

# 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:

- Listing types of discharges that may be discharged without NPDES permit coverage if they're not a significant source of pollutants.
- Requiring a certification statement for all submittals.
- Documenting electronic signature submittal requirements.
- Revisions to Appendix A – Standard General Permit Conditions.
- Reissuance of NPDES general permits:
  - Appendix D authorizing discharges of treated effluent from leaking underground storage tank remedial activities
  - Appendix H authorizing discharges of treated process wastewater associated with petroleum bulk stations and terminals
  - Appendix I authorizing discharges of treated process wastewater associated with well drilling activities
  - Appendix M authorizing point source discharges from the application of pesticides.

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- Addition of offenses that may be addressed by a field citation and increasing of the monetary penalties.
- Reorganization of the zone of mixing rule.

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.
11-55-01	None	“Authorized Representative” means an individual who has been duly authorized by the certifying person and given the express, implied, and apparent authority to act on behalf of the certifying person as a signatory for legally binding documents such as reports or other information submitted to the department in accordance with section 11-55-07(b).	Define “authorized representative” as used throughout 11-55.
11-55-01	None	“Certifying Person” means an individual who meets the signatory requirements in section 11-55-07(a).	Define “certifying person” as used throughout 11-55.
11-55-01	“Pest management measure” means any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to State waters.	“Pest management measure” means any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to State waters <u>from pesticide application</u> .	Clarifying this applies to discharges from pesticide application.

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Section	Current	Proposed	Rationale
11-55-01	None	“Pesticide discharges to State waters from pesticide application” means the discharges that result from the application of biological pesticides or chemical pesticides that leave a residue from point sources to State waters. In the context of this definition of pesticide discharges to State waters from pesticide application, this does not include agricultural storm water discharges and return flows from irrigated agriculture, which are excluded by law.	Define “pesticide discharges to State waters from pesticide application” as used in Appendix M.
11-55-01	“Pesticide residue” includes that portion of a pesticide application that is discharged from a point source to State waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.	“Pesticide residue” <u>for the purpose of determining whether an NPDES permit is needed for pesticide discharges to State waters from pesticide application, means</u> that portion of a pesticide application that is discharged from a point source to State waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.	Revised definition of “pesticide residue” to match definition used in Appendix M.
11-55-03	General prohibition. No person shall violate any provision of section 342D-50, HRS, or any NPDES permit issued under this chapter.	General prohibition. <u>(a) No person shall violate any provision of section 342D-50, HRS. (b) No person, including any public body, shall discharge any water pollutant into State waters, or cause or allow any water pollutant to enter State waters except in compliance with this chapter 342D, HRS, rules adopted pursuant to chapter 342D, HRS, a permit or variance issued by the director.</u>	Explicitly state that there shall be no discharges to state waters unless authorized by a permit or variance.
11-55-04(a)	Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area,	A person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), complete notice of intent (except for the point source discharges from the application of pesticides, if not required under Appendix M) or “no exposure” certification for certain storm water discharges which meet all	Reorganized statements for clarity.

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Section	Current	Proposed	Rationale
	<p>or substantially altering the quality of any discharges, or substantially increasing the quantity of any discharges, or for regulated small municipal separate storm sewer systems, unless the director waives NPDES permit coverage in accordance with 40 CFR §122.32(d) or (e), a person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), submit a complete notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M) or, for certain storm water discharges, meet all requirements for a conditional "no exposure" exclusion.</p>	<p>requirements for a conditional "no exposure" exclusion:</p> <ol style="list-style-type: none"> <li>(1) Before discharging any pollutant;</li> <li>(2) Before substantially altering the quality of any discharges;</li> <li>(3) Before substantially increasing the quantity of any discharges;</li> <li>(4) Before beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land 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;</li> <li>(5) Before beginning discharge from sources or activities identified and described in 40 CFR §122.23 through §122.27;</li> <li>(6) For small regulated municipal storm sewer systems, unless the director waives NPDES permit coverage in accordance with 40 CFR §122.32(d) or (e).</li> </ol>	
11-55-04(j)	None	<p><u>Exclusions:</u></p> <ol style="list-style-type: none"> <li>(1) An NPDES permit may not be required provided that the discharges are consistent with the exclusions identified in 40 CFR §122.3 or have a de minimus impact on water quality due to the quantity or quality of the discharge as determined by the director.</li> <li>(2) The discharge shall not be reasonably expected (based on information available to the department) to be significant sources of pollutants to State waters.</li> </ol>	<p>Add list of non-storm water discharges that may be discharged without an NPDES permit if they are not a significant source of pollutants, similar to discharges allowed to permitted MS4s.</p>

