

**Response to Public Comments on Proposed  
Hawaii Administrative Rules (HAR),  
Chapter 11-53  
Docket No. CWB-1-21**

The Department of Health (DOH), Clean Water Branch (CWB) solicited public comments from December 16, 2020 through February 1, 2021, on proposed new HAR Chapter 11-53 (Section 401 Water Quality Certifications). The proposed new HAR Chapter 11-53 contains the rules for issuance of Section 401 Water Quality Certifications (WQCs) within the State of Hawaii, that were previously contained in HAR Chapter 11-54.

A virtual public hearing was held at 9:00 a.m. on February 1, 2021. The DOH-CWB published notices of the comment period and public hearing on December 16, 2020 in the Honolulu Star-Advertiser, The Garden Island, Maui News, West Hawaii Today, Hawaii Tribune-Herald, and Midweek newspapers. Below is a summary of the comments received and the DOH-CWB responses.

**HAR 11-53 (SECTION 401 WATER QUALITY CERTIFICATIONS)**

**Comments from Hawaii Department of Transportation, Highways Division, Design Branch**

**Comment 1:** Note: WQC will be removed from HAR 11-54 and relocated into HAR 11-53. DOH notes that the certification does not require EPA approval

**Response 1:** This is correct.

**Comment 2:** If the Duly Authorized Representative was removed from the certification process, then does compliance submissions need to be submitted by the Certifying Person?

**Response 2:** This is correct.

**Comment 3:** HAR 11-53-4(a) The director shall act on an application within sixty days of acknowledging receipt of a complete application. How do you know if the application is complete? How is complete defined?

**Response 3:** Complete is defined as all required information from 40 CFR 121.5 and HAR 11-53-3 has been provided to DOH's satisfaction in the application.

**Comments from County of Hawaii, Planning Department**

**Comment 4:** Thank you for the opportunity to provide comments to amendments to Hawaii Administrative Rules. The Hawai'i Department of Health (DOH) is responsible for

monitoring and protecting the quality of waters themselves under the authority of the Federal Clean Water Act. To the degree designed by law, counties share this public trust responsibility with the State.

In addition to the Administrative Rule amendments proposed for water quality certifications, water quality standards, and water pollution control, we understand that DOH is proposing a new Administrative Rule that provides the regulatory framework for the prevention, abatement, and control of new and existing nonpoint sources of pollution.

The 2005 County of Hawaii General Plan (GP) calls for "work with the appropriate agencies to adopt appropriate measures and provide incentives to control point and non-point sources of pollution". In furtherance of this, the GP also addresses:

- Policy 4.3(k) Implementation of the management measures contained in Hawaii's Coastal Nonpoint Pollution Control Program as a condition of land use permitting.
- Standard 4.4(a) Pollution prevention, abatement, and control at levels that will protect and preserve the public health and wellbeing, through the enforcement of appropriate Federal, State and County standards,
- Standard 4.4(b) Incorporate environmental quality controls either as standards in appropriate ordinances or as conditions of approval.

For similar reasons, improved environmental water quality, water quality monitoring and the human health considerations around the same are a recurring theme in the majority of our County's adopted Community Development Plans (CDPs):

- Complete a comprehensive water quality-monitoring program for the Planning Area's coastal waters
- "encourage growth management and environmental quality policies that use public infrastructure to influence the location and timing of growth; ensuring the same in a manner that reduces waste and pollution, conserves water, and generally minimizes environmental impacts;
- State law mandates that Class AA waters "remain in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-caused source or actions." For this reason, wastewater disposal in the coastal zone requires special precaution Encourage State legislation to prohibit the use of cesspools as a means for wastewater disposal in areas below 1,000 feet Mean Sea Level.
- Future development and uses need to take into consideration water quality and promote proper watershed management; including water quality monitoring on a district-wide basis.
- Whether intentionally or inadvertently, we degrade our resources by introducing sediments or chemicals to our water resources through non-point or point sources ... groundwater pollution from cesspools, septic systems, fertilizers and

pesticides. Some of these same activities also threaten nearshore coastal waters.

We recommend ongoing collaboration with County Department of Water Supply (DWS), Dept of Environmental Management (DEM), Department of Public Works (DPW). Moreover, we also encourage increased engagement with our entire watershed and coastal partnerships and any projects to improve groundwater, stream and coastal water quality and encourage local communities to develop such projects.

**Response 5:** Thank you for your comments of support and continued collaboration.

**Comments from Mālama Pūpūkea-Waimea**

**Comment 6:** 11-53-3(a)(7) Application - Support the requirement that applicants better describe effective Best Management Plans (BMPs).

11-53-3(c)-(e) and 11-53-12 Loko I'a (Fishponds) – Support the streamlined or waived application.

11-53-5 Public Notice and Hearing – Support the maintenance of these requirements to ensure public participation in the process.

11-53-7 General Conditions – Support more protective conditions and BMP requirements.

11-53-8 Right To Inspect – Support strong inspection authority for DOH.

11-53-13 After the Fact – Support discouraging after-the-fact applications and encouraging enforcement against violators.

**Response 6:** Thank you for your comments of support.