Public Comment (July 23, 2021 through August 25, 2021)
Response to Comments on Proposed Draft
National Pollutant Discharge Elimination System (NPDES) General Permits in Hawaii Administrative Rules (HAR), Chapter 11-55, Appendices B, E, F, G, and K

Between July 23, 2021 through August 25, 2021, the Department of Health (DOH), Clean Water Branch (CWB) sought written input on proposed draft NPDES General Permits in HAR 11-55 Appendix B (industrial storm water), Appendix E (once through cooling water less than one million gallons per day), Appendix F (hydrotesting), Appendix G (dewatering), and Appendix K (small Municipal Separate Storm Sewer Systems or MS4s). Below are the DOH-CWB responses to the comments received.

State of Hawaii Department of Transportation

Comment 1: *Page 55-B-26, Section 1.2.1.3, Table 1-2*

Increase the NOI submission deadline to 180 days from 90 days for facilities, such as airports, that must develop a comprehensive SWPPP in coordination with tenants.

The new requirements for a Comprehensive SWPPP that includes all tenant information and controls will be very onerous for entities such as DOT Airports Division to meet when dealing with multiple tenants. The timeline of 90 days is unrealistic if the SWPPP must be prepared prior to the submittal of the NOI.

Response: This has been revised.

Comment 2: *Page 55-B-27, Section 1.2.1.3, Table 1-2*

*Revise the deadlines for new operators as follows: New operators of existing industrial activities with discharges previously authorized under the **~~2013 Appendix B~~** **MSGP**.*

The requirement for new operators of existing industrial activities cites discharges previously authorized under the 2013 Appendix B; however, it is not clear how new operators would be covered under the 2013 Appendix B. New operators would have had to file for an individual permit after the expiry of the 2013 Appendix B. Reviewing the corresponding language of the EPA's 2015 MSGP, it appears the correct citation is the current MSGP.

Response: The deadline specified in the MSGP is correct, as it is for situations where a facility's (not the operator) discharge was previously covered under the 2013 Appendix B, and a new operator has since taken operation of the facility. If the facility is covered by an NPDES Individual Permit, the new owner would have to either complete a transfer of permit per 40 CFR 122.62 or submit an NOI to be covered under the MSGP.

Comment 3: *Page 55-B-40, Section 2.1.2.3*

Suggest the following edits: "Cleaning catch basins when the depth of debris reaches two-thirds (2/3) of the sump depth ***~~and keeping the debris surface at least six inches below the lowest outlet pipe~~****."*

In some locations, catch basins may have water within six inches below the outlet due to conditions such as ground water level, weather, tidal influence, or discharges to/from connecting conveyances.

Response: This requirement refers to keeping the debris surface at least six inches below the lowest outlet pipe. It is not referring to water depth. No changes have been made to the proposed permit.

Comment 4: *Page 55-B-51, Section 3.1*

*Suggest the following edits: "At least once per calendar year, the routine inspection must be conducted during a period when a stormwater discharge is occurring****, if safe and during normal business hours****."*

Please clarify the intent of this inspection. In addition, could this be considered one of the four quarterly inspections. Inspections should be done in a safe manner and during normal working hours. Personnel should not be expected to be outside during inclement weather. In addition, some facilities are secured during nonbusiness hours.

Response: The intent is that the permittee will have at least one inspection performed during wet weather per calendar year. Yes, this could be considered one of the four quarterly inspections. If a permittee could not perform an inspection, they would be required to document the reason. No change has been made to the proposed permit.

Comment 5: *Page 55-B-71, Section 5.2.3*

*Suggest clear definition of "****acid rain****", as it relates to the paragraph. "Acid rain" is a broad term to include any form of precipitation with acidic components.*

Response: Thank you for the comment. The DOH will consider this in the future.

Comment 6: *Page 55-B-84, Section 6.1.6*

Suggest the following edits: If your facility is located in areas where limited rainfall occurs during parts of the year... You must ***~~still~~*** *collect* ***with the best practical efforts during normal business hours*** *the required number of samples.*

This requirement can become very cumbersome due to lack of adequate rainfall for sampling, and erratic weatherchanging conditions.

