

CHAPTER 11-55 APPENDIX K

NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF STORM WATER AND
CERTAIN NON-STORM WATER DISCHARGES FROM
SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS

This General Permit is effective on

and expires [three]five years from this date,
unless amended earlier.

In accordance with 40 CFR 122.28(d), the Director has selected the Two-Step General Permit approach to regulate Small MS4s under the State's NPDES Permit Program. See 40 CFR §122.28(d)(2). "40 CFR" as used in this general permit means the Code of Federal Regulations, Title 40, Protection of Environment, revised as of July 1, 2017. The DOH intends to follow and have permittees comply with the Two-Step General Permit Approach in accordance with FR Vol. 81, No. 237 pg. 89330, Section V.B.

1. Coverage under this General Permit

- (a) This general permit covers storm water and certain non-storm water discharges, provided they do not cause or contribute to any violation of water quality standards, to state waters from small municipal separate storm sewer systems.

[Non-storm]The following non-storm water discharges are authorized by this general permit, provided that they do not cause or contribute to any violation of water quality standards[, include]:

- (1) Water line flushing;

CHAPTER 11-55 APPENDIX K

- (2) Landscape irrigation;
- (3) Diverted stream flows;
- (4) Rising ground waters;
- (5) Uncontaminated ground water infiltration (as defined in 40 CFR §35.2005(20));
- (6) Uncontaminated pumped ground water;
- (7) Discharges from potable water sources and foundation drains;
- (8) Air conditioning condensate;
- (9) Irrigation water;
- (10) Springs;
- (11) Water from crawl space pumps and footing drains;
- (12) Lawn watering runoff;
- (13) Water from individual residential car washing;
- (14) Flows from riparian habitats and wetlands;
- (15) Dechlorinated swimming pool discharges;
- (16) Residual street wash water; and
- (17) Discharges or flows from fire fighting activities.

CHAPTER 11-55 APPENDIX K

The Permittee may also develop a list of other similar occasional incidental non-storm water discharges (e.g., charity car washes, etc.) that will not be addressed as illicit discharges. These non-storm water discharges must not be reasonably expected (based on the information available to the Permittee) to be significant sources of pollutants to the MS4, because of either the nature of the discharges or conditions the Permittee has established for allowing these discharges to the MS4 (e.g., charity car washes with appropriate controls on frequency, proximity to sensitive water bodies, BMPs on the wash water, etc.). The Permittee shall document in the Storm Water Management Plan the terms and conditions placed on the discharges, and include a provision prohibiting any individual non-storm water discharge that is determined to be contributing pollutants to the Permittee's MS4.

- (b) This general permit covers all areas of the State except for discharges in or to [state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."] natural freshwater lakes, saline lakes, or anchialine pools.

CHAPTER 11-55 APPENDIX K

2. Limitations on Coverage under this General Permit

- (a) This general permit does not cover the following:
- (1) Storm water discharges into a sanitary sewer system;
 - (2) Storm water discharges from construction activities greater than one acre which discharges into the permittee's small municipal separate storm sewer system;
 - (3) Storm water discharges from industrial facilities as defined in 40 CFR §§122.26(b)(14)(i) through 122.26(b)(14)(ix) and 122.26(b)(14)(xi) which discharges into the permittee's small municipal separate storm sewer system;
 - (4) Storm water discharges from small municipal separate storm sewer systems which initially enter a separate storm water drainage system(s), unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system;
 - (5) Storm water discharges for which the director has issued a notice of general permit coverage under another general permit specific to that type of industrial activity; and

CHAPTER 11-55 APPENDIX K

(6) Storm water discharges the director finds more appropriately regulated under an individual permit.

(b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

(a) This general permit becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires [~~three~~ five] years after the effective date[or when amendments to section 11-55-34.02(b)(10) are adopted, whichever is earlier].

(b) A notice of general permit coverage under this general permit expires:

(1) [~~Three~~ Five] years after the effective date of this general permit;

(2) When the notice of general permit coverage specifies; or

(3) When amendments to section 11-55-34.02(b)(10) are adopted,

whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

CHAPTER 11-55 APPENDIX K

4. Notice of Intent Requirements

The Permittee shall submit a notice of intent in accordance with 40 CFR 122.28(b)(2)(ii) and provide other information the DOH identifies as necessary to establish additional terms and conditions that satisfy the permit requirements of 40 CFR 122.34, such as the information required under 40 CFR 122.33(b)(2)(i).

- (a) [The owner or its duly authorized representative]New Permittees (those MS4s not covered under the previous 2013 general permit) shall submit a complete notice of intent no later than [thirty]180 calendar days before the proposed starting date of the discharge.

Existing Permittees (those granted administrative extension under the previous 2013 general permit) shall submit a complete notice of intent no later than 120 calendar days from the effective date of this general permit. Failure to comply with this deadline will result in the termination of the administrative extension, unless otherwise ordered by DOH.

- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
- (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) Non-storm water discharge information;
 - (3) Facility site map;

CHAPTER 11-55 APPENDIX K

- (4) An assessment of the effectiveness of each control measure the storm water management plan implemented during the previous permit term [in reducing discharges of pollutants to the maximum extent practicable and protecting water quality,] (i.e., only for MS4s covered under the previous general permit) and any [modifications]revisions to the plan proposed to be implemented for compliance with this general permit; and
- (5) Storm water management plan (SWMP), which meets the applicable requirements as specified in section 6 of this general permit, and which has been updated based on the assessment required by section 4(b)(4) of this general permit. [The storm water management plan may be submitted to the director with the notice of intent or within one hundred twenty days after the issuance date of the notice of general permit coverage or by the date the applicant claimed automatic coverage as specified in section 11-55-34.09(e)(2), or for proposed small municipal separate storm sewer systems, by the date the permittee's small municipal separate storm sewer system becomes operational. The plan, and all subsequent revisions, shall be kept on-site or at a nearby office or field office.]
- (6) If specifically assigned a WLA, submit an Implementation & Monitoring (I&M) Plan, which meets the applicable

CHAPTER 11-55 APPENDIX K

requirements as specified in section 8 of this general permit to comply with Wasteload Allocations assigned to the Permittee consistent with the assumption of the associated TMDL document. If compliance will exceed a year, the Permittee shall also include a proposed compliance schedule that meets the requirements of 40 CFR 122.47 to comply as soon as possible.

- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

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

5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

6. Storm Water Management Plan Requirements

The permittee shall develop, implement, and enforce a written storm water management plan

CHAPTER 11-55 APPENDIX K

document designed to meet the MS4 permit standard ("reduce the discharge of pollutants from the permittee's small municipal separate storm sewer system to the maximum extent practicable in order to protect water quality and satisfy the appropriate water quality requirements of the Clean Water Act[.]"). The storm water management plan shall include a description of the best management practice (BMPs) that the Permittee will implement for each of the minimum control measures identified below with implementation dates; timing and frequencies, as appropriate; measurable goals [refer to section 6(b)]; and rationales for each BMP[:]. The BMPs terms and conditions shall be expressed in clear, specific, and measurable terms to adhere to the requirements of 40 CFR 122.34. Refer to EPA's "Municipal Separate Storm Sewer System Permits, Compendium of Clear, Specific & Measurable Permitting Examples," November 2016, EPA-830-S-16-002. The rationales shall explain to the DOH's satisfaction how it meets the MS4 permit standard. Refer to the FR Vol. 81, No. 237 pg. 89333, Section VI.A. The contents of the SWMP document are enforceable under this permit.

- (a) Minimum Control Measures. In case of conflict between the minimum control measures stated herein and those in the 40 CFR 122.34(b)(1) through (6), the more stringent control measures shall apply.

(1) Public Education and Outreach

Develop and implement a public education program to distribute educational materials to users of the permittee's small municipal separate storm sewer system or equivalent

CHAPTER 11-55 APPENDIX K

outreach activities emphasizing the following:

- (A) Impacts of storm water discharges on water bodies,
- (B) Hazards associated with illicit discharges, and
- (C) Measures that users of the permittee's small municipal separate storm sewer system can take to reduce pollutants in storm water runoff, including, but not limited to, minimizing fertilizer application and practicing proper storage and disposal of chemicals and wastes;

(2) Public Involvement/Participation

Include users of the permittee's small municipal separate storm sewer system in developing, implementing, and reviewing the storm water management plan;

(3) Illicit Discharge Detection and Elimination

Develop, implement, and enforce a program to detect and eliminate illicit discharges that, at a minimum, includes the following:

- (A) Establishment of rules, ordinances, or other regulatory mechanism, including enforcement procedures and actions, that

CHAPTER 11-55 APPENDIX K

prohibit non-storm water discharges, except those listed in section 1 that do not cause or contribute to any violations of water quality standards, into the permittee's small municipal separate storm sewer system,

(B) Procedures to detect and eliminate illicit discharges (as defined in 40 CFR Section 122.26(b)(2)), and

(C) Compilation of a list of non-storm water discharges or flows that are considered to be significant contributors of pollutants to the system and measures to be taken to prevent these discharges into the permittee's small municipal separate storm sewer system, or reduce the amount of pollutants in these discharges;

(4) Construction Site Runoff Control

Develop, implement, and enforce a program to reduce pollutants in storm water runoff entering the permittee's small municipal separate storm sewer system from construction activities disturbing one acre or more, including construction activities less than one acre that are part of a larger common plan of development or sale that would disturb one acre or more, that, at a minimum, includes the following:

(A) Establishment of rules, ordinances, or other regulatory

CHAPTER 11-55 APPENDIX K

mechanism, including enforcement procedures and actions, that require erosion and sediment controls,

- (B) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices,
 - (C) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality,
 - (D) Procedures for site plan review which incorporate consideration of potential water quality impacts,
 - (E) Procedures for receipt and consideration of information submitted by the public, and
 - (F) Procedures for site inspection and enforcement of control measures;
- (5) Post-Construction Storm Water Management in New Development and Redevelopment

Develop, implement, and enforce a program to reduce pollutants in storm water runoff entering the permittee's small municipal separate storm sewer system from new development and redevelopment projects that disturb

CHAPTER 11-55 APPENDIX K

greater than or equal to one acre, including construction sites less than one acre that are part of a larger common plan of development or sale that would disturb one acre or more, that, at a minimum, includes the following:

- (A) Establishment of rules, ordinances, or other regulatory mechanism, including enforcement procedures and actions, that address post-construction runoff from new development and redevelopment projects,
 - (B) Structural and/or non-structural best management practices to minimize water quality impacts and attempt to maintain pre-development runoff conditions, and
 - (C) Procedures for long-term operation and maintenance of best management practices.
- (6) Pollution Prevention/Good Housekeeping

Develop, implement, and enforce an operation and maintenance program to prevent and reduce storm water pollution from activities, including, but not limited to, park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance that, at a minimum, includes the following:

CHAPTER 11-55 APPENDIX K

- (A) Good housekeeping and other control measures, and
- (B) Employee and contractor training on good housekeeping practices to ensure that good housekeeping measures and best management practices are properly implemented.

