

National Pollutant Discharge Elimination System

General Permit Fact Sheet for

Hawaii Administrative Rules (HAR) Chapter 11-55, Appendix G

Authorizing Discharges Associated with Construction Activity Dewatering

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

This general permit covers facilities or activities in the State of Hawaii that discharge waters from the construction dewatering process to state waters.

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

The allowed discharge is of waters from construction dewatering activities which is not commingled with other process water or stormwater.

This general permit is not intended for return flow or overflow from dredged material dewatering or discharges of construction dewatering effluent from leaking underground storage tank remediation activities.

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

Not applicable.

- (4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by 40 CFR §124.9 (for EPA-issued permits);

The General Permit is divided into the following sections:

1. Coverage under this General Permit
2. Limitations on Coverage under this General Permit [Revised]
3. Term of General Permit [Revised]
4. Notice of Intent Requirements [Revised]
5. Standard Conditions
6. Effluent Limitations and Monitoring Requirements [Revised]
7. Corrective Action
8. Reporting Requirements [Revised]
9. Submittal Requirements [Revised]
10. Additional Conditions
11. Record Retention
12. Falsifying Report
13. Renewal [Removed]
14. Forms [Revised]

*Table 34.5 Effluent Limitations and Monitoring Requirements for
Construction Dewatering Discharges [Revised]*

Sections 1 through 5 and 7 through 13 are basic requirements necessary to the General Permit. Section 6, Section 14, and Table 34.5 detail the effluent limitations and monitoring requirements for construction dewatering discharges.

Basis for Discharge Limitations and Monitoring Requirements

There are no effluent guidelines promulgated for discharges resulting from construction dewatering activities. The general permit discharge limitations and monitoring requirements are based on HAR Chapter 11-54, Water Quality Standards.

The Director of Health determined that:

- 1) The conditions and discharge limitations established in the proposed general permit ensure that the existing beneficial uses and quality of state waters will be maintained and protected;*
- 2) Discharges regulated in the general permit should not lower receiving water quality if the terms and conditions of the general permit are met; and*
- 3) Discharge to restricted “no discharge” areas is prohibited.*

The effluent parameters in Table 34.5 are based on the pollutants of concern for the discharges from construction dewatering activities.

The discharges covered by the general permit shall comply with the Standard Permit Conditions of HAR Chapter 11-55, Appendix A.

Requirements for Discharge into Class 1 and Class AA Waters

For discharges to Class 1 and Class AA waters, the site-specific dewatering plan, dewatering system maintenance plan, and construction pollution prevention plan will be submitted with the Notice of Intent (NOI) to allow review of the plans.

Chapter 11-55, Appendix G Revisions

Main

Original: *This General Permit is effective on [date] and expires four years from this date, unless amended earlier.*

Revised: *This General Permit is effective on [date] and expires five years from this date, unless amended earlier.*

Rationale:

Following revision of these general permits, the term will be five years after the effective date of the rules change, which is equivalent to the maximum allowable term for NPDES permits per 40 CFR §122.46(a).

Section 2(a)(5)

Original: *Discharges of construction dewatering effluent that is subject to the general permit specified in appendix D of chapter 11-55; and*

Revised: *Discharges of construction dewatering effluent that is subject to the general permit specified in appendix D of chapter 11-55; [and]*

Rationale:

Removed “and” to insert proposed Section 2(a)(6).

Section 2(a)(6) [New]

Original: *(NEW)*

Revised: *Discharges of construction dewatering effluent with toxic parameter concentrations above the applicable water quality criteria in chapter 11-54; and*

Rationale:

This limitation was added to prevent dewatering discharges containing toxic constituents in exceedance of the water quality standards listed in HAR §11-54-4(c)(3).

