plan implementation due to incomplete and/or deficient Water Pollution Prevention Plans does not relieve entities from enforcement and penalties specified in section 11-56-12 for violations of this chapter.
- (5) As necessary, the director may require persons to revise a Water Pollution Prevention Plan to include additional management measures and/or controls to ensure protection of State waters from nonpoint source pollution, including consistency with:
- (A) Department-approved watershed plans;

- (B) Approved TMDLs and associated load allocations;
  - (C) Watershed restoration and protection projects funded under Clean Water Act Section 319(h);
  - (D) Approved water quality trades;
  - (E) Supplemental environmental projects;
  - (F) Approved Spill Prevention, Control, and Countermeasure Plans under 40 CFR Part 112; or
  - (G) Other requirements needed to protect or restore State waters.
- (6) Persons may submit an existing management plan to the department in lieu of a Water Pollution Prevention Plan, subject to the following provisions:
- (A) A plan submitted in lieu of a Water Pollution Prevention Plan shall be considered equivalent to a Water Pollution Prevention Plan, provided the submitted and implemented plan meets the objective of a Water Pollution Prevention Plan detailed in this chapter.
  - (B) A plan submitted in lieu of a Water Pollution Prevention Plan is not considered equivalent to a Water Pollution Prevention Plan unless reviewed and accepted by the director in accordance with section 11-56-06.
- (7) Water Pollution Prevention Plans shall be developed, submitted to the department, and implemented within the following timeframes:
- (A) For existing facilities, within 12 months from the date of publication of this chapter.
  - (B) For new facilities, within 30 days prior to initiation of operations or commencing activities.
- (8) The director may authorize an extension of time for the development and implementation of a Water Pollution Prevention Plan beyond

the time permitted for the development and implementation of the Water Pollution Prevention Plan under this section, when persons cannot fully comply with the requirements. Persons seeking an extension of time must submit a written extension request to the director on or before the deadline for developing and implementing a Water Pollution Prevention Plan for the regulated facility. The extension request must include:

- (A) A full explanation of the cause for any such delay and the specific aspects of the Water Pollution Prevention Plan affected by the delay;
- (B) A full discussion of actions being taken or contemplated to minimize or mitigate such delay;
- (C) A proposed time schedule for the implementation of any corrective actions being taken or contemplated, including interim dates for procurement, installation and operation of any necessary equipment, or other management measures;
- (D) Additional information to support evaluation of an extension request, if requested by the director; and
- (E) Additional written statements in support of the extension request are recommended.

Subsequent to review of an extension request, the director will notify the requester in writing of a decision to authorize or deny the request for extension. If authorized, the director's written authorization will specify the specific extension of time granted. If denied, the notification will indicate the basis for the denial.

- (9) Water Pollution Prevention Plans shall be amended when there is a substantial change

in activity, facility design, construction, operation, or maintenance that materially affects a regulated facility's potential for causing or contributing to nonpoint source pollution. An amendment made under this subsection must be prepared and submitted to the department within 30 days after the change that compels the amendment. The amended Water Pollution Prevention Plan shall be implemented as soon as possible, but not later than 30 days following the submission of the amendment to the department.

(b) The director shall make available to the public for inspection copies of Water Pollution Prevention Plans, NPS Orders, and associated documents submitted in accordance with the requirements of this chapter. Release of information to the public under this subsection shall be done in accordance with the provisions in section 11-56-10. [Eff ??/??/19]  
(Auth: HRS §§342D-5, 342E-3; 33 U.S.C. §§1251, 1329, 1370)

**§11-56-07 Reporting requirements.** (a) Persons required to develop and implement a Water Pollution Prevention Plan under section 11-56-06 shall submit an annual report to the director documenting on-going compliance with their Water Pollution Prevention Plans. At a minimum, annual reports shall include the following, as applicable:

- (1) Summary of monitoring and inspection activities undertaken in accordance with the monitoring strategy developed pursuant to section 11-56-06, including:
  - (A) Date(s) on which monitoring and inspections were conducted;
  - (B) Monitoring and inspection findings; and
  - (C) Corrective actions taken, if any.
- (2) Summary of water quality monitoring activities undertaken in accordance with the

monitoring strategy developed pursuant to section 11-56-06, including:

- (A) Date(s) on which water quality monitoring was conducted;
  - (B) Parameters monitored for;
  - (C) Monitoring results; and
  - (D) Corrective actions taken, if any.
- (3) Assessment of the overall effectiveness of the Water Pollution Prevention Plan, and of the effectiveness of each management measure implemented, in reducing and controlling nonpoint source pollution;
- (4) A summary of Water Pollution Prevention Plan amendments made during the previous year; and
- (5) The following certification signed in accordance with section 11-56-18:  
"I certify that this annual report and all attachments were prepared under my direction or supervision. I am familiar with the content of this annual report and agree to implement it as developed and submitted to the department. I will maintain a copy of this annual report on-site or at a nearby office. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment for violations."

(b) As necessary, and at the discretion of the director, more frequent Water Pollution Prevention Plan reports may be required.

(c) The director shall make available to the public for inspection copies of Water Pollution Prevention Plan annual reports and associated documents submitted in accordance of this chapter. Release of information to the public under this subsection shall be done in accordance the provisions in section 11-56-10. [Eff ??/??/19] (Auth: HRS §§342D-5, 342D-55, 342E-3; 33 U.S.C. §§1251, 1329, 1370)

**§11-56-08 Recordkeeping requirements.** (a)

Persons for which a Water Pollution Prevention Plan is required under this chapter must:

- (1) Maintain a complete copy of the Water Pollution Prevention Plan, including any amendments to the Water Pollution Prevention Plan, on-site or at a nearby office;
- (2) Have the Water Pollution Prevention Plan available to the director for on-site review during normal business hours; and
- (3) Provide, at the request of the director, the Water Pollution Prevention Plan and any associated documentation deemed necessary to determine compliance with this chapter.

(b) In accordance with section 11-56-06(a)(9), persons shall review and update the Water Pollution Prevention Plan as often as needed to control nonpoint source pollution, or as required by the director. Persons shall document any changes made to the Water Pollution Prevention Plan when the changes arise. Persons shall retain the Water Pollution Prevention Plan and all accompanying records, reports, and changes, for a period of five (5) years.

(c) Records documenting all monitoring activities shall be kept on-site or at a nearby office and made available for review and inspection by the director. [Eff ??/??/19] (Auth: HRS §§342D-5, 342D-55, 342E-3; 33 U.S.C. §§1251, 1329, 1370)

**§11-56-09 Compliance with requirements.** (a)

Compliance with this chapter shall be based on development and implementation of Water Pollution Prevention Plans that minimize negative impacts on water quality to the maximum extent practicable. In determining whether a person subject to this chapter is minimizing negative impacts to water quality to the maximum extent practicable, the department shall consider:

- (1) The classification and allowable uses of the State water (waterbody) to be protected;
  - (2) The impact on the State water by the discharge;
  - (3) Background water quality, including during high intensity weather events;
  - (4) Consistency with the State's policy of water quality antidegradation;
  - (5) The financial impact of minimizing negative impacts to water quality on the discharger; and
  - (6) The public interest.
- (b) Persons who demonstrate no significant measurable impact on the receiving water shall be considered in compliance with management measure implementation requirements within this chapter.
- (c) Monitoring strategies required by this chapter shall be designed to assess compliance with the requirements in this section.

**§11-56-10 Public access to information.** (a) In accordance with chapter 92F, HRS, the director shall ensure that any Water Pollution Prevention Plan developed under section 11-56-06 or information required, kept, or submitted under this chapter 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 department.

(b) The director shall protect any information (other than environmental 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 by the director and subject to a claim of confidentiality shall be treated in accordance with the regulations in chapter 92F, HRS.



(c) The director shall provide facilities for the inspection of information submitted in accordance with this chapter 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 ??/??/19] (Auth: HRS §§92F, 342D-5, 342D-14, 342E-3; 33 U.S.C. §§1251, 1329, 1370)

**§11-56-11 Right to inspect.** (a) A person regulated under this chapter shall allow the director to:

- (1) Enter and inspect any area to investigate an actual or suspected source of water pollution, to ascertain compliance or noncompliance with this chapter or any NPS Order issued pursuant to this chapter;
- (2) Inspect any records kept in accordance with the terms and conditions of this chapter; and
- (3) Test any waters and aquatic and other life forms that may have been subjected to any form of nonpoint source pollution and assess the environmental effects of the pollution, including the pollution's effects on the quality of the receiving waters and aquatic and other life forms. If the department determines that the effects of the pollution would make it hazardous to consume the water and aquatic or other life forms, the director shall immediately notify the public of the hazard through the news media and by posting warning signs in those areas where

the waters and shoreline contain water and aquatic or other life forms that would be hazardous if consumed.

