

DEPARTMENT OF HEALTH

Adoption of Chapter 11-56
Hawaii Administrative Rules

June 25, 2021

SUMMARY

Chapter 11-56, Hawaii Administrative Rules,
entitled "Nonpoint Source Pollution Control", is
adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-56

NONPOINT SOURCE POLLUTION CONTROL

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§11-56-1 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 forty-five days or more in any twelve-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 [JUN 25 2021].

"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 [JUN 25 2021].

"Facility" means any facility, physical operation, collection of buildings, parcel or parcels, of farm operated as a single unit (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 ten, fifty, one hundred, or five hundred 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 one hundred twenty feet (thirty-seven meters) wide and at least one acre (0.4 hectare) in size that contains at least ten per cent 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 [JUN 25 2021].

"New animal feeding operation" means a facility that meets the definition of "animal feeding operation" in this chapter and that began operation after [JUN 25 2021].

"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 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 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
JUN 25 2020 (Auth: HRS §§342E-1, 342E-2, 342E-3)
(Imp: HRS §§342E-1, 342E-2, 342E-3)]

§11-56-2 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 **JUN 25 2021**] (Auth: HRS §§205A-2, 342D-1, 342D-4, 342D-50, 342E-2, 342E-3; 16 U.S.C. §§1455b et seq.; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)

§11-56-3 Applicability. (a) This chapter applies to person(s) as identified below:

- (1) Publicly-owned entities owning land and 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-

3(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 to affected persons that includes:

- (1) A notice of findings specifying the source of nonpoint source pollution involved and the conduct that is causing or caused it;
- (2) A requirement to register under section 11-56-5;
- (3) A requirement to develop and implement a Water Pollution Prevention Plan under section 11-56-6(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 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. JUN 25 2021] (Auth: HRS §§205A-2, 342D-4, 342D-5, 342E-2, 342E-3; 16 U.S.C. §§1455b et seq.; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)

§11-56-4 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

§11-56-4

chapter shall not apply to that discharge. [Eff
JUN 25 2021] (Auth: HRS §§342D-4, 342D-5, 342E-
2, 342E-3; 33 U.S.C. §§1251, 1329, 1342, 1370) (Imp:
HRS §§342E-2, 342E-3)

§11-56-5 Registry requirements. (a) All persons subject to this chapter, as specified in section 11-56-3(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 11-56-6 is required for the activity 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 associated with the nonpoint source discharge to register with the department.

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

- (1) Legal name, 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 for the location of the property or activity 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 associated with a nonpoint source discharge;
- (5) General description of the activity 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 11-56-5(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 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 one hundred twenty days from date of publication of this chapter; and
- (2) For new facilities, within thirty days prior to initiation of operations.

(f) A person submitting a registration shall submit a filing fee of \$500. 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 five years from the date of submission to the department. Prior to registration expiration, all persons subject to this chapter, as specified in section 11-56-3(a) through (c), shall renew their registration with the department no later than thirty days prior to the expiration of their existing registration. The submittal date is the date the department receives the registration. The thirty-day period includes weekends and holidays.

- (1) Where the information submitted with the previous registration in accordance with section 11-56-5(c), as well as the associated Water Pollution Prevention Plan developed in accordance with section 11-56-6(a)(1), has not changed, the registration renewal shall include the following:
 - (A) Legal name, 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 11-56-5(c), as well as the associated Water Pollution Prevention Plan

developed in accordance with section 11-56-6(a)(1), has changed, the registration renewal shall include the following:

- (A) Legal name, 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 11-56-5(c) registration information and an updated copy of the existing Water Pollution Prevention Plan, including any amendments, required under section 11-56-6; 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."; and

(3) A person submitting a registration renewal shall submit a filing fee in accordance with section 11-56-5(f).

(i) Persons that wish to terminate their registration must notify the director in writing within thirty days following the cessation of activity 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 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.

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(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 thirty days in advance of the proposed transfer date. The notice of transfer shall include the following:

- (1) The legal name 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 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 section 11-56-5(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 **JUN 25 2021**] (Auth: HRS §§342D-4, 342D-5, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)

§11-56-6 Water pollution prevention plans.