Section 2(a)(6)

Original: *(6) Discharges of construction dewatering effluent that the director finds more appropriately regulated under an individual permit.*

Revised: *(7) Discharges of construction dewatering effluent that the director finds more appropriately regulated under an individual permit.*

Rationale: *Renumbered due to addition of proposed Section 2(a)(6).*

Section 2(c) [New]

Original: *(NEW)*

Revised: *Permittees authorized by this general permit are required to comply with the following requirements.*

- (1) Treat dewatering discharges with controls to minimize discharges of pollutants. Appropriate controls include, but are not limited to, sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, filtration systems (e.g., bag or sand filters), and passive treatment systems that are designed to remove sediment. Appropriate controls to use downstream of dewatering controls to minimize erosion include vegetated buffers, check dams, riprap, and grouted riprap at outlets.
- (2) Prohibit visible plumes from the discharge and prohibit the discharge of visible floating solids or foam.
- (3) Use an oil-water separator or suitable filtration device (such as a cartridge filter) that is designed to remove oil, grease, or other products if dewatering water is found to control these materials.
- (4) To the extent feasible, use vegetated, upland areas to infiltrate dewatering water before discharge. State waters are prohibited from being used as part of the treatment area.
- (5) At all points where dewatering water is discharged, dissipate velocity to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of the conveyance and at the outfall to slow down the discharge. These devices shall not be placed within receiving waters.
- (6) Dispose backwash water offsite in accordance with all governmental regulations or return it to the beginning of the treatment process.
- (7) Replace or clean the filter media used in dewatering devices when the pressure differential equals or exceeds the manufacturer's specifications.

Rationale:

This permit authorizes the discharge of dewatering effluent associated with construction activity. This most often includes dewatering of storm water accumulated in excavated pits or groundwater infiltration during trenching, excavation, or other similar earth work activities. Discharges authorized by this permit are often episodic, low volume, and compositionally variable throughout the discharge period (i.e. discharging prior to construction activity vs. discharging during construction activity). As this permit only authorizes

the discharge of dewatering effluent associated with construction activities, facilities discharging under this permit are not permanent, do not have long term treatment systems, and may not feasibly have continuous discharge monitoring equipment.

Discharges associated with this permit, if not treated, have the potential to cause receiving waters to exceed water quality standards due to the most likely pollutant (sediment) being present in the effluent. The current/previous permit authorizes discharges subject to numeric limits. However, the current/previous permit only requires the sampling and monitoring of effluent once per discharge. The current permit's discharge limitation and monitoring requirements fail to adequately protect receiving waters because the singular per discharge monitoring requirement doesn't reflect the variable nature of effluent quality.

To better protect water quality and improve the permit effectiveness, the following changes are proposed:

- *Require treatment which targets the reduction of settleable and suspended solids to reduce the potential for discharges causing exceedances of the turbidity water quality standards. Adding an explicit prohibition for visible plumes increases the protection of receiving waters from optical impacts, creates an intuitive compliance requirement, and is far more enforceable than a simple numeric turbidity limit. A prohibition of the visible plumes also accounts for potential variability in discharge quality throughout the discharge period as well as potential short-term variability in background receiving water quality.*
- *Add a treatment requirement such as particulate (e.g. "bag") filtration to reduce the potential for the discharge of pollutants associated with the construction dewatering activity. This requirement for treatment is also expected to reduce the presence of other pollutants that may be bound to the sediment particles removed through filtration. This approach is similar to the one taken by the EPA in the national construction general permit.*
- *Add an explicit narrative prohibition for visible plumes and a requirement for treatment while removing the numeric requirement for the following reasons:*
 - *Achieves results similar in nature to numeric requirements.*
 - *Ensures that the receiving water isn't optically degraded by the authorized discharge.*

- *Reflects recognized variability in receiving water criteria.*
- *Provides a qualitative limit that can continuously be monitored by discharger personnel.*
- *Strengthens enforceability including enforcement associated with complaints.*
- *Reduces the complexity and cost of discharge monitoring.*
- *Simplifies permit data tracking and compliance with EPA's E-Reporting Rule.*

Section 3(a)

Original: *This general permit becomes effective ten days after filing with the office of the lieutenant governor.*

Revised: *This general permit becomes effective ten days after filing with the office of the lieutenant governor[.] and shall expire five years after the effective date, unless amended earlier.*

Rationale:

This revision is to make this subsection consistent with the general permit term specified at the beginning of the general permit. The previous language only specified when the general permit term began, and not when it expired. This is a minor change for completeness and consistency and has no functional impact on any permit requirements.

Section 3(b)

Original: *A notice of general permit coverage under this general permit expires:*

- (1) *Four years after the effective date of this general permit;*
- (2) *When the notice of general permit coverage specifies; or*
- (3) *When amendments to section 11-55-34.02(b)(6) are adopted,*

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

Revised: *Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit prior to the expiration of this general permit shall expire five years after*

the effective date of this general permit, unless it is administratively extended in accordance with section 3(c) of this general permit.