(b) Any person who denies, obstructs, or hampers the entrance to and inspection by any duly authorized officer or employee of the department of any building, place, or vehicle shall be fined not more than \$5,000 for each day of such a denial, obstruction, or hampering. Any action taken to impose or collect the penalty provided for in this section shall be considered a civil action. [Eff ??/??/19] (Auth: HRS §§342D-8, 342E-3(b); 33 U.S.C. §§1251, 1329, 1370)

**§11-56-12 Enforcement and penalties.** (a) If the director determines that any person has violated or is violating this chapter, any requirement of this chapter, or any NPS Order issued pursuant to this chapter, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take any measures that may be necessary to correct the violation and to give periodic progress reports. If all attempts of service of process upon the alleged violator or violators are unsuccessful by personal delivery and by certified, registered, or express mail, notice may be given via a posting on a searchable government website and a sign conspicuously posted on the property, if appropriate;
- (2) May require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of; and

- (3) May impose penalties as provided in section 342E-4(a), HRS, by sending written notice, either by certified mail or by personal service, to the alleged violator or violators, describing the violation.
- (b) If the director determines that any person is continuing to violate this chapter or any NPS Order issued pursuant to this chapter after having been served notice of violation, the director:
    - (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within 30 days specifying the measures to be taken and the time within which such measures shall be taken to bring that person into compliance with this chapter or any NPS Order issued pursuant to this chapter;
    - (2) Shall accept or modify the submitted schedule within 30 days of receipt of the schedule. Any schedule not acted upon after 30 days of receipt by the director shall be deemed accepted by the director;
    - (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter or any NPS Order issued pursuant to this chapter if that person does not submit a written schedule to the director within 30 days. This order shall remain in effect until the director accepts the written schedule; and
    - (4) May impose penalties as provided in section 342E-4(a), HRS, by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators, describing the violation.
  - (c) If the director determines that any person has violated an accepted schedule or an order issued under this section, the director shall impose penalties by sending a notice in writing, either by

certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.

(d) Penalties imposed under this section shall be in accordance with section 342E-4(a), HRS.

(e) Any order issued under this chapter shall become final, unless not later than 20 days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable 30 days after an order becomes final unless the person or persons named therein requested in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Any hearing requested under this section shall be conducted as a contested case under chapter 91, HRS, pursuant to the department's Rules of Practice and Procedure, chapter 11-1, HAR.

(f) If after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall affirm or modify any penalties imposed or shall modify or affirm the order previously issued or issue an appropriate order(s) for the prevention, abatement, or control of the violation or discharges involved, or for the taking of such other corrective action as may be appropriate. If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty. Any order issued after a hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation or discharges.

(g) If the amount of any penalty is not paid to the department within 30 days after it becomes due and payable, the director may institute a civil action in

the name of the State to collect the administrative penalty which shall be a government realization. In any proceeding to collect the administrative penalty imposed, the director need only show that:

- (1) Notice was given;
- (2) A hearing was held or the time granted for requesting a hearing expired without a request for a hearing;
- (3) The administrative penalty was imposed; and
- (4) The penalty remains unpaid.

(h) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties. [Eff ??/??/19] (Auth: HRS §§91, 342D-9, 342E-4; 33 U.S.C. §§1251, 1329, 1370; HAR §11-1)

**§11-56-13 Hearings and appeals.** (a) Hearings before the director on any violations of this chapter and appeals from any of the director's decisions at the hearings shall comply with chapter 91, HRS, the department's rules of practice and procedure, and this chapter.

(b) If any party is aggrieved by the decision of the director, the party may appeal in the manner provided in chapter 91, HRS, to the circuit environmental court of the circuit in which the party resides, in which the party's principal place of business is located, or in which the action in question occurred. The operation of an NPS Order will not be stayed on appeal unless specifically ordered by the director or an environmental court of competent jurisdiction. [Eff ??/??/19] (Auth: HRS Chap. 91 and §§342D-12, 342E-3)

**§11-56-14 No effect on enforcement of other law.**

(a) This chapter does not limit the director's or department's authority to enforce any other statute,

rule, or other law that the director or department administers.

(b) This chapter does not limit the authority of any federal, other state, or county agency. [Eff ??/??/19] (Auth: HRS §§342D-5, 342E-3; 33 U.S.C. §§1251, 1329, 1370)

**§11-56-15 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 ??/??/19] (Auth: HRS §§342D-5, 342E-3; 33 U.S.C. §§1251, 1329, 1370)

**§11-56-16 Field citations; noncompliance with nonpoint source pollution control requirements.** This section authorizes citations to effectively and quickly settle easily verifiable violations of chapter 342E, HRS, and this chapter.

(1) Offer to settle; penalties.

(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 causes or allows a discharge of pollutants into State waters from a nonpoint source;
- (ii) Any person required to register under section 11-56-05, who fails to register as required;

- (iii) Any person who fails to correctly install, implement, maintain, or repair management measures as called for in their Water Pollution Prevention Plan, including implementation of the associated monitoring plan; and
  - (iv) Any person who fails to retain a copy of the Water Pollution Prevention Plan and associated monitoring plan on-site or at a nearby office.
- (B) A field citation shall assess the following penalties for violations:
- (i) Any person who violates paragraph (1) (A) (i) shall be fined \$500 for first violation and \$1,000 for a subsequent violation;
  - (ii) Any person who violates paragraph (1) (A) (ii) shall be fined \$500 for first violation and \$1,000 for a subsequent violation;
  - (iii) Any person who violates paragraph (1) (A) (iii) shall be fined \$500 for first violation and \$1,000 for a subsequent violation;
  - (iv) Any person who violates paragraph (1) (A) (iv) shall be fined \$100 for first violation and \$200 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 assessed by 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 department 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 20 days after the person receives the field citation; and
  - (iv) Correction within 7 days, or as otherwise specified on the field citation, of any violation of this chapter;
- (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, HRS, or otherwise challenge the field citation;
  - (ii) Pay the penalty assessed; and
  - (iii) Correct the violation.
- (3) If the field citation is not accepted in compliance with paragraph (2) subparagraph (A), the director may seek for that cited violation any remedies available under this chapter or any other law. For all other violations the director retains authority to seek any available remedies.
- (4) Form of citation. The department shall prescribe a field citation form. [Eff ??/??/19] (Auth: HRS §§321-11, 342D-1, 342D-5, 342E-4)

**§11-56-17 Public hearings.** (a) The owner or operator, any interested agency, person, or group of



persons may request or petition for a public hearing with respect to the determinations of persons subject to this chapter. Any request or petition for public hearing shall be submitted within thirty days of registration pursuant to §11-56-05.

(b) The director shall hold a hearing if the director determines that there is a significant public interest in holding the hearing. Instances of doubt should be resolved in favor of holding the hearing. Any hearing brought under this paragraph shall be held in the geographical area of the proposed facility or other appropriate area, at the director's discretion.

(c) Any person may submit oral or written statements and data concerning the issue being heard.

(d) Public notice for hearings shall be published at least once in a newspaper of general circulation within the geographical area of the facility.

(e) The public notice for hearings shall include: the name and address of the agency holding the public hearing; name and address of the facility being considered; a brief description of the facility and activities conducted; information regarding the date, time, and location of the hearing; the purpose of the hearing; a brief description of the nature of the hearing, including the rules and procedures to be followed; name, address, and telephone number of the person at the State from whom interested persons may obtain further information.

(f) All publication and mailing costs associated with the public notice of the hearing shall be paid by the owner or operator of the facility being considered. 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 the public notification, as deemed appropriate by the director, is basis to delay authorization of discharges or may be considered a violation of this chapter.

