

**HAWAII ADMINISTRATIVE RULES
TITLE 11 CHAPTER 55
WATER POLLUTION CONTROL
PROPOSED AMENDMENTS TO APPENDICES C, J, AND L
DOCKET NO. CWB-1-23
RESPONSE TO COMMENTS**

**DEPARTMENT OF HEALTH
ENVIRONMENTAL MANAGEMENT DIVISION
CLEAN WATER BRANCH
PEARL CITY, HAWAII
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I. BACKGROUND

Water pollution permits in Hawaii are part of the federal Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES). The NPDES is a permit system required by Section 402 of the CWA that authorizes certain types of point source discharges, as well as some storm water discharges, to state waters such as streams, lakes, or coastal waters. The Department of Health has been authorized by the U.S. Environmental Protection Agency (EPA) to issue NPDES permits in Hawaii. NPDES permits in Hawaii are governed by Hawaii Revised Statutes, Chapter 342D Water Pollution, and Hawaii Administrative Rules (HAR), Chapter 11-55 titled “Water Pollution Control.”

HAR Chapter 11-55 describes the policies and requirements for the NPDES program. The NPDES general permits are incorporated into the HAR Chapter 11-55 as appendices. General permits are issued as rules in the HAR and not specifically to any individual owner or operator. Each general permit authorizes a category of discharges for a group of similar types of activities or facilities (e.g., once-through cooling water for air-conditioning systems or storm water discharges from construction activities) and contain requirements to minimize pollutants from being discharged to state waters. If eligible, an owner or operator may request to be covered under an applicable general permit by submitting a Notice of Intent (NOI) to the Clean Water Branch (CWB). By submitting an NOI, an owner or operator thereby agrees to comply with all requirements of the applicable general permit.

Appendix C of HAR Chapter 11-55 authorizes the discharges of storm water associated with construction activities to a receiving state water. Construction activities include, but are not limited to, clearing; grading; excavation; and on or off-site construction support activities, that result in the disturbance of one acre or more of total land area. This general permit also covers activities that disturb less than one acre of total land area that are 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.

Appendix J of HAR Chapter 11-55 authorizes unintentional discharges from recycled water systems to a receiving state water. The discharge shall be composed entirely of R-1 water, or R-1 water with any combination of storm water, potable water, or water used primarily for irrigation. R-1 water is defined as recycled water that has been oxidized, filtered, and disinfected to meet the corresponding standards set in HAR Chapter 11-62 titled “Wastewater Systems.” Unintentional discharges are waters that are discharged rarely and were never planned to be discharged to state waters.

Appendix L of HAR Chapter 11-55 authorizes discharges of circulation water from decorative ponds or tanks to a receiving state water. The decorative ponds or tanks may contain fish or other aquatic species, not including mammals. Appendix L also covers discharges of circulation water from decorative ponds or tanks that do not contain fish or other aquatic species provided that the discharge complies with HAR Chapter 11-54 titled “Water Quality Standards.”

II. PROPOSED REVISIONS

The CWB is proposing the following revisions to HAR Chapter 11-55, and Appendices C, J, and L of HAR Chapter 11-55.

- For HAR Chapter 11-55, it is proposed to revise applicable references in section 11-55-42 since the rules for intake credits have been deleted from HAR Chapter 11-54 and added to HAR Chapter 11-55; and to update section 11-55-34.02 with the new expiration dates of the NPDES general permits in Appendices C, J, and L.
- For Appendix C of HAR 11-55, it is proposed to update the effective date, add coverage from snowmelt runoff, strengthen pollution prevention for chemicals stored onsite, streamline documentation of problems and corrective actions taken, maintain uniformity with the requirements for meeting water quality standards, and clarify procedures for extending general permit coverage.
- For Appendix J of HAR Chapter 11-55, it is proposed to update the effective date, require practices to prevent pollutants from being discharged to state waters, clarify processes for the reporting of analytical results, and clarify procedures for extending general permit coverage.
- For Appendix L of HAR Chapter 11-55, it is proposed to update the effective date, provide photographs of discharge, require practices to prevent pollutants from being discharged to state waters, and clarify procedures for extending general permit coverage.

III. PUBLIC COMMENTS

The CWB conducted a Public Comment period on the proposed revisions to HAR Chapter 11-55, including the general permits specified in Appendixes C, J, and L, from May 19, 2023, through June 23, 2023. The CWB contacted approximately 1,750 permittees, including consultants, small businesses, and government agencies, to inform them of the proposed revisions and to solicit their comments.