(b) Measurable Goals

The permittee shall develop measurable goals to gauge permit compliance and program effectiveness for each [minimum control measure identified above] BMP as described in the Permittee's SWMP. [The permittee shall select measurable goals using an integrated approach that fully addresses the requirements and intent of the minimum control measure.] The term "measurable" means that the permit requirement has been articulated in such a way that compliance with it can be assessed in a straightforward manner. Refer to FR Vol. 81, No. 237 pg. 89336, 3rd column, 2nd paragraph.

(c) Modifications

[(1) Significant Modifications

- (A) Modifications to the storm water management plan that would result in a major reduction in the overall scope or level of effort or both of the storm water management plan must be made for cause and in compliance with 40 CFR §122.62 and 40 CFR Part 124.

CHAPTER 11-55 APPENDIX K

(B) The permittee shall report in writing any proposed modification described above to the Director of Health for approval at least thirty days prior to the initiation date of the modification.

(2) Other Modifications

The permittee shall report and justify all other modifications made to the storm water management plan in the annual report for the year in which the modification was made.]

Any modifications to the BMPs and measurable goals will require submittal of a new NOI and filing fee, unless clearly accounted for in its SWMP and that has been public noticed.

7. Basic Water Quality Criteria and Inspections

- (a) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
- (b) The permittee shall [timely], as indicated in its SWMP, inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating

CHAPTER 11-55 APPENDIX K

debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)

8. TMDL Implementation and Monitoring

The requirements of this section apply to Small MS4 discharges to receiving waters with established TMDLs approved by EPA where urban storm water is identified as a source of TMDL pollutant loading and the Permittee has assigned WLA(s).

(a) The Permittee shall comply with the following:

(i) For the University of Hawaii, Windward Community College (WCC)

WCC must comply with the WLA reductions (refer to Tables 5.10 and 5.11) consistent with the assumption of the TMDL document titled, "Total Maximum Daily Load (TMDLs) for Total Suspended Solids, Nitrogen and Phosphorus in Kaneohe Stream, Kaneohe, Hawaii," dated September 2009, within the timeframes as specified in its I&M Plan.

(ii) For ALL other Permittees

As applicable, comply with any assigned WLA reductions, as additional TMDLs are adopted by DOH and approved by the EPA, consistent with the TMDL document within the

CHAPTER 11-55 APPENDIX K

timeframes as specified in its I&M Plan, unless an I&M Plan has already been developed by the DOH. If an I&M Plan has been developed by the DOH, then the Permittee shall comply with those timeframes and requirements.

As additional TMDLs are adopted by the DOH and approved by the EPA, the Permittee for any assigned WLA reductions will, within two (2) years of the TMDL approval, prepare an I&M plan that will describe the Permittee's approach to proposed activities for compliance with the WLA reductions. If compliance is expected to take longer than 1-year after preparation of the Permittee's I&M Plan, a compliance schedule shall be submitted along with its I&M Plan that meet the requirements of 40 CFR 122.47.

A new NOI shall be submitted to DOH upon submittal of the Permittee's I&M Plan to provide opportunity for public comment and request for a public hearing.

(b) The requirements of an I&M Plan, includes at a minimum the following:

- (i) Detailed information on the activities proposed to be implemented.
- (ii) Actual or literature documentation of the estimated effectiveness of the activities targeted to reduce the

CHAPTER 11-55 APPENDIX K

pollutants of concern such as total nitrogen, total phosphorus, total suspended solids, and turbidity in the watershed, as applicable, to demonstrate consistency with the WLA reductions consistent with the assumptions of the associated TMDL document.

- (iii) A detailed and quantitative analysis which demonstrates that the proposed activities would ensure consistency with the WLA reductions consistent with the assumptions of the associated TMDL document.
- (iv) Information from pre and post monitoring activities to quantitatively demonstrate consistency with the WLA reductions consistent with the assumptions of the associated TMDL document.
- (v) A monitoring plan which shall identify activities to demonstrate consistency with the WLA reductions consistent with the assumptions of the associated TMDL document.

[8.]9. Corrective Action

The permittee shall immediately stop, reduce, or modify the discharge as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

CHAPTER 11-55 APPENDIX K

[9.]10. Reporting Requirements

(a) Annual Report

Annual Reports shall be submitted in compliance with Federal eReporting Rule requirements starting no later than December 21, 2020.

The annual report shall be submitted by the permittee and received by the department by the twenty-eighth day of January of the following year. The annual report shall cover each calendar year during the term of this permit and include the following:

- (1) Status of compliance with the terms and conditions of this permit;
- (2) Assessment of the [storm water management plan] effectiveness of each component in its SWMP, including [progress towards implementing] the status of achieving the measurable goals for each BMP; and
- [(3) Modifications made to the storm water management plan and implementation schedule during that calendar year, including justifications;]
- [(4)](3) Summary of the storm water activities planned to be undertaken during the next calendar year[; and].
- [(5) Major modifications made to the permittee's small municipal separate storm sewer system, including, but not limited to, addition and removal of

CHAPTER 11-55 APPENDIX K

outfalls, drainage lines, and treatment facilities.]

(b) Planned Changes

The permittee shall report [any planned physical alterations or additions to the permitted facility, not covered by] planned changes to the permitted facility in accordance with 40 CFR §122.41(1)(1)(i), (ii), and (iii) to the director on a quarterly basis.

(c) Status of TMDL compliance

The Permittee shall submit their progress for the proposed activities in the I&M Plan annually including any milestone commitments.