**§11-56-18 Signatories.** (a) Any certifications associated with submissions to the director under this chapter 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 registration 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 under this chapter 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:

- (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 registrations to be signed by an  
authorized representative. [Eff ??/??/19] (Auth:  
HRS §§342D-5, 342E-3; 33 U.S.C. §§1251, 1329, 1370)

## CHAPTER 11-56 APPENDIX A

### WATER POLLUTION CONTROL REQUIREMENTS FOR AGRICULTURAL NONPOINT SOURCES

#### 1. General Applicability

(a) Requirements defined in this chapter shall be implemented by persons identified in section 11-56-03, as follows:

- (1) The requirements of this Appendix apply to all publicly-owned agricultural lands comprising 1,000 or more contiguous acres under common ownership and with operations identified in the specific applicability paragraphs in section 3.
- (2) Other agricultural lands or activities may be subject to the requirements of this Appendix at the discretion of the director based on risk of harm to human or environmental health, as determined by the director. Other agricultural lands or activities determined by the director to be subject to the requirements of this Appendix will be provided written notice by the director.

(b) For all other agricultural lands not required to implement the best management practices or management measures identified in this Appendix, the director encourages voluntary development of a Water Pollution Prevention Plan to facilitate the implementation of the management measures contained in this Appendix.

## **2. Incorporation of Management Measures into Water Pollution Prevention Plans**

(a) The owner or operator of an agricultural activity or facility subject to regulation shall incorporate water pollution reducing management measures into a Water Pollution Prevention Plan. At a minimum, Water Pollution Prevention Plans shall incorporate all appropriate management measures to prevent and control the specific sources of pollution identified in section 3 of this Appendix.

(b) The owner or operator of an agricultural activity or facility subject to this Appendix shall identify which management measures in section 3 are required based upon the specific applicability of each management measure and its subparts. Each management measure identified as being applicable shall be implemented as detailed in the Water Pollution Prevention Plan developed pursuant to this chapter.

(c) Authorized management practices that satisfy management measure requirements shall be identified in the Water Pollution Prevention Plan.

(d) For discharges identified in section 11-56-03 that result from activities identified in this Appendix, where such discharges or activities are subject to an alternative regulatory mechanism that accomplishes the objectives of one or more of the management measures in section 3 of this Appendix, the Water Pollution Prevention Plan may include a reference to the alternative regulatory mechanism in lieu of the specified management measure(s).

(e) For an owner or operator of an agricultural activity or facility subject to this Appendix who develops and implements a soil conservation plan approved by the local soil and water conservation district, the soil conservation plan shall be considered an equivalent of a Water Pollution Prevention Plan developed to address sediment control

under subsection 3(a) if the soil conservation plan requires implementation of sediment control management measures identified in subsection 3(a), and effectively controls discharges of sediment to State waters. To the extent that such a soil conservation plan approved by the local soil and water conservation district also effectively addresses activities subject to management measures for other potential pollutants identified in subsections 3(b) - 3(e), the soil conservation plan shall be considered an equivalent Water Pollution Prevention Plan for those management measures. Applicable management measures not addressed in the soil conservation plan must be addressed in a Water Pollution Prevention Plan, which shall be submitted to the department following the procedures in section 11-56-06.

### **3. Management Measures Required for Specific Sources of Pollution**

(a) Erosion and Sediment Control Management Measure

(1) Specific Applicability. This management measure applies to agricultural activities that may cause erosion, including, but not limited to:

- (A) Crop production, including specialty crops and nursery crops;
- (B) Agricultural irrigation;
- (C) Grazing and pasturing;
- (D) Developing and/or maintaining orchards;
- (E) Permanent hayland maintenance; and
- (F) Agroforestry.

Roads, drainage systems, and other infrastructure operated and maintained in support of the above agricultural activities and potentially affecting nearby streams, wetlands, or coastal areas are subject to the requirements of this management measure.

- (2) Purpose. The purpose of this management measure is to preserve soil and reduce the mass of sediment reaching a water body, protecting both agricultural land and water quality.
- (3) General Requirements
  - (A) Design and implement any combination of management practices in paragraph (4) to minimize the mobilization of sediment to surface waters, or
  - (B) Design and install a combination of management and structural practices to settle the settleable solids and associated pollutants in runoff delivered from the contributing area for storms of up to and including a 10-year, 24-hour frequency.
  - (C) All sources of sediment and other water pollutants associated with activities identified in paragraph 3(a)(1) (Specific Applicability) shall be accounted for and mitigated through identification and implementation of appropriate authorized management practices to prevent and abate water pollution to the maximum extent practicable.
- (4) Authorized Management Practices



- (A) Authorized management practices shall be implemented to meet management measure requirements and shall be identified in the Water Pollution Prevention Plan.
- (B) Authorized management practices include but are not limited to:
  - (i) Conservation practice standards pertaining to erosion and sediment control as described in the eFOTG; and
  - (ii) Erosion and sediment control practices identified in *National Management Measures to Control Nonpoint Source Pollution from Agriculture* (EPA, EPA-841-B-03-004, July 2003).

(b) Animal Feeding Operations Wastewater and Runoff Management Measure

(1) Specific Applicability

- (A) This management measure applies to all new animal feeding operations subject to this regulation regardless of size and to all existing animal feeding operations that contain the following number of head or more:

<b>Animal Type</b>	<b>Head</b>
Beef Feedlots	50
Stables (horses)	100
Dairies	20
Layers	5,000
Broilers	5,000
Turkeys	5,000

<b>Animal Type</b>	<b>Head</b>
Swine	100

Existing facilities containing fewer than the number of head listed above are not subject to the requirements of this management measure unless otherwise notified by the director.

- (B) Facilities that are required by Federal regulation 40 CFR 122.23 to apply for and receive discharge permits are excluded. That section applies to "concentrated animal feeding operations," which are defined in 40 CFR 122.23(b). In addition, 40 CFR 122.23(c) provides that the Director of a National Pollutant Discharge Elimination System (NPDES) discharge permit program may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of water pollution. This has the effect of subjecting the operation to the NPDES permit program requirements. If an animal feeding operation has an NPDES permit, then the facility covered by the NPDES permit is exempt from this management measure.
- (2) Purpose. The goal of this management measure is to prevent the discharge of wastewater and contaminated runoff to State waters from animal feeding operations.
- (3) General Requirements
  - (A) Contain both the wastewater and contaminated runoff from animal feeding operations that is caused by storms up to and including an acute 25-year, 24-

hour frequency storm event. Storage structures must be of adequate capacity to allow for proper wastewater utilization and constructed so that they are impervious and prevent seepage to groundwater.

(B) Provide for storage, treatment, and/or application methods such that the monthly volume of wastewater and contaminated runoff produced and stored is, at a minimum, 10% less than the monthly rate of wastewater and contaminated runoff use or disposal. The storage volume necessary to meet this requirement shall be determined using a technical evaluation that addresses the following elements:

(i) Information to be used in the design of the open manure storage structure including, but not limited to, the following: minimum storage periods for rainy seasons, additional minimum capacity for chronic/prevaling rainfalls, applicable technical standards that prohibit or otherwise limit land application during unsuitable soil conditions (e.g., saturated ground), planned emptying and dewatering schedules, additional storage capacity for manure intended to be transferred to another recipient at a later time, and any other factors that would affect the sizing of the open manure storage structure.

(ii) Climate data for the past 10 years at the area local to the regulated animal feeding operation,

including average monthly precipitation and evaporation rates.

(iii) The number and types of animals, anticipated animal sizes or weights, any added water and bedding, any other process wastewater, and the size and condition of outside areas exposed to rainfall and contributing runoff to the manure storage structure.

(C) Manage stored wastewater, contaminated runoff, and accumulated solids from the facility through an appropriate waste utilization system that is operated and maintained to prevent discharges of wastewater, contaminated runoff, and accumulated solids to State waters.

(4) Authorized Management Practices

(A) Authorized management practices shall be implemented to meet management measure requirements and shall be identified in the Water Pollution Prevention Plan.

(B) Authorized management practices include but are not limited to:

(i) Conservation practice standards pertaining to AFOs as described in the eFOTG; and

(ii) Animal Feeding Operation management practices identified in *National Management Measures to Control Nonpoint Source Pollution*

*from Agriculture* (EPA, EPA-841-B-03-004, July 2003).