No inputs were submitted about the proposed revisions to HAR Chapter 11-55 during the Public Comment period. A total of two (2) commenters from state and municipal agencies submitted input about the proposed revisions to Appendices C, J, and L of HAR Chapter 11-55. The CWB extends its gratitude to the commenters.

IV. RESPONSES TO COMMENTS

A. APPENDIX C OF HAR CHAPTER 11-55

Below is the summary of responses to all comments submitted about the proposed revisions to Appendix C of HAR Chapter 11-55.

1. Proposed revision of section 5.1.1.2

Comment: The CWB should revise the note to use the most recent precipitation data available when designing storm water controls.

Comment: The CWB should revise the note to consider historical precipitation data when implementing enhanced storm water controls.

Response: The CWB stresses that it is a design requirement to use recent weather data and to plan earth-disturbing activities when there is a lower risk of storm events, such as heavy precipitation, flooding, and hurricanes. The CWB also stresses that it is a design consideration, and not a design requirement, to use historical weather data and to plan contingency measures or mitigation measures which may help minimize the potential impacts from storm events. The proposed use of recent and historical weather data is also specified in the current version of the U.S. Environmental Protection Agency Construction General Permit (dated February 17, 2022).

The CWB is not amending the proposed revision of section 5.1.1.2.

5.1.1.2. Design requirements.

5.1.1.2.1.

The permittee shall account for the following factors in designing storm water [~~controls:~~]controls.

Note: Storm water controls must be designed using the most recent data available to account for recent precipitation patterns and trends.

Note: If the site is exposed to or has previously experienced major storms, such as hurricanes, storm surge, extreme/heavy precipitation, and flood events, the permittee should also include consideration of and contingencies for whether implementing structural improvements, enhanced/resilient storm water controls, and other mitigation measures may help minimize impacts from storm water discharges from such major storm events.

5.1.1.2.1.1.

The expected amount, frequency, intensity, and duration of precipitation;

5.1.1.2.1.2.

The nature of storm water runoff (i.e., flow) and run-on at the site, including factors such as expected flow from impervious surfaces, slopes, and site drainage features. If any storm water flow will be channelized at the site, the permittee shall design storm water controls to control both peak flowrates and total storm water volume to minimize channel and streambank erosion in the immediate vicinity of discharge points; and

5.1.1.2.1.3.

The range of soil particle sizes expected to be present on the site.

5.1.1.2.2.

The permittee shall direct discharges from storm water controls to vegetated areas of the site, including any natural buffers established under section 5.1.2.1., and maximize ~~[stormwater]~~ storm water infiltration to reduce pollutant discharges, unless ~~[infeasible. Use]~~ infiltration would be inadvisable due to the underlying geology and ground water contamination concerns, or infeasible due to site conditions. The permittee shall use velocity dissipation devices if necessary to minimize soil erosion in order to minimize pollutant discharges when directing storm water to vegetated areas.

2. Proposed revision of section 5.1.1.4

Comment: The CWB should clarify the requirements for routine maintenance.

Response: The CWB agrees that the requirements for routine maintenance can be clarified by referencing the requirements for completing inspection reports as specified in section 9.1.7.1. Specifically, the permittee needs to document in an inspection report why a routine maintenance cannot be completed by the close of the next work day, and why the repair, or the upkeep to be performed, can still be considered as routine maintenance.

The CWB is amending the proposed revision of section 5.1.1.4 as follows to clarify routine maintenance requirements. The amended revision is shown as underlined and red-colored text.

5.1.1.4. *Maintenance Requirements*

5.1.1.4.1.

The permittee shall ensure that all erosion and sediment controls required in this section remain in effective operating condition during permit coverage and are protected from activities that would reduce their effectiveness.

5.1.1.4.2.

The permittee shall inspect all erosion and sediment controls in accordance with the applicable requirements in section 9.1., and document the findings in accordance with section 9.1.7. If a problem is found (e.g., erosion and sediment controls need to be replaced, repaired, or maintained), the permittee shall make the necessary repairs or modifications in accordance with the following schedule:

5.1.1.4.2.1.

Initiate work to fix the problem immediately after discovering the problem, and complete such work by the close of the next work day, if the problem does not require significant repair or replacement, or if the problem can be corrected through routine maintenance. If it is infeasible to complete the routine maintenance by the close of the next work day, the permittee shall document why this is the case and why the repair or other upkeep to be performed should still be considered routine maintenance in an inspection report under section 9.1.7.1.c and complete such work no later than seven (7) calendar days from the time of discovery of the condition requiring maintenance.