Response: Thank you for your comment. The DOH will consider this in the future.

Comment 7: *Page 55-B-98, Section 6.2.4.1*

Suggest the following edit: "Discharges to impaired waters without a DOH established and EPA approved TMDL: Beginning in the first full quarter following 90 days after permit issuance...you must monitor all pollutants for which the waterbody is impaired... once per year at each ***~~outfall~~*** ***identified or permitted discharge point****..."*

Some facilities may have distinct and identified discharge points rather than outfalls. In addition, we suggest that term "discharge point" be used in place of "outfall" for Appendix B.

Response: Thank you for your comment. The DOH will consider this in the future.

Comment 8: *Page 55-B-309, Section 8.S.3.3*

Clarify whether airport authorities who have filed a "No Exposure Certification (NOE)" is required to prepare a comprehensive SWPPP.

Section 1.4 (page 55-B-32) allows for a Conditional Exclusion for No Exposure. Section 8.2.3.3 states that a single comprehensive SWPPP must be developed for all storm water discharges associated with industrial activity at a facility such as an airport before submittal of any NOIs. Since "NOIs" implies all NOIs for airport industrial users (such as tenants), it is unclear the role and requirement of the comprehensive SWPPP if the airport authority or any of its tenants have obtained a NOE and is not required to file an NOI or SWPPP. Would the comprehensive SWPPP apply only to the airport operators that do not obtain a NOE?

Response: A comprehensive SWPPP is always required for airports that obtain coverage under Appendix B. A comprehensive SWPPP does not apply to tenants under a Conditional No Exposure Exclusion.

Comment 9: *Page 55-K-6, Section 4(a)*

Suggest leaving the 30 days instead of revising for 180 days: "New Permittees (those MS4s not covered under the previous 2013 general permit) shall submit a complete NOI no later than ***thirty*** ***~~180 calendar~~*** *days before the proposed starting date of the discharge."*

Request that the existing 30-day submittal requirement for new permittees be unchanged. Additionally, recommend better defining "the proposed starting date of the discharge" for new permittees. The proposed change from 30 days to 180 days seems onerous.

In addition, for an MS4 system that is in place, what would the "starting date of the discharge" be for new permittees?

Is there a "regulation date" by which the system is judged to be a regulated MS4? Recommend clarification.

Response: The 2-step approach requires a longer processing time and accounts for DOH's review, request for additional information, public comment period, response to comments, and time for DOH to determine the final permit conditions. Therefore, the 180 days is necessary.

The starting date for the discharge of an MS4 system that is in place, is the date the Permittee may be assumed to be covered under an NPDES permit. All discharges occurring before this date and before the Notice of General Permit Coverage is issued are not covered.

The regulation date is after the urban area has been identified in the U.S. decennial census and the DOH has notified the municipality of the deadline to apply for coverage.

Comment 10: *Page 55-K-14, Section 6(c)*

*Recommend the following revision: "**~~Any m~~** **M**odifications to the **~~BMPs and~~** measurable goals will require submittal of a new NOI and filing fee, unless clearly accounted for in its SWMP and that has been public noticed."*

We are concerned that the language in this section could discourage permittees from enhancing their program beyond the BMPs and measurable goals in the SWMP if an opportunity to do so arises over a 5-year permit cycle. In addition, something proposed in the SWMP might not provide the benefit sought and the permittee may develop an alternative approach to better meet or exceed the same goals. The rigidity of the proposed language (i.e., "ANY modifications…") could discourage permittees from adapting the program measures to meet desired outcomes. While the measurable goals may be protected, we believe it is better for there to be more flexibility in the BMPs or measures themselves.

Response: The recommended revision will not provide adequate public notice and opportunity to request a hearing. Please refer to the MS4 remand rule. We recommend that your SWMP be flexible by containing a "toolbox" of all potential BMPs and alternative approaches for you to choose from.