- (c) Nutrient Management Measure
  - (1) Specific Applicability
    - (A) This management measure applies to activities associated with the application of nutrients to agricultural lands, including manure, wastewater, contaminated runoff, and commercial fertilizers.
    - (B) Lands that receive manure, wastewater, or contaminated runoff and are subject to the requirements of an NPDES permit for concentrated animal feeding operations are excluded from this management measure.
  - (2) Purpose. The goal of this management measure is to reduce water pollution caused by nutrients (primarily nitrogen and phosphorous) by minimizing nutrient losses and waste from agricultural lands and activities.
  - (3) General Requirements
    - (A) Prevent the discharge of excess nutrients and contaminated storm water to State waters through:
      - (i) Containment of wastewater and waste products;
      - (ii) Isolation of wastewater, waste products, or materials from contact with storm water; and

- (iii) Recycling of nutrients through environmentally beneficial methods.
- (B) Nutrient management plans. A site-specific nutrient management plan shall be developed, implemented, and updated as often as necessary to reflect current operational conditions to:
- (i) Apply nutrients at rates necessary to achieve realistic crop yields;
  - (ii) Improve the timing of nutrient application; and
  - (iii) Use agronomic crop production technology to increase nutrient use efficiency.
- (C) Nutrient management plans must contain the following core components:
- (i) Farm and field maps showing acreage, crops, soils, and waterbodies.
  - (ii) Realistic yield expectations for the crop(s) to be grown, based on achievable yields for the crop. Individual producer constraints and yield records for nearby operations may be considered in determining achievable yields.
  - (iii) A summary of the nutrient resources available to the producer, which at a minimum must include: soil test results for pH, phosphorous, nitrogen, and potassium; an appropriate mix of soil (pH, nitrogen, phosphorous,

potassium) and/or plant tissue testing or historic yield response data for a particular crop; nutrient analysis, including the nutrient value and the rate of availability, of fertilizer, manure, sludge, mortality compost, effluent (if applicable), or other source of nutrients; and other significant nutrient sources, such as irrigation water.

- (iv) An evaluation of field limitations based on environmental hazards or concerns, such as lava tubes, shallow soils over fractured bedrock, soils with high leaching or runoff potential, lands near surface water, highly erodible soils, and shallow aquifers.
- (v) Land application setbacks appropriate to prevent the discharge of nutrients based on identified field limitations and other site specific conditions, including practices such as field diversions or other structures that intercept and direct runoff to State waters.
- (vi) Best available information must be used to establish the appropriate mix of nutrient sources and requirements for the crop. The limiting nutrient concept may be used to establish the mix of nutrient sources and requirements for the crop based on a realistic yield expectation.

- (vii) Identification of timing and application methods for nutrients to provide nutrients at rates necessary to achieve realistic crop yields, to reduce nutrient losses to the environment, and to avoid nutrient applications as much as possible during periods of leaching or runoff.
  - (viii) Provisions for the proper calibration and operation of nutrient application equipment.
  - (ix) Schedule for soil testing and/or plant tissue testing to estimate phosphorous, nitrogen, and potassium concentrations.
- (4) Authorized Management Practices
- (A) Authorized management practices shall be implemented to meet management measure requirements and shall be identified in the Water Pollution Prevention Plan.
  - (B) Authorized management practices include but are not limited to:
    - (i) Conservation practice standards pertaining to nutrient management as described in the eFOTG;
    - (ii) Nutrient management practices identified in *National Management Measures to Control Nonpoint Source Pollution from Agriculture* (EPA, EPA-841-B-03-004, July 2003); and



- (iii) Nutrient management methods and practices identified in *Plant Nutrient Management in Hawaii's Soils: Approaches for Tropical and Subtropical Agriculture* (James A. Silva and Raymond S. Uchida (Eds.), University of Hawaii at Manoa, College of Tropical Agriculture and Human Resources, 2000).
  
- (d) Grazing Management Measure
  - (1) Specific Applicability. The management measure applies to activities on range, irrigated and non-irrigated pasture, and other grazing lands used by domestic livestock. Other grazing lands include woodlands, native pastures, and croplands producing forages.
  
  - (2) Purpose. The purpose of this management measure is to prevent improper livestock grazing and equipment use that may damage streambanks and shores, riparian vegetation, channels, and the water column. Application of this management measure will reduce the physical disturbance to sensitive areas and reduce the discharge of sediment, animal waste, nutrients, and chemicals to surface waters.
  
  - (3) General Requirements
    - (A) Implement one or more of the following, as necessary to protect sensitive areas (such as streambanks, wetlands, estuaries, ponds, lake shores, near coastal waters/shorelines, and riparian zones):

- (i) Exclude livestock, including exclusion from diversion ditches, grassed waterways, swales, and similar structures that concentrate and direct runoff from agricultural lands to sensitive areas;
  - (ii) Provide stream crossings or hardened watering access for drinking;
  - (iii) Provide alternative drinking water locations;
  - (iv) Locate salt and additional shade, if needed, away from sensitive areas; and/or
  - (v) Use improved grazing management (e.g., herding) to reduce the physical disturbance and reduce direct loading of animal waste and sediment caused by livestock.
- (B) Achieve either of the following on all range, pasture, and other grazing lands not addressed under subparagraph (A):
- (i) Range and pasture conservation and management practices that apply the progressive planning approach of USDA-NRCS following the standards and specifications contained in the eFOTG that achieve an acceptable level of treatment to reduce erosion; or
  - (ii) Maintenance of the range, pasture, and other grazing lands in accordance with activity plans

established by the Land Division of DLNR, federal agencies managing grazing land, or other designated land management agencies.

(4) Authorized Management Practices

(A) Authorized management practices shall be implemented to meet management measure requirements and shall be identified in the Water Pollution Prevention Plan.

(B) Authorized management practices include but are not limited to:

(i) Conservation practice standards pertaining to grazing as described in the eFOTG; and

(ii) Grazing management practices identified in National Management Measures to Control Nonpoint Source Pollution from Agriculture (EPA, EPA-841-B-03-004, July 2003).

(e) Irrigation Water Management Measure

(1) Specific Applicability. This management measure applies to activities on irrigated agricultural land, including agricultural crop and pasture land (except for isolated fields of less than 10 acres in size that are not contiguous to other irrigated lands), orchard land, specialty cropland, and nursery cropland.

(2) Purpose

(A) The goal of this management measure is to reduce nonpoint source pollution of

surface waters caused by irrigation. Application of this management measure will reduce the waste of irrigation water, improve the water use efficiency, and reduce the total pollutant discharge from an irrigation system.

- (B) It is not the intent of this management measure to require the replacement of major components of an irrigation system. Instead, the expectation is that components to manage the timing and amount of water applied will be provided where needed, and that special precautions will be taken to reduce the potential for pollutant transport and discharge.

(3) General Requirements

- (A) To minimize runoff and excessive leaching, operate the irrigation system so that the timing and amount of irrigation water applied match crop water needs. This will require, as a minimum:
  - (i) The measurement of soil-water depletion volume and the volume of irrigation water applied; and
  - (ii) Uniform application of water.
- (B) When chemigation is used, include backflow preventers for wells, prevent chemigated waters from discharging from the edge of the field, and control deep percolation. In cases where chemigation is performed with furrow irrigation systems, Tailwater discharges are prohibited.

- (C) Where limitations or special conditions apply, they must be clearly identified in the facility's Water Pollution Prevention Plan.
- (4) Authorized Management Practices
  - (A) Authorized management practices shall be implemented to meet management measure requirements and shall be identified in the Water Pollution Prevention Plan.
  - (B) Authorized management practices include but are not limited to:
    - (i) Conservation practice standards pertaining to irrigation as described in the eFOTG; and
    - (ii) Irrigation water management practices identified in *National Management Measures to Control Nonpoint Source Pollution from Agriculture* (EPA, EPA-841-B-03-004, July 2003).
  - (f) Pesticide Management Measure
  - (1) Specific Applicability
    - (A) This management measure applies to activities associated with the application of pesticides to publicly-owned agricultural lands, including lands subject to the requirements of an NPDES permit for concentrated animal feeding operations, to the extent that such permit requirements do not address pesticide application.

