

Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Hawaii Administrative Rules (HAR), Chapter 11-55 Water Pollution Control regulates the National Pollutant Discharge Elimination System (NPDES) in Hawaii. The NPDES is a permit system required by Section 402 of the federal Clean Water Act that authorizes certain types of point source discharges, as well as some storm water discharges, to surface waters such as streams, lakes, or oceans. The U.S. Environmental Protection Agency (EPA) authorized the State of Hawaii, Department of Health (DOH) to administer the NPDES permit system in Hawaii.

In addition to providing policies and requirements for the NPDES program, HAR Chapter 11-55 also contains the NPDES General Permits in its appendices. The General Permits authorize a category of discharges and has one set of requirements for a group of similar types of activities or facilities such as once-through cooling water for air-conditioning systems or storm water discharges from construction activities. A General Permit is an already written permit that requires an eligible owner or operator to notify the DOH that it wishes to be covered under the General Permit and that it will comply with all requirements of the permit. Coverage under a General Permit tends to be more expeditious than under the formal Individual Permit process.

The current revisions for this chapter include:

- Adding Federal MS4 [i.e., 40 CFR §122.32(d) and (e)] waiver provisions.
- Enlarging the deadline to submit individual NPDES renewal permit applications from 180 days to 360 days before permit expiration.
- Clarifying that public notice and public hearing procedures must follow Hawaii Revised Statutes (HRS) §1-28.5.
- Limiting public hearing comments to written comments.
- Authorizing DOH to deny permits to dischargers that bounce checks or who are currently in violation of other permits issued to them.
- Clarifying that automatic coverage does not apply to Appendix K.
- Including provisions for automatically terminating administrative extensions for projects/activities covered under general permits.
- Including zone of mixing and intake credit requirements from HAR Chapter 11-54.

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| Throughout | | Various formatting, grammatical, and stylistic changes. | Various formatting, grammatical, and stylistic changes were made throughout the proposed rules. Such changes were minor and not substantive changes and will not be discussed in this rationale. All changes were identified following Ramseyer formatting requirements. |
| Title Page | Stamped adoption date. | Placeholder. | Left a placeholder for the adoption date to be stamped after rule making. |
| Table of Contents | Notice of general permit coverage revocation and termination. | Notice of general permit coverage revocation and/or termination. | Revised title of 11-55-34.11 to be consistent with section title in the body of the rules. Non-substantive change for consistency. |
| Table of Contents | None | Added 11-55-41 (zones of mixing) and 11-55-42 (intake credits) | Provisions were previously in HAR Chapter 11-54. Moved those provisions to 11-55-41 and 11-55-42 since these are NPDES requirements that belong in the NPDES rules. |

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| 11-55-04(a) | <p>Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, or substantially altering the quality of any discharges, or substantially increasing the quantity of any discharges, a person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), submit a complete notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M) or, for certain storm water discharges, meet all requirements for a conditional "no exposure" exclusion.</p> | <p>Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, or substantially altering the quality of any discharges, or substantially increasing the quantity of any discharges, <u>or for regulated small municipal separate storm sewer systems, unless the director waives NPDES permit coverage in accordance with 40 CFR §122.32(d) or (e)</u>, a person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), submit a complete notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M) or, for certain storm water discharges, meet all requirements for a conditional "no exposure" exclusion.</p> | <p>To be consistent with Federal requirements and be able to waive MS4 requirements.</p> |
| 11-55-04(a)(1) | <p>At least one hundred eighty days before the discharge or construction begins or, for renewals, at least one hundred eighty days before the expiration date of the existing permit. The director may waive this one hundred eighty day requirement by issuing the permit with an effective date before the one hundred eighty days</p> | <p>At least one hundred eighty days before the discharge or construction begins or, for renewals, at least <u>three hundred sixty</u> days before the expiration date of the existing permit. The director may waive this <u>three hundred sixty</u> day requirement by issuing the permit with an effective date before the <u>three hundred sixty</u> days</p> | <p>40 CFR 122.21(d) and 40 CFR 123.25 require renewal permit applications to be submitted one hundred and eighty days before the existing permit expires. The DOH has decided to require renewal permit applications to be submitted sooner (three hundred sixty days before the existing permit expires) so there is enough time to process and draft the renewal permit before the existing permit expires. 40 CFR 123.25(a) allows States to impose more stringent requirements.</p> |