[10.]11. Submittal Requirements

- (a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

- (b) The owner or its duly authorized representative shall include the following certification statement and an original

CHAPTER 11-55 APPENDIX K

signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).
- (d) All submittals shall be made on forms provided and specified by DOH.
- (e) All submittals shall be submitted in compliance with Federal eReporting Rule requirements starting no later than December 21, 2020.

[11.]12. Additional Conditions

CHAPTER 11-55 APPENDIX K

The director may impose additional conditions under section 11-55-34.09(b).

13. Public Notice of Permit Actions and Public Comment Period

The DOH shall follow 40 CFR 124.10 for this general permit and as otherwise specified below.

- (a) The Permittee shall publish, in accordance with HRS 1-28.5, the Director's proposal (i.e., Public Notice document) to authorize the MS4 to discharge under the general permit. The DOH will provide the Public Notice document to the Permittee at least two (2) week prior to the publication date as determined by DOH. The contents of Public Notice document shall include the information in accordance with 40 CFR 124.10(d).
- (b) All publication and mailing costs associated with the Public Notice document shall be paid by the Permittee to the appropriate publishing agency or agencies determined by the Director. The Permittee shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the Director, is a basis to deny coverage under this general permit.

14. Public Comments and Public Hearings

The DOH shall follow 40 CFR 124.11, 124.12 and 124.17, and HAR 11-55-13 and 11-55-14 for this general permit. Public comments shall comply

CHAPTER 11-55 APPENDIX K

with 40 CFR 124.13. Publication and payment for costs associated with the Public Hearing shall comply with Sections 13(a) and (b) of this general permit.

[12.]15. Record Retention

The permittee shall retain all records and information resulting from the monitoring activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

[13.]16. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

17. Renewal

Requests for coverage under a renewed (reissued) general permit must be received within the timeframe as specified in the reissued general permit. Requests must be made on forms provided by DOH.

18. Forms

Electronic notice of intent forms may be found at the Department's e-Permitting portal. The

CHAPTER 11-55 APPENDIX K

e-Permitting portal may be accessed via the
Clean Water Branch's website at:
<http://health.hawaii.gov/cwb/>

Fact Sheet for Appendix K

(1) A brief description of the type of facility or activity which is the subject of the draft permit;

The subject of the draft National Pollutant Discharge Elimination System (NPDES) general permit is Small Municipal Separate Storm Sewer Systems (MS4s).

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

- (1) Owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or under state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Act that discharges to state waters;
- (2) Not defined as "large" or "medium" municipal separate storm sewer systems under 40 CFR §122.2(b)(4) and (b)(7), or designated under section 11-55-04(a)(4) or 11-55-34.08(k)(2) or 40 CFR §122.26(a)(1)(v); and
- (3) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings (the system must serve two (2) or more buildings).

The following is a list of Permittees that have applied for NPDES coverage:

1. Department of Transportation, Highways Division (DOT-HWYs) – Maui District, Kahului, Island of Maui, HI 15KE674
2. University of Hawaii, Maui College, HI 14KE369 (not yet issued)
3. University of Hawaii, West Oahu Campus, Kapolei, Island of Oahu, HI 14KE294
4. Department of Transportation, Airports Division (DOT-AIR), Kahului Airport, Kahului, Island of Maui, HI 14KE349
5. County of Maui, Kahului, Island of Maui, HI 14KE360
6. Department of Health, State Hospital, Kaneohe, Island of Oahu, HI 11KD929 (not yet issued)
7. Hawaii Community Development Authority, Kakaako Community Development District, Honolulu, Island of Oahu, HI 08KD270
8. University of Hawaii, Windward Community College, Kaneohe, Island of Oahu, HI 07KC937

9. University of Hawaii, Kapiolani Community College, Honolulu, Island of Oahu, HI 07KC926
10. University of Hawaii, Leeward Community College, Pearl City, Island of Oahu, HI 07KC817
11. Department of Business, Economic Development & Tourism, Hawaii Housing Finance and Development Corporation, Villages of Kapolei, Kapolei, Island of Oahu, HI 06KC738
12. University of Hawaii, Pearl City Urban Garden Center, Pearl City, Island of Oahu, HI 06KC682
13. Department of the Navy, Pearl Harbor Naval Shipyard & Intermediate Maintenance Facility, Pearl Harbor, Island of Oahu, HI 06KC635
14. University of Hawaii, John A. Burns School of Medicine, Honolulu, Island of Oahu, HI 06KC589
15. Kaena Point Satellite Tracking Station, Waianae, Island of Oahu, HI 05KC128
16. University of Hawaii at Manoa, Honolulu, Island of Oahu, HI 03KB495
17. Department of Transportation, Harbors Division, Kalaeloa Barbers Point Harbor, Kapolei, Island of Oahu, HI 03KB488
18. Hawaii Community Development Authority, Kewalo Basin, Honolulu, Island of Oahu, HI 03KB487
19. Department of Transportation, Harbors Division, Honolulu Harbor, Honolulu, Island of Oahu, HI 03KB482
20. Department of Education, various locations, Island of Oahu, HI S000003
21. City and County of Honolulu, Board of Water Supply, various locations, Island of Oahu, HI S000062

Currently, all the above facilities are currently covered by the 2013 permit, except for #2 – University of Hawaii, Maui College, #6 – Department of Health (DOH), State Hospital, #20 Department of Education (DOE), and #21 Board of Water Supply (BWS). During the pendency of reissuing this general permit, the University of Hawaii, Maui College has submitted an Individual NPDES Permit application and is currently being processed. After issuance of this General Permit, Maui College may elect to seek coverage under the General Permit by submitting an NOI. The DOH, State Hospital has submitted an NOI to request coverage, however will be granted a waiver from the Phase II Permit requirements. The DOE is currently working under an Administrative Extension of their Individual NPDES Permit and the BWS has applied for an Individual NPDES permit. Both will be granted waivers from the Phase II Permit requirements, pursuant to authority in 40 CFR §122.32(d).