Note: Routine maintenance means minor repairs or other upkeep performed to ensure the site's storm water controls remain in effective operating condition, not including significant repairs or the need to install a new or replacement control.

5.1.1.4.2.2.

When installation of a new erosion or sediment control or a significant repair is needed, the permittee shall install the new or modified control and make it operational, or complete the repair, by no later than 7 calendar days from the time of discovery where feasible. If it is infeasible to complete the installation or repair within 7 calendar days, the permittee shall document in its records why it is infeasible to complete the installation or repair within the 7-day timeframe and document the schedule for installing the storm water control(s)

and making it operational as soon as practicable after the 7-day timeframe. Where these actions result in changes to any of the storm water controls or procedures documented in the SWPPP, the permittee shall modify the SWPPP accordingly within 7 calendar days of completing this work.

3. Proposed revision of section 9.1.7.2

Comment: The CWB should consider revising the signature requirements of inspection reports.

Response: As specified in section 11-55-07(b) of HAR Chapter 11-55, "... all information to comply with the conditions of the individual permit or notice of general permit coverage ... shall be signed by person designated in subsection 11-55-07(a) or by a duly authorized representative of that person." Since an inspection report contains information documented to demonstrate compliance with permit conditions, it must be certified and signed per the requirements of section 11-55-07(b).

The CWB is not amending the proposed revision of section 9.1.7.2.

9.1.7.2. Signature Requirements.

Each inspection report must be certified and signed in accordance with section 15 of appendix A, chapter 11-55 or the duly authorized representative that meets the requirements of 11-55-07(b).

4. Proposed revision of section 10.4.3

Comment: The CWB should consider revising the signature requirements of corrective action logs.

Response: As defined in section 10.1 of Appendix C of HAR Chapter 11-55, corrective actions are actions that are taken to repair, modify, or replace any storm water controls at the project site; clean up and properly dispose of spills, releases, or other deposits; or remedy a permit violation. As specified in the proposed revision of section 10.4 of Appendix C of HAR Chapter 11-55, permittees shall document corrective actions in corrective action logs.

As specified in section 11-55-07(b) of HAR Chapter 11-55, "... all information to comply with the conditions of the individual permit or notice of general permit coverage ... shall be signed by person designated in subsection 11-55-07(a) or by a duly authorized representative of that person." Since a corrective action log is a summary of information documented to demonstrate compliance with permit conditions, it must be certified and signed per the requirements of section 11-55-07(b) of HAR Chapter 11-55.

The CWB is not amending the proposed revision of section 10.4.3.

10.4.3.

~~[Each corrective action report]~~Each entry into the corrective action log, consisting of the information required by both sections 10.4.1. and 10.4.2., must be certified and signed in accordance with section 15 of appendix A, chapter 11-55 or the duly authorized representative that meets the requirements of 11-55-07(b).

Note: The corrective action log may be prepared, certified and signed, and kept electronically, rather than in paper form, if the records are:

a. In a format that can be read in a similar manner as a paper record;

b. Legally dependable with no less evidentiary value than their paper equivalent; and

c. Immediately accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form.

5. Proposed revision of section 11.4.2

Comment: The CWB should consider clarifying the submission requirements of NOIs.

Response: Since January 31, 2023, requests for permit coverage and compliance forms, that are required by permit conditions, must be submitted at the e-Permitting Portal. It is no longer possible to physically send, or hand deliver hard-copy requests for permit coverage and compliance forms to the CWB. The CWB agrees that it would be helpful to update Appendix C of HAR Chapter 11-55 and include the web address of the e-Permitting Portal.

As explained, the CWB uses the e-Permitting Portal for the submission of requests from interested parties for permit coverage, and compliance forms from permittees. At the same time, the CWB also uses the Water Pollution Control (WPC) Database to store information and documents that are related to all permits issued by the branch. Permittees and the public can access information and documents about issued permits by using the WPC Viewer or requesting access to government records. Currently, the CWB must synchronize the information submitted at the e-Permitting Portal with the information stored in the WPC Database.

In the short-term, the CWB will continue to accept requests for permit coverage and compliance forms at the e-Permitting Portal, and to provide access to information and documents of all issued permits. In the medium term, the CWB is considering the use of an integrated application such as the NPDES Electronic Reporting Tool (NeT) by the EPA. Integrated applications allow both the submission and management of permit documents, and they eliminate the need to synchronize permit documents that are accessed by multiple applications.