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. The previous section 3(b) specified that the Notice of General Permit Coverage (NGPC) expires in the identified three scenarios in accordance with this renewal procedure. The Clean Water Branch is now revising the renewal procedures for general permits to no longer require a renewal NOI and administrative extension prior to the expiration of the general permit. Under the new procedure, unless otherwise specified on the NGPC, the NGPC expires five years after the effective date of the general permit, unless it is administratively extended under the new section 3(c). This revision is necessary to be consistent with the new renewal process. More information explaining this change in the renewal process is provided in the rationale for the new section 3(c).

Section 3(c) [New]

Original: (NEW)

Revised: If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:

(1) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;

(2) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or

(3) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. This procedure created a situation where a permittee is required to submit an NOI to request coverage under the reissued general permit prior to the reissued permit being finalized and adopted. In essence, permittees would be required to submit an NOI to apply for coverage under a general permit that has not been finalized, or at worst, has not had a draft public noticed yet, and therefore, permittees would not even be aware of what the new general permit's requirements would potentially be. To avoid this situation, the renewal process for general permit coverage has been revised. This new section now specifies that when the department is unable to reissue the general permit prior to its expiration, NGPCs granted under the general permit prior to its expiration are administratively extended until sixty days after effective date of the reissued general permit, unless one of three actions are taken by the permittee. In the new process, permittees would have sixty days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly required information in the NOI to request coverage under the reissued general permit.

Section 4(a)

Original: *The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.*

Revised: *The owner or operator shall submit a complete notice of intent thirty days before the proposed starting date of the discharge, and at least thirty days before the expiration date of this general permit.*

Rationale:

The previous text specified that the owner or its authorized representative shall submit the notice of intent no later than thirty days prior to discharge for new dischargers, and thirty days prior to expiration of their NGPC for existing dischargers. However, dischargers intending to be covered under the general permit must also submit their NOI prior to the expiration date of the general permit to receive coverage as NGPCs cannot be issued under expired general permits. As CWB also needs time to process the NOI, a thirty-day deadline (thirty days prior to the expiration of the general permit) was added,

which is the same timeframe for a new proposed discharge. The requirement for permittees to submit an NOI prior to the expiration date of their NGPC was removed, to prevent conflict with the new renewal process.

As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was also added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to submit the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.

Section 4(b)

Original: *The owner or its duly authorized representative shall include the following information in the notice of intent:*

Revised: *The owner or operator shall include the following information in the notice of intent:*

Rationale:

The previous text specified that the owner or its authorized representative shall provide information for the notice of intent. As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to provide information in the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.

Section 4(b)(2)

Original: *Legal name, street address, telephone and fax numbers, and contact person(s) for the designer(s) of the dewatering or treatment facility(ies) or both;*

Revised: *Legal name, street address, telephone number, and contact person(s) for the designer(s) of the dewatering or treatment facility(ies) or both;*

Rationale:

The DOH no longer requires or uses fax numbers. The requirement to submit a fax number is proposed to be removed.

Section 4(d)

Original: *The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:*

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

Revised: *The initial notice of intent shall be signed by the certifying person as described in section 11-55-07(a). A revised notice of intent (a notice of intent that the department has required to be revised and resubmitted) shall be signed by either the certifying person or duly authorized representative as described in section 11-55-07(b).*

Rationale:

The original text has been moved to the new section 4(e). The revised section 4(d) was revised to clarify the signatory requirements of the notice of intent. Previously, the DOH would receive questions on who must sign the notice of intent and revised notice of intent (as applicable). The intent of this revision is to clarify the signatory abilities of the certifying person and authorized representative. These signatory requirements are already in practice in current notice of intent processing procedures.

Section 4(e) [New]

Original *[From the previous section 4(d)]: The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:*

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

Revised: *The owner or operator shall submit a complete notice of intent to the director at the following address or as otherwise specified:*

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

Rationale:

Most of the original text comes from the previous section 4(d). The previous text specified that the owner or its authorized representative shall submit the notice of intent. As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to provide information in the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.