DOH expects that all of the above facilities that are currently covered would continue to be covered by the proposed permit, except for the Kaena Point Satellite Tracking Station and University of Hawaii, John A. Burns School of Medicine. The Kaena Point Satellite Tracking Station is not located within the urban area and the University of Hawaii, John A. Burns School of Medicine will be granted a waiver from the Phase II Permit requirements.

The Department of the Navy, Navy Region Hawaii has been issued an Individual NPDES permit for Joint Base Pearl Harbor-Hickam (JBPHH) Small MS4 and does not cover the Department of the Navy, Pearl Harbor Naval Shipyard & Intermediate Maintenance Facility (File No. HI 06KC635) as they are separate entities with separate controlling authorities. Both Department of Navy's facilities shall continue to obtain NPDES coverage for their Small MS4s.

(2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.

Storm water discharge and certain allowable non-storm water from Small MS4s.

(3) For a PSD permit, the degree of increment consumption expected to result from operation of the facility or activity.

Not applicable.

(4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by § 124.9 (for EPA-issued permits);

DOH published notice of its proposed revised Appendix K for the discharges of storm water and certain non-storm water discharges from Small Municipal Separate Storm Sewer Systems on May 31, 2016 and again on August 1, 2016. Public hearings were held on July 1, 2016 and September 29, 2016. DOH received comments on the proposed 2016 Appendix K. However, on December 6, 2016, the EPA issued its Final Rule to address a partial remand of the Phase II stormwater regulations by the U.S. Court of Appeals for the Ninth Circuit. *Environmental Defense Center, et al. v. EPA*, 344 F.3d 832 (9th Cir. 2003). As a result of the Final Remand Rule and after considering the comments received on the 2016 Appendix K, the DOH has made significant changes to the previously proposed 2016 Appendix K. Because of the significant changes made from the previously proposed 2016 Appendix K, the DOH is proposing to offer the proposed 2017 Appendix K for public review and comment and opportunity to request a hearing rather than providing responses to 2016 Appendix K comments.

EPA selected proposed Option 3 (the "State Choice Approach") for the Final Remand Rule. The EPA renamed this option the "Permitting Authority Choice Approach". Under this approach, the NPDES permitting authority (i.e. DOH) may choose between two alternatives means of establishing permit requirements in general permits for small MS4s. Whenever issuing a small MS4 general permit, 40 CFR 122.28(d) as amended by the final rule requires permitting authorities to choose either of these two types of general permits: the "Comprehensive General Permit" or "Two-Step General Permit." The DOH has chosen the Two-

Step approach for its General Permit. The Two-Step General Permit allows the DOH to establish some requirements in the general permit and others applicable to individual MS4s through a second proposal and public comment process. This allows the DOH the flexibility to address unique circumstances, such as different maturity levels of its MS4s and for non-traditional MS4s (e.g. state department of transportation, public universities, and military bases).

Polluted storm water runoff is often transported to municipal separate storm sewer systems (MS4s) and ultimately discharged into local rivers and streams without treatment. EPA's Stormwater Phase II Rule establishes an MS4 stormwater management program that is intended to improve the Nation's waterways by reducing the quantity of pollutants that stormwater picks up and carries into storm sewer systems during storm events. Common pollutants include oil and grease from roadways, pesticides from lawns, sediment from construction sites, and carelessly discarded trash, such as cigarette butts, paper wrappers, and plastic bottles. When deposited into nearby waterways through MS4 discharges, these pollutants can impair the waterways, thereby discouraging recreational use of the resource, contaminating drinking water supplies, and interfering with the habitat for fish, other aquatic organisms, and wildlife.

In 1990, EPA promulgated rules establishing Phase I of the National Pollutant Discharge Elimination System (NPDES) stormwater program. The Phase I program for MS4s requires operators of "medium" and "large" MS4s, that is, those that generally serve populations of 100,000 or greater, to implement a stormwater management program as a means to control polluted discharges from these MS4s. The Stormwater Phase II Rule (64 FR 68722) extends coverage of the NPDES stormwater program to certain "small" MS4s but takes a slightly different approach to how the stormwater management program is developed and implemented.

A small MS4 is any MS4 not already covered by the Phase I program as a medium or large MS4. The Phase II Rule automatically covers on a nationwide basis all small MS4s located in "urbanized areas" (UAs) as defined by the Bureau of the Census (unless waived by the NPDES permitting authority).

The General Permit is divided into the following sections:

1. Coverage under this General Permit [Revised]
2. Limitations on Coverage under this General Permit
3. Term of General Permit [Revised]
4. Notice of Intent Requirements [Revised]
5. Standard Conditions
6. Storm Water Management Plan Requirements [Revised]
7. Basic Water Quality Criteria and Inspections [Revised]

8. TMDL Implementation and Monitoring [New]
9. Corrective Actions
10. Reporting Requirements [Revised]
11. Submittal Requirements [Revised]
12. Additional Conditions
13. Public Notice of Permit Actions and Public Comment Period [New]
14. Public Comments and Public Hearing [New]
15. Record Retention
16. Falsifying Report
17. Renewal [New]
18. Forms [New]

The General Permit currently in effect expired on December 6, 2016. The proposed General Permit will be effective for a term of 5 (five) years (revised from 3 years, refer to Section 3 of the General Permit).