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| 11-55-09(a)(1) and (2) | <p>Public notice procedures shall include at least the following:</p> <p>(1) Notice shall be circulated within the geographical areas of the proposed discharge; circulation includes any or all of the following:</p> <p>(A) Posting in the post office and public places of the municipality nearest the premises of the owner or operator in which the effluent source is located;</p> <p>(B) Posting near the entrance to the owner's or operator's premises and in nearby places; or</p> <p>(C) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation.</p> <p>(2) Notice shall be mailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v); and....</p> | <p>Public notice procedures shall include at least the following:</p> <p>(1) <u>Notice shall comply with section 1-28.5, HRS;</u></p> <p>(2) Notice shall be mailed <u>or emailed</u> to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v); and....</p> | <p>DOH regularly publishes notices in newspapers in accordance with section 1-28.5, HRS. DOH has found this method to be sufficient and rarely, if ever, posts notice in the local post office, other local public place, or near the effluent source or owner's or operator's premises. DOH believes it is more appropriate to reference the statute in 11-55-09(a)(1) as the statute has a more comprehensive treatment of newspaper publication.</p> <p>Email notice was added to 11-55-09(a)(2) as DOH has determined from experience that many applicants and interested groups prefer receiving notices by email.</p> |
| 11-55-13(d) | <p>Any person may submit oral or written statements and data concerning the draft permit. The public comment period under section 11 55 09 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.</p> | <p>Any person may submit oral or written statements and data concerning the draft permit[-], <u>provided that persons submitting oral statements also submit a written copy of their oral statements prior to the end of the public comment period.</u> The public comment period under section 11-55-09 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.</p> | <p>The DOH believes it is appropriate to require oral commenters at a public hearing to provide a written copy of oral statements to ensure that concerns are accurately and adequately memorialized for consideration with respect to the draft permit at issue. DOH does not believe requiring a written statement is unduly burdensome when it is mandated to address comments in making a permit determination. Instead, it will require DOH to address such comments in a more direct and discernable way.</p> |

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| 11-55-14(a) | <p>Public notice of any hearing held under section 11 55 13 shall be circulated as widely as the notice of the draft permit. Public notice for hearings held under section 11 55 13 shall be:</p> <p>(1) Published at least once in a newspaper of general circulation within the geographical area of the discharge;</p> <p>(2) Sent to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES permit application;</p> <p>(3) Mailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v), (ix), and (x); and</p> <p>(4) Effected under paragraphs (1) and (3) at least thirty days in advance of the hearing.</p> | <p>Public notice of any hearing held under section 11 55 13 shall be circulated as widely as the notice of the draft permit. Public notice for hearings held under section 11 55 13 shall be:</p> <p>(1) Published <u>in accordance with section 1-28.5, HRS</u>;</p> <p>(2) Sent to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES permit application;</p> <p>(3) Mailed <u>or emailed</u> to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v), (ix), and (x); and</p> <p>(4) Effected under paragraphs (1) and (3) at least thirty days in advance of the hearing.</p> | <p>As discussed in connection with revisions to 11-55-09(a), DOH believes it is more appropriate to reference section 1-28.5, HRS, in HAR 11-55-14(a)(1).</p> <p>Email notice was added to 11-55-14(a)(3) as DOH has determined from experience that many applicants and interested groups prefer receiving notices by email.</p> |
| 11-55-15(i) | None | <p>The director may deny applications for a permit from persons who are respondents in department issued open enforcement actions associated with water pollution, who fail to make payments as required by law for permit fees or penalties, or who have a history of violating water pollution laws such as failing to comply with permit requirements, effluent limits, or enforcement orders.</p> | <p>The director should have explicit authority to deny renewals of permits for permittees who are violating permit conditions. The addition of this section prevents the same permittees from obtaining new permits without resolving their ongoing violations. Further, this allows the director to halt a new permit issuance for permittee's who failed to pay fees or penalties as required by law, court judgment, or a final administrative hearing decision.</p> |
| 11-55-17(c)(5) | None | <p>The permittee's failure to comply with enforcement orders associated with the applicable NPDES permit.</p> | <p>The director has authority to terminate or deny renewal for permittee's in violation of permit conditions. The added paragraph codifies that failure to comply with enforcement orders issued for permit violations is grounds for permit termination or denial of renewal.</p> |