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Section	Current	Proposed	Rationale
		<p>(3) Discharges which do not require an NPDES permit unless found to cause or contribute to a waterbody exceeding narrative or numeric water quality criterion in chapter 11-54 include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>(A) Water line flushing (using potable water);</li> <li>(B) Landscape irrigation (using potable water);</li> <li>(C) Diverted stream flows;</li> <li>(D) &lt;Reserved&gt;</li> <li>(E) Uncontaminated pumped ground water infiltration (as defined in 40 CFR §35.2005[20]) to separate storm sewers;</li> <li>(F) Uncontaminated pumped groundwater;</li> <li>(G) Discharges from potable water sources;</li> <li>(H) Discharges from foundation drains;</li> <li>(I) Air conditioning condensate;</li> <li>(J) Irrigation water (using potable water);</li> <li>(K) Springs;</li> <li>(L) Uncontaminated water from crawl space pumps and footing drains;</li> <li>(M) Lawn watering (using potable water);</li> <li>(N) Individual residential car washing (using potable water);</li> <li>(O) Flows from riparian habitats and wetlands;</li> <li>(P) Dechlorinated freshwater swimming pool discharges to non-marine environments;</li> </ul>	

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		<p>(Q) Low pressure rinsing of sidewalks without chemical additives (using potable water); and,                      (R) Discharges or flows from firefighting activities.</p> <p>Exclusions for agriculture are limited to discharges identified in 40 CFR §122.3, or agricultural land that implements practices consistent with section 11-54-4(d), or section 11-56), but do not include storm water or wastewater discharges from construction or industrial activities associated with the construction or operation of agricultural facilities.</p>	
11-55-07(c)	None	If the certifying person changes, the new certifying person shall notify the department and provide their contact information on a form as specified by the director.	Requires a new certifying person to notify the department of the change and provide their contact information so the department can update permit records.
11-55-07(d), formerly (c)	If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.	If an authorization under subsection (b) is no longer accurate because <u>the certifying person changed</u> or a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.	Requires submittal of new authorization of authorized representative upon change of the certifying person.

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Section	Current	Proposed	Rationale
11-55-07(e)		Any person signing a document under subsections (a), (b), or (c) shall make the following certification: “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.”	Document the certification statement required for all submittals.
11-55-07(f)		Electronic reporting. If documents described in subsections (a) or (b) are submitted electronically by or on behalf of the NPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section, and shall ensure that all of the relevant requirements of 40 CFR Part 3 (including, in all cases, subpart D to Part 3)(Cross-Media Electronic Reporting) and 40 CFR Part 127 (NPDES Electronic Reporting Requirements) are met for that submission.	Document requirements for signatories providing submittals using an electronic signature.
11-55-34.02(b)(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 July 13, 2018;	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 _____;	Update issuance date of Appendix D.

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Section	Current	Proposed	Rationale
11-55-34.02(b)(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 July 13, 2018;	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 _____;	Update issuance date of Appendix H.
11-55-34.02(b)(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 July 13, 2018;	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 _____;	Update issuance date of Appendix I.
11-55-34.02(b)(12)	Appendix M, titled “NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides”, dated July 13, 2018.	Appendix M, titled “NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides”, dated _____.	Update issuance date of Appendix M.
11-55-34.08(e)	Any notice of intent form submitted to the director shall be signed in accordance with section 11-55-07(a).	Any notice of intent form submitted to the director shall be signed <u>by the certifying person</u> .	Replaced the rule reference with “certifying person” for clarity.
11-55-34.08(f)	All other reports or responses to requests for information required by the director shall be signed in accordance with section 11-55-07(b).	All other reports or responses to requests for information required by the director shall be signed <u>by either the certifying person or authorized representative</u> .	Replaced the rule reference with “certifying person or authorized representative” for clarity.
11-55-34.08(g)	Any change in the written authorization submitted to the director under subsection (f) which occurs after the issuance of a permit shall be reported to the director by submitting a copy of a new written authorization which meets the requirements of subsections (e) and (f).	Any change <u>of the certifying person or authorized representative</u> which occurs after the issuance of a permit shall be reported to the director. <u>A change in authorized representative</u> shall be reported to the director by submitting a copy of a new written authorization which meets the requirements of <u>section 11-55-07(b)</u> .	In addition to a change of the authorized representative, rule requires notification of change of the certifying person.