Proposed Changes:

The draft 2017 Appendix K includes the following proposed changes (the sections referenced below are that of the General Permit):

1. A paragraph was added to the beginning of the permit to explain the revised Small MS4 General Permit approach pursuant to the MS4 Final Remand Rule. Refer to FR Vol. 81, No. 237, Friday, December 9, 2016. Included is a definition of “40 CFR,” which is different than that in HAR, §11-55-01.

In accordance with 40 CFR 122.28(d), the Director has selected the Two-step general permit approach to regulate Small MS4s under the State’s NPDES Permit Program. See 40 CFR §122.28(d)(2). The DOH will follow the Two-Step General Permit Approach in accordance with FR Vol. 81, No. 237 pg. 89330, Section V.B.

2. Revised Section 1(a), 2nd paragraph to delete the word “include” because use of that word indicated a non-exclusive list.

Revised from:

Non-storm water discharges authorized by this general permit, provided that they do not cause or contribute to any violation of water quality standards, include:

to,

The following non-storm water discharges are authorized by this general permit, provided that they do not cause or contribute to any violation of water quality standards:

3. Added a paragraph to the end of Section 1(a) to allow in the MS4 additional non-storm waters that the Permittee does not expect to be significant sources of pollutants (e.g., charity vehicle wash water). The Permittee shall document in the Storm Water Management Plan the terms and conditions placed on the discharges, and include a provision prohibiting any individual non-storm water discharge that is determined to be contributing pollutants to the Permittee's MS4.
4. Section 1(b), extended coverage to all State waters, except for discharges to natural freshwater lakes, saline lakes, or anchialine pools (i.e., Hawaii's "no discharge" policy, refer to HAR, Chapter 11-54, §11-54-5.2(a)). The proposed revision allows the General Permit to cover discharges to Class 1, Inland Waters, and Class AA, Marine waters, instead of requiring coverage under an Individual NPDES Permit. The "two-step" general permit approach is the same as the DOH's individual NPDES approach for Small MS4s. The "two-step" approach allows the DOH to consider the receiving water classification and the need, if any, for additional BMPs during the processing of coverage and therefore, the traditional Individual NPDES process is no longer needed.
5. Sections 3(a) and 3(b), revised the expiration and effective dates from three (3) to five (5) years.
6. Section 4, 1st paragraph, added language from 40 CFR 122.33(b)(1)(ii) which describes the NOI requirements as a result of the Final Remand Rule.
7. In Section 4(a), added requirements for new and existing permittee NOI submittal deadlines.
8. Revised Section 4(b)(4) to clarify that the assessment of the effectiveness applies to "each control measure." Deleted redundant language which said "in reducing discharges of pollutants to the maximum extent practicable and protecting water quality." Added language to clarify that the assessment is only required for those MS4s covered under the previous general permit. Replaced the word "modifications" with "revisions" to prevent any confusion since modifications are not allowed after the Permittee is issued coverage.

9. Added in Section 4(b)(5) the acronym for Storm Water Management Plan (SWMP).
10. Deleted in Section 4(b)(5) language that allowed the NOI to be submitted without the SWMP. Following the “two-step” approach the SWMP must be submitted with the NOI. Also, deleted having to keep the SWMP and revisions at a nearby field office since that requirement is not applicable.
11. Added Section 4(b)(6) to address TMDL implementation and monitoring. An Implementation and Monitoring (I&M) Plan is required where the Permittee is subject to wasteload allocations (WLAs) and must be submitted with the NOI to be reviewed by the DOH and public noticed during the second step of the two-step Small MS4 approach. Also required is a proposed compliance schedule, if compliance is not expected within 1-year that meets the 40 CFR 122.47 requirements to comply as soon as possible.
12. Revised Section 6, 1st sentence to clarify that the SWMP is a written document and added the “MS4 permit standard” wording to mean, “reduce the discharge of pollutants from the permittee's small municipal separate storm sewer system to the maximum extent practicable in order to protect water quality and satisfy the appropriate water quality requirements of the Clean Water Act.”
13. Revised Section 6, 2nd sentence to clarify that the SWMP shall include “a description of the best management practices that the Permittee will implement for each of the minimum control measures...” Refer to 40 CFR 122.33(b)(2)(i) and FR Vol. 81, No. 237, Friday, December 9, 2016, Section VI.D., page 89338, 3rd Column, 2nd paragraph, where it states: “Likewise, an MS4 that is seeking an individual permit or coverage under a Two-Step General Permit, can propose BMPs or other management measures to the permitting authority that reflect its judgment about how and to what extent permit terms and conditions should change or stay the same.”

Added requiring the “timing and frequencies, as appropriate” and replaced “measure” with “BMP.” Refer to FR Vol. 81, No. 237/Friday, December 9, 2016, page 89323, 1st column, 1st paragraph. Also, revised to clarify that the SWMP must include the measurable goals, which is already an existing condition (refer to Section 6(b)) and frequencies.

14. Added information to Section 6 to comply with the Final Remand Rule. 40 CFR 122.34 states that the terms and conditions must be **clear, specific, and measurable**. DOH interprets this to mean that the BMPs as proposed by the Permittee must also be clear, specific, and measurable. DOH will review the information provided by the Permittee and determine the permit terms and conditions. As such, if the proposed BMPs are described by the Permittee in clear, specific and measurable terms, then the DOH is able to provide permit terms and conditions also expressed in clear, specific, and measurable terms. For clarity, DOH has provided reference to the EPA's "Municipal Separate Storm Sewer System Permits, Compendium of Clear, Specific & Measurable Permitting Examples," November 2016, EPA-830-S-16-002.