Section 6(a)

Original: *The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.5 (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)*

Revised: *The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.5.*

Rationale:

As the proposed permit will not allow discharges of toxics above water quality standards, effluent limitations for toxics are not included in the proposed permit. The sentence in parentheses applied to effluent limitations for toxic constituents. Therefore, in accordance with the new restrictions and removal of toxic effluent limitations, the language in parentheses was removed. Further, applicability of limits based on discharges to fresh waters or saline waters are now exclusively identified in footnotes to Table 34.5 for clarity.

Removal of toxic effluent limitations in the proposed permit are discussed later in this fact sheet.

Section 6(a)(4)(C)

Original: *If the test result is not detectable, indicate;*

Revised: *If the test result is not detectable, the permittee shall indicate that;*

Rationale:

The DOH is clarifying who shall provide the indication.

Section 8(a)(2)

Original: *The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.*

Revised: *The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period. The reporting period begins on the effective date of the issued notice of general permit coverage (e.g., if the notice of general permit coverage effective date is January 16th, monitoring results shall be reported no later than February 28th).*

Rationale:

Previously, the general permit did not include language that explicitly stated when the first reporting period began. This caused confusion among permittees, as the due date for their first DMR was left up to interpretation. Some may interpret the general permit requirements as being required to begin submissions from the issue date of the NGPC, while others may interpret it as beginning when discharge activities begin. Regulatorily, once the NGPC is issued, the permittee is required to comply with the general permit as applicable. Section 8(a)(5) specifies that permittees must submit a DMR specifying “no discharge” when no discharge activities occur in a calendar month. Based on this, the intent of these reporting requirements is to have permittees regularly report to the Clean Water Branch monthly regardless of whether there was a discharge in the calendar month reporting period. Therefore, this revision was made to explicitly state that reporting begins as soon as the notice of general permit coverage is effective, in accordance with the intent of the general permit’s reporting requirements.

Section 8(a)(3)

Original: *If there is more than one discharge in a single month, report the monthly maximum, monthly minimum, and monthly average values for each parameter on the discharge monitoring report.*

Revised: *For the purposes of reporting, the permittee shall use the reporting threshold equivalent to the laboratory's method detection limit (MDL) and must utilize a standard calibration where the lowest standard point is equal or less than the concentration of the minimum level (ML).*

(A) The permittee shall report sample results and calculations at or above the laboratory's ML on DMRs as the measured concentration or calculation.

(B) The permittee shall report sample results and calculations below the laboratory's MDL as NODI(B) on the DMR. NODI(B) means that the concentration of the pollutant in the sample is not detected.

(C) The permittee shall report sample results and calculations between the ML and MDL as NODI(Q) on the DMR. NODI(Q) means that the concentration of the pollutant in a sample is detected, but not quantified.

(D) For purposes of calculating averages, zero shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting average value must be compared to the effluent limitation or the ML, whichever is greater, in assessing compliance.

(E) For purposes of calculated geometric means, $0.25 \times \text{MDL}$ shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting geometric mean must be compared to the effluent limitation of the ML, whichever is greater, in assessing compliance.

(F) When NODI(Q) or NODI(B) is reported for a parameter, the laboratory's numeric ML and MDL for that parameter shall also be noted on the DMR or on an attachment.

Rationale:

Requirements on reporting when collecting additional data are now solely identified in Table 34.5 Footnote {2} in the proposed revision, and therefore, the previous language has been replaced. To reduce the need for re-numbering sections, new language regarding reporting of monitoring results have been added to replace the previous section 8(a)(3) language. This language specifies how to report quantifiable, non-quantifiable, and non-detected results, as well as how to calculate averages and geomeans that include these results. This new language is to update the general permit to be in accordance with current compliance practices and procedures.

Sections 8(c)(2)

Original: The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.

Revised: The permittee or its duly authorized representative shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.

Rationale:

Section 8(c)(1) specifies that the permittee or its duly authorized representative shall orally report certain noncompliances. Section 8(c)(2) was revised to be consistent with section 8(c)(1) and specify that the permittee's duly authorized representative is also responsible for making oral reports to the DOH at the identified phone numbers.