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| 11-55-17(c)(6) | None | The permittee's failure to pay penalties or fees, as required by law. | The added paragraph codifies that permittee's failure to pay fees or penalties as required by law, court judgment, or a final administrative hearing decision is grounds for permit termination or denial of renewal. |
| 11-55-27(a) | The director shall review applications for reissuance of NPDES permits. Any permittee who wishes to continue to discharge after the expiration date of the permittee's NPDES permit shall submit for renewal of the permit at least one hundred eighty days prior to its expiration. | The director shall review applications for reissuance of NPDES permits. Any permittee who wishes to continue to discharge after the expiration date of the permittee's NPDES permit shall submit for renewal of the permit at least one hundred eighty <u>three hundred sixty</u> days prior to its expiration. | To match revision in 11-55-4(a)(1). |
| 11-55-34.02(b)(2) through (9), (11), and (2) | None | Added effective dates of the general permits. | Effective dates were added for clarity. Stamped dates for paragraphs 2, 9, and 11 were replaced with typed dates. Dates for paragraphs 3-8 and 12 were copied from stamped dates from their respective appendices. |
| 11-55-34.09(d) | The director may, automatically or by notification, administratively extend a notice of general permit coverage upon receipt of a complete notice of intent for renewal of a notice of general permit coverage before the expiration of the general permit or when the notice of general permit coverage specifies, whichever occurs first. A notice of general permit coverage shall be considered to have been automatically extended unless the department informs the Permittee otherwise. An administrative extension of an NGPC granted, automatically or by notification, for a project which later is found to be in non-compliance will be automatically terminated and may be required to apply for individual NPDES | The director may, automatically or by notification, administratively extend a notice of general permit coverage [upon receipt of a complete notice of intent for renewal of a notice of general permit coverage before the expiration of the general permit or when the notice of general permit coverage specifies, whichever occurs first] . A notice of general permit coverage shall be considered to have been automatically extended unless the department informs the <u>permittee</u> otherwise. <u>The department shall inform the permittee of any deadlines to submit a complete NOI to request authorization to discharge under the new general permit. Any permittee granted coverage under the general permit that receives an administrative extension for</u> | The intent of the proposed revisions are to: 1) allow administrative extensions for general permit coverages to be automatic without the need for a permittee to submit a renewal NOI, which would require the permittee to certify that they will comply with a general permit that is not effective yet. The deadline to submit the renewal NOI needs to be in the effective general permit. The reason is so that the discharger will know what the permit conditions are, and it will allow them to certify that they will comply with these conditions. |

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| | <p>permit coverage. If administratively extended, the terms and conditions of the expired permit will continue to be effective for projects that submitted NOIs prior to the expiration date. The department intends that projects that do not submit NOIs prior to the expiration date will not be administratively extended.</p> <p>The permittee who submits a notice of intent for renewal of the notice of general permit coverage shall be treated as an owner or operator applying for permit renewal under section 342D-6(h), HRS.</p> | <p><u>coverage, shall remain covered by the general permit until the earlier of:</u></p> <ul style="list-style-type: none"> • <u>Authorization for coverage under reissuance or replacement of the general permit;</u> • <u>The permittee's submittal of a notice of cessation;</u> • <u>The issuance of an individual NPDES permit;</u> • <u>A formal permit decision by the director not to reissue this general permit, at which time the permittee must seek coverage under an alternative general or individual permit; or</u> • <u>A formal permit decision by the director to terminate the administrative extension due to the Permittee failing to submit by the deadline specified by the director, a complete NOI to request authorization to discharge under the new general permit.</u> <p><u>The department shall notify the permittee in writing that its administrative extension is being terminated and the reason(s) why.</u></p> <p>An administrative extension of an NGPC granted, automatically or by notification, for a project which later is found to be in non-compliance [will]may be [automatically] terminated and may be required to apply for individual NPDES permit coverage. [If administratively extended, the terms and conditions of the expired permit will continue to be effective for projects that submitted NOIs prior to the expiration date. The department intends that projects that do not submit NOIs prior to the expiration date will not be administratively extended.]</p> <p>The permittee who submits a notice of intent for renewal of the notice of general permit coverage shall be treated as an</p> | <p>2) clarify that coverage under an administrative extension is terminated once the permittee is granted coverage under the reissued general permit.</p> <p>3) clarify that coverage under an administrative extension is terminated upon the permittee's submittal of the Notice of Cessation</p> <p>4) clarify that coverage under an administrative extension is terminated upon the issuance of an Individual NPDES Permit; and</p> <p>5) provide rules for terminating administrative extensions if the Director decides not to reissue a general permit.</p> |