For upcoming updates of Appendix C of HAR Chapter 11-55, the CWB will consider clarifying the submission requirements of NOIs to include the web address of a “future” integrated application for the submission and management of permit documents. At this time, the CWB is not amending the proposed revision of section 11.4.2.

11.4.2.

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
Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378*

6. Proposed revision of section 13.3

Comment: The CWB should consider clarifying the submission requirements of reports required by the general permit.

Response: Since January 31, 2023, requests for permit coverage and compliance forms, that are required by permit conditions, must be submitted at the e-Permitting Portal. It is no longer possible to physically send, or hand deliver hard-copy requests for permit coverage and compliance forms to the CWB. The CWB agrees that it would be helpful to update Appendix C of HAR Chapter 11-55 and include the web address of the e-Permitting Portal.

For upcoming updates of Appendix C of HAR Chapter 11-55, the CWB will consider clarifying the submission requirements of reports to include the web address of a “future” integrated application for the submission and management of permit documents. Please see the above response to comment(s) about the proposed revision of section 11.4.2 for a detailed discussion of the benefits from using integrated applications. At this time, the CWB is not amending the proposed revision of section 13.3.

13.3

The ~~owner~~ permittee or its duly authorized representative shall submit signed copies of all 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

7. Proposed revision of section 13.4

Comment: The CWB should consider clarifying the signature requirements of forms, reports, and documents that are required by the general permit.

Response: Since January 31, 2023, requests for permit coverage and compliance forms, that are required by permit conditions, must be submitted at the e-Permitting Portal. It is no longer possible to physically send, or hand deliver hard-copy permit documents with wet signatures to the CWB. The CWB agrees that it would be helpful to update Appendix C of HAR Chapter 11-55 and reflect the use of approved electronic signatures for the submission of permit documents at the e-Permitting Portal.

The CWB is amending the proposed revision of section 13.4 as follows to clarify signature requirements. The amended revision is shown as underlined and red-colored text.

13.4

The ~~owner~~ permittee or its duly authorized representative shall include the following certification statement and an original signature, or as otherwise specified, 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.

B. APPENDIX J OF HAR CHAPTER 11-55

Below is the summary of responses to all comments submitted about the proposed revisions to Appendix J of HAR Chapter 11-55.

1. Proposed revision of section 4

Comment: The CWB should consider clarifying the submission requirements of NOIs as specified in section 4(e).

Response: Since January 31, 2023, requests for permit coverage and compliance forms, that are required by permit conditions, must be submitted at the e-Permitting Portal. It is no longer possible to physically send, or hand deliver hard-copy requests for permit coverage and compliance forms to the CWB. The CWB agrees that it would be helpful to update Appendix J of HAR Chapter 11-55 and include the web address of the e-Permitting Portal.

As explained, the CWB uses the e-Permitting Portal for the submission of requests from interested parties for permit coverage, and compliance forms from permittees. At the same time, the CWB also uses the WPC Database to store information and documents that are related to all permits issued by the branch. Permittees and the public can access information and documents about issued permits by using the WPC Viewer or requesting access to government records. Currently, the CWB must synchronize the information submitted at the e-Permitting Portal with the information stored in the WPC Database.

In the short-term, the CWB will continue to accept requests for permit coverage and compliance forms at the e-Permitting Portal, and to provide access to information and documents of all issued permits. In the medium term, the CWB is considering the use of an integrated application such as NeT by the EPA. Integrated applications allow both the submission and retrieval of permit documents, and they eliminate the need to synchronize permit documents that are accessed by multiple applications.

For upcoming updates of Appendix J of HAR Chapter 11-55, the CWB will consider clarifying the submission requirements of NOIs to include the web address of a “future” integrated application for the submission and retrieval of permit documents. At this time, the CWB is not amending the proposed revision of section 4.

4. *Notice of Intent (NOI) Requirements*

~~[(a) 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.]~~

(a) 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.

- (b) The owner or ~~[its duly authorized representative]~~operator shall include the following information in the notice of intent:
- (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) ~~[Activity for which the recycled water is to be used and the amount in gallons per day of recycled water to be used or conveyed]~~A brief description of the recycled water system and the amount in gallons per day of R-1 water;
 - (3) Name of the owner or operator of treatment works producing or supplying the R-1 water, if different from the permittee;
 - (4) ~~[Copy of the agreement(s) relating to R-1 water use between the permittee and the owner or operator of treatment works producing the R-1 water, if the owner or operator is different from the permittee; and]~~Documentation showing that the recycled water system has been approved pursuant to Chapter 11-62 by the department.
 - (5) Quantitative data of the R-1 water in the recycled water system.
- (c) The director may require additional information to be submitted.
- ~~[(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
Wastewater Branch
Environmental Management Division
Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378]~~

(d) 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).