15. Added language to Section 6 to explain that the rationales provided by the Permittee must be to the satisfaction of the DOH because DOH is responsible for establishing permit requirements that meet the MS4 permit standard. The purpose of the language is to directly address the Ninth Circuit remand that the regulations need to preclude the small MS4 from determining on its own what actions are sufficient to meet the MS4 standard. DOH is the ultimate authority to determine what Small MS4s must do to meet the MS4 permit standard and the rationales provided by the Permittee are needed to make this decision because the BMPs as proposed by the Permittee reflect their rationales.

The DOH is required to issue permits that independently meet the MS4 permit standard based on an evaluation of, among other things, how well the past permit conditions worked and what more can be reasonably achieved in the next permit term. This evaluation involves factors that are necessarily unique to the permit jurisdiction, therefore, the DOH is not compelled to consider the terms and conditions of permits in other jurisdictions in determining the need to modify their own permits. Refer to FR Vol. 81, No. 237, Friday, December 9, 2016, Section VI.D., page 89338-89339.

16. Added language to Section 6 explaining that the contents of the SWMP document are enforceable under this permit since the DOH intends that the BMPs in the SWMP and measurable goals, including any revisions as required by the DOH (prior to public notice in the 2nd step), contain the supplemental terms and conditions of the general permit.

17. Section 6(a) was revised to reference the 40 CFR 122.34(b)(1) through (6) for the minimum control measures requirements for regulated small MS4 permits. Concurrently with these amendments, the definition of "40 CFR"

in Hawaii Administrative Rules (HAR), Chapter 11-55 is being revised to mean the Code of Federal Regulations, Title 40, Protection of the Environment, revised as of July 1, 2017, unless otherwise specified.

18. Section 6(b) was revised to specify that the measurable goals apply to the Permittee's BMPs as described in the SWMP. A definition of "measurable" was added to mean "that the permit requirement has been articulated in such a way that compliance with it can be assessed in a straightforward manner. Refer to FR Vol. 81, No. 237 pg. 89336, 3rd column, 2nd paragraph."
19. Replaced the existing language in Section 6(c) with the following: "Any modifications to the BMPs and measurable goals will require submittal of a new NOI, unless clearly accounted for in its SWMP and that has been public noticed." The SWMP maybe written to provide for options based on the Permittee's evaluation of its program. For example, the Permittee may have begun educating its audience on housekeeping measures, however survey results indicated that their knowledge of housekeeping measures was already adequate. Therefore, the Permittee wanted to change their message to target pesticide use instead. If this option was already accounted for its SWMP then the change would not be considered a modification.
20. Section 7(b), replaced "timely" with "as indicated in its SWMP," since the word "timely" is not defined.
21. Section 8 – TMDL Implementation and Monitoring was added to comply with 40 CFR § 122.44(d)(1)(vii)(B).

DOH is directly implementing the TMDL WLAs applicable to Small MS4s as Water Quality-Based Effluent Limits (WQBELs).

Currently, there are eight (8) TMDLs that have been approved by the EPA and adopted by the Department:

- KANEOHE STREAM, OAHU
- UPPER KAUKONAHUA STREAM, OAHU
- NAWILIWILI, KAUAI
- HANAIEI, KAUAI
- KAPAA, OAHU
- KAWA, OAHU
- WAIMANALO, OAHU
- ALA WAI, OAHU

Of the eight (8) TMDLs, only Kaneohe Stream, Upper Kaukonahua Stream, and Kawa Stream, have Small MS4s that have been assigned a specific WLA. The Small MS4s located within these areas include, the State of Hawaii, Department of Defense; Department of Education, Department of Health, University of Hawaii, Windward Community College; and the Navy Region Hawaii, Department of the Navy. The State of Hawaii, Department of Defense has been identified as being assigned Wasteload Allocations (WLAs) in both Kaneohe and Kawa Stream TMDLs, but is not currently covered under an NPDES permit. The DOD areas are within the Veteran's Cemetery and the DOH does not intend to require coverage because, unless information becomes available to show otherwise, the facility does not meet the definition of a Small MS4.

WLAs have been assigned to the Department of Education for Kawa and Kaneohe Streams and to the Department of Health for Kawa Stream, but the Department is granting both facilities waivers from the Phase II Permit requirements.

The University of Hawaii, Windward Community College (WCC) is currently covered under an NGPC and under this proposed General Permit must comply with the assigned WLAs consistent with the assumption of the TMDL document within the timeframes as specified in its I&M Plan.

For all other Permittees, the proposed General Permit requires compliance with any assigned WLAs, as additional TMDLs are adopted by DOH and approved by the EPA, consistent with the TMDL document within the timeframes as specified in its I&M Plan, unless an I&M Plan has already been developed by the DOH. If an I&M Plan has been developed by the DOH, then the Permittee shall comply with those timeframes and requirements.

As additional TMDLs are adopted by the DOH and approved by the EPA, the Permittee for any assigned WLAs will, within two (2) years of the TMDL approval, prepare an I&M plan that will describe the Permittee's approach to proposed activities for compliance with the WLA reductions. The DOH expects the two-year timeframe to be sufficient because it is expected that stakeholders will participate in the development of the TMDL. If compliance is expected to take longer than 1-year after preparation of the Permittee's I&M Plan, a compliance schedule shall be submitted along with its I&M Plan that meet the requirements of 40 CFR 122.47. A new NOI shall be submitted to DOH upon submittal of the

Permittee's I&M Plan to provide opportunity for public comment and request for a public hearing.