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| 11-55-34.09(e)(2) | Authorization to discharge under the general permit is effective upon the earlier of: The thirtieth day after receipt at the clean water branch of the department of a complete notice of intent for a new notice of general permit coverage and the applicable filing fee, unless before the thirtieth day the director notifies the owner or its duly authorized representative that the notice of intent is incomplete. This paragraph does not apply to a notice of intent for renewal of a notice of general permit coverage. | owner or operator applying for permit renewal under section 342D-6(h), HRS. Authorization to discharge under the general permit is effective upon the earlier of: The thirtieth day after receipt at the clean water branch of the department of a complete notice of intent for a new notice of general permit coverage and the applicable filing fee, unless before the thirtieth day the director notifies the owner or its duly authorized representative that the notice of intent is incomplete. This paragraph does not apply to a notice of intent for renewal of a notice of general permit coverage. <u>This paragraph does not apply to a notice of intent for small municipal separate storm sewer systems.</u> | The additional sentence clarifies that general permit automatic coverage provisions do not apply to small municipal separate storm sewer systems. It should not apply because the general permit for these types of facilities will follow the Two-Step General Permit Approach in FR Vol. 81, No. 237 pg. 89330, Section V.B., which requires a public notice. |
| 11-55-41 | None | Zones of mixing. (a) Zones of mixing are defined and authorized for use in discharge permits in section 11-54-1. Zones of mixing allow for dilution of wastes before compliance with the applicable water quality criteria must be met. Zones of initial dilution are a subset of zones of mixing that are applied to toxic pollutants. (b) Establishment, renewal, and termination. (1) Application for establishment of a zone of mixing shall be made concurrently with any discharge permits whenever applicable and the conditions of a zone of mixing shall be incorporated as conditions of the discharge permits. Every application for a zone of mixing shall be made on forms furnished by the director and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and other information as the director may prescribe. | This provision is being incorporated in HAR Chapter 11-55 from HAR section 11-54-9(c) because these are NPDES requirements that belong in the NPDES rules. HAR 11-54-9(c) was copied as currently written, except for the following: 1) Proposed 11-55-41(a) was included to introduce zones of mixing and to define zones of initial dilution. 2) Proposed 11-55-41(b) is from 11-54-9(c). |

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| | | <p>(2) Each application for a zone of mixing shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information as may be submitted upon the request of the director, and in light of the effect or probable effect upon water quality standards established pursuant to chapter 11-54.</p> <p>(3) Whenever an application is approved, the director shall establish the zone of mixing, taking into account the environmental impact, including but not limited to factors such as the protected uses of the body of water, existing natural conditions of the receiving water, character of the effluent, and the adequacy of the design of the outfall and diffuser system to achieve maximum dispersion and assimilation of the treated or controlled waste with a minimum of undesirable or noticeable effect on the receiving water.</p> <p>(4) Approval of a zone of mixing shall be made either after a public hearing is held by the director in the county where the source is situated, in accordance with chapters 91 and 92, HRS and the rules of practice and procedures of the department, or after the public notification and comment process duly established for a discharge permit in the case when the zone of mixing is being considered concurrently with the discharge permit.</p> <p>(5) No zone of mixing shall be established by the director unless the application and the supporting information clearly show that:</p> <p>(A) The continuation of the function or operation involved in the discharge by the granting of the zone of mixing is in the public interest;</p> | |

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| | | <p>(B) The discharge occurring or proposed to occur does not substantially endanger human health or safety;</p> <p>(C) Compliance with the existing water quality standards from which a zone of mixing is sought would produce serious hardships without equal or greater benefits to the public; and</p> <p>(D) The discharge occurring or proposed to occur does not violate the basic standards applicable to all waters, will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control.</p> <p>(E) The capacity of the receiving water to dilute a pollutant or assimilative capacity is available in the receiving water for the pollutant in which a zone of mixing is being requested.</p> <p>(6) Any zone of mixing or renewal thereof shall be established within the requirements of this section and for time periods and under conditions consistent with the reasons within the following limitations:</p> <p>(A) If the zone of mixing is established on the grounds that there is no reasonable means known or available for the adequate prevention, control, or abatement of the discharge involved, it shall be allowed only until the necessary means for prevention, control or abatement become practicable, and subject to the taking of any substitute or alternative measures that the director may prescribe. No renewal of a zone of mixing established under this subsection shall be allowed without a thorough review of known and available means of preventing,</p> | <p>3) Proposed 11-55-41(b)(5)(E) was included to clarify that DOH will not grant a zone of mixing for a pollutant if assimilative capacity is not available in the receiving water.</p> |