(a) Any person subject to this chapter as defined in section 11-56-3(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 or activity. Each Water Pollution Prevention Plan must, at a minimum, include:
 - (A) Legal name, 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 for the location of the activity 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 associated with a nonpoint source discharge;
 - (E) Brief facility description, including area 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 of specific activities that generate the nonpoint source discharge;
 - (H) Description of the authorized management measure 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 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 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;
- (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 11-56-6(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 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; 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 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 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 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 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; and
 - (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 11-56-6.
- (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; and
 - (B) For new facilities, within thirty 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 thirty 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 thirty 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, Nonpoint Source 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 JUN 25 2021] (Auth: HRS §§342D-4, 342D-5, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)

§11-56-7 Reporting requirements. (a) Persons required to develop and implement a Water Pollution Prevention Plan under section 11-56-6 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 11-56-6, including:
 - (A) Date 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 11-56-6, including:
 - (A) Date 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 JUN 25 2021] (Auth: HRS §§342D-4, 342D-5, 342D-55, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)

§11-56-8 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 11-56-6(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 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 **JUN 25 2021**] (Auth: HRS §§342D-4, 342D-5, 342D-55, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)

§11-56-9 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:

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- (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. [Eff JUN 25 2021]
(Auth: HRS §§342D-4, 342D-5, 342E-2, 342E-3) (Imp: HRS §§342E-2, 342E-3)

§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 11-56-6 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
JUN 25 2021] (Auth: HRS §§92F, 342D-4, 342-5, 342D-14, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, HRS 342E-3)

§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 Nonpoint Source 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 **JUN 25 2021**]
(Auth: HRS §§342D-4, 342D-8, 342E-2, 342E-3, 342E-4; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3, 342E-4)

§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 Nonpoint Source 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 Nonpoint Source 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 thirty 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 Nonpoint Source Order issued pursuant to this chapter;
- (2) Shall accept or modify the submitted schedule within thirty days of receipt of the schedule. Any schedule not acted upon after thirty 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 Nonpoint Source Order issued pursuant to this chapter if that person does not submit a written schedule to the director within thirty 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 thirty 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 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 thirty 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 **JUN 25 2021**] (Auth: HRS Ch. 91, §§342D-4, 342D-9, 342E-2, 342E-3, 342E-4; 33 U.S.C. §§1251, 1329, 1370; HAR §11-1) (Imp: HRS §§342E-2, 342E-3, 342E-4)

§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 a Nonpoint Source

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Order will not be stayed on appeal unless specifically ordered by the director or an environmental court of competent jurisdiction. [Eff ~~JUN 25 2021~~ JUN 25 2021] (Auth: HRS Ch. 91, §§342D-4, 342D-12, 342E-2, 342E-3) (Imp: HRS §§342E-2, 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

JUN 25 2021 (Auth: HRS §§342D-4, 342D-5, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §342E-3)

§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 JUN 25 2021] (Auth: HRS §§342D-4, 342D-5, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)

§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 11-56-5, 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; and
 - (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 twenty days after the person receives the field citation; and
 - (iv) Correction within seven 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)(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 JUN 25 2021] (Auth: HRS §§321-11, 342D-1, 342D-4, 342D-5, 342E-2, 342E-3, 342E-4) (Imp: HRS §§342E-2, 342E-3, 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 section 11-56-5.

(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

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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. [Eff

JUN 25 2021] (Auth: HRS §§342D-4, 342E-2, 342E-3) (Imp: HRS §§342E-2, 342E-3)

§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;
- (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

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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 **JUN 25 2021**]
(Auth: HRS §§342D-4, 342D-5, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)

DEPARTMENT OF HEALTH

Chapter 11-56, Hawaii Administrative Rules, on the Summary Page dated June 25, 2021, was adopted on June 25, 2021, following a public hearing held on February 1, 2021, after public notice was given in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island on December 16, 2020.

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

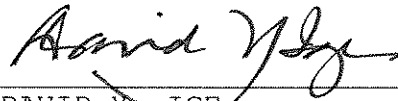
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OFFICE

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ELIZABETH A. CHAR, M.D.
Director
Department of Health

APPROVED:



DAVID Y. IGE
Governor
State of Hawaii

Dated: 6/15/21

APPROVED AS TO FORM:



Deputy Attorney General

Filed

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