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Section	Current	Proposed	Rationale
11-55-34.08(h)	Any person signing a document under subsections (e) and (f) shall make a certification in accordance with 40 CFR §122.22(d).	Any person signing a document under subsections (e) and (f) shall make the following certification: <u>“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.”</u>	Document the certification statement required for all general permit submittals.
11-55-34.08(p)	None	<u>Electronic reporting. If documents described in subsections (e) or (f) are submitted electronically by or on behalf of the NPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section, and shall ensure that all of the relevant requirements of 40 CFR Part 3 (including, in all cases, subpart D to Part 3)(Cross-Media Electronic Reporting) and 40 CFR Part 127 (NPDES Electronic Reporting Requirements) are met for that submission.</u>	Document requirements for signatories providing general permit submittals using an electronic signature.
11-55-40(b)(1)(A) formerly 11-55-40(1)(i)	Any person who discharges or causes or allows a discharge of pollutants into State waters or municipal separate storm sewer systems without coverage under an NPDES permit, or in excess of limitations established by an NPDES permit;	Any person who discharges or causes or allows a discharge of pollutants into State waters or municipal separate storm sewer systems without coverage under an NPDES permit, or in <u>non-compliance of an NPDES permit</u> ;	Language added such that if a discharger does have a permit, but exceeds limits, field citation can be utilized. Prevents unnecessarily large and complex penalties for smaller violations.

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Section	Current	Proposed	Rationale
11-55-40(b)(1)(B) formerly 11-55-40(1)(A)(ii)	Any person who begins an activity prior to obtaining the required individual NPDES permit, coverage under a general permit, and/or authorization from the director;	Any person who begins an activity <u>or discharge</u> prior to obtaining the required individual NPDES permit, coverage under a general permit, and/or authorization from the director;	Added language to clarify that the field citation is applicable when someone who requires permit coverage discharges without a permit, not just starts the activity.
11-55-40(b)(1)(C) formerly 11-55-40(1)(A)(iii)	Any person who fails to correctly install, implement, maintain, or repair site best management practices as called for in their storm water pollution control plan, best management practices plan, or other plan;	Any person who fails to correctly install, implement, maintain, or repair site best management practices, <u>treatment system, pollution control device or who fails to provide and/or receive training</u> as called for <u>by the applicable NPDES permit, in whole or in part;</u>	Added language to clarify that the Field Citation is applicable when a discharger fails to meet specific requirements such as installing or maintaining required treatment systems or conduct training. The added language facilitates timely resolution to smaller violations as those identified.
11-55-40(b)(1)(D) formerly 11-55-40(1)(iv)	Any person who fails to monitor as required by the applicable NPDES permit, in whole or in part;	Any person who fails to <u>conduct monitoring, including visual monitoring or inspections,</u> as required by the applicable NPDES permit, in whole or in part;	Added language to clarify that “monitoring” includes visual monitoring and oversight inspections required to ensure compliance with the permit.
11-55-40(b)(1)(E)(ii) formerly 11-55-40(1)(v)b)	storm water pollution control plan, best management practices plan or all other plans required in the NPDES permit and NGPC and all subsequent revisions,	storm water pollution control plan, <u>storm water pollution prevention plan, storm water management plan,</u> best management practices plan or all other plans required in the NPDES permit <u>or</u> NGPC and all subsequent revisions,	Added language to clarify and account for the various different plan names referenced in various NPDES permits.
11-55-40(b)(1)(F) formerly 11-55-40(1)(vi)	Any person who fails to submit documents, reports, and/or submittals as required by the applicable NPDES permit, in whole or in part, including but not limited to discharge monitoring reports, monthly compliance information, pollution prevention plans, notification to the director, and/or notices of cessation.	Any person who fails to submit documents, reports, and/or submittals as required by the applicable NPDES permit, in whole or in part, including but not limited to <u>notices of start, discharge monitoring reports, reports of non-compliance,</u> monthly compliance information, pollution prevention plans, notification to the director, and/or notices of cessation;	Added language to clarify that notices of start and reports of non-compliance, both required by permits, are specifically captured by this Field Citation. Previously, they were captured but were not specifically identified.
11-55-40(b)(1)(G)	None	Any person who fails to update their storm water pollution control plan, storm water pollution prevention plan, best management practices plan, or other plan as required by	Added a category for situations when a discharger fails to update plans as required by the permit. The addition facilitates timely resolution when violation of this nature occur.

