

**§11-55-34.02 General permit authority and adoption. (a)**

The director may adopt general permits.

(b) The appendices located at the end of this chapter are adopted and incorporated by reference as general permits for the following applicable categories of sources:

- (1) Appendix B, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities" for discharges composed entirely of storm water associated with certain industrial activities as identified in 40 CFR §§122.26(b)(14)(i) through 122.26(b)(14)(ix) and §122.26(b)(14)(xi), dated January 15, 2022;
- (2) Appendix C, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity" for storm water discharges from construction activities which result in the disturbance of five acres or more of total land area or small construction activities which result in the disturbance of one to less than five acres of total land area 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, dated [~~February 9, 2019~~;  
(new effective date)];
- (3) Appendix D, titled "NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities" for the discharge of treated effluent from the leaking underground storage tank remedial activities, dated \_\_\_\_\_; (to be sent to Gov for signature soon)
- (4) Appendix E, titled "NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day" for the discharge of once-through, non-contact cooling water for one million gallons per day or less, dated January 15, 2022;
- (5) Appendix F, titled "NPDES General Permit Authorizing Discharges of Hydrotesting Waters" for the discharge of non-polluted hydrotesting water, dated January 15, 2022;
- (6) Appendix G, titled "NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering" for the discharge of dewatering effluent from a construction activity, dated January 15, 2022;
- (7) Appendix H, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated

with Petroleum Bulk Stations and Terminals” for the discharge of treated process wastewater effluent from petroleum bulk stations and terminals, dated

- \_\_\_\_\_ ; (to be sent to Gov for signature soon)
- (8) Appendix I, titled “NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities” for the discharge of treated process wastewater effluent associated with well drilling activities, dated \_\_\_\_\_ ; (to be sent to Gov for signature soon)
- (9) Appendix J, titled “NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems” for the discharge of treated process wastewater effluent from recycled water distribution systems, dated [~~February 9, 2019;~~] **(new effective date)**;
- (10) Appendix K, titled “NPDES General Permit Authorizing Discharges of Storm Water and Certain Non-Storm Water Discharges from Small Municipal Separate Storm Sewer Systems” for the discharge of storm water and certain non-storm water discharges from a small municipal separate storm sewer system as defined in 40 CFR §122.26(b)(16), dated January 15, 2022;
- (11) Appendix L, titled “NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks” for the discharge of circulation water from decorative ponds or tanks, dated [~~February 9, 2019;~~] **(new effective date)**; and
- (12) Appendix M, titled “NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides”, dated (to be sent to Gov for signature soon). [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; am and comp 10/21/12; am and comp 12/06/13; comp 11/15/14; am and comp 02/09/19; am and comp 10/22/21; am and comp 01/15/22; am and comp \_\_\_\_\_ ; am and comp \_\_\_\_\_ ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 123.25(a)(11))

**§11-55-42 Intake credits.** (a) An intake credit is an NPDES implementation tool that applies to the

implementation of water quality standards through NPDES permits only.

(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 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 discharge) is similar to that in the intake water; and
- (2) There is a direct hydrologic connection between the intake and discharge points; and
- (3) Water quality characteristics (e.g. temperature, pH, hardness) are similar in the intake and receiving waters.

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.

(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:

- (1) To the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the intake pollutant value; and
- (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 intake 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.

(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 and have been approved by the U.S. Environmental Protection Agency unless the TMDL and WLA provide for such an intake credit.

(e) The director shall grant credit for water quality-based effluent limits only if:

- (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;
- (2) The facility does not chemically or physically alter the intake pollutant in a manner that would cause adverse water quality impacts to occur;
- (3) The timing and location of the discharge of the intake pollutant would not cause adverse water quality impacts to occur; and~~[7]~~
- (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.]~~ chapter 11-54.

(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.

(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:

- (1) Documentation showing a complete and detailed description of present conditions and how present conditions do not conform to standards; ~~[and]~~
- (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
- (3) Documentation showing that pollutant(s) for which credits are being requested actually come(s) from the intake water.

(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:

- (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

(2) All credit for intake pollutants developed under this section shall be re-evaluated upon permit renewal.

(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.

(j) All other water quality criteria established under [this] chapter 11-54 continue to apply. [Eff and comp 10/22/21; comp 01/15/22; comp ; am and comp ]  
(Auth: HRS §§342D-4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, 342D-6, Ch. 342E)

# 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:

- Reissuance of NPDES general permits:
  - Appendix C authorizing discharges of storm water associated with construction activities
  - Appendix J authorizing occasional or unintentional discharges from recycled water systems
  - Appendix L authorizing discharges of circulation water from decorative ponds or tanks.
- References to HAR Chapter 11-54 in 11-55-42 Intake water.

Section	Current	Proposed	Rationale
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.

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

Section	Current	Proposed	Rationale
11-55-34.02(b)(2)	Appendix C, titled “NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity” for storm water discharges from construction activities which result in the disturbance of five acres or more of total land area or small construction activities which result in the disturbance of one to less than five acres of total land area 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, dated February 9, 2019;	Appendix C, titled “NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity” for storm water discharges from construction activities which result in the disturbance of five acres or more of total land area or small construction activities which result in the disturbance of one to less than five acres of total land area 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, dated _____;	Update issuance date of Appendix C.
11-55-34.02(b)(9)	Appendix J, titled “NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems” for the discharge of treated process wastewater effluent from recycled water distribution systems, dated February 9, 2019;	Appendix J, titled “NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems” for the discharge of treated process wastewater effluent from recycled water distribution systems, dated _____;	Update issuance date of Appendix J.
11-55-34.02(b)(11)	Appendix L, titled “NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks” for the discharge of circulation water from decorative ponds or tanks, dated February 9, 2019;	Appendix L, titled “NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks” for the discharge of circulation water from decorative ponds or tanks, dated _____;	Update issuance date of Appendix L.
11-55-42(e)(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.	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 <u>chapter 11-54</u> .	Revise reference of water quality criteria from “this chapter” to “chapter 11-54” due to the move of the intake water rule from 11-54 to 11-55.

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

Section	Current	Proposed	Rationale
11-55-42(j)	All other water quality criteria established under this chapter continue to apply.	All other water quality criteria established under chapter <u>11-54</u> continue to apply.	Revise reference of water quality criteria from “this chapter” to “chapter 11-54” due to the move of the intake water rule from 11-54 to 11-55.
Adoption text	Stamped adoption date and previous public hearing and hearing notice.	Placeholder	Left placeholders to be filled in after adoption.