Section 8(c)(3)

Original: The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:

Revised: *The permittee or its duly authorized representative shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:*

Rationale:

Section 8(c)(1) specifies that the permittee or its duly authorized representative shall orally report certain noncompliances. Section 8(c)(3) was revised to be consistent with section 8(c)(1) and specify that the permittee's duly authorized representative is also responsible for making written reports.

Section 8(d) [Removed]

Original: *The permittee shall notify the director of the start of the dewatering activities in writing within one week before the start of the dewatering activities.*

Revised: (REMOVED)

Rationale:

Previously, this requirement would be used to track when dewatering activities would begin for CWB's own records and use. In the past, this information has typically not been used to perform any compliance activities. Regulatorily, once the NGPC is effective, the permittee is required to comply with the terms of the general permit regardless of when discharge activities begin. Further, section 8(a)(2) has been revised to clarify that the reporting period begins on the effective date of the NGPC, with permittees reporting "no discharge" for calendar months with no discharge activities. Therefore, CWB would be able to determine when discharge activities begin based on what is reported in the DMR, should that information be necessary for regulatory actions. Ultimately, this requirement created additional reporting requirements on the permittee, and additional compliance submission processing time for CWB, for no real benefit to CWB's regulatory oversight and therefore has been removed.

Section 9(a)

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

*Director of Health
Clean Water Branch*

*Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378*

Revised: *The permittee or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:*

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

Rationale:

Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

Section 9(b)

Original: *The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):*

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

Revised: *The permittee or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):*

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the

information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Rationale:

Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

Section 9(c)

Original: *The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence may be a basis for delay of the processing of the document(s).*

Revised: *The permittee or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence may be a basis for delay of the processing of the document(s).*

Rationale:

Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

Section 13 [Removed]

Original: *Requests for renewal of general permit coverage must be received no later than 30 calendar days before the expiration of the general permit coverage.*

Revised: (REMOVED)

Rationale: *Request for renewals requires the permittee to certify in the NOI that they will comply with the new general permit. Request for renewals should not be submitted before the new general permit is issued. The*

permittee will not know of the new general permit requirements if the new general permit cannot be issued before the existing general permit expires. Section 3(c) has been revised to require the renewal NOI be submitted within sixty days after the effective date of the reissued general permit. See the rationale for Section 3(c) above.

Section 14

Original: 14. Forms

Electronic notice of intent forms may be found at the Department's e-Permitting portal. The e-Permitting portal may be accessed via the Clean Water Branch's website at: <http://health.hawaii.gov/cwb/>

Revised: 13. Forms

Electronic notice of intent forms may be found at the Department's e-Permitting portal. The e-Permitting portal may be accessed via the Clean Water Branch's website at: <http://health.hawaii.gov/cwb/>

Rationale:

Section 14 was re-numbered to section 13 to account for the removal of the previous section 13.

Table 34.5

Original:

Effluent Parameter	Effluent Limitations {1}	Minimum Monitoring Frequency	Type of Sample
Quantity of Discharge (GPD or gpm)	{2}	{3} {11}	Calculated or Estimated
Total Suspended Solids (mg/l)	{2}	{4} {11}	Grab
Turbidity (NTU)	{2}	{4} {11}	Grab

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Effluent Parameter	Effluent Limitations {1}	Minimum Monitoring Frequency	Type of Sample
Oil and Grease (mg/l)	15	{4} {11}	Grab {5}
pH (standard units)	{6}	{4} {11}	Grab {7}
Toxic Pollutants {8}	{9}	{4} {11}	{10}

GPD = gallons per day

gpm = gallons per minute

mg/l = milligrams per liter

NTU = nephelometric turbidity units

Revised:

Effluent Parameter	Effluent Limitations {1}	Minimum Monitoring Frequency {2}	Type of Sample
Quantity of Discharge (GPD or gpm)	{2} <u>Report</u>	{3} {11} <u>Once/Month</u>	Calculated or Estimated
Total Suspended Solids (mg/l)	{2} <u>55</u>	{4} {11} <u>Once/Month</u>	Grab
[Turbidity (NTU)]	{2}	{4} {11}	[Grab]
Oil and Grease (mg/l)	15	{4} {11} <u>Once/Month</u>	Grab {5} <u>{3}</u>

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Effluent Parameter	Effluent Limitations {1}	Minimum Monitoring Frequency {2}	Type of Sample
pH (standard units)	[6+] 6.0 - 8.0	[4+] [11+] Once/Month	Grab [7+] {4}
[Toxic Pollutants {8}]	[9+]]	[4+] [11+]]	[10+]]

GPD = gallons per day

gpm = gallons per minute

mg/l = milligrams per liter

NTU = nephelometric turbidity units

Rationale:

40 CFR 122.44(d)(1)(i) requires all NPDES permits, including general permits, to contain limitations on all pollutant parameters that may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above the State's Water Quality Standards.