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Section	Current	Proposed	Rationale
		the applicable NPDES permit, in whole or in part;	
11-55-40(b)(1)(H)	None	Any person who submits a document without the appropriate signature or certification statement.	Category added to provide an option for a Field Citation when this type of violation is identified. The added language facilitates timely resolution for this type of situation.
11-55-40(b)(2)(A) through (C) formerly 11-55-40(2)(i) through (iii)	(i) \$500 for any person who violates paragraphs (1)(A)(i), (ii), (iii), or (iv) for the first violation, and \$2,000 for a subsequent violation; (ii) \$100 for any person who violates paragraph (1)(A)(v) for the first violation, and \$200 for a subsequent violation; (iii) \$500 for any person who violates paragraph (1)(A)(vi) for the first violation, and \$1,000 for a subsequent violation.	(A) <u>\$1,000</u> for any person who violates paragraphs (b)(1)(A), (B), (C), or (D) for the first violation, and <u>\$4,000</u> for a subsequent violation; (B) <u>\$200</u> for any person who violates paragraph (b)(1)(E) for the first violation, and <u>\$400</u> for a subsequent violation; (C) <u>\$1,000</u> for any person who violates paragraph (b)(1)(F), (G), or (H) for the first violation, and <u>\$2,000</u> for a subsequent violation.	Field citations were initially authorized in 2007. The penalties have not changed since original adoption. The increased penalties maintains levels that promote timely resolution while maintaining the deterrent effect intended.
11-55-41(a)	Zones of mixing are defined and authorized for use in discharge permits in section 11-54-1. Zones of mixing allow for dilution of wastes before compliance with the applicable water quality criteria must be met. Zones of initial dilution are a subset of zones of mixing that are applied to toxic pollutants.	Zones of mixing are defined and authorized for use in NPDES permits in section 11-54-1. <u>This only applies to NPDES individual permits.</u> Zones of mixing allow for dilution of wastes before compliance with the applicable water quality criteria must be met. Zones of initial dilution are a subset of zones of mixing that are applied to toxic pollutants.	Specify that zones of mixing only apply to NPDES individual permits.
11-55-41(b)		Reorganized existing text.	Clarified requirements and reorganized to consolidate similar requirements into their own sections. Except for changes identified in this fact sheet, the original text was only moved/ reorganized and not revised.
11-55-41(b)	All references to "NPDES permit"	NPDES <u>individual</u> permit	Clarify that zones of mixing only apply to NPDES individual permits.

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Section	Current	Proposed	Rationale
11-55-41(b)(4), now 11-55-41(c)(1)	Approval of a zone of mixing shall be made either after a public hearing is held by the director in the county where the source is situated, in accordance with chapters 91 and 92, HRS and the rules of practice and procedures of the department, or after the public notification and comment process duly established for a discharge permit in the case when the zone of mixing is being considered concurrently with the discharge permit.	Approval of a zone of mixing shall be made after the <u>public participation process in sections 11-55-09 and 11-55-13 for the NPDES individual permit and associated zone of mixing.</u>	Clarify that a public hearing isn't required prior to approving a zone of mixing.
11-55-41(b)(5), now 11-55-41(c)(2)	No zone of mixing shall be established by the director unless the application and the supporting information clearly show that:	No zone of mixing shall be established <u>or approved</u> by the director unless the application and the supporting information clearly show that:	Revised to be consistent with similar language in section 11-55-41 which references approval of a zone of mixing. There is no functional difference as a zone of mixing may only be established once approved.

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Section	Current	Proposed	Rationale
11-55-41(b)(5)(D), now 11-55-41(c)(2)(D)	The discharge occurring or proposed to occur does not violate the basic standards applicable to all waters, will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control.	The discharge occurring or proposed to occur does not violate <u>applicable water quality standards contained in chapter 11-54 (except for pollutants for which dilution is being requested and only within the boundary of the zone of mixing or initial dilution)</u> , will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control.	<p>Revised to clarify that the discharge may exceed water quality standards but only within the boundary of the zone of mixing or dilution. These zones by definition allow for dilution of a discharge within a defined area and as such, allow for water quality standard exceedances within the zone of mixing or dilution for approved pollutants. Therefore, such an exceedance should not prevent a zone of mixing or dilution from being granted as that type of exceedance is allowable within a zone of mixing or dilution.</p> <p>The language was also further clarified to state that the exceedance is only allowed for pollutants that were granted dilution. Any other exceedance of a water quality standard that was not granted dilution is still considered a violation.</p>
11-55-41(b)(11), now 11-55-41(f)(2)	Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee.	Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee, <u>unless the NPDES individual permit for the facility which has been granted the zone of mixing has been administratively extended.</u>	Revised to clarify that the term of the zone of mixing is effective when the NPDES individual permit for the facility that has the zone of mixing has been administratively extended. Zone of mixing approvals are issued within an NPDES permit and for the same effective term of the NPDES permit. Therefore, when an NPDES permit is administratively extended, the zone of mixing approval is also considered to be extended as it is a part of the NPDES permit.
Adoption text	Stamped adoption date and previous public hearing and hearing notice.	Placeholder	Left placeholders to be filled in after adoption.