22. Section 8(b) was added to specify the minimum requirement of the I&M Plan.

To ensure BMP effectiveness, the plan shall identify the activities to be implemented and explanation for selecting those activities based on an analysis of "actual or literature documentation of the estimated effectiveness." To determine the actual effectiveness after implementation, a baseline would first need to be determined, if not already determined in the TMDL document, and then compared to post activity monitoring results.

23. In Section 10, added: "Annual Reports shall be submitted in compliance with Federal eReporting Rule requirements starting no later than December 21, 2020."

24. Section 10(a)(1) was revised to add "the terms and" to be consistent with the Final Remand Rule. Also, EPA replaced the term "effluent limitations" with "terms and conditions" to be consistent with changes made to 40 CFR 122.34(a).

Refer to FR, Vol. 81, No. 237/ Friday, December 9, 2016, page 89337, 1st column, 3rd paragraph.

EPA has substituted the term "terms and conditions" for "effluent limitations" because stakeholders (in response to the Remand Rule) asserted the term effluent limitations connotes end-of-pipe numeric limits even though EPA is not insisting that these types of limitations be used. In sum, EPA intends that terms and conditions are a type of effluent limitations and that they are interchangeable and both mean permit requirements.

25. Section 10(a)(2) replaced "storm water management plan" with "effectiveness of each component in its SWMP" because the assessment is required of each component and not just the SWMP in its entirety. Also, replaced "progress towards implementing each minimum control measure" with "the status of achieving the measurable goals for each BMP" since compliance shall be met when meeting its measurable goals.
26. Deleted Sections 10(a)(3) and 10(a)(5) because modifications to the SWMP are no longer allowed. Modifications to the SWMP that have not

been accounted for (i.e., the SWMP may provide for BMP if/then options) and publicly noticed require submission of a new NOI and SWMP.

27. Revised Section 10(b) to be consistent with recent individual permit's standard conditions.
28. Added Section 10(c) to require reporting on the status of TMDL compliance.
29. Added Section 11(d) to ensure that all submittals use the forms as specified by the DOH.
30. Added Section 11(e) to comply with the Federal eReporting Rule.
31. Added Sections 13 and 14 to address requirements for the Public Notice of Permit Actions, Public Comments, the Public Comment Period and Public Hearings.

The public shall be notified of the DOH's proposal to authorize the MS4 to discharge under the general permit and, consistent with 40 CFR 124.10, make available for public review and comment and opportunity for public hearing the NOI (refer to Section 14 of the general permit), and the specific BMPs, milestones, and schedules from the NOI that the Director proposes to be incorporated into the permit as enforceable requirements. The Public Notice document will provide directions as to how the above information may be obtained. In accordance with Hawaii Revised Statutes, §1-28.5 Publication of Notice – whenever a public notice shall be given, notice shall be provided as follows:

For Oahu

Honolulu Star-Advertiser
Current contacts: Lisa Kaukani, Account Executive
Phone: (808) 529-4344
Fax: (808) 529-4829
Email: lkaukani@staradvertiser.com

Name: Rose Rosales, Account Executive
Phone: (808) 529-4825
Fax: (808) 529-4829
Email: rrosales@staradvertiser.com

For Maui

The Maui News

Current contact: Terri Yip-Komoda, Classified Advertising Sales Representative

Ph. (808) 242-6333/Fax: (808) 242-6389

Email: tykomoda@mauinews.com or e-mail: class@mauinews.com

All publication and mailing costs associated with the public notification(s) on the draft permit terms and conditions shall be paid by the Permittee. The Permittee shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the Director, is a basis to deny issuance of permit coverage. The process for submitting public comments and hearing requests, and the hearing process if a hearing is granted, must follow the procedures applicable to draft permits in 40 CFR 124.11 through 124.13. The DOH shall respond to significant comments received during the comment period, as provided in 40 CFR 124.17, and, if necessary revise the proposed BMPs and/or timelines to be included as terms of the permit.

32. Added Sections 16 and 17 for renewal and forms. The language specifies that requests for coverage under a renewed (reissued) general permit must be received within the timeframes as specified in the reissued general permit. Requests must be made on forms provided by DOH. Forms will be available on the Department's e-permitting portal.

(5) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

Not applicable.

(6) A description of the procedures for reaching a final decision on the draft permit including:

- (i) The beginning and ending dates of the comment period under § 124.10 and the address where comments will be received;
- (ii) Procedures for requesting a hearing and the nature of that hearing; and
- (iii) Any other procedures by which the public may participate in the final decision.

Refer to HAR 11-1-51 procedures for adopting rules. The comment period has yet to be determined. Comments will be received via email to the cleanwaterbranch@doh.hawaii.gov, at the various District Health Offices, and at 919 Ala Moana Blvd., Room 310, Honolulu, Hawaii 96814. The procedures for requesting a hearing shall follow 40 CFR 124.11.

(7) Name and telephone number of a person to contact for additional information.

Mr. Darryl Lum
Engineering Section Supervisor
Clean Water Branch
Department of Health
Ph. (808) 586-4309

(8) For NPDES permits, provisions satisfying the requirements of § 124.56.

Refer to 40 CFR 122.30 through 122.37.

40 CFR 122.34 requires Small MS4 to reduce pollutant discharge to the Maximum Extent Practicable which requires the implementation of minimum control measures.

(9) Justification for waiver of any application requirements under § 122.21(j) or (q) of this chapter.

Not applicable.