Turbidity limits have been removed as the proposed imposition of treatment requirements under section 2(c)(1) and prohibition visible plumes in 2(c)(2) remove the potential for a compliant discharge to cause an exceedance of a water quality standard within a water body. A numeric Water Quality Based Effluent Limits (WQBEL) for Total Suspended Solids (TSS) for 55 mg/l was added. 55 mg/l is the dry season water quality criteria for inland streams, which are the only waterbody type for which there is a numeric TSS criteria. In establishing the numeric criteria for TSS at 55 mg/l, all waterbodies are afforded a minimum amount of treatment for the pollutants (solids) most likely to be present in discharges authorized by this permit. The numeric effluent becomes a minimum treatment design specification and also standardizes the limit set associated with TSS.

In addition, required numeric effluent limits for pollutants specified in HAR 11-54-4(c)(3) (referred to as "toxics") were also removed based on analysis of three years of discharge monitoring data from dewatering (Appendix G) general permitted facilities. Between 2018 and 2021 the DOH issued approximately 25 NGPCs associated with HAR 11-55, Appendix G. Of the 25 NGPCs, only six permittees reported any discharges and of the six, only one discharger reported discharges of toxic parameters greater than the

associated waterbody's water quality standards (NGPC, File No. HI19GF810). The other five of six permittees either did not report discharges or did not report exceedances of water quality standard based effluent limits for toxics. Given the small number of discharges who were subject to WQBELs for toxics, the largely episodic nature of the discharges, and the newly required treatment requirements under section 2(c)(1), numeric limits for TSS, and inclusion the narrative prohibition of discharges which cause exceedances of basic water quality criteria, there is no reasonable potential for the discharge to cause or contribute to an exceedance of water quality standards for toxics. Numeric limits must be established when a discharge may cause or contribute to an exceedance of water quality standards for any pollutant(s). The DOH has determined based on the reasons outlined above, that numeric limits for toxics are not necessary, and the new requirements in the proposed general permit such as treatment requirements and the narrative prohibition on discharges that exceed basic water quality criteria are stringent enough to prevent authorized discharges from degrading receiving water bodies.

In addition, the DOH is also not establishing effluent limitations for nutrients (i.e., total nitrogen, ammonia nitrogen, nitrate plus nitrite nitrogen, and total phosphorus). Water quality criterion for total nitrogen, ammonia nitrogen, nitrate plus nitrite, and total phosphorus, are established as geometric means and not to exceed percentiles. They are not based on potential toxicity to aquatic life or human health impacts and are instead based on natural background concentrations that would be expected without human influence on the environment and are developed from water quality observed at high quality reference stations.

Unlike toxics, nutrients are not conservative pollutants. Because of the biological and physical variables, there is a delay from when the parameter is discharged until impacts are observed. Additionally, some nutrient criteria, such as chlorophyll a and turbidity are reflective of response conditions and short-term exceedances are often not indicative of the long-term quality of the receiving water. Thus, it is long-term impacts resulting in the change of biota and eutrophication of the receiving waters that must be considered. These impacts result over extended periods of time, ranging from months to years. Biological responses in the receiving water from day-to-day variation in effluent pollutant concentrations are not significant, as chronic biological responses occur over months to years of continuous elevated nutrient loading. DOH-CWB evaluates consistency with these criteria based on a 1-year exposure duration to allow for seasonal fluctuations within the receiving water concentrations and acknowledging that the environmental response to nutrients typically occurs in the far-field and shows minimal response over short periods of time. As mentioned in the rationale for the proposed addition

of section 2(c) in the permit, discharges authorized by this permit are often episodic, low volume, and compositionally variable throughout the discharge period (i.e. discharging prior to construction activity vs. discharging during construction activity). The DOH expects there will be no water quality impacts or degraded waterbody conditions by not including numeric effluent limits for nutrients. For this reason, the DOH has decided not to require limitations on nutrients in this permit.