Comment 11: *Page 55-K-16, Section 8(a)(ii)*

*Recommend clarification of the second paragraph by revising to read: "As additional TMDLs are adopted by the DOH and approved by the EPA, the Permittee for any assigned WLA reductions will, within two (2) years of the TMDL approval, prepare an I&M plan that will describe the Permittee's approach to proposed activities for compliance with the WLA reductions, **unless an I&M Plan has already been developed by the DOH**. If compliance is expected to take longer than **1** year **~~1 year~~** after **DOH approval** **~~preparation~~** of the Permittee's I&M Plan, a*

*compliance schedule shall be submitted along with its I&M Plan that meet**s** the requirements of 40 CFR 122.47.*

The revised language will provide clarification that an I&M plan will not need to be developed if already developed by the DOH and that the compliance timeline should begin after DOH approval of the Permittee's I&M Plan. Other revisions are grammatical.

Response: A Permittee specific I&M plan will still be required even if an I&M plan were developed by DOH. No changes were made to the proposed Appendix K from this comment.

Comment 12: *Page 55-K-18, Section 8(b)(iii)*

*Recommend clarification of the statement by revising to read: "A detailed and quantitative analysis which demonstrates that the proposed activities would **provide** ~~**ensure**~~ consistency with the WLA reductions consistent with the assumptions of the associated TMDL document."*

An analysis can demonstrate that the proposed activities are consistent with requirements but cannot reasonably ensure consistency.

Response: The DOH prefers the word "ensure" as it means to make something certain. No changes have been made to the proposed Appendix K from this comment.

Comment 13: *Appendix K Fact Sheet*

*(1) A brief description of the type of facility or activity which is the subject of the draft permit (3) Suggest the following edits: "This term includes systems similar to separate storm sewer systems in municipalities, such as systems at ~~**military bases,**~~ large hospital or prison complexes, and **non-traditional MS4s (such as State of Hawaii Department of Transportation)** ~~**highways and other thoroughfares**~~.*

EPA recognizes the difference between traditional MS4s, county or local storm sewer systems and the non-traditional MS4s, such as department of transportations (See website: https://www.epa.gov/npdes/stormwater- dischargestransportation-sources). Non- traditional MS4s have unique circumstances and different issues to address than a traditional MS4.

The unique circumstances and the ability to be flexible to address non-traditional MS4 issues is confirmed in Part 4 of the DOH Fact Sheet which states " This allows the DOH the flexibility to address unique circumstances, such as different maturity levels of its MS4s and for non-traditional MS4s (e.g. state department of transportation, public universities, and military bases).

Response: Thank you for the comment. No revision necessary.

County of Maui

Comment 1: *Chapter 11-55, Appendix B §1.2.1.3, Table 1-2.*

NOI Submittal Deadlines and Discharge Authorization Dates. The requirement for new operators of existing industrial activities cites discharges previously authorized under the 2013 Appendix B; however, it is not clear how new operators would be covered under the 2013 Appendix B. New operators would have had to file for an individual permit after the expiry of the 2013 Appendix B. Reviewing the corresponding language of the EPA's 2015 MSGP, it appears the language should be revised to, "New operators of existing industrial activities with discharges previously authorized under the MSGP."

Response: Please see response to Department of Transportation's Comment 2.

Comment 2: *Chapter 11-55, Appendix K §4(a).*

This section states that "New Permittees (those MS4s not covered under the previous 2013 general permit) shall submit a complete NOI no later than [thirty] 180 calendar days before the proposed starting date of the discharge." The change from 30 days to 180 days seems onerous. In addition, for an MS4 system that is in place, what would the "starting date of the discharge" be for new permittees? Is there a "regulation date" by which the system is judged to be a regulated MS4? Recommend clarification. Also, how would this time period apply if an existing Permittee's regulated MS4 is expanded geographically? As an existing permittee, is a new NOI and updated SWMP due within 120 calendar days from the date a new UA is identified or the existing UA is expanded (i.e., new census report date) or 180 calendar days before the "starting date of the discharge" as defined in response to the above?

Response: Please see response to Department of Transportation's Comment 9 regarding the "regulation date" and new permittee requirements. Whenever the results of a census causes a designation of a new permittee or causes an expansion of a regulated area of an existing MS4, the CWB will contact the affected permittees with instructions and deadlines.