- (B) Pesticide applications subject to the requirements of an NPDES permit for application of pesticides, including chapter 11-55, Appendix M, are excluded.
- (2) Purpose. The goal of this management measure is to reduce contamination of surface water and groundwater from pesticides and to foster effective and safe use of pesticides without causing degradation to the environment.
- (3) General Requirements
- (A) Use alternative methods for pest control, to the extent practicable.
  - (B) Apply pesticides only when an economic benefit to the producer will be achieved (i.e., applications based on economic thresholds);
  - (C) Apply pesticides efficiently and at times when runoff losses are unlikely;
  - (D) When pesticide application is necessary and a choice of registered materials exists, consider the persistence, toxicity, runoff potential, and leaching potential of products in making a selection;
  - (E) Use appropriate pesticides for the given situation and environment; and
  - (F) Minimize the movement of pesticides from the target area.
- (4) Authorized Management Practices

- (A) Authorized management practices shall be implemented to meet management measure requirements and shall be identified in the Water Pollution Prevention Plan.
- (B) Authorized management practices include but are not limited to:
  - (i) Conservation practice standards pertaining to pest management as described in the eFOTG; and
  - (ii) Pesticide management practices identified in National Management Measures to Control Nonpoint Source Pollution from Agriculture (EPA, EPA-841-B-03-004, July 2003).

## CHAPTER 11-56 APPENDIX B

### WATER POLLUTION CONTROL REQUIREMENTS FOR FORESTRY

#### 1. General Applicability

(a) Requirements defined in this chapter shall be implemented by persons identified in section 11-56-03, as follows:

- (1) The requirements of this Appendix apply to all publicly-owned forest lands comprising more than 5 contiguous acres where silvicultural or commercial forestry operations are planned or conducted or, regardless of acreage, any road construction or reconstruction conducted as part of silvicultural or forestry activities, any road maintenance conducted as part of silvicultural or forestry activities, any revegetation of areas disturbed by harvesting operations or road construction as part of silvicultural or forestry activities, any streamside management zone within lands where silvicultural operations are planned or conducted, or any area where chemicals (fertilizers and pesticides) are used as part of silvicultural or commercial forestry operations.
- (2) Other forest lands where silvicultural or commercial forestry operations are planned or conducted may be subject to the requirements of this Appendix at the discretion of the director based on risk of harm to human or environmental health, as determined by the director. Forest lands determined by the director to be subject to the requirements of this Appendix will be provided written notice by the director.



(b) For forest lands that do not fall under the applicability of this Appendix, the director encourages voluntary development of a Water Pollution Prevention Plan to facilitate the implementation of the management measures contained in this Appendix.

## **2. Incorporation of Management Measures into Water Pollution Prevention Plans**

(a) The owner or operator of a silvicultural or commercial forestry operation subject to regulation shall incorporate water pollution reducing management measures into a Water Pollution Prevention Plan. At a minimum, Water Pollution Prevention Plans shall incorporate all appropriate management measures to prevent and control the specific sources of pollution identified in Section 4 of this Appendix.

(b) The owner or operator of a silvicultural or commercial forestry operation subject to this Appendix shall identify which management measures in Section 4 are required based upon the specific applicability of each management measure and its subparts. Each management measure identified as being applicable shall be implemented as detailed in the Water Pollution Prevention Plan developed pursuant to this chapter.

(c) Authorized management practices that satisfy management measure requirements shall be identified in the Water Pollution Prevention Plan.

(d) For discharges identified in section 11-56-03 that result from activities identified in this Appendix, where such discharges or activities are subject to an alternative regulatory mechanism that accomplishes the objectives of one or more of the management measures in section 4 of this Appendix, the Water Pollution Prevention Plan may include a

reference to the alternative regulatory mechanism in lieu of the specified management measure(s).

(e) The following documents may be submitted in lieu of a Water Pollution Prevention Plan provided that they address all applicable management measures in section 4:

- (1) Any BLNR- or DLNR-approved plan or permit which adopts, incorporates, or requires implementation of relevant BMPs from DOFAW's "Best Management Practices for Maintaining Water Quality in Hawaii" (February 1996); or
- (2) A forest management plan developed by a certified United States Department of Agriculture Natural Resources and Conservation Service (NRCS) Technical Service Provider and approved by the NRCS.

**3. Water Pollution Prevention Plan Exemptions.** Water Pollution Prevention Plans for publicly-owned forest lands managed by DOFAW are not required for as long as DOFAW's policy to implement relevant BMPs from DOFAW's *Best Management Practices for Maintaining Water Quality in Hawaii* (February 1996) on publicly-owned, DOFAW-managed lands is in effect.

**4. Management Measures Required for Specific Sources of Pollution**

- (a) Preharvest Planning Management Measure
  - (1) Specific Applicability
    - (A) This management measure applies to commercial harvesting on areas greater than five (5) acres and any associated

road system construction or reconstruction conducted as part of normal silvicultural activities.

- (B) This management measure does not apply to harvesting conducted for precommercial thinnings or noncommercial firewood cutting.
- (2) Purpose. The objective of this management measure is to ensure that silvicultural activities, including timber harvesting, site preparation, and associated road construction, are conducted without significant nonpoint source pollutant delivery to streams and coastal areas.
- (3) General Requirements
- (A) Perform advance planning for forest harvesting that includes the following elements, where appropriate:
    - (i) Identify the area to be harvested including location of waterbodies and sensitive areas such as wetlands, threatened or endangered aquatic species habitats, or high erosion hazard areas (landslide-prone areas) within the harvest unit.
    - (ii) Time the activity for the season or moisture conditions when the least impact occurs.
    - (iii) Consider potential water quality impacts and erosion and sedimentation control in the selection of silvicultural and regeneration systems, especially

for harvesting and site preparation.

- (iv) Reduce the risk of occurrence of landslides and severe erosion by identifying high erosion-hazard areas and avoiding harvesting in such areas to the extent practicable.
  - (v) Consider additional contributions from harvesting or roads to any known existing water quality impairments or problems in watersheds of concern.
- (B) Perform advance planning for forest road systems that includes the following elements, where appropriate:
- (i) Locate and design road systems to minimize, to the extent practicable, potential sediment generation and delivery to surface waters. Key components are: locate roads, landings, and skid trails to avoid, to the extent practicable, steep grades and steep hillslope areas, and to decrease the number of stream crossings; avoid, to the extent practicable, locating new roads and landings in Streamside Management Zones; and determine road usage and select the appropriate road standard.
  - (ii) Locate and design temporary and permanent stream crossings to prevent failure and control impacts from the road system. Key components are: size and site crossing structures to prevent

failure and, for fish-bearing streams, design crossings to facilitate fish passage.

(iii) Ensure that the design of road prism and the road surface drainage are appropriate to the terrain and that road surface design is consistent with the road drainage structures.

(iv) Use suitable materials to surface roads planned for all-weather use to support intended vehicle use.

(v) Design road systems to avoid high erosion or landslide hazard areas. Identify these areas and consult a qualified specialist for design of any roads that must be constructed through these areas.

(4) Authorized Management Practices. Authorized management practices include but are not limited to:

(A) Best management practices for pre-harvest planning and forest roads identified in *Best Management Practices for Maintaining Water Quality in Hawaii* (DOFAW, February 1996); and

(B) Best management practices for preharvest planning identified in *National Management Measures to Control Nonpoint Source Pollution from Forestry* (EPA, EPA-841-B-05-001, April 2005).

(b) Streamside Management Zones (SMZs) Management Measure

(1) Specific Applicability

- (A) This management measure applies to surface waters bordering or within the area of the silvicultural or commercial forestry operation.
  - (B) Manmade structures that may function as streams and other natural waterbodies, such as livestock ponds, swales, and water distribution systems, are not considered perennial waterbodies or streams.
- (2) Purpose. This management measure is intended to preserve SMZ integrity to protect water quality.
- (3) General Requirements
- (A) Establish and maintain a SMZ along surface waters that is sufficiently wide and includes a sufficient number of canopy species to buffer against detrimental changes in the temperature regime of the waterbody, to provide bank stability, and to withstand wind damage.
  - (B) Protect against soil disturbance in the SMZ and against delivery to the stream of sediments and nutrients generated by silvicultural or forestry activities, including harvesting.
  - (C) Manage the SMZ canopy species to provide a sustainable source of large woody debris needed for instream channel structure and aquatic species habitat.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to:

- (A) Streamside management zone BMPs identified in *Best Management Practices for Maintaining Water Quality in Hawaii* (DOFAW, February 1996); and
  - (B) Best management practices for streamside management areas identified in *National Management Measures to Control Nonpoint Source Pollution from Forestry* (EPA, EPA-841-B-05-001, April 2005).
- (c) Road Construction/Reconstruction Management Measure
- (1) Specific Applicability. This management measure applies to road construction and reconstruction operations for silvicultural purposes, including:
    - (A) The clearing phase: clearing to remove trees and woody vegetation from the road right-of-way;
    - (B) The pioneering phase: excavating and filling the slope to establish the road centerline and approximate grade;
    - (C) The construction phase: final grade and road prism construction and bridge, culvert, and road drainage installation; and
    - (D) The surfacing phase: placement and compaction of roadbed, road fill compaction, and surface placement and compaction (if applicable).
  - (2) Purpose. The goal of this management measure is to minimize delivery of sediment to surface waters during road construction and road reconstruction on forest lands.