(e) 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

2. Proposed revision of section 10

Comment: The CWB should consider clarifying the submission requirements of reports, that are required by the general permit, as specified in section 10(a).

Comment: The CWB should consider clarifying the signature requirements of forms, reports, and documents, that are required by the general permit, as specified in section 10(b).

Response: Since January 31, 2023, requests for permit coverage and compliance forms, that are required by permit conditions, must be submitted at the e-Permitting Portal. It is no longer possible to physically send, or hand deliver hard-copy permit documents with wet signatures to the CWB. The CWB agrees that it would be helpful to update Appendix J of HAR Chapter 11-55 by including the web address of the e-Permitting Portal and reflecting the use of approved electronic signatures for the submission of permit documents at the e-Permitting Portal.

For upcoming updates of Appendix J of HAR Chapter 11-55, the CWB will consider clarifying the submission requirements of reports to include the web address of a “future” integrated application for the submission and management of permit documents. Please see the above response to comment(s) about the proposed revision of section 4 for a detailed discussion of the benefits from using integrated applications. At this time, the CWB is not amending the proposed revision of section 10 to include the web address of the e-Permitting Portal.

The CWB is amending the proposed revision of section 10 as follows to clarify the signature requirements. The amended revision is shown as underlined and red-colored text.

10. Submittal Requirements

- (a) The ~~[owner]~~ 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
~~[Wastewater]~~ Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

- (b) The ~~[owner]~~ permittee or its duly authorized representative shall include the following certification statement and an original signature, or as otherwise specified, 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."

- (c) The ~~[owner]~~ 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 or submittals may be a basis for delay of the processing of the document(s).

C. APPENDIX L OF HAR CHAPTER 11-55

Below is the summary of responses to all comments submitted about the proposed revisions to Appendix L of HAR Chapter 11-55.

1. Proposed revision of section 2

Comment: The CWB should consider clarifying the maintenance requirements of filter media, that are used in decorative pond devices, as specified in section 2(c)(5).

Response: There are many types of filtering devices for fish and decorative ponds including pressurized and non-pressurized devices. Depending on the device used, there are other factors besides pressure differentials to consider when replacing filter media. The CWB agrees that the maintenance requirements should accommodate a wide range of decorative pond devices with different factors for determining the replacement of filter media.

The CWB is amending the proposed revision of section 2 as follows to clarify maintenance requirements. The amended revision is shown as underlined and red-colored text.

2. *Limitations on Coverage Under the General Permit*

(a) *This general permit does not cover the following:*

- (1) *Discharges of circulation water from decorative ponds or tanks into a sanitary sewer system; ~~and~~*
- (2) *Discharges of circulation water from decorative ponds or tanks which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s) ~~[-]~~ except if the permittee is the owner of the drainage system~~[-]~~; and*
- (3) *Discharges of decorative ponds with toxic parameter concentrations above the applicable water quality criteria in chapter 11-54.*

(b) *The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11- 55-34.10.*

(c) Permittees authorized by this general permit are required to comply with the following requirements.

- (1) Treat decorative pond discharges with controls to minimize discharges of pollutants. Appropriate controls to use downstream of decorative pond 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) To the extent feasible, use vegetated, upland areas to infiltrate decorative pond water before discharge. State waters are prohibited from being used as part of the treatment area.
- (4) At all points where decorative pond 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.
- (5) ~~[Replace or clean the]~~ **Inspect, maintain, and replace** filter media used in decorative pond devices ~~[when the pressure differential equals or exceeds]~~ **according to the** manufacturer's specifications.

2. Proposed revision of section 4

Comment: The CWB should consider clarifying the submission requirements of NOIs as specified in section 4(e).

Response: Since January 31, 2023, requests for permit coverage and compliance forms, that are required by permit conditions, must be submitted at the e-Permitting Portal. It is no longer possible to physically send, or hand deliver hard-copy requests for permit coverage and compliance forms to the CWB. The CWB agrees that it would be helpful to update Appendix L of HAR Chapter 11-55 and include the web address of the e-Permitting Portal.