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| | | <p>controlling, or abating the discharge involved;</p> <p>(B) The director may issue a zone of mixing for a period not exceeding five years;</p> <p>(C) Every zone of mixing established under this section shall include conditions requiring the applicant to perform effluent monitoring, at a minimum, for pollutants with effluent limitations established in the permit, and receiving water quality monitoring, at a minimum, for pollutants for which a zone of mixing is established. Additional effluent and receiving water monitoring, including monitoring of bottom biological communities, may be required as appropriate. The results of all required monitoring shall be reported to the director. A program of research to develop reasonable alternatives to the methods of treatment or control in use by the applicant may be required if research is deemed prudent by the director; and</p> <p>(D) In order to prevent high temperature discharges from violating section 11-54-04(a)(4), no new or increased domestic, industrial, or other controllable source shall discharge at a maximum temperature which will cause temperatures to exceed three degrees Celsius above ambient, or thirty degrees Celsius, whichever is less, within one meter of the bottom within a zone of mixing. For discharges with or without submerged outfalls, the director may make a limited allowance for higher discharge temperatures if there is satisfactory demonstration that the elevated temperature will not cause damage to the local aquatic community.</p> <p>(7) Any zone of mixing established pursuant to this section may be renewed</p> | <p>4) Proposed 11-55-41(b)(6)(C) revises the language from 11-54-9(c)(6)(C) to clarify minimum required effluent and receiving water sampling, and additional monitoring when appropriate.</p> |

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| | | <p>from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial establishment of a zone of mixing, provided that the applicant for renewal meets the requirements in section 11-55-41. The renewal shall provide for the discharge not greater in quantity of mass emissions than that attained pursuant to the terms of the immediately preceding zone of mixing at its expiration, unless such an increase is in accordance with state and federal anti-degradation and anti-backsliding regulations as applicable. Any new zones of mixing or requests for zone of mixing renewals for wastewater treatment plants performing primary treatment shall comply with section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251). No renewal shall be allowed except upon application. Any renewal application shall be made at least three hundred and sixty days days prior to the expiration of the zone of mixing.</p> <p>(8) No zone of mixing established pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.</p> <p>(9) Each mixing zone may be subject to revocation, suspension, or modification if, after notice and opportunity for a hearing pursuant to chapter 91, HRS and the rules of practice and procedures of the department, the director determines that the terms specified in section 342D-6, HRS have been violated. In taking any action, the director may consider operating records, compliance investigations, or other information regarding discharge quality or</p> | <p>5) Proposed 11-55-41(b)(7) revised the language from 11-54-9(c)(7) to clarify that a zone of mixing can be renewed provided that requirements from 11-55-41 are complied with. Removed previous increase in mass emissions restriction provided that the increase is in accordance with anti-degradation and anti-backsliding regulations.</p> <p>6) Proposed 11-55-41(b)(7) requires the renewal application for a zone of mixing to be submitted at least 360 days prior to expiration. This is to match the proposal in HAR 11-55-04(a)(1) because the zone of mixing renewal application is required to be submitted with the NPDES renewal application.</p> <p>7) The language in HAR 11-54-9(c)(9) was not included in the proposed HAR 11-55-41 as establishment of a zone of mixing does not require EPA concurrence.</p> |

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| | | <p>impact on receiving waters. The action shall be effected by giving written notice to the permittee, which shall contain the reasons for the action.</p> <p>(10) The director shall be notified within thirty days of the permanent discontinuance of a discharge. The zone of mixing shall terminate thirty days after such notification has been received.</p> <p>(11) Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee. [Eff] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)</p> | |
| 11-55-42 | None | <p>Intake credits. (a) An intake credit is an NPDES implementation tool that applies to the implementation of water quality standards through NPDES permits only.</p> <p>(b) As used in this section: “Background pollutant concentration” means the water body concentration, regardless of whether those pollutants are natural or result from anthropogenic upstream activity. “Intake pollutant” means the background pollutant concentration that is present in the intake water body. “Same body of water” means an intake pollutant is considered to be from the “same body of water” as the discharge if the department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period of time had it not been removed by the permittee. This finding may be deemed established if: (1) The background pollutant concentration in the receiving water (excluding any amount of the pollutant in the facility’s</p> | <p>This provision is being incorporated in HAR Chapter 11055 from HAR section 11-54-12 because these are NPDES requirements that belong in the NPDES rules. HAR 11-54-12 were copied as currently written except for the following:</p> <p>1) Proposed 11-55-42(b) revises the 11-54-12(b) definitions of “background pollutant concentration” and “intake pollutant” for clarity.</p> |