(3) General Requirements

- (A) Follow preharvest planning requirements as described in subsection 0(a) of this Appendix when constructing or reconstructing the roadway.
- (B) Follow design requirements for road surfacing and shaping as described in subsection 0(a) of this Appendix.
- (C) Install road drainage structures according to designs planned under subsection 0(a) of this Appendix and regional storm return period and installation specifications. Match these drainage structures with terrain features and with road surface and prism designs.
- (D) Guard against the production of sediment when installing stream crossings.
- (E) Protect surface waters from slash and debris material from roadway clearing.
- (F) Use straw bales, silt fences, mulching, or other favorable practices on disturbed soils on unstable cuts and fills.
- (G) Avoid constructing new roads in SMZs, to the extent practicable.

(4) Authorized Management Practices. Authorized management practices include but are not limited to:

- (A) Best management practices for forest roads identified in *Best Management*



*Practices for Maintaining Water Quality in Hawaii* (DOFAW, February 1996); and

- (B) Best management practices for road construction/reconstruction identified in *National Management Measures to Control Nonpoint Source Pollution from Forestry* (EPA, EPA-841-B-05-001, April 2005).
  
- (d) Road Maintenance Management Measure
  - (1) Specific Applicability. This management measure applies to active and inactive roads constructed or used for silvicultural activities.
  
  - (2) Purpose. The objective of this management measure is to manage existing roads to maintain stability and utility and to minimize sedimentation and pollution from runoff-transported materials.
  
  - (3) General Requirements
    - (A) Avoid using roads, where possible, for timber hauling or heavy traffic during wet periods on roads not designed and constructed for these conditions.
  
    - (B) Evaluate the future need for a road and close roads that will not be needed. Leave closed roads and drainage channels in a stable condition to withstand storms.
  
    - (C) Remove drainage crossings and culverts if there is a reasonable risk of plugging or failure from lack of maintenance.

- (D) Following completion of harvesting, close and stabilize temporary spur roads and seasonal roads to control and direct water away from the roadway. Remove all temporary stream crossings.
  - (E) Inspect roads to determine the need for structural maintenance. Conduct maintenance practices, when conditions warrant, including cleaning and replacement of deteriorated structures and erosion controls, grading or seeding of road surfaces, and, in extreme cases, slope stabilization or removal of road fills, where necessary to maintain structural integrity.
  - (F) Conduct maintenance activities, such as dust abatement, so that chemical contaminants or pollutants are not introduced into surface waters, to the extent practicable.
  - (G) Properly maintain permanent stream crossings and associated fills and approaches to reduce the likelihood that stream overflow will divert onto roads and that fill erosion will occur if the drainage structures become obstructed.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to:
- (A) Best management practices for forest roads identified in *Best Management Practices for Maintaining Water Quality in Hawaii* (DOFAW, February 1996); and
  - (B) Best management practices for road management identified in *National*

*Management Measures to Control Nonpoint  
Source Pollution from Forestry* (EPA,  
EPA-841-B-05-001, April 2005).

- (e) Timber Harvesting Management Measure
  - (1) Specific Applicability
    - (A) This management measure applies to all harvesting, yarding, and hauling conducted as part of normal silvicultural activities on harvest units larger than five (5) acres.
    - (B) This management measure does not apply to harvesting conducted for precommercial thinnings or noncommercial firewood cutting.
  - (2) Purpose. The purpose of this management measure is to minimize sedimentation resulting from the siting and operation of timber harvesting, and to manage petroleum products properly.
  - (3) General Requirements
    - (A) The timber harvesting management measure consists of implementing the following:
      - (i) Timber harvesting operations with skid trails or cable yarding shall follow layouts determined under subsection 0(a) of this Appendix.
      - (ii) Install landing drainage structures to avoid sedimentation, to the extent practicable. Disperse landing drainage over side slopes.

- (iii) Construct landings away from steep slopes and reduce the likelihood of fill slope failures. Protect landing surfaces used during wet periods. Locate landings outside of SMZs. Minimize the size of landing areas.
  - (iv) Protect stream channels and significant ephemeral drainages from logging debris and slash material.
  - (v) Use appropriate areas for petroleum storage, draining, and dispensing. Establish procedures to contain and treat spills. Recycle or properly dispose of all waste materials in accordance with State law.
- (B) For cable yarding:
- (i) Limit yarding corridor gouge or soil plowing by properly locating cable yarding landings.
  - (ii) Locate corridors for SMZs in accordance with subsection 0(b) of this Appendix.
  - (iii) Cable yarding shall not be done across perennial or intermittent streams, except at improved stream crossings.
- (C) For groundskidding:
- (i) Within SMZs, operate groundskidding equipment only at stream crossings, to the extent practicable. In SMZs, fell and

endline trees to avoid sedimentation.

- (ii) Use improved stream crossings for skid trails which cross flowing drainages. Construct skid trails with adequate drainage structures to disperse runoff.
  - (iii) On steep slopes, use cable systems rather than groundskidding where groundskidding may cause excessive sedimentation.
  - (iv) Groundskidding shall not be done across perennial or intermittent streams, except at improved stream crossings.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to:
- (A) Best management practices for timber harvesting and forest roads (temporary access roads and landings) identified in *Best Management Practices for Maintaining Water Quality in Hawaii* (DOFAW, February 1996); and
  - (B) Best management practices for timber harvesting identified in *National Management Measures to Control Nonpoint Source Pollution from Forestry* (EPA, EPA-841-B-05-001, April 2005).

(f) Site Preparation and Forest Regeneration Management Measure

- (1) Specific Applicability. This management measure applies to all site preparation and regeneration activities conducted as part of

normal silvicultural activities on harvested units larger than five (5) acres.

- (2) Purpose. This management measure is intended to confine on-site potential nonpoint source pollution and erosion resulting from site preparation and the regeneration of forest stands.
- (3) General Requirements
  - (A) Select a method of site preparation and regeneration suitable for the site conditions.
  - (B) Conduct mechanical tree planting and ground-disturbing site preparation activities on the contour of erodible terrain.
  - (C) Do not conduct mechanical site preparation and mechanical tree planting in SMZs.
  - (D) Protect surface waters from logging debris and slash material.
  - (E) Suspend operations during wet periods if equipment used begins to cause excessive soil disturbance that will increase erosion.
  - (F) Locate windrows at a safe distance from drainages and SMZs to control movement of the material during high runoff conditions.
  - (G) Conduct bedding operations in high water-table areas during dry periods of the year. Conduct bedding in erodible areas on the contour.