Satisfaction of Anti-Backsliding Requirements

The CWA specifies that a revised permit may not include effluent limitations that are less stringent than the current permit unless a less stringent limitation is justified based on exceptions to the anti-backsliding provisions contained in CWA Sections 402(o) or 303(d)(4), or, where applicable, 40 CFR 122.44(l).

The proposed construction dewatering effluent discharge requirements align with the EPA's issued NPDES permit that authorize similar discharges.

Effluent limitations for pH were revised to apply one standard pH range effluent limitation to all discharges. As discharges are infrequent, changes in pH in the waterbody are expected to be relatively short and localized. The proposed range is expected to be protective of all types of waterbodies for the reasons listed above, while still prohibiting discharge of extreme pH values from construction dewatering effluent that may potentially have immediate impacts at the location of discharge. Therefore, the limits are at least as stringent as the previous permit.

Removal of the toxic pollutant limit complies with anti-backsliding requirements, as there is now an explicit narrative prohibition on discharges that exceed toxic parameter water quality standards in HAR 11-54. Based on this prohibition, discharges covered under this permit will not have reasonable potential to cause or contribute to exceedances of water quality standards for toxic parameters. Therefore, the removal of the numeric effluent limitation for toxic parameters and the addition of the new prohibition means that the requirements for toxic parameters are more stringent than the previous permit.

Satisfaction of Antidegradation Policy Requirements

The DOH established the State antidegradation policy in HAR, 11-54-1.1, which incorporates the federal antidegradation policy at 40 CFR 131.12. HAR, 11-54-1.1 requires that the existing quality of waters be maintained unless degradation is justified based on specific findings demonstrating that allowing lower water quality is necessary to accommodate economic or social development in the area in which the waters are located.

The conditions in the proposed permit, are no less stringent than in the current/previous permit. As explained above, the proposed permit is utilizing a different approach which follows EPA's NPDES permit and places greater emphasis on control measures and treatment to minimize further pollutant discharges than on exceeding a singular per discharge monitoring requirement that doesn't reflect the variable nature of effluent quality. The discharges are often episodic, low volume, and compositionally variable throughout the discharge period.

Therefore, the proposed Appendix G is consistent with antidegradation provisions of 40 CFR 131.12 and HAR 11-54-1.1. The impact on existing water quality will be insignificant and the level of water quality necessary to protect the existing uses will be maintained and protected.

Table 34.5 Footnote 1

Original: *Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.*

Revised: *Pollutant concentration levels shall not exceed the single sample maximum effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.*

Rationale:

The previous language did not specify the type of effluent limitation that was established for pollutants. To clarify, the term "single sample maximum" was added to footnote 1. As the permittee is required to sample once per discharge, it is appropriate to clarify that the effluent limitation is a single sample maximum (i.e., each discharge must comply with effluent limitations).

Table 34.5 Footnote 2

Original: *The value shall not exceed the applicable limit as specified in chapter 11-54 for the applicable classification of the receiving state waters. If no limitation is specified in chapter 11-54, then the permittee shall monitor and report the analytical result.*

Revised: *The permittee shall take a minimum of one sample for each month that is representative of the discharge. If the permittee collects more than*

one sample during the month, the maximum value for each pollutant parameter shall be reported. For pH, only report the minimum and maximum for the month. Laboratory results of all sampling shall be included with the discharge monitoring report.

Rationale:

The previous language only applied to flow, TSS, and turbidity limits. As the TSS limit changed to a single value applicable to all discharges and the turbidity limit was removed, the previous language was replaced. For flow, the term "Report" was substituted for footnote 2.

The new language in footnote 2 provides directions and requirements for reporting when more than one sample is taken in a month. This language replaces the previous language in footnote 11.

Table 34.5 Footnotes 3 and 4 [Removed]

Original: {3} For intermittent discharges, flow measurement shall be taken once for each discharge for the duration of the discharge. For continuous discharge, continuous flow measurement is required.

{4} For intermittent discharges, the sample shall be taken once for each discharge. For continuous discharge, the sample shall be taken at least once per week.