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| | | <p>discharge) is similar to that in the intake water; and</p> <p>(2) There is a direct hydrologic connection between the intake and discharge points; and</p> <p>(3) Water quality characteristics (e.g. temperature, pH, hardness) are similar in the intake and receiving waters.</p> <p>The department may consider other site-specific factors relevant to the transport and fate of the pollutant in deciding whether a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.</p> <p>(c) The director may, upon request of the discharger, adjust water quality-based effluent limitations or standards to reflect credit for intake pollutants in the discharger's intake water only:</p> <p>(1) To the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the intake pollutant value; and</p> <p>(2) If there is no net increase in the mass of the intake pollutant for which the credit is given. A discharger may increase the concentration of the background pollutant if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water, and the higher concentration discharge is demonstrated to not cause acute toxicity or detrimental effects.</p> <p>(d) Intake credit is not applicable to any pollutant for which a Total Maximum Daily Load (TMDL) and waste load allocation (WLA) have been developed</p> | <p>2) Proposed 11-55-42(c)(2) revises the 11-54-12(c)(2) restriction for intake credit usage for clarity.</p> |

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| | | <p>and have been approved by the U.S. Environmental Protection Agency unless the TMDL and WLA provide for such an intake credit.</p> <p>(e) The director shall grant credit for water quality-based effluent limits only if:</p> <p>(1) The intake water containing the intake pollutant is withdrawn from the same body of water into which the discharge is made, or the director may waive this requirement if the director finds that no environmental degradation will result;</p> <p>(2) The facility does not chemically or physically alter the intake pollutant in a manner that would cause adverse water quality impacts to occur;</p> <p>(3) The timing and location of the discharge of the intake pollutant would not cause adverse water quality impacts to occur; and,</p> <p>(4) The director finds that the discharge of intake pollutants into the receiving water will not adversely impact narrative or numeric water quality criteria specified in this chapter.</p> <p>(f) Effluent limitations must be established so that they comply with all other applicable state and federal laws and regulations including water quality-based requirements and anti-degradation policies.</p> <p>(g) All requests for the establishment of credit for intake pollutants shall be made on forms furnished by the department and shall be accompanied by:</p> <p>(1) Documentation showing a complete and detailed description of</p> | <p>3) Proposed 11-55-42(e) revises the 11-54-12(e) requirement for clarity and to include 40 CFR 122.45(g)(4) requirements that allow the permitting agency to waive the requirement for the intake water containing the intake pollutant to be withdrawn from the same body of water into which the discharge is made if the permitting agency finds that no environmental degradation will result.</p> |

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| Section | Current | Proposed | Rationale |
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| | | <p>present conditions and how present conditions do not conform to standards; and</p> <p>(2) Documentation showing that the intake and discharge waterbodies are the “same body of water” or request a waiver and demonstrate that no additional environmental degradation will occur in the receiving water; and</p> <p>(3) Documentation showing that pollutant(s) for which credits are being requested actually come(s) from the intake water.</p> <p>(h) Credit for intake pollutants shall be specified in the discharger’s NPDES permit and shall become effective with the department’s issuance of the permit for the specified permittee:</p> <p>(1) All permits that include intake credits issued by the department shall include monitoring of all influent, effluent, and ambient water to demonstrate that the conditions in this section are maintained during the permit term; and</p> <p>(2) All credit for intake pollutants developed under this section shall be re-evaluated upon permit renewal.</p> <p>(i) Credit for intake pollutants established under this section apply in the vicinity of the discharge for purposes of establishing permit limits for a specified pollutant for the specified permittee.</p> <p>(j) All other water quality criteria established under this chapter continue to apply. [Eff] Auth: HRS §§342D-4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, 342D-6, Ch. 342E)</p> | <p>4) Proposed 11-55-42(g)(2) revises the 11-54-12(g)(2) requirement to include the 40 CFR 122.45(g)(4) requirement described above.</p> |
| Adoption text | Stamped adoption date and previous public hearing and hearing notice. | Placeholder | Left placeholders to be filled in after adoption. |

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