- (H) Protect small ephemeral drainages when conducting mechanical tree planting.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to:
  - (A) Best management practices for reforestation and timber harvesting (mechanical site preparation) identified in "Best Management Practices for Maintaining Water Quality in Hawaii" (DOFAW, February 1996); and
  - (B) Best management practices for site preparation and forest regeneration identified in *National Management Measures to Control Nonpoint Source Pollution from Forestry* (EPA, EPA-841-B-05-001, April 2005).
- (g) Fire Management Measure
  - (1) Specific Applicability. This management measure applies to all prescribed burning conducted as part of normal silvicultural activities on all harvested units larger than five (5) acres for wildfire suppression and rehabilitation on forest lands.
  - (2) Purpose. The purpose of this management measure is to minimize potential nonpoint source pollution and erosion resulting from prescribed fire for site preparation and from the methods used for wildfire control or suppression on forest lands.
  - (3) General Requirements. Prescribe fire or suppress wildfire in a manner which reduces potential nonpoint source pollution of surface waters:

- (A) Prescribed fire shall not cause excessive sedimentation due to the combined effect of removal of canopy species and the loss of soil-binding ability of subcanopy and herbaceous vegetation roots.
  - (B) Prescriptions for fire shall protect against excessive erosion or sedimentation, to the extent practicable.
  - (C) All bladed firelines, for prescribed fire and wildfire, shall be plowed on contour or stabilized with water bars and/or other appropriate techniques if needed to control excessive sedimentation or erosion of the fireline.
  - (D) Wildfire suppression and rehabilitation shall consider possible nonpoint source pollution of watercourses, while recognizing the safety and operational priorities of fighting wildfires.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to:
- (A) Best management practices for wildfire damage control and reclamation/prescribed burn, fireline construction and maintenance, and prescribed burn identified in *Best Management Practices for Maintaining Water Quality in Hawaii* (DOFAW, February 1996); and
  - (B) Best management practices for fire management identified in *National Management Measures to Control Nonpoint*



*Source Pollution from Forestry* (EPA, EPA-841-B-05-001, April 2005).

(h) Revegetation of Disturbed Areas Management Measure

- (1) Specific Applicability. This management measure applies to all disturbed areas resulting from harvesting, road building, and site preparation conducted as part of normal silvicultural activities. Disturbed areas are those localized areas within harvest units or road systems where mineral soil is exposed or agitated (e.g., road cuts, fill slopes, landing surfaces, cable corridors, or skid trail ruts).
- (2) Purpose. The purpose of this management measure is to prevent sediment and other pollutants from harvested, burned, or other disturbed areas from entering State waters. Revegetating disturbed areas stabilizes the soil in these areas, reduces erosion, and helps to prevent sediment and pollutants associated with sediment from entering nearby surface waters.
- (3) General Requirements
  - (A) Using seeding or planting, revegetate areas disturbed by harvesting operations or road construction promptly after completion of the earth-disturbing activity. Local growing conditions should dictate the timing for establishment of vegetative cover.
  - (B) Use mixes of species and treatments developed and tailored for successful vegetation establishment for the region or area.

- (C) Prioritize initial revegetation efforts in disturbed areas in SMZs or the steepest areas of disturbance near drainages.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to:
- (A) Best management practices for reforestation, wildfire damage control and reclamation/prescribed burn, and timber harvesting (skidding) in *Best Management Practices for Maintaining Water Quality in Hawaii* (DOFAW, February 1996); and
  - (B) Best management practices for revegetation of disturbed areas identified in *National Management Measures to Control Nonpoint Source Pollution from Forestry* (EPA, EPA-841-B-05-001, April 2005).
- (i) Forest Chemical Management Measure
- (1) Specific Applicability
- (A) This management measure applies to all fertilizer and pesticide applications (including biological agents) conducted as part of normal silvicultural or commercial forestry activities.
  - (B) This management measure applies to the transportation, storage, mixing, loading, application, cleanup, and disposal of chemicals used in silvicultural and commercial forestry operations.

- (2) Purpose. The purpose of this management measure is to prevent pesticides and fertilizers used in forest management from entering State waters.
- (3) General Requirements. Use chemicals only when necessary for forest management and in accordance with the following activities to reduce the movement of forest chemicals off-site during and after application:
  - (A) Conduct applications by skilled and, where required, licensed applicators according to the registered use, with special consideration given to impacts to nearby surface waters and groundwater.
  - (B) Carefully prescribe the type and amount of pesticides appropriate for the insect, fungus, or herbaceous species.
  - (C) Establish and identify buffer areas for surface waters for applications, including aerial applications.
  - (D) Prior to applications of pesticides and fertilizers, inspect the mixing and loading process and the calibration of equipment and identify the appropriate weather conditions, the spray area, and buffer areas for surface waters.
  - (E) Immediately report accidental spills of pesticides or fertilizers into surface waters to the appropriate State and local agencies. Develop an effective spill contingency plan to contain spills.

- (4) Authorized Management Practices. Authorized management practices include but are not limited to:
- (A) Best management practices for silvicultural chemical management identified in *Best Management Practices for Maintaining Water Quality in Hawaii* (DOFAW, February 1996); and
  - (B) Best management practices for forest chemical management identified in *National Management Measures to Control Nonpoint Source Pollution from Forestry* (EPA, EPA-841-B-05-001, April 2005).

**CHAPTER 11-56 APPENDIX C**

**WATER POLLUTION CONTROL REQUIREMENTS FOR  
MARINAS AND RECREATIONAL BOATING**

**1. General Applicability**

(a) Requirements defined in this chapter shall be implemented by persons identified in section 11-56-03 who own or operate a publicly-owned marina or recreational boating facility that has any of the following:

- (1) Ten (10) or more slips;
- (2) A pier where ten (10) or more boats may tie up;
- (3) A facility where a boat for hire is docked;
- (4) A boat maintenance or repair yard that is adjacent to the water; or
- (5) A mooring field where ten (10) or more boats are moored.
- (6) Other marinas or recreational boating facilities may be subject to the requirements of this Appendix at the discretion of the director based on risk of harm to human or environmental health, as determined by the director. Marinas and recreational boating facilities determined by the director to be subject to the requirements of this Appendix will be provided written notice by the director.

(b) For marinas and recreational boating facilities that do not fall under the applicability of this Appendix, the director encourages voluntary

development of a Water Pollution Prevention Plan to facilitate the implementation of the management measures contained in this Appendix.

## **2. Incorporation of Management Measures into Water Pollution Prevention Plans**

(a) The owner or operator of a marina or recreational boating facility subject to regulation shall incorporate water pollution reducing management measures into a Water Pollution Prevention Plan. At a minimum, Water Pollution Prevention Plans shall incorporate all appropriate management measures to prevent and control the specific sources of pollution identified in section 3 of this Appendix.

(b) The owner or operator of a marina or recreational boating facility subject to this Appendix shall identify which management measures in section 3 are required based upon the specific applicability of each management measure and its subparts. Each management measure identified as being applicable shall be implemented as detailed in the Water Pollution Prevention Plan developed pursuant to this chapter.

(c) Authorized management practices that satisfy management measure requirements shall be identified in the Water Pollution Prevention Plan.

(d) For discharges identified in section 11-56-03 that result from activities identified in this Appendix, where such discharges or activities are subject to an alternative regulatory mechanism that accomplishes the objectives of one or more of the management measures in section 3 of this Appendix, the Water Pollution Prevention Plan may include a reference to the alternative regulatory mechanism in lieu of the specified management measure(s).

(e) All publicly-owned facilities or operations managed by the Department of Land and Natural Resources, Division of Boating and Ocean Recreation are not required to incorporate the following management measures in a Water Pollution Prevention Plan, provided that those facilities or operations are subject to and in compliance with section 13-232-43, HAR (4/22/04): shoreline stabilization (section 3(d)(d)), storm water runoff (section 3(e)), fueling station design (section 3(f)), sewage facility (section 3(g)), maintenance of sewage facilities (section 3(h)), solid waste (section 3(i)), and liquid material (section 3(k)).

### **3. Management Measures Required for Specific Sources of Pollution**

- (a) Marina Flushing Management Measure
  - (1) Specific Applicability. This management measure applies to new and expanding marinas.
  - (2) Purpose. The purpose of this management measure is to ensure proper siting and design of marinas and recreational boating facilities such that water quality will be maintained through proper flushing.
  - (3) General Requirements. Site and design marinas such that tides and/or currents will aid in flushing of the site or renew its water regularly.
  - (4) Authorized Management Practices. Authorized management practices include but are not limited to marina flushing BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA

841-B-01-005, November 2001, or as subsequently amended).

(b) Water Quality Assessment Management Measure

- (1) Specific Applicability. This management measure applies to new and expanding marinas.
- (2) Purpose. This management measure is intended to establish criteria for assessments of water quality that may be used to determine whether a proposed marina design will result in poor water quality.
- (3) General Requirements. Assess water quality as part of marina siting and design.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to water quality assessment BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).

(c) Habitat Assessment Management Measure

- (1) Specific Applicability. This management measure applies to new and expanding marinas where site changes may have an impact on important marine species, coral reefs, wetlands, or other important habitats. The habitats of non-indigenous nuisance species are not considered important habitats.
- (2) Purpose. This management measure is intended to establish biological siting and design provisions for marinas based on the premise that marinas should not destroy important aquatic habitat, should not



diminish the harvestability of organisms in adjacent habitats, and should accommodate the same biological uses (e.g., reproduction, migration) for which the source waters have been classified.