Revised: (REMOVED)

Rationale:

These footnotes are no longer applicable. The proposed general permit requires collection of a representative sample of the discharge and analysis once a month. It does not distinguish between intermittent and continuous discharges.

Table 34.5 Footnote 5

Original: {5} Oil and Grease shall be measured by EPA Method 1664, Revision A.

Revised: {3} Oil and Grease shall be measured by EPA Method 1664, Revision A.

Rationale:

Renumbered due to the removal of footnotes 3 and 4.

Table 34.5 Footnote 6 [Removed]

Original: *The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.*

Revised: (REMOVED)

Rationale:

As the pH effluent limitation has been revised to have one pH range applicable to all discharges, this language is no longer applicable. Therefore, footnote 6 was removed.

Table 34.5 Footnote 7

Original: *{7} The pH shall be measured within fifteen minutes of obtaining the grab sample.*

Revised: *{4} The pH shall be measured within fifteen minutes of obtaining the grab sample.*

Rationale:

Renumbered due to the removal of footnotes 3, 4, and 6.

Table 34.5 Footnote 8 [Removed]

Original: *The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 only if they are identified as potential pollutants requiring monitoring in the notice of intent or as identified by the director. For dewatering processes involving only the treated storm water discharges, only those potential pollutants identified in the site characterization report need to be monitored. The permittee shall measure for the total recoverable portion of all metals.*

Revised: (REMOVED)

Rationale:

As the toxics effluent limitation has been removed in the proposed permit, this language is no longer applicable. Therefore, footnote 8 was removed.

Table 34.5 Footnote 9 [Removed]

Original: *Effluent limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters. For pollutants*

which do not have established acute water quality standards, the permittee shall report any detected concentration greater than 0.01 µg/l.

Revised: (REMOVED)

Rationale:

As the toxics effluent limitation has been removed in the proposed permit, this language is no longer applicable. Therefore, footnote 9 was removed.

Table 34.5 Footnote 10 [Removed]

Original: *The permittee shall measure for cyanide, temperature, bacterial counts, and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a composite sample.*

Revised: (REMOVED)

Rationale:

As the toxics effluent limitation has been removed in the proposed permit, language is no longer applicable. Therefore, footnote 10 was removed.

Table 34.5 Footnote 11 [Removed]

Original: *If there is more than one discharge per month in a single monitoring location, report for each parameter the monthly maximum, monthly minimum, and monthly average values on the discharge monitoring report. For pH, only report monthly minimum and monthly maximum.*

Revised: (REMOVED)

Rationale:

As the effluent limitations in the proposed permit are single sample maximums, monthly minimums and monthly averages are not relevant (except monthly minimum for pH). Requirements for reporting results when there is additional sampling in the month are now in footnote 2. Therefore, footnote 11 was removed, with the remaining relevant language moved to footnote 2.

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

Not applicable.

- (6) A description of the procedures for reaching a final decision on the draft permit including:
- (i) The beginning and ending dates of the comment period under 40 CFR §124.10 and the address where comments will be received;
 - (ii) Procedures for requesting a hearing and the nature of that hearing; and
 - (iii) Any other procedures by which the public may participate in the final decision.

Refer to HAR 11-1-51 procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix G within HAR Chapter 11-55, Water Pollution Control.

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

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

- (8) For NPDES permits, provisions satisfying the requirements of 40 CFR §124.56.

The CWA requires that discharges from existing facilities, at a minimum, must meet technology-based effluent limitations (TBELs) reflecting, among other things, the technological capability of permittees to control pollutants in their discharges. Water quality-based effluent limitations (WQBELs) are required by CWA Section 301(b)(1)(C). Both TBELs and WQBELs are implemented through NPDES permits.

For this permit, the limits are WQBELs because effluent limitation guidelines and TBELs do not apply.

The proposed HAR 11-55, Appendix G, Section 2(c) implements the 40 CFR 450.21(c) requirement that prohibits “discharges from dewatering activities, including discharges from dewatering of trenches and excavations” unless managed by “appropriate controls.” The specific restrictions in HAR 11-55, Appendix G, Section 2(c) provide the permit’s interpretation of what is meant by “appropriate controls” in 40 CFR 450.21(c).

- (9) Justification for waiver of any application requirements under 40 CFR §122.21(j) or (q) of this chapter.

Not applicable.