Comment 3: *Chapter 11-55, Appendix K §6(c).*

The following paragraph was added at the end of this section: "Any modifications to the BMPs and measurable goals will require submittal of a new NOI and filing fee, unless clearly accounted for in its SWMP and that has been public noticed." We are concerned that, without clarification, this language could discourage permittees from enhancing their program beyond the BMPs and measurable goals in the SWMP if

an opportunity to do so arises over a 5-year permit cycle. In addition, something proposed in the SWMP might not provide the benefit sought and the permittee may develop an alternative approach that was previously unforeseen to better meet or exceed the same goals. The rigidity of the proposed language (i.e., "ANY modifications…") could discourage permittees from adapting the program measures to meet desired outcomes. While the measurable goals may be protected, we believe it is better for there to be more flexibility in the BMPs or measures themselves. We recommend the following revision:

"[Any m]<u>M</u>odifications to the [BMPs and]measurable goals will require submittal of a new NOI and filing fee, unless clearly accounted for in its SWMP and that has been public noticed."

Response: Please see response to Department of Transportation's Comment 10.

Comment 4: *Chapter 11-55, Appendix K §8(a)(ii)*

Recommend clarification of the second paragraph by revising to read, "As additional TMDLs are adopted by the DOH and approved by the EPA, the Permittee for any assigned WLA reductions will, within two (2) years of the TMDL approval, prepare an I&M plan that will describe the Permittee's approach to proposed activities for compliance with the WLA reductions<u>, unless an I&M Plan has already been developed by the DOH</u>. If compliance is expected to take longer than <u>1 year</u> [1-year] after <u>DOH approval</u> [preparation] of the Permittee's I&M Plan, a compliance schedule shall be submitted along with its I&M Plan that meet<u>s</u> the requirements of 40 CFR 122.47.

Response: Please see response to Department of Transportation's Comment 11.

Comment 5: *Chapter 11-55, Appendix K §8(b)(iii)*

Recommend clarification of the statement by revising to read, "A detailed and quantitative analysis which demonstrates that the proposed activities would provide [ensure] consistency with the WLA reductions consistent with the assumptions of the associated TMDL document.

Response: Please see response to Department of Transportation's Comment 12.

<u>City and County of Honolulu Department of Facility Maintenance</u>

Comment 1: *Definition of "New Discharger" and "New Source."*

The 2018 State of Hawaii Water Quality Monitoring and Assessment Report lists 58 inland water bodies and 78 marine water bodies on Oahu as impaired for at least one (1) pollutant (Source: https://health.hawaii.gov/cwb/files/2018/09/Final-2018- State-of-Hawaii-Water-Quality-Monitoring-Assessment-Report.pdf).

Appendix B Section 1.1.4.8 (Parts 1-7 PDF page 21) states that "new dischargers" or "new sources" are "ineligible for coverage under this permit [if they] discharge to an 'impaired water," unless the permittee takes additional steps such as preventing exposure of pollutants to stormwater or demonstrating to the DOH that the facility's discharge will not exceed water quality standards. The City is concerned that this restriction may make it cost-prohibitive to construct new facilities in areas discharging to impaired waters. This restriction may affect City's ability to provide services to certain areas.

The City requests that the DOH provide further clarification within Appendix B on the definition of "new discharger" and "new source."

Response: Thank you for your concerns. If a waterbody is already impaired, the DOH, at a minimum, is responsible for preventing further impairment. Please see Section 1.1.4.7 of the proposed Appendix B for the definitions of "New Discharger" and "New Source".

Comment 2: *Requirements Related to Monitoring for Impaired Pollutants.*

The 2018 State of Hawaii Water Quality Monitoring and Assessment Report lists 58 inland water bodies and 78 marine water bodies on Oahu as impaired for at least one (1) pollutant. The report states that "nutrients are the second leading cause of water quality exceedances" (Source: https://health.hawaii.gov/cwb/files/2018/09/Final-2018-State-of-Hawaii-Water-Quality-Monitoring-Assessment-Report.pdf).