- (3) General Requirements. Site and design marinas to protect against adverse effects on coral reefs, shellfish resources, wetlands, submerged aquatic vegetation, or other important riparian and aquatic habitat areas as designated by local, State, or federal governments.
  - (4) Authorized Management Practices. Authorized management practices include but are not limited to habitat assessment BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).
- (d) Shoreline Stabilization Management Measure
- (1) Specific Applicability. This management measure applies to new and expanding marinas where site changes may result in shoreline erosion.
  - (2) Purpose. This management measure is intended to encourage the use of vegetative methods for shoreline stabilization to prevent or reduce the delivery of pollutants to water resources.
  - (3) General Requirements. Stabilize shorelines where shoreline erosion is a serious nonpoint source pollution problem.
  - (4) Authorized Management Practices

- (A) Authorized management practices include but are not limited to shoreline and streambank stabilization BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).
  - (B) Authorized management practices that employ vegetative methods to stabilize shorelines should be used. Structural methods to stabilize shorelines may be necessary where vegetative methods cannot work and where they do not interfere with natural beach processes or harm other sensitive ecological areas.
- (e) Storm Water Runoff Management Measure
- (1) Specific Applicability
    - (A) This management measure applies to all marinas, with vessel maintenance areas and any other areas where vessel maintenance, boat bottom scraping, sanding, and/or painting is done.
    - (B) This management measure does not apply to storm water runoff that enters the marina property from upland sources.
  - (2) Purpose. The purpose of this management measure is to control pollutants in runoff from vessel maintenance areas. The proper design and operation of these areas can significantly prevent the entry of pollutants from marina property into surface waters.

- (3) General Requirements
  - (A) Implement effective runoff control strategies which include the use of pollution prevention activities and the proper design of vessel maintenance areas to minimize storm water contact with water pollutants.
  - (B) Reduce the average annual loadings of total suspended solids and other water pollutants in runoff from vessel maintenance areas to the maximum extent practicable.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to storm water runoff BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).
- (f) Fueling Station Design Management Measure
  - (1) Specific Applicability. This management measure applies to all marinas where fueling stations are to be added or moved.
  - (2) Purpose. The purpose of this management measure is to prevent and control petroleum and other chemicals associated with fuel spillage.
  - (3) General Requirements
    - (A) Design fueling stations to allow for ease in cleanup of spills.
    - (B) Maintain adequate spill containment and mitigation measures.

- (C) Eliminate storm water contact with fueling appurtenances.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to fueling station design BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).
- (g) Sewage Facility Management Measure
  - (1) Specific Applicability
    - (A) This management measure applies to new and expanding marinas in areas where adequate marine sewage collection facilities do not exist.
    - (B) This measure does not apply to direct discharges from vessels covered under Section 312 of the Clean Water Act.
  - (2) Purpose. This management measure is intended to prevent and control pollution by ensuring proper siting and design of sewage facilities associated with marinas and recreational boating activities.
  - (3) General Requirements
    - (A) Install pumpout, dump station, and restroom facilities where needed at new and expanding marinas to reduce the release of sewage into surface waters. Design these facilities to allow ease of access and post signage to promote use by the boating public.

- (B) Marinas that do not provide services for vessels that have marine sanitation devices (MSDs) do not need to have pumpouts, although dump stations for portable toilets and restrooms shall be available.
  
- (4) Authorized Management Practices. Authorized management practices include but are not limited to sewage facility BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).
  
- (h) Maintenance of Sewage Facilities Management Measure
  - (1) Specific Applicability. This management measure applies to marinas where marine sewage disposal facilities exist.
  - (2) Purpose. The purpose of this measure is to eliminate the release of untreated sewage into marina and surface waters.
  - (3) General Requirements. Ensure that sewage pumpout facilities are maintained in operational condition and encourage their use.
  - (4) Authorized Management Practices. Authorized management practices include but are not limited to maintenance of sewage facilities BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).
  
- (i) Solid Waste Management Measure

- (1) Specific Applicability. This management measure applies to the operation and maintenance of all marinas.
  - (2) Purpose. This management measure is intended to ensure proper disposal of solid waste materials generated at marinas and recreational boating facilities.
  - (3) General Requirements. Properly dispose of solid wastes produced by the operation, cleaning, maintenance, and repair of boats to limit entry of solid wastes into surface waters.
  - (4) Authorized Management Practices. Authorized management practices include but are not limited to solid waste BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).
- (j) Fish Waste Management Measure
- (1) Specific Applicability. This management measure applies to marinas where fish waste is generated.
  - (2) Purpose. The purpose of this management measure is to control fish waste pollution, which can result in water quality problems and odor problems at marinas with large numbers of fish landings or at marinas that have limited fish landings but poor flushing.
  - (3) General Requirements
    - (A) Promote sound fish waste management through a combination of fish-cleaning

restrictions and proper disposal of fish waste.

- (B) Prohibit discarding fish waste into State waters.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to fish waste BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).
- (k) Liquid Material Management Measure
  - (1) Specific Applicability. This management measure applies to the operation and maintenance of marinas where liquid materials used in the maintenance, repair, or operation of boats are stored.
  - (2) Purpose. This management measure is intended to minimize the discharge of potentially harmful liquid materials into marina and surface waters through proper storage and disposal.
  - (3) General Requirements. Provide and maintain appropriate storage, transfer, containment, and disposal facilities for liquid material, such as oil, harmful solvents, antifreeze, and paints, and encourage recycling of these materials.
  - (4) Authorized Management Practices. Authorized management practices include but are not limited to liquid material BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA

841-B-01-005, November 2001, or as subsequently amended).

- (1) Petroleum Control Management Measure
  - (1) Specific Applicability. This management measure applies to boats that have inboard fuel tanks and marinas that harbor such boats.
  - (2) Purpose. This management measure is intended to control pollution from fuel and oil associated with marina boat operation and maintenance.
  - (3) General Requirements. Reduce the amount of fuel and oil from boat bilges and fuel tank air vents entering marina and surface waters.
  - (4) Authorized Management Practices. Authorized management practices include but are not limited to petroleum control BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).
- (m) Boat Cleaning Management Measure
  - (1) Specific Applicability. This management measure applies to marinas where boat topsides are cleaned and marinas where hull scrubbing in the water may result in water or sediment quality problems.
  - (2) Purpose. This management measure is intended to minimize the use and release of potentially harmful cleaners and bottom paints to marina and surface waters.



- (3) General Requirements. For boats that are in the water, perform cleaning operations to minimize, to the extent practicable, the release to surface waters of harmful cleaners, solvents, and paint from in-water hull cleaning.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to boat cleaning BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).
- (n) Public Education Management Measure
  - (1) Specific Applicability. This management measure applies to all environmental control authorities in areas where marinas are located.
  - (2) Purpose. This management measure is intended to prevent pollution from marinas and boating activities by educating the public and facility operators about the causes and effects of pollution and the methods to prevent pollution.
  - (3) General Requirements. Education, outreach, and/or training programs shall be instituted for boaters and marina owners and operators to prevent improper disposal of polluting material, including, but not limited to, solid waste, fish waste, liquid materials, fuel and oil, sewage, and boat cleaner and paints.
  - (4) Authorized Management Practices. Authorized management practices include but are not limited to public education BMPs identified in the *National Management Measures to*

*Control Nonpoint Source Pollution from  
Marinas and Recreational Boating* (EPA, EPA  
841-B-01-005, November 2001, or as  
subsequently amended).

Chapter 11-56, Hawaii Administrative Rules,  
entitled "Nonpoint Source Pollution Control" dated  
, was adopted following a public hearing held [DATE]  
, after public notice was given in the Honolulu Star-  
Advertiser, West Hawaii Today, Hawaii Tribune Herald,  
Maui News and The Garden Isle on [DATE]\_\_\_\_\_.

The adoption of chapter 11-56 shall take effect  
ten days after filing with the office of the  
Lieutenant Governor.

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

Approved:

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

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

APPROVED AS TO FORM:

*Edward G. Bohlen*

---

Edward G. Bohlen  
Deputy Attorney General

---

Filed