As explained, the CWB uses the e-Permitting Portal for the submission of requests from interested parties for permit coverage, and compliance forms from permittees. At the same time, the CWB also uses the WPC Database to store information and documents that are related to all permits issued by the branch. Permittees and the public can access information and documents about issued permits by using the WPC Viewer or requesting access to government records. Currently, the CWB must synchronize the information submitted at the e-Permitting Portal with the information stored in the WPC Database.

In the short-term, the CWB will continue to accept requests for permit coverage and compliance forms at the e-Permitting Portal, and to provide access to information and documents of all issued permits. In the medium term, the CWB is considering the use of an integrated application such as NeT by the EPA. Integrated applications allow both the submission and retrieval of permit documents, and they eliminate the need to synchronize permit documents that are accessed by multiple applications.

For upcoming updates of Appendix L of HAR Chapter 11-55, the CWB will consider clarifying the submission requirements of NOIs to include the web address of a “future” integrated application for the submission and retrieval of permit documents. At this time, the CWB is not amending the proposed revision of section 4.

4. *Notice of Intent Requirements*

~~[(a) 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.]~~

(a) 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.

(b) The owner or [its duly authorized representative] operator shall include the following information in the notice of intent:

(1) Information required in section 34 of appendix A of chapter 11-55;

- (2) Description of the decorative fish pond or tank and the type of aquatic species being housed. The description should include, but not be limited to: material type of the pond or tank; water volume contained; the type, size, and number of aquatic species being housed; and, the type(s) and quantity of food utilized;
- (3) Description of the average frequency of flow and duration of any intermittent or seasonal discharge. The frequency of flow means the number of days or months per year when there is an intermittent discharge. Duration means the number of days or hours per discharge. Provide the best estimate for new discharges;
- (4) Source(s) of the circulation water for the decorative fish pond or tank;
- (5) Quantitative data on [~~pollutant(s)~~] pollutant(s) that the owner or operator of the facility knows or reasonably should know are or will be present in the discharge and for which the pollutants numerical criteria for the existing or proposed receiving state waters are specified in chapter 11-54, especially section 11-54-4;
- (6) Name and chemical composition of any water enhancement or treatment additives, if any used;
- (7) Best management practices applied to minimize or eliminate the discharge of pollutants (e.g., feeding procedures, pond or tank cleaning operations, and control measures); and
- (8) A brief description of any treatment system used or to be used. For discharges to Class AA or Class 1 waters, the treatment system plan shall be submitted with the notice of intent.

For discharges to Class A or Class 2 waters, the treatment system plan shall be submitted with the notice of intent or thirty days before the start of discharge activities. The permittee shall retain the treatment system plan, and all subsequent revisions, on-site or at a nearby office.

- (c) The director may require additional information to be submitted.*
- (d) 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).*
- ~~(d)~~ (e) 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*

3. Proposed revision of section 9

Comment: The CWB should consider clarifying the submission requirements of reports, that are required by the general permit, as specified in section 9(a).

Comment: The CWB should consider clarifying the signature requirements of forms, reports, and documents, that are required by the general permit, as specified in section 9(b).

Response: Since January 31, 2023, requests for permit coverage and compliance forms, that are required by permit conditions, must be submitted at the e-Permitting Portal. It is no longer possible to physically send, or hand deliver hard-copy permit documents with wet signatures to the CWB. The CWB agrees that it would be helpful to update Appendix L of HAR Chapter 11-55; and include the web address of the e-Permitting Portal and reflect the use of approved electronic signatures for the submission of permit documents at the e-Permitting Portal.

For upcoming updates of Appendix L of HAR Chapter 11-55, the CWB will consider clarifying the submission requirements of reports to include the web address of a “future” integrated application for the submission and management of permit documents. Please see the above response to comment(s) about the proposed revision of section 4 for a detailed discussion of the benefits from using integrated applications. At this time, the CWB is not amending the proposed revision of section 9 to include the web address of the e-Permitting Portal.

The CWB is amending the proposed revision of section 9 as follows to clarify signature requirements. The amended revision is shown as underlined and red-colored text.

9. *Submittal Requirements*

- (a) *The [~~owner~~] 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, HI 96801-3378*

- (b) *The [~~owner~~] permittee or its duly authorized representative shall include the following certification statement and an original signature, or as otherwise specified, 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 [~~for~~and] and imprisonment for knowing violations."

- (c) The [~~owner~~] 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 or submittals may be a basis for delay of the processing of the document(s).