The Appendix B permit fact Section 3 (Fact Sheet PDF page 7) indicates that monitoring is only required "if a parameter has been identified as having a benchmark or effluent limitation in the EPA's 2015 MSGP or if the discharge is to an impaired waterbody." The fact sheet further indicates on Fact Sheet PDF Page 7 that "TSS, TP, Nitrate+Nitrite Nitrogen, Oil and Grease, and pH, monitoring…[were] removed because if a sector didn't already require that pollutant to be monitored in the EPA's 2015 MSGP, then the EPA had already ruled out that pollutant to be a pollutant of concern."

However, Appendix B Section 6.2.4.1 (Parts 1-7 PDF page 98) states that permittees "must monitor all pollutants for which the waterbody is impaired and for which a standard analytical method exists (see 40 CFR Part 136) once per year..."

The City requests that the DOH provide further clarification within Appendix B that though monitoring is required for impaired pollutants, there are no benchmarks, numeric effluent limits, or corrective action requirements associated with this requirement.

Response: The requirements for benchmark monitoring and numeric effluent limits are based solely on the facility's sector. If there is an established benchmark monitoring requirement or effluent limitation (even for TSS, TP, Nitrate + Nitrite Nitrogen, Oil and Grease, and pH) the facility is required to comply with the monitoring and limitation requirements.

While it is true that impairment monitoring does not trigger additional benchmark monitoring, effluent limitation, or corrective action requirements (i.e., beyond those required by the applicable sector), the facility must still comply with all sections of the general permit that specify the requirements for monitoring of discharges to impaired waterbodies. It should also be noted that regardless of impairment status of the waterbody, if the facility causes any violations of the State's basic water quality criteria applicable to all waters, corrective actions may be required as specified in the general permit.

Based on this, Fact Sheet PDF Page 7 was revised to add: "However, it should be noted that to be consistent with EPA's 2015 MSGP, a facility may be required to monitor for these pollutants if the receiving waterbody is impaired for these pollutants. Although we had removed TSS, TP, Nitrate + Nitrite Nitrogen, Oil and Grease, and pH monitoring requirements applicable to all facilities (not including ELGs, or benchmarks established in EPA's 2015 MSGP), they are still considered pollutants of concern if the receiving waterbody is impaired for that pollutant."

Comment 3: *Monitoring for Trash.*

Appendix B Section 6.2.4.1 (Parts 1-7 PDF page 98) states that permittees "must monitor all pollutants for which the waterbody is impaired and for which a standard analytical method exists (see 40 CFR Part 136) once per year..." Certain water bodies on Oahu are impaired for trash. It is the City's understanding that no standard analytical method exists in 40 CFR Part 136 for trash. Therefore, the City requests that the DOH provide further clarification within Appendix B that no monitoring for trash is required as part of permittee's impaired waters monitoring.

Response: Thank you for your comment. This is correct, as there is no 40 CFR Part 136 analytical method established for trash, there is no impaired monitoring requirements (i.e., annual sampling and monitoring) for trash. It should be noted however, that Appendix B requires compliance with the basic water quality criteria, which also includes (among other requirements) that waters shall be free of "Floating debris, oil, grease, scum, or other floating materials; Substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts sufficient to produce objectionable color, turbidity or other conditions in the receiving waters;" [HAR 11-54-4(a)(2) and (3)].

Comment 4: *Definition of "Economically Practicable."*

The City requests that the DOH provide further clarification within Appendix B on the definition of the term "economically practicable" as used in Appendix B Section 1.1.3.1 (Parts 1-7 PDF page 16), Section 2 (Parts 1-7 PDF page 35), Section 4.2 (Parts 1-7 PDF page 62), Section 5.5 (Parts 1-7 PDF page 83), Section 6.2.1.2 (Parts 1-7 PDF page 90), and Section 7.5 (Parts 1-7 PDF page 104).

Response: Thank you for your comment. Please refer to the entire phrase in the permit where the term "economically practicable" is used. For example, refer to Section 1.1.3.1 where it states: "Minimize – for the purposes of this permit, minimize means to reduce and/or eliminate to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of best industry practices." As each industry has different practices, situations, and factors to consider, the definition of "economically practicable" would vary from industry to industry, and therefore, it is infeasible for DOH to have a more inflexible overarching definition applicable to all industries.

Comment 5: *Documentation of Infeasibility.*

The term "unless infeasible" prefaces several permit requirements in Appendix B Section 2.1.2.1 (Parts 1-7 PDF page 38) and throughout Section 8. The City requests that the DOH provide further clarification within Appendix B as to whether, if a permittee determines a permit requirement is infeasible, a permittee is required to document the rationale for this determination.

Response: Thank you for your comment. If a permittee determines a permit requirement is infeasible, a permittee is not required to document the rationale for this determination. However, if no rationale or justification for this determination is available, it is assumed the requirement is feasible and failure to comply with the requirement would be a non-compliance.

Comment 6: *Timing of Monitoring Report Results.*

Appendix B Section 6.2.2.3 (Parts 1-7 PDF page 96) and Section 7.6

(Parts 1-7 PDF page 104) each state that the permittee must submit an Exceedance report no later than 30 days after receiving laboratory results. For ease of reference, the City hereinafter refers to this requirement as "Rule 1."

Section 7.4 (Parts 1-7 PDF page 102) states that "all monitoring data collected pursuant to Part 6.2 must be submitted to DOH via the e-Permitting Portal and also using an electronic reporting method no later than the 28th day following the month when the samples were

taken." (emphasis added). For ease of reference, the City hereinafter refers to this requirement as "Rule 2."

The City requests that the DOH revise Section 7.4 (Parts 1-7 PDF page 102) to state that "all monitoring data collected pursuant to Part 6.2 must be submitted to DOH via the e-Permitting Portal and also using an electronic reporting method no later than 30 days after receiving laboratory results". Permittees have little control over laboratory turn-around time, and therefore the "clock" for permittees to report results to the DOH should start when the permittee receives lab results.

Response: Thank you for your comment, however no revisions were made.

Comment 7: *Definition of Qualified Person.*

Appendix B Part 3.1 (Parts 1-7 PDF page 53) states that inspections of permitted facilities must be performed by "qualified personnel." Part 5.1 (Parts 1-7 PDF page 67) states that the stormwater pollution prevention plan must be developed by a "qualified person."

Appendix B defines "qualified persons" as "…those who are knowledgeable in the principles and practices of industrial storm water controls and pollution prevention, and who possess the education and ability to assess conditions at the industrial facility that could impact storm water quality, and the education and ability to assess the effectiveness of storm water controls selected and installed to meet the requirements of the permit."

The City requests that the DOH provide further clarification within Appendix B regarding the definition of "qualified persons" in the following areas:

1. The current definition in Appendix B references "education" as a determining factor as to whether a person is "qualified." Does "education" refer to formal classroom education, such as a bachelor's or master's degree?

2. Can "education" include certification courses such as EnviroCert International's Certified Professional in Industrial Stormwater Management (CPISM)?

3. Could a person be considered "qualified" if they were trained by someone else with CPISM certification?

4. Would the DOH consider offering formal courses to become a qualified person as defined in Appendix B?

Response: Thank you for your comment. It is the permittee's responsibility to determine if a person is qualified.

Comment 8: *Photographic Documentation of Control Measure/Storm Water Pollution Prevention Plan (SWPPP) Implementation.*

Appendix B Part 6.2.2.3 (Parts 1-7 PDF page 96) requires that, concurrent with required stormwater monitoring, the permittee must collect and submit to the DOH photographic documentation of control measures and/or pollution control measures included in a SWPPP implemented for permit compliance purposes.

The City requests that the DOH provide further clarification within Appendix B as to whether photographs must be collected and submitted for all control measures and/or pollution control measures included in the SWPPP.

The City further requests that the DOH specify that photographs need only be collected and submitted within the drainage area that is being monitored.

Finally, the City requests that the DOH provide further guidance within Appendix B regarding collecting photographs at night and at facilities with security concerns such as wastewater treatment plants.

Response: Thank you for your comment. The permit says photo documentation of control measures and/or pollution control measures are required. The permit does not limit photo documentation to only areas that are being monitored.

It is up to the permittee to resolve any concerns for collecting photographs at night and at facilities with security concerns.